



COMMONWEALTH OF AUSTRALIA  
PARLIAMENTARY DEBATES

# **SENATE**

## **Official Committee Hansard**

**FINANCE AND PUBLIC ADMINISTRATION  
LEGISLATION COMMITTEE**

**(Consideration of Estimates)**

**TUESDAY, 17 JUNE 1997**

BY AUTHORITY OF THE SENATE  
CANBERRA 1997

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**SENATE****Tuesday, 17 June 1997****FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE**

**Portfolios:** Parliament; Prime Minister and Cabinet; Finance (including Administrative Services)

**Members:** Senator Gibson (*Chair*), Senator Murray (*Deputy Chair*), Senators Heffernan, Mackay, Ray and Watson

**Participating members:** Senators Abetz, Bishop, Bolkus, Brown, Bob Collins, Colston, Conroy, Cooney, Evans, Faulkner, Harradine, Lundy, Margetts, Murphy, Neal, Reynolds, Schacht, Sherry and Tambling

**The committee met at 8.04 p.m.**

**DEPARTMENT OF THE PRIME MINISTER AND CABINET**

Proposed expenditure, \$1,046,985,000 (Document A).

Proposed Provision, \$1,002,889,000 (Document B).

Consideration resumed from 16 June.

**In Attendance**

Senator Hill, Minister for the Environment

Department of the Prime Minister and Cabinet—

Program 5.1—Office of National Assessments

Mr Ken Heydon, Acting Director-General

Mr Derryl Triffet, Head, Corporate Services

Mr Peter McDonald

Program 6.1—Public Service and Merit Protection Commission

Dr Peter Shergold, Public Service Commissioner

Ms Ann Forward, Merit Protection Commissioner

Mr Peter Kennedy, Deputy Public Service Commissioner

Mr Michael Jones, Team Leader, Managing Performance Team

Mr Alan Doolan, Team Leader, Internal Support Team

Ms Heather Byrne, Senior Officer, Internal Support Team

Program 6.2—Office of the Commonwealth Ombudsman

Mr John Wood, Deputy Commonwealth Ombudsman

Mr Phillip Jones, Senior Assistant Ombudsman

Ms Sue Pidgeon, Senior Assistant Ombudsman

Barry Hugg, Executive Officer

**CHAIR**—I declare open this hearing of the Senate Finance and Public Administration Legislation Committee. I welcome the minister and the officers. We will deal with the Office of the Commonwealth Ombudsman first.

[8.05 p.m.]

**Program 6—Public administration and accountability**

**Subprogram 6.2—Office of the Commonwealth Ombudsman**

**Senator MACKAY**—I have some general questions rather than more specific ones. I have some queries with regard to the process that is being gone through at the moment with regard to contracting out, outsourcing and so on—a fairly predictable line of questioning, I would have thought. Obviously, you would be aware that there is a concern from our side of politics with regard to the increased use of commercial-in-confidence as a way of—

**Senator ROBERT RAY**—Not all of us, though.

**Senator MACKAY**—I know. Those who have been following this issue very carefully on various contracting-out inquiries and so on recently are concerned that it is becoming increasingly difficult in relation to transparency on the commercial-in-confidence side and in relation to actually scrutinising documentation with regard to tendering processes and contracting out and so on. I am just wondering whether you have got any views on it.

**Mr Wood**—It is an issue that I think we touched on briefly in the evidence we gave to the references committee on that inquiry. I indicated there that this is an issue that we have some concerns about. We indicated in that evidence that part of it is the issue of accountability and that, in our experience—and I think also there is evidence from overseas—a broad claim of commercial-in-confidence is frequently used as a generic statement for some who do not wish to disclose all, whether it be to the parliament or to an inquiring body such as an ombudsman or an auditor-general.

There is also some very interesting comment, I think, you would find in the submissions to the Administrative Review Council in its inquiry into contracting out on this subject. I think a lot of the argument, which we would certainly support, goes to the fact that really, with the kind of information that is normally sought by such inquiries, the only need to protect that is very minimal.

For instance, the claims are sometimes made that this would disclose competitive information et cetera. I think generally the sense is that the broad approach which is required in disclosing that information to an inquiry in the first place ought to be there because it is money which is spent on behalf of the citizenry. In the second place, that information which is critically confidential to and goes to matters of competitiveness is a very small proportion of that material. We could see no reason why that could not be provided in camera or with confidence and protected accordingly.

**Senator MACKAY**—In terms of a process that you would recommend in relation to what is becoming a burgeoning problem, you are suggesting, for example, an in camera session of a Senate estimates committee? Is that what you mean?

**Mr Wood**—I was not specifically referring to the operations of an estimates committee. Any form of inquiry by the parliament is entitled to be informed of the substance of that material and could be treated accordingly with the provisions that are available to the parliament to give protection to that information. An instance would be an in camera session of an estimates committee, for example.

**Senator ROBERT RAY**—Could you give us any examples of where the argument of commercial-in-confidence has been run against you or your area, where you have subsequently seen the documents, because you have eventually got them? I am really trying to percentage out what in those documents is commercial-in-confidence, because surely a lot of the times you can excise certain figures and still make the whole thing understandable?

**Mr Wood**—In a funny sense the problem does not emerge very frequently because the powers that we have to obtain information are pretty compelling. There have been occasions where people have said that they will not provide that information to us unless we issue them with a notice to give them protection. We have done that in a number of instances when we have looked at the substance of the document—for example, in matters which might relate to potential compensation claims. That is information which we have been able to look at. We have protected it and it has not appeared in context or in any form in any reporting that we have subsequently done but it has given us the kind of picture that we need in order to make appropriate recommendations for compensation. I cannot give you an instance at all where there has been, at the end of the day, a problem.

**Senator MACKAY**—We have had very strong representations from the Office of Government Information Technology with regard to commercial-in-confidence. They simply say, ‘There is no way we can provide you with virtually any information on a particular tender document or an RFI’—which is the process that they are going through at the moment—‘leading to an RFT.’ What are your views in relation to that?

**Mr Wood**—I really could not comment on the specificity of that kind of arrangement because I do not know what is involved in the tendering procedures that they are involved in. I can only repeat that I would find that difficult to understand in the context of normal tendering arrangements. When we have looked at matters of complaints in relation to tenders, we have seen all the documentation that was available, including the tender prices. It has been treated, as I have said, with appropriate confidence, and it has not been disclosed to other sources. It is there for you and for us, as an organisation, to be able to make judgments about so that we can come to some form of conclusions about the propriety of the arrangements that were entered into, and the fairness of the process.

**Senator ROBERT RAY**—Where is the line of demarcation in looking at a government tender process between you and the Auditor-General?

**Mr Wood**—We would only look at it in the context of there being some allegation of defective administration of the process. We are not so concerned with the specifics of, if you like, the probity or the contract details as such or the expenditure of money in a particular tendering process. That would be very much more the Auditor-General’s bailiwick. As far as we are concerned it is normal that there have been complaints about the tender process and the outcomes of the tender process.

**Senator MACKAY**—Page 83 of the PBS says:

Current evidence suggests that complaints will continue to trend upward at the same rate as for 1996/97. This trend, combined with the reduction in resources, will probably result in a greater number of complaints being denied investigation.

How does that sit with the fact that there has been a reduction in resources with regard to the office?

**Mr Wood**—Life is becoming considerably more difficult for our investigation officers is the simple answer to that question.

**Senator MACKAY**—An exponential workload, I would have thought, with the new regime.

**Mr Wood**—Yes. We have got to the stage where essentially our investigation officers simply cannot take on greater workloads. It is very difficult to assign a specific number of investigations at any one time to a particular investigation officer because the nature of the complaint to be investigated varies so markedly from the type of complaint that might be able to be resolved in an hour to those that might take over a year of investigation and resolution.

We are finding that staff are now starting to suffer because of the workloads. Because of our legislation, of course, we have no alternative. We cannot just make a blanket decision to exercise discretion not to look at categories of complaints. We must look at all complaints and determine whether an investigation is warranted.

However, we have had to exercise discretion at a much higher level where complaints are made in those portfolios that have some form of alternative review mechanism. The letters of discretion—for example, in the field of social security and the Child Support Agency—are very much higher now than they were a year ago. In other words, we are saying to complainants, ‘Look, there’s another avenue for you. You should go there in the first instance.’

In one sense, that is not a bad thing because those agencies have established, or are establishing, quite competent internal complaints handling systems. But there are occasions where we simply do not know how those people will fare in that system. There are other occasions where we might have, in other circumstances, acted on their behalf and taken the matter up. We have just had to make some fairly hard decisions along those lines.

**Senator MACKAY**—Would you be able to provide us with some information as to where you have advised a client with a complaint to, say, go to the SSAT as the first port of call and where you have decided, given the limited resources that the office has now got, to proceed with the investigation? If you have any internal guidelines with respect to that, could you also provide us with copies of those?

**Mr Wood**—Yes.

**Senator MACKAY**—You will take that on notice?

**Mr Wood**—Yes.

**Senator MACKAY**—That is great. It seems that the office has underspent its budget allocation by \$640,000 in the 1996-97 financial year. Is that right?

**Mr Wood**—As soon as the cut was originally applied in the 1995-96 budget, we made some very hard decisions then, knowing that it was going over a period of time. We exercised a lot of cut backs, non-replacement of certain staff, and other matters which were mentioned in the last annual report, so that we could ensure that the effect did not build up and become worse as time went on.

As Ms Pidgeon reminds me, one of the key things that we were going to do in that period was to undertake a very major upgrade to the software for our computer system. That is something which we just had to drop in favour of trying to retain what staff we had. Essentially, the reason we have done that is to build up a carry over which will even off the effects of that cut over a three-year period.

**Senator MACKAY**—Just going back to the question of the potential for backlog, do you perceive that there will be an increasing backlog? In terms of time lines, do you have any comparisons? I appreciate that there are exigencies that may make it difficult to do a comparison—but, say, a complaint took X amount of time previously, it might now take Y.

**Mr Wood**—I cannot give you an answer to that at the moment. That is information that we will be reporting on in our annual report. The projections for the number of complaints

continues—as I think I indicated previously—but at the moment we are looking at an increase of some 18 per cent over last year's total approaches to us. One cannot tell because we cannot predict the kinds of actions within the agencies against whom the complaints are made what is going to happen in their bailiwick, if you like, which will give rise to complaints to us. In that sense, the performance and behaviour of others determines what the rate will be.

However, looking at the kinds of things that are happening around the place, I would certainly predict that that increase, which has been very dramatic in the last year and this financial year, will even off somewhat next financial year. I am expecting it to probably be around the 10 per cent increase next financial year. That is as good a guess as is available.

**Senator MACKAY**—Minister, can I just ask you a couple of questions? Do you have any comment with regard to the comments that were just made on the commercial-in-confidence provisions?

**Senator Hill**—I thought that the solutions that you were heading towards were reasonable.

**Senator MACKAY**—Thank you for that.

**Senator Hill**—I think that there is a motion being put in the Senate looking at the capacity of estimates committees to go into camera for such material.

**Senator MACKAY**—Do you think that is fairly reasonable?

**Senator Hill**—Without hearing any arguments against it, it seems to me not unreasonable, provided that it remains the exception. Part of the purpose of the estimates process is its transparency in order to give public confidence in the process. The more you do out of the public eye, the lower that transparency will be. There may be circumstances when it is helpful arming senators in their task of better exploring the estimates and ensuring proper accountability.

**Senator MACKAY**—With regard to the reduction in resources to the Ombudsman's office, do you think that that is going to be a difficulty? It strikes me that, in what is a brand new regime on the outsourcing and contracting out area, this is a time when the resources allocation should be increased to this office. You have heard evidence from Mr Wood about the arrangements they are making internally to try to overcome this.

**Senator Hill**—There is always an argument for increased resources. The government made a decision that the levels of public expenditure could not be maintained and we have made cuts across-the-board. That has made life tough for a lot of people. If I might ask a question, I am rather interested to know what the trend is in relation to the state ombudsmen's offices re workloads and expenditure?

**Mr Wood**—The workload of New South Wales has certainly increased, as has their budget. Looking at their reports over the last few years, from my recollection it has been relatively static. It is important to point out that one of the significant differences in workload for a number of the state ombudsmen, which also have the police complaints jurisdiction, is that over 50 per cent of all their complaint work is police work, whereas for us it is a very small proportion of our total workload—thank heaven.

In Victoria, for example, nearly 60 per cent of all complaints to the Victorian ombudsman are police complaints. In New South Wales, my recollection is that it is something around 55 per cent of their total complaint work. It is a very different kind of operation. I just correct one thing I said to you earlier, Senator Mackay. I said the 1995-96 financial year—it was the 1996-97 financial year.

**Senator MACKAY**—Thank you, Minister, for that. Are you happy with your answer?

**Senator Hill**—It is not a question of whether I am happy or not.

**Senator MACKAY**—Mr Wood, we understand that there have been concerns raised about the capacity for senior public servants' ability to write contracts. Are you concerned at all with the lack of power that the office has currently to ensure that a contract standard is set?

**Mr Wood**—Do you mean in relation to the kind of contracting out?

**Senator MACKAY**—It is a fairly disparate process at the moment, isn't it?

**Mr Wood**—That is certainly my experience. It is difficult for me to answer specifically. Generalisations are a bit easy to come by. I certainly have seen an incredible variation in the quality of contracts one sees around the place. I certainly think it is an area where a very good deal of improvement could be made in the capacity and abilities of people working there. The Commonwealth often is in a very dominant purchaser position as opposed to being the vendor. In those circumstances, it has tended to get away in the past with writing what I would describe as being some examples of contracts which border on the unconscionable on occasions in the requirements that it places on the contractor.

Certainly, that is changing. However, I think a reflection on the purchasing power is one matter that has not always been brought home to the attention of those writing contracts. They should ensure that appropriate standards are built into the contracts in the first instances. There must be an understanding of what kind of performance is required under that contract, both in the interests of the Commonwealth at large, the recipients in cases where it is a service being provided, or in the interests of the contractors themselves, just what kinds of standards they are required to meet.

**Senator MACKAY**—One of the more current issues is the IT outsourcing fracas, for want of a better term, that is going on at the moment. I do not want to lead you too much, but it seems to me that this is an area where you could devise a standard contract, for want of a better term, because we have got a whole of government approach in relation to IT outsourcing. What do you think?

**Mr Wood**—It happened before I joined the ombudsman's office, but the contract that the ombudsman went into for its IT was an appalling piece of work for a start. Luckily, we now use standard government information technology contracts and we use the special expertise of the Australian Government Solicitor, who I think has developed very good contracts in these areas. They are also standard around the country.

I still think there is room for improvement in certain areas in relation to standards within those contracts. They are very good in relation to the provision of information technology, but they are a little short sometimes on the levels of standards that are required. But I would not want to overextend any assertions about my particular knowledge beyond that.

**Senator MACKAY**—Will you be making recommendations to agencies with regard to this, if that is within your purview?

**Mr Wood**—Certainly, if it comes up that we are involved in looking at investigating, yes.

**Senator MACKAY**—You probably will find that that will happen.

**CHAIR**—Given your comment before that your impression is that amongst the states the comparable offices have been fairly static, why is there an increase in complaints over the last year or so? Is it because there has been a change of government and a fair bit of change has taken place here? Would you expect things to level off?



**Mr Wood**—The increase started before the change of government. You could put it down to a number of things. In the first instance there is a greater awareness of the ombudsman as an institution. The current ombudsman has been a fairly high profile person. That has clearly brought certain attention to the public at large about the existence of the office. There was also quite a bit of outreach work done to get to those people who traditionally had not used the ombudsman's resources, people from non-English speaking backgrounds and from indigenous Australian backgrounds.

It has also undoubtedly been due to significant changes in the way in which particular programs have been administered over that period of time. There have been moves to greater reliance on call centres, teleservice type operations, provision of oral rather than written advice and, in a number of instances, cut backs in direct face to face contact with clients of agencies. There is a range of reasons why.

**CHAIR**—Thank you very much.

[8.29 p.m.]

### **Program 5—Portfolio policy advising agencies**

#### **Subprogram 5.1—Office of National Assessments**

**CHAIR**—I welcome Mr Heydon, Mr Triffett and Mr McDonald from the ONA.

**Senator FAULKNER**—Given the budget cuts to ONA and your limited analytical resources, I am interested to know what processes are in place to determine priority for intelligence analysis.

**Mr Heydon**—We do have a formal process of priority setting. The principal vehicle for that is the national foreign intelligence assessment priorities which are prepared by ONA and then are considered in the Secretaries Committee on Intelligence and Security and from that then go on to the National Security Committee of Cabinet. Those priorities were reviewed about 12 months ago and will be reviewed in a few months time.

**Senator FAULKNER**—As I understood the situation under the former government, we had intelligence priorities being set by the Security Committee of Cabinet and had official levels of advice being coordinated by the Secretaries Committee on Intelligence and Security. I think it is fair to say that that is how the situation worked historically. Would that be fair?

**Mr Heydon**—Yes.

**Senator FAULKNER**—I understand from what you have said to us that that is fundamentally still true, is that right?

**Mr Heydon**—Yes. The procedures now are basically the same as they were then.

**Senator FAULKNER**—So I am clear, how does that relate to ONA's work?

**Mr Heydon**—Once the national foreign intelligence assessment priorities have been endorsed by the National Security Committee of Cabinet they, in effect, set the priorities for ONA and that is the framework in which we work. There are basically four categories of priority and, increasingly, in response to budget pressures, we have been devoting more resources to category A and will continue to do that.

**Senator FAULKNER**—Is there a problem for me in understanding what the categories are? I assume they are A, B, C and D. Is that right?

**Mr Heydon**—Yes.

**Senator FAULKNER**—Are you uncomfortable in letting the committee know what the broad categorisations are?

**Mr Heydon**—I am afraid that to go beyond the groupings would really get into questions of national security. I think I would rather not get into that sort of detail.

**Senator FAULKNER**—At least we know it is the first four letters of the alphabet. What sorts of relationships exist between ONA and customers in policy departments?

**Mr Heydon**—We have relations obviously at a number of levels. The most important, in terms of our links with customers, is the relationship between the director-general and the Prime Minister. There is fairly frequent contact at that level. There are then formal processes for contact with customers of which the most important is the national intelligence committee which is an opportunity for ONA to meet with collectors and also with our key customers. That meets regularly and provides an opportunity for feedback from customers.

**Senator FAULKNER**—Would your reports and assessments usually be generated at the initiative of ONA itself or would it mainly be as a consequence of demand from consumers or would it be both?

**Mr Heydon**—It is both but, more commonly, it is generated by consumer interest, often at ministerial level or desk level from within departments. It is generally in response to customer interest that we write on particular issues.

**Senator FAULKNER**—Are you facing any problems recruiting staff so that you maintain adequate levels of expertise in areas of national and international importance? I was interested, when having a look at the PBS, to know whether this was a particular problem for you.

**Mr Heydon**—There can be problems. It is essentially a problem of timing. If analysts leave then there may be a period before you recruit new analysts when resources may be somewhat depleted. We have had that experience in recent times. Beyond that, we are able to recruit analysts. We have a number in the pipeline that we are expecting to recruit quite soon.

**Senator FAULKNER**—So you would say there are some deficiencies at the moment?

**Senator Hill**—He said that there was pressure of time.

**Senator FAULKNER**—That is what I am trying to clarify.

**Senator Hill**—Like many other areas, there is always more work for the resources available.

**Senator FAULKNER**—I was interested in the staff recruitment issue and whether you are particularly looking at your recruitment activities to remedy any particular deficiencies. That was the purpose of my question.

**Mr Heydon**—No, I would not characterise them as deficiencies. We have had areas where it would have been nice to have had greater analytical capacity, but we have certainly maintained a level of analytical capacity and are now in the process of recruiting more.

**Senator FAULKNER**—Would you be able to indicate those areas where ONA would have preferred to have greater capacity or is that difficult for you to put before the committee?

**Mr Heydon**—Again, it is difficult.

**Senator FAULKNER**—I am comfortable with that. That is why I asked the question in those terms. You can let me know. We are not too sensitive about it. If I cannot get an answer to that question I will battle on and see whether I can ask one I can get an answer to. I notice that section 5(1)(d) of your act requires ONA:

. . . to keep under review the activities connected with international intelligence that are engaged in by Australia and to bring to the notice of relevant Departments and Commonwealth authorities, any

inadequacies in the nature, the extent, or the arrangements for coordination of those activities that become apparent from time to time and suggest any improvements that should be made to remedy those inadequacies.

In 1988 we had a situation where former Senator Bishop raised questions in this committee about ONA's performance in respect of the military coup in Fiji. I do not know whether you were in harness then, Mr Heydon?

**Mr Heydon**—I was not, Senator.

**Senator FAULKNER**—I do not know whether you were even aware of that history.

**Mr Heydon**—I was aware of it, Senator.

**Senator FAULKNER**—Basically, the response of the Director-General of ONA then confirmed that the performance of the intelligence community in respect of those events had been the subject of a review. I suppose there is a precedent in a sense for asking a question like this. I would be interested, if you are able to, if you could inform the committee whether a review had been conducted of ONA's performance, or perhaps a review contemplated, and the intelligence community's performance as a whole in respect of the recent crisis concerning the PNG government's decision to engage foreign mercenaries for operations on Bougainville?

**Mr Heydon**—Again, I am afraid that that really is an area that does impinge on national security and intelligence matters. I would rather not respond to that.

**Senator Hill**—The trouble is that if you said that you had reviewed it that would imply that there was some conclusion of deficiency, would it not? I suppose you could review a success, but you are more likely to be reviewing an area of concern. That makes it very difficult to confirm or deny, as they say, without really—

**Senator FAULKNER**—One thing I do not intend to do, Minister, is to give a Bronwyn Bishop impersonation for the committee, and I am sure that will come as a relief to you and everyone else. But hearing what you say, Mr Heydon, in your response, does the Director-General of ONA—it is a general question which I do not think you will not have a problem with—have a statutory responsibility for conducting such a review? You might explain that to me because it is something that I am not entirely clear about.

**Mr Heydon**—As you say, under section 5(1)(d) of the act, the director-general does have responsibility for looking at questions of coordination and efficiency within the intelligence community, and that is an activity which is engaged in quite regularly—but again, generally through the channel of the Secretaries Committee on Intelligence and Security and then to the National Security Committee of Cabinet.

**Senator FAULKNER**—You have given me a response in relation to my question on mercenaries for operations on Bougainville, PNG. Has there been some revisionism here in ONA as a result of Senator Bishop's questioning in 1988, which I think was of a similar nature?

**Mr Heydon**—My understanding is that it is a fairly longstanding practice that we do not respond to questions on national security. That has certainly been the practice in recent years in my experience.

**Senator Hill**—It is reasonable to expect that the agency would analyse its performance from time to time, and would make assessments, would it not?

**Mr Heydon**—We do indeed and, of course, we produce an annual report as do all the other agencies. Again, they go through this formal process of consideration in the secretaries committee and then will go to cabinet. So that is a regular annual activity that we go through.

**Senator FAULKNER**—I appreciate that, but I think Senator Hill talks about a different review, in a sense, or reviewing activities. It is a different review, I think you would accept, would you not, Mr Heydon, to the nature of the review that I speak of in invoking the Bishop precedent of 1988? Tell me if I am wrong, but do I understand that Senator Hill's very helpful intervention there is about a matter a little different to the sort of review that I am talking about?

**Mr Heydon**—Yes, Senator, that is true, and there is an ongoing process of internal evaluation of performance which can cover specific incidents.

**Senator FAULKNER**—So you would consider informing me of any decision in relation to holding a review of the nature that I am speaking of—would you define that as an operational, security or intelligence matter—and it is for that reason that it is sufficiently sensitive that you do not think it is appropriate that you answer my question in that regard?

**Mr Heydon**—Yes, senator, that would be my view.

**Senator FAULKNER**—I wonder if the then director-general argued the same case back in 1988 with Senator Bishop. Do you know that?

**Mr Heydon**—I don't, Senator.

**Senator FAULKNER**—If I asked you a couple of questions about the mercenary project, it would be best to ask you these questions and see if I can evince an answer?

**Senator Hill**—It sounds operational right from the start, I have to say.

**Senator FAULKNER**—I understand that if I ask them I may not receive an answer. I think you would accept the spirit with which I am asking these questions, Senator Hill; I have to acknowledge that.

**Senator Hill**—I have no problem with questions being asked.

**Senator FAULKNER**—Only with them being answered! That is what we find with all the ministers, as a matter of fact. Could I ask whether it was a fact that the mercenary project was the subject of negotiating and planning as early as March last year, and that more than nine months of extensive discussions and international activity followed before ONA briefed the Prime Minister and other ministers on 13 February this year—which was two weeks after the Sandline contract had been signed and after the first group of mercenaries had arrived in PNG? Is that a question you are comfortable in answering?

**Senator Hill**—It is clearly operational.

**Mr Heydon**—If it were a matter that had been on the public record, we would have no problem in responding, but I think that that question does go to intelligence matters and operational matters, and it would be very difficult for us to respond.

**Senator FAULKNER**—I was interested in trying to understand why, on the surface, the intelligence community appeared to fail to give ministers a more timely briefing. But I suspect, given your response to my other questions, that you might care to let that one go through to the keeper, too. Would that be right?

**Mr Heydon**—Yes, it would.

**Senator FAULKNER**—Can I ask a question you may be comfortable in answering? If you are not, I might quit while I am behind! The issue of early warning to government ministers of these sorts of things obviously is important. I do not want to make this a hypothetical question, because you know the tenor of the questions I have been asking you. An earlier warning to ministers effectively would have allowed the Australian government to register our

nation's opposition before the Sandline deal was signed and the consequent destabilisation in PNG was under way. It is for these sorts of reasons that these are obviously very important issues in terms of the Australian government and government processes here. Is that a fair statement on my part?

**Mr Heydon**—That is fair.

**Senator FAULKNER**—Is it something you are comfortable in answering?

**Mr Heydon**—Yes. Early warning is an extremely important function, and it is within our charter and one of our principal goals to try and anticipate developments well before they happen. That certainly is something that we are responsible for.

**Senator FAULKNER**—This might go to whether you are tasked to give adequate attention to whatever the issue might be. I suppose, as I understand from the evidence you have given us, you can either be tasked to do this or else you can, depending on the advice of your own analysts, appreciate the significance of what might be occurring internationally and, appreciating the significance of the raw intelligence before you, make internal assessments.

**Mr Heydon**—Yes. In fact, where it is something that is quite unforeseen, it is almost certain that we would not have been tasked, and that it is something that has come to our notice which we then feel a responsibility to alert ministers to.

**Senator FAULKNER**—Thank you, Mr Heydon. Unlike Senator Bishop, I try to establish a good dialogue and a good relationship with officers at the table.

**Mr Heydon**—I think you have.

**Senator FAULKNER**—You never know: very soon I think that you will find Labor ministers sitting in the same chair as Senator Hill is in now. We always find that that keeps the lines of communication open. I can assure you that I will not do a Senator Bishop; I am much nicer than Senator Bishop.

**Mr Heydon**—Thank you, Senator.

**CHAIR**—That completes program 5.1. Thank you, Mr Heydon, and your staff.  
[8.50 p.m.]

### **Program 6—Public administration and accountability**

#### **Subprogram 6.1—Public Service and Merit Protection Commission**

**CHAIR**—We have done subprogram 6.2, so we will now do program 6, the general one, and subprogram 6.1 together. Welcome, Dr Shergold and Mr Jones. Any questions, Senators?

**Senator FAULKNER**—I would like to ask Dr Shergold a question about his review into Max Moore-Wilton, which he was tasked to undertake on behalf of the Prime Minister. Dr Shergold—if we could understand a little about the process here—I understand that you were tasked telephonically by the Prime Minister to do this. Is that fair?

**Dr Shergold**—That is correct, yes.

**Senator FAULKNER**—So on a Saturday you got a call from the Prime Minister?

**Dr Shergold**—On Saturday morning, between 8.30 and 9 o'clock, I got a call from the Prime Minister.

**Senator FAULKNER**—It was lucky you were at home, I suppose.

**Dr Shergold**—I was at a winning stage in my tennis game.

**Senator FAULKNER**—So have you forgiven him?

**Senator ROBERT RAY**—This is about two days after the estimates committee on Wednesday, the 8th, is it?

**Dr Shergold**—That would be correct.

**Senator FAULKNER**—Perhaps you could let us know how you went about this task. You have got a call from the Prime Minister. You are at two sets to love up and five-love in the third set, at 40-love about to serve and the mobile phone rings.

**Senator Hill**—Looking forward to the rest of the day.

**Senator FAULKNER**—Just tell us how, after that, you went about it.

**Dr Shergold**—After I had had the conversation with the Prime Minister, I rang up the deputy secretary in PM&C, explained that I had been asked to conduct this investigation and asked for officers who would be available to come in to the department immediately on Saturday morning, in order to provide me with all the files on the matter. I then rang those officers and asked them to go to the department to prepare the files for me. I arrived at the department at about 11 o'clock and worked my way through those files. My deputy commissioner, Peter Kennedy, joined me at about lunchtime and together we spent some hours drafting the report.

I interviewed, by telephone, the acting assistant director of personnel and the head of corporate services, whose names are on the files, to check on some matters, and that afternoon completed my report. I think it was delivered to the Lodge late on Saturday night.

**Senator FAULKNER**—What were, effectively, the terms of reference of this investigation?

**Dr Shergold**—The Prime Minister wanted to assure himself that the secretary of Prime Minister and Cabinet had followed due processes. In the course of the conversation, he indicated that he would be interested in knowing if there were any systemic problems also and, if so, for me to make recommendations as to how they might be addressed.

**Senator FAULKNER**—Was the deputy secretary of PM&C Mr Blick?

**Dr Shergold**—Correct.

**Senator ROBERT RAY**—While Senator Faulkner is chasing something else up, I will ask: by what authority would you normally be given the task of investigating such a matter? Where does it come within the ambit of your job description?

**Dr Shergold**—The Prime Minister telephoned me on the basis that he thought I was the appropriate person within the Public Service to investigate this issue. And, of course, the determination which was central to the issue was an old Public Service Board determination of 1984.

**Senator ROBERT RAY**—I understand what was in the Prime Minister's mind, but I am wondering how it comes within your job description to become, rather than the administrator, someone to write a report and make judgments about these matters.

**Dr Shergold**—As I have suggested, it was a Public Service Board determination originally which was the main determination which governed the issue of the TAA, the allowance. I think it was appropriate that I would be asked and would have the authority to assure the Prime Minister that that determination had not been breached.

**Senator ROBERT RAY**—On how many other occasions have you carried out investigations—I cannot say 'of a similar nature'—with a similar ambit?

**Dr Shergold**—This is the first time I have carried out an investigation of this type.

**Senator ROBERT RAY**—You have not been asked before?

**Dr Shergold**—I have not been asked before for an investigation of this type. I did use the powers under the act to undertake the inquiry into allegations of paedophile activity in the Department of Foreign Affairs and Trade.

**Senator ROBERT RAY**—Again, because of the position you hold, you were regarded as the most suitable?

**Dr Shergold**—And the Public Service Act sets out those powers.

**Senator FAULKNER**—I think it is fair to say—I do not want to put words into your mouth—that in essence you found that Mr Moore-Wilton had acted appropriately and within the guidelines. I think that is a fair summary of your report.

**Dr Shergold**—The summary of my report I would say is that there was no determination in existence which specifically covered the situation of secretaries. The only determination was one covering SES officers, and by custom and practice that had then been applied to secretaries. Even that determination provided considerable flexibility to secretaries in deciding what would be the allowance to be paid to SES officers.

**Senator ROBERT RAY**—You mentioned another inquiry you were involved in—I do not want to go into any details of that—where there were allegations made against officers, I think. Did you talk to those officers in the course of that investigation?

**Dr Shergold**—In terms of the paedophile inquiry?

**Senator ROBERT RAY**—Yes.

**Dr Shergold**—I did not directly. There was something done, under delegation, by Pamela O'Neil, and yes, she certainly talked to those officers.

**Senator ROBERT RAY**—That is the last question on that one. In this other case, did you talk to Mr Max Moore-Wilton about these matters?

**Dr Shergold**—No. I made a decision at the start that I did not think that was the most appropriate response initially. I wanted to first read the files and then speak to the people who had generated those files. If there was any concern on my part that there had been a breach of process, or indeed if there had been any concern on my part that anything was ambiguous, then I would have talked to the secretary of PM&C. In this instance that was not the case and I did not speak to the secretary.

**Senator ROBERT RAY**—So you had no thoughts at any stage that the secretary had influenced a junior officer to come to a particular ruling?

**Dr Shergold**—No, I came to the conclusion, both from the files and from speaking to the officers, that there had been no pressure brought to bear and that, more importantly, all the decisions that had been made were transparent and recorded on files.

**Senator ROBERT RAY**—I think you also note in the report, to support that contention that you have just brought forward here, that you thought there was a degree of transparency that would have certainly led you to that conclusion?

**Dr Shergold**—That is correct. I thought that rather than seeking to place any pressure on subordinate officers, which I think was a real potential, the secretary had quite explicitly made the decision himself and ensured that it was recorded on the files.

**Senator ROBERT RAY**—I know it was not part of your brief, and I do not expect you to say directly, but were you able to form any view at all on how this set of circumstances reached the public domain?

**Senator Hill**—Sorry?

**Senator ROBERT RAY**—How the circumstances surrounding this reached the public domain; whether, in the course of Dr Shergold's investigation, he picked up any—I am not asking him to say, 'Yes, I found so-and-so is a leaker,' but did that come up at any stage?

**Dr Shergold**—No, it did not.

**Senator FAULKNER**—Dr Shergold, in your review you also suggested that there be some new arrangements to avoid secretaries having to approve their own allowances. I was wondering where we were up to in relation to that—whether they have been established? You indicated that the Public Service Commissioner could issue guidelines. Where have we gone since your brief to the Prime Minister on 10 May 1997 in regard to that?

**Dr Shergold**—Since the Prime Minister indicated that his preference was for the Public Service Commissioner to issue guidelines, they have been being developed. I anticipate that they will be provided to secretaries in the next two weeks.

**Senator FAULKNER**—So the guidelines as yet are not completed?

**Dr Shergold**—The guidelines are as yet not complete.

**Senator ROBERT RAY**—Just a more general question here, as to whether it should be up to the Remuneration Tribunal to consolidate all these allowances—and we will probably go through some of these later. There seems to be a whole range of emoluments, if you like, derived from various authorising bodies, like the Remuneration Tribunal, the Public Service Commission. In one or two instances I suspect that that cannot be avoided, because it relates to superannuation. Is there any thought of asking the Remuneration Tribunal to review and consolidate some of these quite numerous allowances and give guidelines?

**Dr Shergold**—I think that is a wider question and worthy of consideration. In this instance it is simply a guideline to deal with the discretionary allowances that are set out for SES officers under that determination 1984/46.

**Senator ROBERT RAY**—But you don't think, because these allowances apply to SES officers and because the Remuneration Tribunal sets the salary of secretaries at three different levels, in this case at the highest level, and has made a determination on tenure, that they may have taken into account in that totality of package what the remuneration should be in these supplementary arrangements which apply to SES officers, then translated to secretaries may have altered their decision as to the ultimate remuneration package?

**Dr Shergold**—I think that is a wider policy issue, but all I can do is to confirm that the guidelines that I am working on at the moment are simply to cover those discretionary allowances.

**Senator ROBERT RAY**—If it does not involve advice to a minister or government, is some consideration being made to have all these matters either consolidated under the Remuneration Tribunal or not?

**Dr Shergold**—That is a policy matter, Senator.

**Senator ROBERT RAY**—Minister, what do you think?

**Senator Hill**—I do not see any reason why it should not be taken on board, but I am not sure what the process would be.

**Dr Shergold**—These are matters of policy consideration, and they would not normally be the sorts of matters that would be put forward by a public servant at this forum.

**Senator Hill**—We can take them on board.



**Senator ROBERT RAY**—We will let it go.

**Senator FAULKNER**—Dr Shergold, what is the procedure with the new guidelines? Do they need to be, or should they preferably be, approved by the Prime Minister? What is your plan for them?

**Dr Shergold**—The guidelines would set, in broad terms, what the parameters are for such discretionary allowances with secretaries, so that those working within departments or agencies will know what is appropriate for secretaries or heads of agencies. If they wanted to go beyond those guidelines, they would have to seek the agreement of the Public Service Commissioner.

**Senator FAULKNER**—Is this a matter for your determination, and yours alone? What I am trying to understand is whether you would be proposing to pass these by the Prime Minister before they are issued, or is it just a matter for yourself?

**Dr Shergold**—In the normal course of events, I would not imagine passing them by the Prime Minister. If there were occasions in which it was necessary to seek the advice of a minister or Prime Minister, one would do so. But, in most instances, these would be guidelines issued by the commissioner which would clearly apply to secretaries or heads of agency for the first time.

**Senator ROBERT RAY**—If there were some contention, wouldn't you run it not by the Prime Minister but by the Minister Assisting the Prime Minister on Public Service Matters?

**Dr Shergold**—In terms of actually developing the guidelines, or once they are set in place?

**Senator FAULKNER**—Perhaps either.

**Senator ROBERT RAY**—Having developed them, but before you set them in place: is that the appropriate time?

**Dr Shergold**—In that instance, at that stage, while they are being developed, it would certainly be the intention to discuss them with the minister. Once they are set in place, however, the aim would be to avoid the minister or Prime Minister having to get involved in those discretionary allowances.

**Senator FAULKNER**—Have you had any discussions yet with the Minister Assisting the Prime Minister on Public Service Matters on these guidelines?

**Dr Shergold**—Not at this stage.

**Senator ROBERT RAY**—We use that term, 'the Minister Assisting the Prime Minister on Public Service Matters,' and I assume that that is Mr Reith, isn't it?

**Senator FAULKNER**—It is. It is a bit of a long-winded title. I am not clear on one issue in relation to the guidelines. When they are finalised, obviously they will be made available to secretaries; but, ordinarily, would they also be publicly available?

**Dr Shergold**—Correct.

**Senator FAULKNER**—I think the committee can have a look at them at that stage.

**Dr Shergold**—They would be available for perusal, yes.

**Senator FAULKNER**—Your time frame here is a couple of weeks: is that right?

**Dr Shergold**—It is realistic to think that within two or perhaps three weeks the guidelines will be developed.

**Senator FAULKNER**—Haven't we had a situation in the past where it has always been possible for a secretary to refer any matter where he or she is unsure—where a secretary might

have to approve their own allowances—to the Public Service Commissioner for approval? That has always been an option open to a secretary in the past, hasn't it?

**Dr Shergold**—That is an option open; as is the option of discussing the matter with the minister or the Prime Minister.

**Senator ROBERT RAY**—Is it still the case that public servants are not supposed to have a second or third job?

**Dr Shergold**—It is not that simple. You have to have agreements for other activities, including paid or unpaid occupations outside the Public Service.

**Senator ROBERT RAY**—Who would you seek agreement from?

Let us say that I am an SES band 2, and I—

**Dr Shergold**—In terms of the senior executives, you would seek the agreement of the secretary or the head of agency.

**Senator ROBERT RAY**—And in the case of the head of agency or secretary?

**Dr Shergold**—It would normally be the agreement of the minister. But, again, that is based on custom and practice rather than anything being set down. The key problem that is identified here is that we have not written determinations having in mind the situation of secretaries or agency heads.

**Senator ROBERT RAY**—Would this also apply to an unpaid job that in some way may become a paying job when the secretary would leave?

**Dr Shergold**—In terms of a public servant seeking agreement to undertake unpaid work on a regular basis, yes, they would seek the approval of the secretary.

**Senator ROBERT RAY**—Are you aware of any cases of that?

**Dr Shergold**—In the past, I have given an agreement to someone undertaking voluntary work on a regular basis.

**Senator Hill**—What is the test? Is it when they were not maybe functioning consistent with the principal responsibility of the employer?

**Dr Shergold**—The difficulty is if they are undertaking voluntary work which may impose time constraints on when you would need them to be employed as a public servant. That is the sort of thing you would take into consideration.

**Senator ROBERT RAY**—So the normal procedure if, let us say, you are a secretary and you want to hold down a voluntary job—and I know I have approved one in my time as a minister—or a paid job, would be to seek approval from the minister?

**Dr Shergold**—Correct.

**Senator ROBERT RAY**—When Mr Max Moore-Wilton is placed in that position, he does not hesitate, does he, Minister, to consult with the Prime Minister?

**Senator Hill**—Mr Max Moore-Wilton has had other positions and, as I understand it, they were approved by the Prime Minister.

**Senator ROBERT RAY**—In terms of the matters that we have been discussing, I am just wondering why, in the case of his own remuneration, he did not consult the Prime Minister.

**Senator Hill**—That is hypothetical, is it not?

**Senator ROBERT RAY**—I do not know. Having faced a situation where he is holding down one job worth \$50,000 and one worth \$35,000 that involve some work, ostensibly

outside working hours, he informs the Prime Minister of that because he is the only authority left to inform. I am wondering why, in a case where he has to approve his own emoluments, he did not raise it with the Prime Minister. This is pre the new guidelines coming out.

**Senator Hill**—One of the possible explanations that I suggested at the last meeting was that this particular allowance—according to the notes on the file of the officer—did not require further consent unless it was beyond certain levels. Then there was debate as to whether or not it was beyond those levels. What I am suggesting is that perhaps this was not one of those obvious cases where it would seem to have been necessary to seek the approval of a higher authority.

**Senator ROBERT RAY**—Dr Shergold, in the time that you have held this post, how many cases have come to your attention of a public servant approving their own allowances, emoluments and expenses when those are incurred within guidelines but the person should not approve their own? I know there have been cases where they are outside the guidelines, but we will leave those aside. Have there been any cases?

**Dr Shergold**—I would not be aware of any cases unless they entered the public domain. Under the present guidelines, there are no reasons for secretaries to report back to me.

**Senator FAULKNER**—I would be interested in knowing—given that when I suggested it was possible for a secretary of a department to go to the Public Service Commissioner to have his allowances approved, you said, quite rightly, he could go to the Prime Minister—whether there are any other cases that you are aware of where decisions relating to the approval of allowances for secretaries, who have actually been recruited from the private sector, have been either referred to you or to the Prime Minister?

**Dr Shergold**—I am not aware of such instances.

**Senator FAULKNER**—What about salary packages including allowances?

**Dr Shergold**—The salary packages are set by the Remuneration Tribunal.

**Senator ROBERT RAY**—Can they be varied at all?

**Dr Shergold**—Not for secretaries.

**Senator ROBERT RAY**—Secretaries are now—correct me if I am wrong—the secretary of Treasury, the secretary of Prime Minister and Cabinet, and the secretary of Defence. They go to the highest level. There are probably a couple who are paid at the lower third level. I think that Tourism used to be one, with one or two others. Nearly all the rest are paid at that medium level. Is that right?

**Dr Shergold**—That is correct.

**Senator ROBERT RAY**—None of them are on contract?

**Dr Shergold**—The word ‘contract’ tends to be misused. Virtually all of them are on fixed term arrangements now which are often described in shorthand as a contract even though they actually do not hold a contract.

**Senator ROBERT RAY**—The reality is that even prior to that, they were all on fixed term arrangements because they could be terminated at any stage anyway.

**Dr Shergold**—That is correct. All the so-called contract does is to set out the financial arrangements if they are terminated.

**Senator ROBERT RAY**—What are those financial arrangements? Let me give you an example. I am appointed secretary of a department with a five-year term and I serve two years.

What is the ratio for paying out if the government of the day decides that it would like the secretary to serve the community more closely elsewhere?

**Dr Shergold**—It is one month's payment for each three months outstanding of the contract, up to a maximum of one year's payment.

**Senator ROBERT RAY**—We heard evidence in a previous estimates committee that for some of those who sought other careers, or were assisted into other careers, there were payments made of about \$1 million. That is probably more PM&C than you, isn't it?

**Dr Shergold**—That is correct. I would not know the exact payments.

**Senator FAULKNER**—When I said approval of salary packages and arrangements such as Mr Moore-Wilton, for example, with his two directorships, is that a remuneration package? Is that a fair way of describing it?

**Dr Shergold**—No. I think that the other positions he held could not have been incorporated within his remuneration package. The remuneration package he is on is precisely the same as that of his predecessor as the head of PM&C.

**Senator FAULKNER**—It was a special deal outside of what ordinarily would be allowed for a secretary. It was a special arrangement, wasn't it?

**Dr Shergold**—As I understand it and, of course, I was not asked to investigate this issue, the Prime Minister had approved him continuing in the two positions that he had held before he took up his position as the head of PM&C.

**Senator FAULKNER**—If I could go back to the question I was asking you about a case where another secretary sought the approval of, say, the Prime Minister for his or her allowances, would you necessarily know about that? Could this have occurred and you not be aware of it?

**Dr Shergold**—Yes. It could occur and I would not know. In a sense, what the Prime Minister has now agreed to would mean that, for the first time, the Public Service commissioner would know of such matters.

**Senator ROBERT RAY**—Who is your Public Service head?

**Dr Shergold**—The head of the Public Service?

**Senator ROBERT RAY**—I am sorry, I put that very inelegantly. Whom do you report to in a bureaucratic sense?

**Dr Shergold**—I report to no-one in a bureaucratic sense. I am an independent statutory office holder reporting to the Prime Minister and, on a day-to-day basis, to the Minister Assisting the Prime Minister on the Public Service.

**Senator ROBERT RAY**—There is no line of linkage between the secretary of Prime Minister and Cabinet and you?

**Dr Shergold**—There are a number of linkages but they are not the direct ones. There are linkages in terms of participation, in portfolio secretaries, and the fact that we both have positions on the management advisory board, for example. But I do not report to the head of PM&C.

**Senator ROBERT RAY**—There is no line of authority down to you from it?

**Dr Shergold**—Correct.

**Senator ROBERT RAY**—I ask that because I am still toying with the concept of why you were asked to do it. Therefore, you would be in no way embarrassed if you brought down an adverse or any other finding?

**Dr Shergold**—It has got a logic in terms of the appointment of secretaries. In most instances, the Prime Minister makes that appointment after receiving advice from the head of Prime Minister and Cabinet, but in terms of the appointment to the head of Prime Minister and Cabinet, the advice is sought from the Public Service Commissioner.

**Senator ROBERT RAY**—So, you are saying that before Mr Max Moore-Wilton was appointed, your advice was sought?

**Dr Shergold**—Correct. I provided advice to the Prime Minister before that appointment was made.

**Senator ROBERT RAY**—According to Mr Max Moore-Wilton, all that was teed up at a Liberal Party fundraiser, I thought.

**Dr Shergold**—I provided advice to the Prime Minister.

**Senator FAULKNER**—You weren't at the same fundraiser, were you? Could I go to your report, Dr Shergold? You would be aware that Mr Blick tabled your brief, or report or submission to the Prime Minister of 10 May?

**Dr Shergold**—Yes. It was a report to the Prime Minister.

**Senator FAULKNER**—A report, fine. If I could take you to page 3 of your report, the third paragraph reads—

In an attempt to be economical the Department also loaned Mr Moore-Wilton a range of surplus furniture which was held by the department. . . . On the basis of its calculations, the Department estimated that the weekly cost of accommodation, including furniture was \$341.50 per week. A rental component for the Departmental surplus furniture should probably have been assessed as part of the accommodation allowance.

That means, of course, that the rental component for the departmental surplus furniture is not there in the \$341.50. I think that is correct, isn't it?

**Dr Shergold**—Correct.

**Senator FAULKNER**—Why did you come to the conclusion that a rental component for the departmental surplus furniture should probably have been assessed as part of the accommodation allowance?

**Dr Shergold**—It is a matter of interpretation. In my view, it probably would have been more appropriate to include that within the allowance, although I think it would have had a marginal impact. From the department's point of view, of course, the cost to the department was zero in that this was furniture that was in storage or surplus.

**Senator ROBERT RAY**—Have you talked to Finance about accrual accounting recently? Everything has a value. You cannot say that it was no cost to the department.

**Dr Shergold**—That is the point, I suppose, that is made in my report. Although the department, I think, in good faith worked on the basis that the value was zero and it certainly did this in order to be economical. My report suggests that in retrospect it would probably have been better to attach a value to that furniture and to have included it in the rental allowance. I must say that I do not think it would have significantly increased the level of \$341.50.

**Senator FAULKNER**—That may well be the case, I suppose, but the point is that it is not there and you indicate that it should probably have been there. But I am interested in

understanding a little more about the file reference F36,37 of 7 May. You indicated that you spoke to the acting assistant director of personnel and in your advice—I am reading attachment D of your report, Dr Shergold—you said:

should he choose accommodation with rent higher than the agreed \$300 ceiling, he would be required to meet the additional cost—

that is, the additional cost becomes his ‘officer contribution’. The additional cost stood at \$41.50 per week—I think my arithmetic is right there. Is that fair?

**Dr Shergold**—Correct.

**Senator FAULKNER**—And it should probably have been, it is fair to say, a little more. I will not say a lot more, obviously, because I think you make the point it would not have been enormous, but it probably should have been more. Let us deal with what we have in front of us, the \$41.50.

What I still fail to understand from your report to the Prime Minister is why Mr Moore-Wilton did not pay, given that advice from the acting assistant director, personnel, the \$41.50 as an officer contribution. Perhaps you could explain that to us.

**Dr Shergold**—He made the judgment that under the determination which applies to the SES there is no need to make an officer contribution, and it is not at all unusual for that contribution to be waived, and determined that he did not believe that it was appropriate to make that officer contribution, and that was recorded on the file.

**Senator FAULKNER**—Yes. From your investigations, do you know on what basis he made that judgment?

**Dr Shergold**—I do not know, nor do I need to know.

**Senator ROBERT RAY**—Concerning this allowance for furniture and these other things that are provided, is fringe benefits tax applicable? You are providing something that would always fall on the employer, not the employee, of course.

**Dr Shergold**—I would have to take that on notice, I do not know. I will try to find out before we finish the questions.

**Senator FAULKNER**—You just indicated that you do not know on what basis he made that judgment and that you do not need to know. Why do you not know, and why do you not need to know?

**Dr Shergold**—I do not need to know because two things are very apparent. The first is that there are—

**CHAIR**—Dr Shergold, can I interrupt you for a minute? There is quorum called, perhaps we could just adjourn for five minutes.

**Senator ROBERT RAY**—We can keep going. I do not think we are doing anything too outrageous, Mr Chair.

**CHAIR**—Okay, keep going, if you are happy. I will be back in a moment.

**Dr Shergold**—There are two reasons. The first is that it is clear that there is no determination actually covering the extent of temporary accommodation allowance for secretaries. Even if by custom and practice we apply the SES determination, that provides the flexibility for the officer contribution to be waived. It therefore stands to reason that there has been no breach of process and that nothing has been done wrong.

I did then, however, want to assure myself that the standard of accommodation provided to the secretary at \$341.50 a week seemed to be appropriate. Certainly, the indications from

real estate agents, which were on the file, suggested that that was the case. Indeed, since then in developing the guidelines I have sought information from eight real estate agents working in the Forrest, Barton, Civic and Kingston areas. They have told me that the cost of a two-bedroom flat ranges from \$220 a week to \$430 a week and that the average for a two-bedroom flat is \$340 a week. So I think that the amount that was set was entirely appropriate.

**Senator FAULKNER**—So you believe the advice of the acting assistant director, personnel, at PM&C, to be flawed?

**Dr Shergold**—The advice—

**Senator FAULKNER**—Perhaps we could go back a step. Could we just be clear. It says in your attachment D:

Advice indicates that should Moore-Wilton—

It says here Moore-Wilton, but I say Mr Moore Wilton—

choose accommodation with rent higher than the agreed \$300 per week ceiling, he would be required to meet the additional cost, ie the additional cost becomes his officer contribution.

That is a direct quote from attachment D. Would you be able to read into the *Hansard* the actual nature of the advice, what the acting assistant director, personnel, precisely said?

**Dr Shergold**—I do not have the file with me, so I cannot read it verbatim, but in terms of attachment D I think it is clear that the file that went to Mr Moore-Wilton on 7 May indicated the view of the officer that they had identified a range of appropriate accommodation in the vicinity of \$300 a week and a suggestion that, if he went above that level, he would be required to make an officer contribution. However, it is absolutely clear that there is no requirement on the secretary to make such an officer contribution, for the reasons that I have explained: first, the determination does not apply to secretaries, and, second, there is that flexibility to waive that officer contribution, and it happens quite regularly.

**Senator FAULKNER**—What you have effectively got is a view from a much more junior officer in the Department of the Prime Minister and Cabinet. Would you accept that this officer made a professional assessment—it seems to be professional from the small amount of advice we have—that Mr Moore-Wilton should pay, as an officer contribution, any cost of accommodation higher than \$300 per week ceiling, that he be required to meet the additional cost? So that is the assessment of the acting assistant director, personnel. All that has happened is that Mr Moore-Wilton said, ‘No, I’m not going to do it.’

**Senator Hill**—That was not quite the wording that was on the minute.

**Senator FAULKNER**—It may not be the wording on the minute. We do not have the minute.

**Dr Shergold**—And the same officer made a professional and correct judgment that the secretary of the Department of the Prime Minister and Cabinet was able to waive that officer contribution—and that is correct.

**Senator FAULKNER**—He is fighting a bit out of his weight division here, is he not, against the highest level public servant in the land? He is making a professional assessment that anything above \$300 the secretary pays. The secretary says no. So then this far more junior officer says, ‘If you say no, you don’t have to.’ You have to be kidding, haven’t you?

**Dr Shergold**—It may be a professional assessment. But the correct assessment is that this determination does not directly apply to the secretary and, to the extent to which it can be applied to secretaries, the officer contribution can be waived. That is the correct situation.

**Senator FAULKNER**—So technically it can be waived, regardless of the fact the officer who has responsibility for such matters in the Department of Prime Minister and Cabinet makes a particular recommendation?

**Dr Shergold**—The recommendation, however, cannot overrule the determination.

**Senator FAULKNER**—I am well aware of that.

**Senator ROBERT RAY**—Am I correct that, at the time the secretary of PM&C says that he does not think it is advisable or necessary for him to pay the \$41 a week, he is paid a salary of \$151,430? He gets \$30,286 for tenure. He gets \$9,500 a year for meals. He gets \$2,000 a year for incidentals. He has a vehicle package worth \$10,000. He has a package of \$6,000 for reunion purposes. He is receiving \$50,000 from the Public Transport Commission in Victoria. He is receiving \$35,000 from Hydropower. Yet he does not want to pay \$41 a week as initially recommended. Is that right?

**Dr Shergold**—I do not know of the last few, but in terms of the other matters my report makes it absolutely clear that the only area in which Mr Moore-Wilton has received conditions superior to those set by the various authorities—and most of those authorities are longstanding—was relating to the accommodation component of the temporary accommodation allowance.

**Senator ROBERT RAY**—You did not know about the latter figures. Which latter figures?

**Dr Shergold**—I have no responsibility for the other positions that the secretary had. In terms of his salary package and the other allowances, I can answer for those because I investigated those as part of this report.

**Senator ROBERT RAY**—I am talking as of 5 June last year. He was on a salary package of all up around \$300,000 a year and would not pay \$41 a week.

**Dr Shergold**—He received exactly the standard allowances.

**Senator ROBERT RAY**—We will move on to those standard allowances for a moment. This is not a trick question, but no-one at the table could assist us last time around. You may have been viewing us from another room. The disturbance allowance description—I am sure you did not write this description—reads:

This is a one-off notional amount designed to cover a range of costs associated with relocation which are not covered by other transfer allowances. The allowance is automatically paid and is not subject to the production of receipts.

This was a 1984 determination, so I do not know if you have gone across it yet. What is a disturbance allowance?

**Dr Shergold**—That is a very good description of the disturbance allowance. What it means, however, is that it is an allowance paid, for example, for the transport of goods and chattels as part of the—

**Senator ROBERT RAY**—You mean furniture?

**Dr Shergold**—Well, goods, chattels, library, clothing, household items. It is a standard disturbance allowance—

**Senator ROBERT RAY**—I know, but I thought the great reason for furnishing the flat in the way we did was so that we did not have to pay money to transfer these goods from, I take it, Sydney to Canberra.

**Dr Shergold**—No. It is clear that the disturbance allowance does not apply only to the removal of furniture.



**Senator ROBERT RAY**—I am going to bring this one to the attention of the CFMEU. They would love to know about this one. That is a much better description than we got. I do not blame anyone for not knowing too much about it. It is not subject to any acquittal. Is it taxable, do you know?

**Dr Shergold**—No, it is not taxable.

**Mr M. Jones**—A similar allowance is available to all public servants who are moved on fixed term arrangements.

**Senator ROBERT RAY**—It is a very broad definition, isn't it? I have heard of psychic salary, but this disturbance allowance is an interesting one.

**Dr Shergold**—It has been pointed out to me that this disturbance allowance is not simply to do with the transportation of household items included. It also includes disturbance for removal from family, setting up new bank accounts and so on.

**Senator ROBERT RAY**—I would love to know how you quantify that and got it down to that amount of money—\$1,744. That is most interesting. You did indicate that the furniture provided by PM&C was not of great value in your view. What led you to that conclusion?

**Dr Shergold**—From talking to two of the senior officers who were involved. They told me what the furniture was and the fact that it had been made surplus, that it had in fact been replaced by other furniture.

**Senator ROBERT RAY**—The only thing of any potential value, maybe not much, was the television and video, I believe. Were you given that information?

**Dr Shergold**—I am not sure if I was given that information, but it seems a fair assertion.

**Senator ROBERT RAY**—Have you read the evidence given by Mr Blick and Senator Hill regarding their interpretation of the last page of your report?

**Dr Shergold**—I did read it, but I do not know if I have it available.

**Senator ROBERT RAY**—Have you got any comment on that interpretation? I do not mean to be critical to the minister, but they did interpret your report. Do you regard that as a satisfactory interpretation of your report?

**Dr Shergold**—If you could tell me the parts to which you are referring, I could—

**Senator Robert Ray**—In particular, this question of whether there is a rental ceiling or it is approximately—

**Mr M. Jones**—Is there a page reference in the *Hansard* that you are referring to?

**Senator ROBERT RAY**—Now you have got me. That is a good ambush, Mr Jones; you have done me like a dinner there.

**Mr M. Jones**—I have got a follow-up question!

**Senator ROBERT RAY**—I do recall its being discussed briefly after the adjournment. Senator Faulkner raised attachment D. There was an interpretation given, or a spin put on that, especially the 7 May one, and then again 5 June.

**Dr Shergold**—On reading through the evidence I did not see anything that I thought to be an extraordinary interpretation of my report. I think the issue that was discussed was this issue of the suggestion from the officer that there was a \$300 limit, and then the fact that the secretary decided that there was no requirement for an officer contribution.

**Senator ROBERT RAY**—Based on that limit.

**Dr Shergold**—I think the interpretation was, in broad terms, right. I have tried to set it out perhaps a bit more clearly this evening.

**Senator FAULKNER**—Dr Shergold, in relation to the files that are noted there in attachment D, I think one of those has been tabled before the committee already. Is there any reason why they could not be tabled, given the interest in this particular matter?

**Senator Hill**—Which ones?

**Senator ROBERT RAY**—You were helpful, Senator Hill, to table one of the documents, which was 5 June, I think.

**Dr Shergold**—I should make the point, of course, that I do not hold these files. They are held in PM&C.

**Senator ROBERT RAY**—It is more a question to the minister, now. In other words, we got one and we did not get the other. That is what I am saying.

**Senator FAULKNER**—I think the 5 June one was tabled at the additional estimates in February.

**Senator ROBERT RAY**—No, May—additional supplementary.

**Senator FAULKNER**—Yes, perhaps at the additional supplementary in May.

**Senator ROBERT RAY**—So it was a supplementary additional.

**Senator FAULKNER**—True, but let's forget that; let's just say it was previously tabled.

**Senator ROBERT RAY**—In mid-May.

**Senator Hill**—You are asking for—

**Senator FAULKNER**—It seems to me that, in this circumstance where the government appears to put a high priority on the importance of the review of the allowances, so much so that the Prime Minister interrupted Dr Shergold's tennis match, it might be in the interests of transparency and accountability if the other files that are referred to in the document were tabled.

**Senator Hill**—I take that as a request that the files referred to in attachment D be tabled. I would like to take advice; I do not know what else might be in those documents. But they are not in the possession of—

**Senator ROBERT RAY**—If you are willing to table them, we probably do not want them.

**Senator Hill**—They are not in the possession of this particular witness.

**Senator ROBERT RAY**—It is just that you have already given us what you regard as a crucial one, and we want to see if the build-up to those documents is consistent with the one you gave us for 5 June.

**Senator Hill**—Yes, I understand that, but I just want to check the documents. Can I take that on notice?

**Senator ROBERT RAY**—Yes.

**Senator FAULKNER**—Dr Shergold, are you aware of the Public Service officer who was based in Dublin? I think you are aware because you wrote a letter to the *Canberra Times* about this particular matter. You are aware of the article in the *Canberra Times* of 23 May about the Public Service officer demoted and forced to repay money. At some later stage—I think, later that month—you wrote to the *Canberra Times* indicating that you thought the two Public Service cases were not comparable.

**Dr Shergold**—Correct.

**Senator FAULKNER**—Could you indicate to me what you actually believe the differences between these two cases are: the public servant on posting in Dublin and Mr Max Moore-Wilton?

**Dr Shergold**—The two cases are profoundly different. I wrote to the *Canberra Times* because I think any reasonable reader would have been led to the belief that they were similar cases.

**Senator ROBERT RAY**—On that point, before you go any further, why did you write to the *Canberra Times*? Why didn't the Minister Assisting the Prime Minister for Public Service Matters do so? Why should you, as a public servant, write to the *Canberra Times* on this?

**Dr Shergold**—I think it is appropriate for me, as an independent statutory office holder who had knowledge of these cases, to try to set the record straight.

**Senator ROBERT RAY**—So every time there is some misconception about the Public Service, you are going to write to the paper?

**Dr Shergold**—No. This is, indeed, the first occasion.

**Senator ROBERT RAY**—That is why I am asking why, indeed, you did it.

**Dr Shergold**—I did it on the basis that I was aware of both cases, and I thought it was important to try to set the record straight on what were the key differences between what Senator Faulkner is calling the Dublin case and the case of Mr Moore-Wilton.

**Senator ROBERT RAY**—You have explained the content but I am asking why you, as a public servant, are writing to the newspaper on these sorts of matters.

**Dr Shergold**—Because I, as the Public Service Commissioner, as an independent statutory office holder, believed that it was appropriate for me to try to set the record straight in this instance. It was my own judgment.

**Senator ROBERT RAY**—Every time the auditor finds a poor report in the paper about one of his audit reports, he is supposed to write in, is he?

**Dr Shergold**—If the suggestion is that I was writing in order to defend my report, then I think that is wrong.

**Senator ROBERT RAY**—No, I am not suggesting that at all. As you say, this is the first time you have written to a newspaper, as opposed to speaking to a newspaper. As this is the first time, I am asking why you did it on this occasion.

**Mr M. Jones**—Could I interrupt there? This might be the first time that Dr Shergold has written to the newspaper as Public Service Commissioner to correct the record, but his predecessor, Mr Ives, did write on a number of occasions to national newspapers to correct the record on misrepresentation of matters to do with the Public Service.

**Senator ROBERT RAY**—I do not endorse that, either. I do not think my problem is the content of Dr Shergold's letter, which, on the face of it, seems okay. My colleague may disagree—he has further questions in a moment. But the moment you write on one issue and fail to write on the next issue concerned with the Public Service, to do with other individuals, you can understand. This time, Dr Shergold has written to the paper essentially to defend the secretary of the Department of the Prime Minister and Cabinet. What happens if you are about six levels down and you have been misrepresented in the press to do with a Public Service matter? Does Dr Shergold write to the paper on that person's behalf?

**Dr Shergold**—I would make a judgment as to whether it was appropriate. In this case, my personal judgment was that it was appropriate.

**Senator ROBERT RAY**—You do not think it is unreasonable for people to draw a conclusion that you are happy to write to defend the chief of the Public Service, yet in other cases you may not write? Once you commit yourself to paper in one defence, surely you commit yourself in all.

**Dr Shergold**—I hear that as simply a matter of judgment.

**Senator Hill**—They may well be critical, but in defending the interests of a public servant I guess that is part of the professional risk that Dr Shergold takes. In this instance it happens to have been a very senior public servant, but it may not have been.

**Senator FAULKNER**—In relation to the case in question—I hope it is fair enough, Dr Shergold, to describe it as the Dublin case; I think we understand what we are talking about if we use that terminology—

**Dr Shergold**—The Dublin case, yes.

**Senator FAULKNER**—Is it not true in the Dublin case that the disciplinary appeals committee was satisfied that the officer had not been aware that he was not entitled to the payments he had approved?

**Dr Shergold**—Yes. It is also clear that the payments to the officer were payments to which he was not entitled. That, of course, is the first clear comparison with the case of Mr Moore-Wilton, where there is no doubt that the payments were those to which he was entitled.

**Senator FAULKNER**—Not in the view of the acting assistance director, personnel, Department of the Prime Minister and Cabinet. Only in your view, surely; certainly not in my view, I must say.

**Dr Shergold**—In the judgment of myself as Public Service Commissioner, based on the determination, I have no doubt whatever, as my report makes clear, that he approved a payment to himself to which he was entitled, whereas the Dublin case was a payment to which he was not entitled.

The disciplinary appeals committee to which you refer found also that the Dublin officer had not checked his entitlements and, in their words, ‘displayed a cavalier attitude to responsibilities’. I must say that in my view there is no doubt whatever that Mr Moore-Wilton did check his entitlements, and, far from being cavalier, he ensured that the decision making was transparent. For that reason I think there is no comparison whatever between the two cases.

**Senator FAULKNER**—Let us go back again to Mr Moore-Wilton. We have got the officer on 7 May—the officer in this case is the acting assistant director, personnel—saying:

Advice indicates that should Mr Moore-Wilton choose accommodation with rent higher than the agreed \$300 a week ceiling he would be required to meet the additional cost.

That is, the additional cost becomes his officer contribution. It was higher than \$300. In fact, it was \$341.50. Beyond that, according to you at page 3 of your report, a rental component for the departmental surplus furniture should probably be assessed as part of the accommodation allowance. To be fair, you went on to say that this would probably be a comparatively small amount, and I accept that. But it should have been more—or, to use your words, should probably have been more—than \$341.50.

So what happens then, Dr Shergold? There is an officer of the department saying that anything above \$300 should be paid by Mr Moore-Wilton. Mr Moore-Wilton says, 'No, I am not going to do this.' Apparently it does not breach a regulation for him to say no, he is not going to do it. I take your word for that. I think that is fair, isn't it, as what you have said, that it does not breach a regulation?

**Dr Shergold**—Correct.

**Senator FAULKNER**—It does not breach a guideline?

**Dr Shergold**—Correct.

**Senator FAULKNER**—I am not sure if there are even any guidelines.

**Dr Shergold**—There are not. There is only custom and practice of applying a determination relating to the SES to a secretary.

**Senator FAULKNER**—Okay. So how many other departmental secretaries or senior officers would be in such a situation? I assume that no-one else is in the situation of approving his or her own allowances. Would that be right?

**Dr Shergold**—I could not say that for certain. There may be some instances where that has been the case.

**Senator FAULKNER**—Have there been any other secretaries who have not accepted the advice of their own departmental officers in relation to their own allowances?

**Dr Shergold**—I would think that there have been many secretaries who have asked their officers—as happened in this case—what the determination was. That was what happened in a conversation between Mr Moore-Wilton and the officer in question.

**Senator FAULKNER**—Let us be clear on that. He asked him what?

**Dr Shergold**—Between 7 May and 5 June—the dates of the two file notes—discussions took place between the acting director of personnel and the secretary, during which the determination and whether the secretary was required to make an officer allowance were talked about. It was not required, and Mr Moore-Wilton then made the decision that it was not necessary to pay the allowance and ensured that it was recorded on the file.

**Senator FAULKNER**—Where do I find a report of those conversations in your report?

**Dr Shergold**—I have indicated to you this evening that I spoke to both of the officers who raised the files—the acting director, personnel and the head of corporate services. I did that on the Saturday in question because I wanted to assure myself that they had been placed under no pressure, and I also wanted to assure myself whether they had provided any advice to the secretary that it was appropriate to seek the agreement of the Prime Minister. They confirmed that no such advice had been provided.

**Senator FAULKNER**—With respect, Dr Shergold, that does not answer my question, which was: where do I read about these conversations in your report?

**Dr Shergold**—You cannot read about those conversations in my report. There is no reason for it to be necessary to read about the conversations in the report. What you do read about are the outcomes of my inquiry, which confirmed to my satisfaction that no pressure had been placed on any officer and that all the dealings had been placed on file. The way I assured myself of that was by speaking to the officers who had raised the files.

**Senator FAULKNER**—There are file notes about all of these conversations, are there?

**Dr Shergold**—I have handwritten notes which were taken at the time I undertook the investigation on 10 May.

**Senator FAULKNER**—No; you said there were file notes.

**Dr Shergold**—No, there has been a misunderstanding. These are the only file notes. On 10 May, I interviewed the acting director of personnel and the head of corporate services to assure myself that these were the only file notes and what the conversations were that had taken place between them and the secretary.

**Senator FAULKNER**—But there is no record of these conversations anywhere?

**Dr Shergold**—These are the only records in PM&C. These are the only files, yes.

**Senator FAULKNER**—So the only records of how we get that Mr Moore-Wilton was not to pay his officer contribution are, on 10 May, some notes that you took in conversation with more junior officers in the Department of the Prime Minister and Cabinet. I would like to know this, if you could outline it to the committee now. We are at 7 May; we have an officer saying that Mr Moore-Wilton should not be paid the \$41.50. Who rang whom next? Were these face-to-face meetings, or telephonic communications, or what?

**Dr Shergold**—What happened between 7 May and 5 June, which are the dates of the two file notes, was that there was a discussion—and perhaps discussions, but that I cannot tell you—between the acting director, personnel and Mr Moore-Wilton, which were discussions about the file note of 7 May. Following those discussions, as is clear from the file note of 5 June, Mr Moore-Wilton indicated that he would not be paying the officer contribution.

**Senator FAULKNER**—Hang on. Was there a discussion, or were there discussions?

**Dr Shergold**—There was at least one discussion.

**Senator FAULKNER**—Okay, but was there more than one discussion?

**Dr Shergold**—I could not tell you if there was more than one discussion, I am sorry.

**Senator FAULKNER**—Did you ask the acting assistant director of personnel?

**Dr Shergold**—I asked the acting director of personnel if there were discussions between these two files and how the decision was made not to pay the officer contribution. I asked if any pressure was placed upon that officer. I asked if any advice was provided to Mr Moore-Wilton that he should seek the approval of the Prime Minister, and I asked—

**Senator FAULKNER**—But you did not ask how many discussions he had, which seems a pretty basic sort of question to me. Maybe I am just a—

**Dr Shergold**—No, I asked if discussions had taken place. My interest was in the content of the discussions.

**Senator FAULKNER**—No, not discussions. We do not know whether there was a discussion or discussions, do we?

**Dr Shergold**—No.

**Senator FAULKNER**—Let me ask a little bit more about this discussion. Was this a telephonic communication?

**Senator Hill**—You are almost implying that he should have been interrogating the officer.

**Senator FAULKNER**—Dr Shergold in fact us told us that he thoroughly investigated this.

**Senator Hill**—It was not an interrogation; he wanted to establish certain facts and he asked the officer the relevant questions.

**Senator FAULKNER**—Thank you for your view, Senator Hill.

**Senator Hill**—You are expressing your view, which is not appropriate for this place, all night.

**Senator FAULKNER**—I am not actually expressing any view. I am asking questions.

**Senator Hill**—Yes, you are. You said a minute ago that you would have expected that he would have asked about each discussion. That is not a question.

**Senator FAULKNER**—Let me express a view, then: I would have expected that Dr Shergold, if he was doing a thorough job, would have established whether there was one or more than one discussion. Yes, I would have. But he did not, so we do not know.

**Senator Hill**—That is not a question.

**Senator FAULKNER**—It is not a question, but you engaged me in a dialogue there so I am giving you my view.

**Senator Hill**—You have already said that.

**Senator FAULKNER**—Well, I have just said it again. So you do not know, Dr Shergold, if there was one or more than one discussion. Do you know the nature of this discussion? Was it held on the telephone, or was it a face-to-face meeting?

**Dr Shergold**—There was a face-to-face discussion at which the secretary inquired about the basis of the determination and whether it was obligatory to pay an officer contribution. He was informed by the acting director of personnel that the determination applied only to SES officers and that indeed, even in that case, there was flexibility and there was no need for an officer contribution. On that basis Mr Moore-Wilton indicated to the acting director, personnel that he did not believe it appropriate to pay the contribution, and that was what was recorded in the file note of 5 June.

**Senator FAULKNER**—Thank you for that. So this face-to-face meeting was held on the initiative of which party?

**Dr Shergold**—I did not assure myself of who initiated the discussions. My interest was in the content of the discussions. In terms of my report there were a number of things which I needed to know. I needed to know whether Mr Moore-Wilton had been advised as to the nature of the determination. I was assured he had, and it was on that basis that he had made his decision. I had to assure myself that he had placed no pressure on a subordinate officer, and I assured myself of that. I had to assure myself that there was no attempt to hide this decision, and indeed there was not. I received assurance that Mr Moore-Wilton had asked for everything to be placed on file. Those were the key issues in terms of my report to the Prime Minister.

**Senator FAULKNER**—Yes, but do you not think then that it is significant as to who initiated the face-to-face discussion between the acting assistant director, personnel and the secretary of the Department of the Prime Minister and Cabinet? Do you not think it might have made a difference or be quite significant whether the secretary hauled the acting assistant director of personnel into his office or not?

**Dr Shergold**—No. The key thing from my point of view is whether there was any pressure placed upon the officer.

**Senator FAULKNER**—Where was the meeting held, Dr Shergold?

**Dr Shergold**—I assume, but I do not know, that it was held in the secretary's office—

**Senator ROBERT RAY**—Was this before or after renovations!

**Dr Shergold**—And that it was held between 7 May and 5 June.

**Senator ROBERT RAY**—Would an officer normally keep a file note of that sort of conversation or not, or does it vary?

**Dr Shergold**—The file note, in effect, was set out on 5 June; it is stated in that file note to the secretary, ‘You have indicated that you will not be making an officer contribution.’ So that actually is recording the decision.

**Senator ROBERT RAY**—Yes, but did you ask the officer?

**Dr Shergold**—Yes. I asked if there were any other file notes available. I am assured that this is the complete set of files.

**Senator ROBERT RAY**—Did you ask if there were any e-mails on this, backwards and forwards?

**Dr Shergold**—I was assured that these were the only files or e-mails that were available.

**Senator ROBERT RAY**—Did you ask the officer whether, in between the two file notes and the meeting with Mr Max Moore-Wilton, he had consulted or discussed it with any other officer in the department of the Prime Minister?

**Dr Shergold**—I assured myself that the key conversation in which the secretary had indicated that no officer contribution would be paid was in a meeting he had with the acting assistant of personnel and that that officer then conveyed it to the head of corporate services.

**Senator FAULKNER**—Did you establish whether anyone else was present at the meeting?

**Dr Shergold**—Nobody else was present at the meeting.

**Senator ROBERT RAY**—You did not actually answer my question, which was: did the acting officer—

**Dr Shergold**—Assistant, personnel, yes.

**Senator ROBERT RAY**—Discuss it with anyone else before he then sent the file note up saying, ‘Well, I have had the indication, et cetera’?

**Dr Shergold**—There is nothing on the file to indicate—I am trying to think—that the file had been signed off by higher than the acting director, personnel.

**Senator ROBERT RAY**—I am asking you whether you asked the officer.

**Dr Shergold**—No, I did not ask that.

**Sitting suspended from 10.07 to 10.18 p.m.**

**CHAIR**—We will resume. Are there any further questions, Senator?

**Senator FAULKNER**—I have a couple. Is it true, Dr Shergold, that as the Public Service Commissioner you have got policy responsibility for human resource management in the APS, including policy for recruitment and appointment?

**Dr Shergold**—I have policy responsibilities in a broad sense but I do not have all selection and recruitment responsibility. I do make all appointments to the Senior Executive Service.

**Senator FAULKNER**—Does your role in relation to that extend to the selection processes that are used by government departments to select candidates for nomination to positions with international agencies?

**Dr Shergold**—No, it does not.

**Senator FAULKNER**—I shall not progress that further. I will have to progress it elsewhere. I thought that would be the case but you never know your luck! We might finish off tonight



by asking some questions about reforms. In a general sense, will the reforms to the Public Service Act that the government is proposing substantially increase the powers of departmental secretaries?

**Dr Shergold**—The minister indicated in a discussion paper at the end of last year that the aim of Public Service reforms will be to continue the process of devolving responsibility to secretaries, as employers on behalf of the Commonwealth.

**Senator FAULKNER**—They have enhanced powers to hire and fire and set their own employment conditions and job classifications and the like.

**Dr Shergold**—It is anticipated that the minister will be bringing a Public Service bill into the House of Representatives next week and that will set out those arrangements.

**Senator FAULKNER**—What is the rationale for enhancing the powers of secretaries in this way?

**Dr Shergold**—The minister's discussion paper makes it clear that it is in part a pragmatic response to moving to a more efficient and effective Public Service, part of an evolutionary change building on the extent of devolution that had taken place over the previous decade. There needs to be a distinction made between a Public Service act which focuses on matters of public interest and the private interest of employees, which will increasingly be dealt with under the umbrella of the Workplace Relations Act.

**Senator FAULKNER**—In the document you refer to, *Towards best practice: Public Service*, the Public Service leadership was described as cautious, conservative, risk averse, lacking in collective vision. I assume that these changes proposed to correct that sort of view that has been identified?

**Dr Shergold**—They are designed to ensure that departments and agencies can discuss the most appropriate workplace systems and structures for the work that they undertake. It recognises that there is a considerable diversity across the APS.

**Senator FAULKNER**—Do you agree with that sort of analysis about the conservative and the risk averse, the lacking in vision, the cautious approach? Do you actually share that view?

**Dr Shergold**—I think it is true that management within the Public Service tends to be cautious and, quite properly in some regards, risk averse—a view that in the public interest it is necessary to ensure that a strategic approach to risk is prudent and transparent.

**Senator FAULKNER**—One of the concerns has been that a consequence of this is that you actually end up with 18 or so separate, competing, perhaps even warring government departments, all offering different pay and conditions and corporate values. Is that a concern that you share?

**Dr Shergold**—It is a policy matter on which I think it would be inappropriate for me to comment, except perhaps to say that there is considerable mythology about the extent to which even now the APS is a single public service. We need to bear in mind that right now somewhere between 80 and 85 per cent of promotions actually take place within departments. So I would not want us to exaggerate the extent of inter-agency mobility, even with standard terms and conditions.

**Senator FAULKNER**—I appreciate the point you make about policy questions, but I am sure that you have to take some serious account of any danger that the Commonwealth Public Service would become a series, if you like, of personal fiefdoms, which was one of the descriptions—fair or unfair—that has been used. You have fiefdoms, if you like, headed by departmental secretaries that, at the end of the day, get hired more for loyalty to a minister

or loyalty to the government of the day than for what might be their professional qualifications or their dedication to the Public Service. That must be an issue that is of concern to you as the Public Service Commissioner.

**Dr Shergold**—It is. It concerns me that the present Public Service Act, which was brought in 75 years ago and has been amended, I think, more than 100 times since, does not provide the basis of a cohesive public service. It is one of the reasons that, I believe, it is necessary for a change. There is nothing in that Public Service Act which identifies the values or the traditions or the ethos or the conduct that we expect of public service. I believe that, if we want to ensure that we do not have a balkanised service, so that we have a cohesion based upon the public interest, a new public service act should address those matters. It is important that set out in legislation is a common set of values which all secretaries and all public servants are asked to uphold, and that there are appropriate mechanisms for improved public accountability and parliamentary scrutiny to ensure that those values are upheld.

**Senator MACKAY**—Dr Shergold, what are those appropriate mechanisms for public accountability and parliamentary scrutiny?

**Dr Shergold**—I think it is appropriate that the minister announce that when he introduces the public service bill next week.

**Senator MACKAY**—So we will get a look at, for example, all the AWAs that are struck within the APS, or tendering documents, contracts? No?

**Dr Shergold**—On the basis of the discussion paper and the public comments already made by the minister, the Public Service Act is going to focus on the matters of public interest. There are mechanisms that have already been suggested for improved accountability including, for example, enhancing the role of the Public Service Commissioner to audit and investigate the employment practices of secretaries.

**Senator MACKAY**—How is that going to translate into transparency and improved parliamentary scrutiny?

**Dr Shergold**—The discussion paper that has been issued by the minister indicates that he will be looking at introducing for the first time a report through the minister to parliament on the state of the public service each year. That is a report that does not exist at the moment.

**Senator MACKAY**—We will all look forward to that but, in the meantime, we cannot get hold of copies of tender documents, we cannot get hold of contracting out documents—all under the guise of commercial-in-confidence. In the meantime, we cannot get hold of AWAs in relation to the provisions relating to them because they will go straight to the Employment Advocate, I presume. Or will you be scrutinising them as well, or will they be made available to the parliament?

**Dr Shergold**—I will certainly not have the responsibility for scrutinising AWAs or certified agreements.

**Senator MACKAY**—Who will do that?

**Dr Shergold**—Employment powers will be devolved to secretaries and agency heads. What will be set within the Public Service Act is matters of public interest.

**Senator MACKAY**—Do you think that the level and content of AWAs, and the content of contracts and tender documents, is in the public interest? It is public money.

**Dr Shergold**—I think there are matters of confidentiality which apply to some of those issues, such as AWAs.

**Senator MACKAY**—Where is the enhanced public accountability and parliamentary scrutiny? We will get to see less than what we can see now, other than a report that the minister presumably vets prior to its presentation to parliament.

**Dr Shergold**—I have no doubt that the public service bill to be introduced by the minister will provide mechanisms for accountability which do not exist in the present Public Service Act.

**Senator MACKAY**—You have no doubt of that?

**Dr Shergold**—I have no doubt of that.

**Senator MACKAY**—Would you care to elaborate as to why you have no doubt?

**Dr Shergold**—There are virtually no protections in the existing Public Service Act. There are no APS values set out in the existing Public Service Act. There is no legislative commitment to an apolitical, non-partisan, impartial public service—

**Senator MACKAY**—And that commitment will be in the new act?

**Dr Shergold**—There is no code of conduct set out in the existing legislation. So just on that basis, I think it will be very difficult not to improve on the existing legislation.

**Senator MACKAY**—I am not asking you to divulge anything that you feel that you should not, but in the revised act there will be reference to an apolitical public service, for example. I presume that is what you are saying. I don't really—

**Senator Hill**—What Dr Shergold is saying is that if each or all of those were included, it would be an improved act for the reasons he set out.

**Senator MACKAY**—The point I am trying to make, Minister, is that they are all very nice words but essentially what we have got is a regime or regimen being introduced that will result in a substantial diminution of those lofty goals. As I indicated before—to use the apocryphal example we have used continually, IT outsourcing—with regard to scrutiny of AWAs, and when we are talking about being apolitical, how can we be assured that, when an agency head actually strikes an individual contract with a public servant, that contract is above board and is not influenced by the sorts of things Senator Faulkner alluded to with regard to cronyism, nepotism and so on, if we cannot see it? It goes straight to the Employment Advocate. You do not see it, Dr Shergold. Presumably, Minister Reith does not see it. Who sees it—the Employment Advocate?

**Senator Hill**—It is not the time for a speech; just ask the questions.

**Senator MACKAY**—I have finished, Minister.

**Dr Shergold**—I think these matters will be significantly easier to discuss once the new public service bill has been introduced.

**Senator MACKAY**—With respect, the Workplace Relations Bill has already been introduced and is through the parliament. In DIR's own guidelines and your guidelines you refer to that and say that, obviously, that takes precedence with regard to the matters I have spoken about.

**Senator Hill**—Is that a question?

**Senator MACKAY**—Question mark. It is rhetorical.

**Dr Shergold**—I am not suggesting that, in all instances, the Workplace Relations Act takes precedence.

**Senator MACKAY**—Let us go to some detail here. The 1½ per cent that has been appropriated by the government with regard to the flow-on from the living wage case has been allocated to every agency. Is that right, Dr Shergold?

**Dr Shergold**—Sorry, Senator, this is not my responsibility. It is perhaps more appropriate to address these questions to the Department of Industrial Relations.

**Senator MACKAY**—But you are aware that there has been an amount appropriated with regard to wages within the Public Service as a result of the living wage case?

**Dr Shergold**—Yes, but I would not wish to comment on something that is not my responsibility. It is something that is more appropriately dealt with by the portfolio department.

**Senator MACKAY**—If I were just to tell you that this has happened and if I were to indicate to you that the 1½ per cent has been allocated to agencies, appropriated by the government to cover so-called wages increases as a result of the flow-on from the living wage case, what would you think that an agency head would do with that 1½ per cent that has been appropriated for that specific task?

**Dr Shergold**—I would not hazard a guess, Senator.

**Senator MACKAY**—Do you think it might be reasonable that they would actually pass that on to the staff involved, by way of a pay increase?

**Dr Shergold**—I just repeat that I think it is quite inappropriate for me to comment on these issues.

**Senator MACKAY**—I am talking about the matter of propriety here with regard to money appropriated for a specific purpose. If, for example, agencies were to hang onto that money—and I have set it in terms of, say, an efficiency dividend that has been imposed—would you regard that as improper?

**Dr Shergold**—I believe that it would be highly appropriate for secretaries and agency heads to be publicly accountable, as they are through this Senate estimates process, and that questions should be directed to those agency heads.

**Senator MACKAY**—What will you be doing in relation to these types of matters? Do you have any watching brief with regard to what is happening—and I am not talking about the industrial relations aspects, for example, with AWAs—with the concept of merit which presumably you are charged with ensuring is implemented in the public sector?

**Dr Shergold**—That is different. I certainly have a role in ensuring that a merit process is used for appointments and selection.

**Senator MACKAY**—Will the new Public Service remain a meritocracy?

**Senator Hill**—Remain?

**Senator MACKAY**—Do you currently regard it as a meritocracy?

**Dr Shergold**—The minister has indicated in his discussion paper that employment decisions made on merit will be a key value of the Public Service. I think that once the bill is—I hope—introduced next week, this will be clear.

**Senator MACKAY**—How are you going to ensure the concept of merit with a deregulated wage negotiation system?

**Dr Shergold**—Again I do not want to anticipate the bill, but I can assure you that the Public Service Commissioner is likely to have enhanced powers in that regard.

**Senator MACKAY**—How can we as parliamentarians be sure that the concept of merit will be implemented in the Public Service?

**Senator Hill**—As far as you are to rely on legislation, you should await the legislation. It is all right if you want to ask the commissioner—

**Senator MACKAY**—We have the discussion paper.

**Senator Hill**—It is not really possible to ask him how his role will differ.

**Senator MACKAY**—I appreciate that. I am not asking about the legislation. I am asking about the discussion paper which essentially talks about the retention of merit and so on. I do not know whether it mentions the term ‘approved accountability’ or whatever, but I will take your word that it does. We have the Workplace Relations Act in place now and one of the key concerns that we have—and I apologise that this may be a speech, Minister, but it might actually amplify the question which is coming at the end—is that the predominance of AWAs may in fact militate against the implementation of the merit principle because they are secret. It is irrelevant what is in the new APS act. The reality is, Dr Shergold, you will not get a look at them, they will go to the Employment Advocate.

**Dr Shergold**—What is the question?

**Senator Hill**—The question is: under the existing system, you have access to all contracts, do you not?

**Dr Shergold**—No, I do not.

**Senator MACKAY**—How do you ensure the implementation of merit in terms of selection?

**Dr Shergold**—What is being looked at is the selection process, not matters of remuneration.

**Senator MACKAY**—So in relation to the negotiation of an AWA, which is an individual contract between a designated person, not necessarily the agency head within the Public Service, and an individual employee, will you have guidelines with respect to the selection process of that individual?

**Dr Shergold**—There will be directions established for all appointments and selection processes to ensure the merit principle is upheld.

**Senator MACKAY**—But you will not have any say in what the final outcome of those negotiations are with regard to the remuneration package?

**Senator Hill**—I do not think you have that now, beyond assuring that the process is correct.

**Senator MACKAY**—You do, Minister.

**Senator Hill**—Who is right? I am right.

**Senator MACKAY**—You are not, with respect.

**Senator Hill**—He is paid to answer the questions; you are paid to ask them.

**Senator MACKAY**—You are certainly not paid to answer them.

**Senator FAULKNER**—Just as well.

**Senator Hill**—I actually am allowed to.

**Senator MACKAY**—Please feel free to jump in at any time.

**Dr Shergold**—What is the power that you believe I have at the moment?

**Senator MACKAY**—Let me tell you what is available very easily at the moment; that is how much public servants are paid, because there is an agreement with regard to what public servants are paid.

**Dr Shergold**—I have no involvement in that area.

**Senator MACKAY**—But you could find out what it is very easily.

**Dr Shergold**—In the same way as anybody else could.

**Senator MACKAY**—My question is: do you agree that there is a nexus between a selection process and the application of the principle of merit and how much somebody actually gets in terms of a remuneration package?

**Dr Shergold**—I believe that merit, as it is presently applied, does not relate to remuneration. It relates to the selection and promotion of officers, including the Senior Executive Service.

**Senator MACKAY**—So merit does not relate to remuneration?

**Dr Shergold**—No. The Public Service Commissioner does not examine or make comment on the remuneration paid to officers who are selected for positions.

**Senator MACKAY**—Let us say hypothetically that you were to set down a series of selection guidelines for a particular position. We are assuming all positions will continue to be advertised, at least, internally.

**Dr Shergold**—I think we will await the legislation.

**Senator MACKAY**—So we have a situation whereby the selection guidelines are set down and in your view that is the extent of your involvement? So you do not know how much a particular position, that you have approved the selection guidelines for, is actually given in remuneration, what the conditions are or what the package is and you have no interest in that?

**Dr Shergold**—The direct involvement I have is in terms of the selection of senior executives.

**Senator MACKAY**—So, in your view, your involvement ends at that point and there is no nexus between setting down or approving selection guidelines and how much positions are actually remunerated?

**Dr Shergold**—No.

**Senator MACKAY**—So merit has no bearing on how much somebody earns?

**Dr Shergold**—Under the present legislation, I have no input into the setting of remuneration.

**Senator MACKAY**—I know that, but you do have responsibility for the application of the merit principle.

**Dr Shergold**—The act makes it quite clear that that merit principle is applied in particular instances. There is nothing within the existing Public Service Act which sets out that this is a clear definition for all employment decisions within the Public Service. The references to merit are quite explicit in terms of selections, promotions and the appointment of Senior Executive Service officers.

**Senator MACKAY**—In your opinion, there is not a nexus between the application of the merit principle and the remuneration package of a particular position?

**Dr Shergold**—It is possible that the new legislation to be introduced will widen the definition of merit which applies under the existing Public Service Act.

**Senator MACKAY**—That was not my question.

**Senator Hill**—She was asking about at the moment.

**Dr Shergold**—At the moment, no.

**Senator MACKAY**—Are you saying there is no nexus between the application of the merit principle and how much a person is remunerated?

**Dr Shergold**—I am sorry, I am not commenting on the nexus, I am commenting on what my powers are as Public Service Commissioner.

**Senator MACKAY**—I am asking you—

**Senator Hill**—Just ask the question explicitly and we will get an explicit answer.

**Senator MACKAY**—I will ask it for the third time. The question is: do you believe that there is a nexus between the application of the merit principle, in relation to a position, and how that particular position is remunerated?

**Dr Shergold**—I believe that there is a nexus, but I would not wish that remark to be interpreted that I believe that therefore the commissioner should have a role in terms of remuneration.

**Senator Hill**—The question is whether or not you have a role now.

**Senator MACKAY**—The question is now that there is transparency, Minister. We actually know how much public servants are paid and we know what their wages and conditions are.

**Senator Hill**—But the issue, as I understand, is the linkage between remuneration and merit.

**Mr M. Jones**—I might make two brief comments in relation to remuneration. We do not actually know how much individual public servants are paid at the moment. We know the range within which their salary is located. In relation to Senior Executive Service officers, the commissioner has a clear role in their appointment or their promotion. The actual salary they receive within those ranges is a secondary decision and it is a decision that is the responsibility of agency heads. Remuneration in that sense is quite separate from the process of appointment or selection.

**Senator MACKAY**—Let's cut to the chase. Effectively, you know how much public servants are paid because there are clear classification structures. There is the agreement. There are all types of mechanisms which currently exist within the public service that provide you with that knowledge.

**Mr M. Jones**—There are fairly wide salary bands, particularly at the more senior levels. There is also the availability in some cases of things like performance pay, which makes it fairly difficult to get an accurate handle on individual public servants.

**Senator MACKAY**—I can assure you that under AWAs, if you wish to find out whether the application of merit was being successful right through to the remuneration package of individual public servants, you will not be able to find out. You will not be able to find that out, I can tell you right now, because it will go to the Employment Advocate. You will not be able to find that out, and neither will we.

I just want to move on to another issue. In terms of the application of merit, do you believe that if a person is doing the same job in one state they should be paid the same amount of money as somebody doing the same job in another state?

**Senator Hill**—Is that a judgment for Dr Shergold to make?

**Dr Shergold**—It is not. I simply think it is not appropriate for me to answer that, which is a policy question.

**Senator MACKAY**—I thought it was a question of merit.

**Dr Shergold**—I can answer you on what I do now in terms of the application of merit, and that is what I was trying to do. In terms of the application of merit now, merit relates to appointment and selection, it does not relate, from my responsibility, to the amount of remuneration that is paid.

**Senator MACKAY**—So you regard it as not without the bounds of the merit principle for people to be doing precisely the same work in two different locations in Australia and be paid different wages?

**Dr Shergold**—I am simply saying what my responsibility is as Public Service Commissioner under the present act. If you look at the Public Service Act and you look at the references to merit, you see that those reference are very specific. It is those references within the legislation which set out the role of the Public Service Commissioner, and they do not apply to remuneration.

**Senator MACKAY**—I cannot understand how the application of the merit principle can be met by wage differentials based on where public servants are located, given that they are doing exactly the same task. If that circumstance was brought to your attention—

**Senator Hill**—That can be a conclusion that you are entitled to draw.

**Senator MACKAY**—If that circumstance was brought to your attention, would you regard that as sufficiently adhering to the merit principle?

**Dr Shergold**—If that was drawn to my attention I would make it clear that I have no responsibility under the existing legislation.

**Senator FAULKNER**—I was talking about the nature of the new role of secretaries—if you like, the fact that they are getting increasing power and flexibility. Have you been at all concerned, Dr Shergold, that this might actually encourage a situation where personal loyalties would be more likely to determine advancement in a department, say, than personal qualities? Is that an issue of concern to you?

**Dr Shergold**—I am assured at the moment from my role in the appointments of senior executives that the merit process is being applied.

**Senator FAULKNER**—I know we have not got a huge amount of time left. What is the difference between an executive agency and a department?

**Mr Kennedy**—When you used the term ‘executive agency’, what agency were you referring to under the current legislation?

**Senator FAULKNER**—Do I have to name a specific agency to get an answer to this question ?

**Mr Kennedy**—I am not quite sure of the question, that is the difficulty. Perhaps if I could explain that the Public Service—

**Senator FAULKNER**—We have a situation where executive agencies are being created, as you are well aware, and I was interested in understanding if there was a definition of ‘executive agency’ and a definition of a ‘department’.

**Mr Kennedy**—Not in the current Public Service Act. It talks about, initially, departments of state, and then you have the parliamentary departments, and then the term is also used to cover agencies or bodies, the head of which have the powers of a secretary of a department.

**Senator FAULKNER**—Can you explain the difference between the role and responsibility of the head of an agency and of a departmental secretary?



**Mr Kennedy**—If the head of the agency is one which has been given the powers of a secretary then, except in relation to their relationship with the minister, they would have the same personnel powers anyhow as a secretary of a department. There is a provision in the Public Service Act, section 25(2), which makes the secretary of a department responsible under the minister for the management of that department, but that only applies to the departments of state; it does not apply to statutory organisations like the Australian Tax Office, say. You have to look to their own legislation to determine any other roles and relationships they have.

**Senator FAULKNER**—Why can't departments do the job without creating a parallel bureaucracy?

**Mr Kennedy**—The parliament over the years has taken the view that it would create statutory authorities and it would give to the heads of those statutory authorities what we would call secretary powers. The parliament has presumably judged that an appropriate thing to do.

**Senator FAULKNER**—In the discussion paper we were talking about before, 'Towards a best practice Australian Public Service', Mr Moore-Wilton spoke about regulatory prescriptions of the Public Service Act. Dr Shergold, are you aware of what sort of regulatory prescriptions were being referred to there? We can't ask Mr Moore-Wilton because he is never here. I suspect we are not going to see much of him.

**Dr Shergold**—I cannot tell you what the prescriptions were that Mr Moore-Wilton was referring to but, of course, the present Public Service Act is, in very large measure, a prescription—a prescription in terms of selection, appointment, termination, dealing with inefficiency, dealing with misconduct, mobility and so on.

**Senator FAULKNER**—The latest discussion paper talks of a 'simplified and transparent accountability matrix'. I thought it would be reasonable tonight to ask you what on earth that meant.

**Dr Shergold**—Again, I hope you will see it is reasonable for me to say that it will become transparent, I hope, next week, rather than anticipating legislation which the minister is going to introduce.

**Senator FAULKNER**—I see, and that is the only way you are going to answer that question?

**Dr Shergold**—It is simply that I am placed in a difficult position where the legislation is going to be introduced next week or in the next sitting and I do not think it is appropriate.

**Senator FAULKNER**—But, you see, aren't the regulatory prescriptions of the Public Service Act and the accountability matrix actually justified by the fact that the Public Service is spending taxpayers' money and it actually needs to be subject to the highest level of accountability?

**Dr Shergold**—That is absolutely right and, in fact, the reference you make to the accountability matrix is with reference to the legislation that is to be introduced.

**Senator FAULKNER**—The discussion paper *The Public Service Act 1997: accountability in a devolved management framework* talks of improved accountability. I was interested in understanding in what ways the accountability mechanisms proposed in the reform of the Public Service Act will actually improve the current level of accountability of the Public Service.

**Dr Shergold**—On the basis of what is in the discussion document to which you refer, it is suggested that public accountability will be considerably improved by, for the first time,

setting out a statement of APS values and setting out, unambiguously, the accountability, through the minister to parliament, recognising that the Public Service is to be apolitical and impartial, and increasing the investigatory and audit powers of the Public Service Commissioner. That is what is foreshadowed in this paper.

**Senator FAULKNER**—Is it proposed to maintain the current avenues which are available to appeal against administrative decisions?

**Dr Shergold**—Again there are some suggestions made in the document to which you refer, and again I think it would be inappropriate to go beyond that until the legislation is introduced.

**Senator FAULKNER**—Would you consider it a retrograde step to abolish, say, the Administrative Appeals Tribunal?

**Dr Shergold**—I do not think it is appropriate for me to answer that question, and it is not my responsibility.

**Senator FAULKNER**—I know it is not directly your responsibility. I thought this was something that you might have a strong view on, given your area of responsibility. What do you think, Minister?

**Senator Hill**—I do not have a strong view on the thing.

**Senator FAULKNER**—That might put you at odds with one or two of your colleagues. Have you got any view in relation to the concept of user pays for appeals against administrative decisions? This is something that I assume you would have a view about.

**Dr Shergold**—Yes. I think that is a policy matter, and I certainly have views, but I do not think it is appropriate that I put them forward before this committee.

**Senator FAULKNER**—Have you advised government of your views in relation to that matter?

**Dr Shergold**—It is part of my ongoing responsibility to advise government on such matters.

**Senator FAULKNER**—Yes; I assumed it would be. Given that it is, why wouldn't it be reasonable for me to expect you to respond to those questions at the estimates?

**Dr Shergold**—I provide advice on such matters.

**Senator FAULKNER**—I understand that. And, given that you do that, I thought this would be something that would be perfectly reasonable for me to ask you about at the estimates committee.

**Dr Shergold**—I am not sure that it is reasonable to ask me the content of policy advice provided to the government.

**CHAIR**—We are about to close down. Are there any other matters or questions you want to table?

**Senator FAULKNER**—I appreciate that we are to close at 11 o'clock. I would like to place a range of questions on notice. How long would we have to develop those and pass them through to the Public Service Commissioner for his consideration? What is a reasonable time frame?

**CHAIR**—The next two days—tomorrow and Thursday.

**Senator FAULKNER**—Would the close of business on Thursday be okay? Dr Shergold, I do not want to overwhelm you with an unreasonable number of questions on notice so I will try to be a bit sensitive about that, as I always am.

**CHAIR**—When do you want responses to those?

**Senator FAULKNER**—I thought we had set some more general time frames.

**CHAIR**—Yes, we had, one of them was 30 June, which is the following Monday.

**Senator FAULKNER**—I think we ought to be a bit more flexible in relation to the Public Service Commissioner. I do not think there is any point in putting an unreasonable demands on the officers.

**CHAIR**—We suggest the end of July for responses, well before we come back.

**Senator FAULKNER**—I will place on notice those questions that cannot be followed through at a supplementary hearing.

**CHAIR**—We will set a deadline of Friday, 18 July for responses.

**Senator FAULKNER**—If we have that time frame it takes account of some of the questions that Senator Mackay has been asking. I appreciate some of the points that Dr Shergold has made about the difficulty he has in answering some of the questions because of the fact that the government intends to introduce the act before the end of this session of parliament, while Senator Hill is otherwise engaged happily overseas. We will be here slaving away! It might mean, appreciating your comments in that regard, Dr Shergold, some of the questions with that time frame can perhaps be more comfortably answered in mid-July.

**Senator MACKAY**—With reference to the act, as well.

**Dr Shergold**—It would certainly be easier once it has been introduced.

**CHAIR**—We will take on board questions you will give to the secretariat by the close of business in the Senate on Thursday and set the deadline for responses for 18 July.

**Senator Hill**—So you are putting questions now and asking him to answer them in the light of a piece of legislation to be subsequently introduced?

**Senator FAULKNER**—No. Senator Hill, you are not quite with us. You are already planning your itinerary for next week. Dr Shergold, as you have heard on a couple of occasions, has said that he does not feel comfortable in answering policy questions, which is always understandable. If only you had been able to fill the breach, it would have been easier. He has also said, in response to a number of questions that Senator Mackay asked, that he has a difficulty with answering them before the introduction of the act into the parliament. One or two of these questions may be easier answered within that time frame because of the fact that Mr Reith has indicated that the bill will be introduced next week. That is pretty straightforward, is it not?

**Senator MACKAY**—That is a fairly lengthy time line for responses.

**Senator Hill**—That is exactly what I understood the situation to be. I am suggesting to you that that is a touch unusual. He has to answer the questions at the date they are brought down and not at some subsequent date after which the circumstances have changed.

**CHAIR**—Dr Shergold will still have the option of saying that the questions are a policy matter.

**Senator Hill**—I was only trying to be helpful.

**Senator FAULKNER**—Thank you.

**CHAIR**—That completes the hearing of this set of estimates. I thank senators for their contribution. Thank you, Minister. Thank you, officials, and thank you, Hansard.

**Committee adjourned at 11.04 p.m.**