The Senate

Employment, Workplace Relations and Education References Committee

Office of the Chief Scientist

August 2004

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Sub-Committee for inquiry into the Office of the Chief Scientist

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***** Senator David Johnston substituted for Senator Tierney for the inquiry into the Office of the Chief Scientist.

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Terms of Reference

(a) the functioning of the Office of the Chief Scientist;

(b) potential conflicts of interest arising from the dual role of the Chief Scientist; and

(c) the development of criteria for the appointment of the Chief Scientist through legislation.

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Abbreviations

ACF	Australian Conservation Foundation
APS	Australian Public Service
ARC	Australian Research Council
ASTEC	Australian Science and Technology Council
CCST	Commonwealth Coordination Committee on Science and Technology
CRC	Cooperative Research Centres
DEST	Department of Education, Science and Training
FASTS	Federation of Australian Scientific and Technological Societies
NHMRC	National Health and Medical Research Council
OECD	Organisation for Economic Cooperation and Development
PMSC	Prime Minister's Science Council
PMSEIC	Prime Minister's Science, Engineering and Innovation Council
WWF	World Wide Fund for Nature Australia

Recommendations

Recommendation 1 page 25

The committee recommends that the conflict of interest guidelines included in the Australian Public Service Code of Conduct should be reviewed to ensure that the broader conflict of interest concepts examined in this report can be addressed more transparently and rigorously.

Recommendation 2 page 28

The committee recommends that in view of the responsibility and potential workload attached to the Office of the Chief Scientist, and in the light of the potential for conflict of interest associated in particular with a part-time Chief Scientist, the position of the Chief Scientist should be full time.

Recommendation 3 page 28

The committee recommends that guidelines, codes of conduct and procedures on dealing with potential and actual conflicts of interest, applying to holders of public office in the Australian Government, should be similar and consistent across all government agencies and bodies.

Recommendation 4 page 28

The committee recommends that the position of Chief Scientist should be appointed under public service conditions. In doing so, it also recognises the public education role of this position, and the possibility, given that science and scientific research is contestable, that the occupant of the position may express controversial views. The terms of the appointment should be such that the Office of the Chief Scientist will be subject to public accountability equivalent to that applying to other senior public servants.

AUSTRALIAN SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION

REFERENCES COMMITTEE

30 July 2004

Senator George Campbell

Chair

Employment, Workplace Relations and Education References Committee

Parliament House

CANBERRA ACT 2600

Dear Senator Campbell

The subcommittee formed to deal with the inquiry into the Office of the Chief Scientist has completed its majority report.

We commend this report to the full committee.

Yours sincerely

Senator Kim Carr
Subcommittee Chair

Report formally adopted by the committee on 4 August 2004 for tabling.

Senator Natasha Stott Despoja
Australian Democrats

Senator George Campbell
Chair

Introduction

Background

The committee's inquiry into the role of the Office of the Chief Scientist was triggered by the Government's refusal to allow the Chief Scientist, Dr Robin Batterham, to appear before Senate estimates hearings to answer serious conflict of interest allegations arising from his dual part-time roles as Chief Scientist for the Commonwealth and Chief Technologist for Rio Tinto. The Minister for Science, the Hon Peter McGauran MP, had advised the committee that it would be inappropriate for the Chief Scientist to appear at estimates hearings because he is not a public servant, is employed to provide advice to Government as a consultant under a contract with the Minister, and has no Government decision-making authority and no role in budgetary matters or line management with the Department. The Minister was of the view that questions relating to the Chief Scientist's activities could be answered by relevant Department of Education, Science and Training (DEST) officers. The Minister's response is repeated by DEST in its submission to this inquiry.

It is a matter of concern to this committee that the Minister has refused the Chief Scientist the opportunity to accept invitations to appear before the committee. There is no doubt that the belated and obviously reluctant agreement of the Minister to allow Dr Batterham to appear for the purposes of this inquiry has mainly to do with his being alerted to the powers of the Senate in relation to the summoning of witnesses.

The committee takes the view that the Government has adopted an extremely narrow view of the role of the Chief Scientist, particularly in regard to the responsibility which all office holders have in their accountability to Parliament. While the Chief Scientist does not have administrative responsibility for public expenditure, he is a part of the machinery of government. While the advice he gives as Chief Scientist is necessarily confidential, in many respects he is in no different a position to that of most senior officials who appear before the committee. It is not for the Minister to decide that the Chief Scientist is not in a position to assist this committee in its oversight of portfolio administration. Respect for the office of the Chief Scientist and its incumbent is not inconsistent with the committee's scrutiny functions.

Therefore, the committee majority does not accept the Government's position. While it acknowledges that Dr Batterham is contracted to the Government as a consultant, this does not prevent the holder of a senior public office from appearing at estimates hearings to answer questions about the operation and role of that office, especially when conflict of interest allegations are involved. Dr Batterham, in private discussions with members of the Employment, Workplace Relations and Education Legislation committee, had previously raised no objections to appearing at estimates hearings. He declined invitations from the committee only upon the Minister's advice. The committee also notes that Dr Batterham's contract of employment states that he is to act in accordance with the Australian Public Service Values and Code of Conduct as contained in sections 10 and 13 of the *Public Service Act 1999*, an inclusion which

does not fit with his assumed status as a consultant under contract with the Minister for Science.

The committee majority believes the Government failed to act in good faith on this issue. Its position has been counterproductive and has wasted time. The inquiry has experienced delays due to the failure of the Minister for Science to respond in a timely fashion to an invitation to Dr Batterham to appear at this inquiry's public hearing. The committee received confirmation of Dr Batterham's attendance some four weeks after a formal invitation was issued. The delays have increased media speculation surrounding the Chief Scientist and a potential conflict of interest. The committee also notes the Government's initial refusal to comply with the Senate's order of 9 October 2003 requiring working documents and correspondence relating to the Chief Scientist's advice to Government to be made publicly available. The Government's position highlights the Minister's lack of understanding of the Senate's role in investigating issues of public importance as an instrument of accountability and good governance.

The committee is of the view that the estimates process would have been the most appropriate avenue for Dr Batterham to explain the role and function of the Office of the Chief Scientist and to address conflict of interest allegations raised in Parliament and the media. It is likely this inquiry would not have been necessary had the Government acted with common sense in accepting the committee's invitation to Dr Batterham to appear at an estimates hearing in February 2004.

It is important to stress at the outset that this inquiry has not questioned Dr Batterham's standing in Australia and overseas as a highly respected research scientist. Dr Batterham's professional record is beyond reproach. The committee rejects outright the claim by the Minister for Science that there has been a 'witchhunt' against Dr Batterham, and the suggestion in one submission that Dr Batterham had been personally vilified by those asking important questions about his part-time role as Chief Scientist. These are baseless accusations arising from a misunderstanding of the inquiry's purpose as stated in the terms of reference. Nor does the committee believe that a parliamentary inquiry of this nature has damaged the Office of the Chief Scientist because it may make that office less attractive to outstanding scientists in the future.

At no time during the inquiry was Dr Batterham's character or his professional conduct questioned in the performance of his duties as Chief Scientist. These were not issues for the committee. The conflict of interest allegations surrounding Dr Batterham deserve close examination to establish any weaknesses in how the Office of the Chief Scientist is structured and whether the terms of Dr Batterham's appointment have resulted in difficulties for him in discharging his duties as Chief Scientist.

Summary of issues

The main issue before the committee is the perception of a possible conflict of interest arising from Dr Batterham's dual part-time roles as Chief Scientist for the

Commonwealth and Chief Technologist for Rio Tinto. Allegations of conflict of interest raised by the Australian Greens and conservation groups centre on the extent of the Chief Scientist's influence over Government policy on Greenhouse gas emissions and geosequestration. It is alleged the Chief Scientist used unpublished and disputed data in a high-level presentation to Commonwealth and state energy ministers in November 2002. The data, which was obtained from a private consulting firm by Rio Tinto, was also included in a report prepared for the Prime Minister's Science, Innovation and Engineering Council (PMSIEC).

Leaving aside the policy issues which are in dispute, the committee is concerned that the Chief Scientist's contract of employment with the Minister for Science does not contain any accountability provisions for parliamentary oversight of the Office of the Chief Scientist. The committee believes that the contract provides an inadequate mechanism to identify and manage potential conflict of interest arising from the Chief Scientist's dual part-time roles. It is also concerned about how the conflict of interest guidelines issued by the Cooperative Research Centres (CRC) committee apply to the Chief Scientist.

As early as February 2003, a Labor spokesperson expressed the view, based on the evidence then in the public domain, that any conflict of interest had yet to be demonstrated. There was no evidence that Dr Batterham had behaved inappropriately or improperly as Chief Scientist. Since then, and during the course of the inquiry, the committee has found no evidence that would lead it to a different conclusion.

As the terms of reference indicate, this inquiry is concerned principally with broader issues of public administration and government accountability, rather than the scientific basis of Australia's greenhouse policy. The committee is concerned that public trust in science and in the Office of the Chief Scientist has been damaged and will be eroded further if the position of Chief Scientist remains a part-time appointment. The committee holds the view that the way the Government re-structured the Office of the Chief Scientist in 1996, to create a part-time position, resulted in a public perception of an *apparent* conflict of interest and, to a lesser extent, an *apparent* indirect pecuniary conflict of interest involving the Chief Scientist's public duties. The committee concludes that potential and apparent conflicts of interest which arise from Dr Batterham's dual part-time roles are as damaging to the Office of the Chief Scientist as any real conflict of interest. They erode public confidence in the political and administrative process and call into question the integrity of high level scientific advice provided to Government. The public interest is not being served as long as the perception of a conflict of interest remains and is not properly managed.

The issue that arises for the committee is that neither disclosure in the Chief Scientist's contract of a potential conflict of interest, nor Dr Batterham's public pronouncements to this effect, are sufficient to address the perception of conflict of interest. Both Dr Batterham and the Government claim that the potential for conflict of interest has been properly addressed and managed. The Chief Scientist and several witnesses assured the committee in their written submissions and at a public hearing that the

conflict of interest guidelines in the Chief Scientist's contract with the Minister and in the CRC program had been complied with at all times. The Chief Scientist also stated that his legally binding contract with Rio Tinto provides a 'firewall' which prevents him from lobbying the Government on Rio Tinto's behalf, and being personally involved in any applications for CRC funding in which Rio Tinto participates.

Be that as it may, public disclosure by the Chief Scientist of a potential conflict of interest does not address the committee's main areas of concern. While the committee heard no evidence to contradict the Chief Scientist's assurance that conflict of interest guidelines have been adhered to, it is concerned that details of the firewall with Rio Tinto have not been made public. It is left with no option but to take the Chief Scientist at his word. The committee is concerned that the Chief Scientist is required to comply with several sets of conflict of interest guidelines which vary in scope and operation. It is also concerned about how the CRC conflict of interest guidelines apply to the Chief Scientist. As will become clear later in the report, evidence presented to the committee shows a discrepancy between how Dr Batterham is classified under the CRC conflict of interest guidelines and the CRC committee's acceptance of a letter from Dr Batterham, endorsed in writing by the Company Secretary of Rio Tinto, stating that a firewall exists. Yet the committee received no evidence to show how the firewall operates in practice, or even if the firewall exists. It notes that the CRC committee also takes Dr Batterham and Rio Tinto at their word. The CRC committee has not made any attempt to determine how Dr Batterham complies with the firewall beyond accepting a letter from his employer which presumably only states that a firewall is in place. This adds to the confusion surrounding the conflict of interest allegations and raises questions about the CRC committee's procedures to address conflict of interest situations.

The perception of a conflict of interest arising from Dr Batterham's dual part-time roles has not been addressed and managed to the committee's satisfaction. The guidelines in the Chief Scientist's contract of employment and in the CRC program are overshadowed by an underlying structural problem with the Office of Chief Scientist; namely, the position is filled on a part-time basis which has given rise to a serious conflict of duties. The conflict of duties is compounded by Dr Batterham sometimes carrying out public interest duties as Chief Scientist from an office at Rio Tinto headquarters in Melbourne from which he also carries out private interest duties as Chief Technologist for Rio Tinto. The committee believes that Dr Batterham should occupy separate offices for each of his two part-time roles.

The committee believes that the appearance of a conflict of interest has undermined public confidence in the Office of the Chief Scientist. This is why it recommends restoring the position of Chief Scientist to a full-time appointment under public service conditions as a matter of importance and sound public administration.

Role of the Chief Scientist and the nature of scientific debate

It is important, in the context of public debate about science-related policy issues, to be mindful of the essential fluidity and uncertainty of scientific inquiry. In science, as

in many areas of human intellectual endeavour and activity, absolute and exhaustive truth is not usually apparent or even attainable. There are genuine differences of opinion about the facts and about the weight that should be accorded to the various items of evidence. Scientists operate in an atmosphere of uncertainty, especially at the frontiers of inquiry. The scientific subject matter of the policy issues that have apparently given rise to public concern about the role of the Chief Scientist is highly complex. The issues themselves, from a policy perspective as well as a scientific one, are extremely controversial.

Despite, and also because of, the complexity of the scientific facts relating to energy use and climate change, and the intensity of public interest in the policy issues, the Chief Scientist has a clear responsibility to enter the debate, both within the Government and in the public arena. That is a central aspect of his role. Inevitably, the views he expresses will be supported by some and opposed by others – among scientists and also the public at large. While it is reasonable to expect that the Chief Scientist would always remain open to disagreement about, and rational assessment of, any statements he might make in the course of this debate, it would be inappropriate to ask that he play no part in it. The Committee has not found that Dr Batterham has done anything other than fulfil his public duty in this regard.

Conduct of the inquiry

The committee advertised the inquiry on 11 May 2004 in the *Australian* and on the committee's website. It called for written submissions to be lodged with the committee by 4 June 2004.

The committee received 22 submissions. A list of submissions is contained in appendix 1. All of the submissions were published and can be accessed on the committee's webpage at http://www.aph.gov.au/Senate/committee/eet_ctte/index.htm.

A public hearing was held on 2 July in Canberra. Details of the hearing and witnesses who appeared are contained in appendix 2. The Hansard transcript of the evidence taken at the hearing is also available on the committee's webpage.

During the inquiry, the Department of Education, Science and Training and other witnesses appearing before the committee, including the Chief Scientist, provided written answers to questions taken on notice at the public hearing.

Chapter 1

Office of the Chief Scientist

Role and Function

1.1 The Office of the Chief Scientist was established in the Department of Prime Minister and Cabinet (PM&C) in July 1989 shortly after the appointment of the founding Chief Scientist, Professor Ralph Slatyer. Before his appointment, Professor Slatyer was Chair of the Australian Science and Technology Council (ASTEC). He served in the position of Chief Scientist as a full-time public servant until 1992. According to DEST, the Office of the Chief Scientist together with the Prime Minister's Science Council (PMSC), the Coordination Committee on Science and Technology and ASTEC were then part of the Prime Minister's portfolio.[1] Professor Slatyer's successor, Professor Ralph Pittman, also filled the position on a full-time basis from 1992 to 1996. In 1990, the Cooperative Research Centres (CRC) program was established within the Office of the Chief Scientist, which was then a division of PM&C.

1.2 Following the election of the Coalition Government in 1996, the position of Chief Scientist became part-time with the appointment of Professor John Stocker. The Office of the Chief Scientist was also moved from PM&C to the then Department of Industry, Science and Technology. Soon after, PMSC became the Prime Minister's Science and Engineering Council (PMSEC), ASTEC was also abolished and, in 1998, PMSEC was again broadened to become the Prime Minister's Science, Engineering and Innovation Council (PMSEIC).

1.3 Dr Robin Batterham was appointed Chief Scientist in June 1999 for a term of three years. The roles and conditions were set out in a deed of appointment signed by Dr Batterham and the then Minister for Industry, Science and Resources, the Hon Nick Minchin MP, on 9 June 1999. The Minister had advised the Prime Minister that:

- a thorough and comprehensive process had been used to identify candidates, and to select the most suitable candidates for the position of Chief Scientist;
- the process included wide consultation with members of PMSEIC and with senior representatives of interested communities; and
- he proposed that Dr Batterham be appointed Chief Scientist on a part-time basis.

1.4 In his submission to this inquiry, Dr Batterham says there were three reasons why he accepted the invitation from the Government to become Chief Scientist. First, he had spent a number of years espousing the role of innovation in the development

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1 Submission no. 14, DEST, p.16

and growth of nations; second, he held a unique position in concurrently understanding the mind of researchers and academics, and having first-hand experience of translating scientific discovery into commercial outcomes; and third, he believed he could make a lasting contribution to Australian science.[2]

1.5 In May 2002, Dr Batterham's appointment was renewed by contract for a period of a further three years. The contract was tabled in Parliament on 30 October 2003 in compliance with an order of the Senate. A copy of the contract is also attached to this report as appendix 4. Dr Batterham undertakes duties as Chief Scientist two days each week for an annual salary of $94,120. The Office of the Chief Scientist Budget for 2003-04 is expected to be slightly more than a million dollars, of which approximately $300,000 is allocated for staff salaries and $125,000 for the Chief Scientist's travel costs, travel allowances and reimbursement of $22,000 to Rio Tinto for secretariat support provided from the Melbourne office.

1.6 The Office of the Chief Scientist is a section within the Science Group in DEST consisting of nine staff of whom one provides full-time support for the Chief Scientist, and several others spend part of their time supporting the Chief Scientist. In addition to providing support for the Chief Scientist, the Office also provides secretariat and other support for PMSEIC, the PMSEIC standing committee, PMSEIC working groups and the Commonwealth Coordination Committee on Science and Technology (CCST).[3]

1.7 Under the terms of the current contract between the Chief Scientist and the Minister for Science, the Chief Scientist's duties include, but are not limited to:

- providing advice to the Prime Minister and the Minister on matters affecting science, engineering and innovation as the Prime Minister and the Minister request;
- drawing to the Minister's attention emerging issues in science, engineering and innovation that may affect the national well-being or require attention by the Government;
- chairing the Standing Committee of PMSEIC and acting as the Council's Chief Executive Officer, including overall management of the Council's working parties and coordination of their reports;
- assisting in the coordination of government activities in science, engineering and innovation; and
- fostering close and effective working relationships between the Government and organisations with responsibilities for science, engineering and innovation.[4]

2 Submission no. 18, Dr Robin Batterham, p.1

3 Submission no. 14, DEST, pp.7-8

4 Submission no. 14, DEST, p.4

1.8 Dr Batterham performs a number of important advisory roles at the highest levels of Government. Dr Jim Peacock, President of the Australian Academy of Science, states that it is the role of the Chief Scientist to ensure that the Australian Government has access to high-level advice on science and innovation, especially from the research community and industry: 'The Chief Scientist advises the Australian Government on the contributions of science, technology and innovation to national goals; one important area for delivery of that advice is through the Prime Minister's Science, Engineering and Innovation Council'.[5]

1.9 This view is supported by the Federation of Australian Scientific and Technological Societies (FASTS) which states in its submission that, for the role of Chief Scientist to be carried out effectively: 'it is important the Chief Scientist has good linkages and strong communication with funding agencies, sector and industry groups and other stakeholders. The Chief Scientist should also maintain good knoweldge of cutting edge developments in science throughout their tenure'.[6]

1.10 The Chief Scientist performs a critically important advisory and oversight role through the PMSEIC process. PMSEIC is the Government's principal independent source of advice on science, engineering and innovation. The Council is chaired by the Prime Minister and is made up of ministerial members, representatives of science, technology, engineering and industry bodies, and personal members. The Chief Scientist is the Council's Executive Officer. In this role he briefs the Prime Minister and other ministers, and helps coordinate agenda items and briefings for each Council meeting. The agendas for meetings are approved by the Prime Minister.[7]

1.11 Dr Batterham also chairs a group of non-ministerial members of PMSEIC, who constitute the Council's standing committee. It meets four times a year. An important process involving PMSEIC is the consideration of independent reports and presentations prepared by working groups comprising up to ten leading experts from the private sector, universities, and research bodies. The working groups are normally chaired by standing committee members. DEST informed the committee that the Chief Scientist takes an oversight role on the membership and terms of reference of the working groups, maintains an overview of their progress in preparing their reports to PMSEIC, and provides guidance as necessary. The content of a working group's report is the responsibility of the chair and members of the working group.[8]

1.12 The committee notes that the Chief Scientist performs a variety of other roles and duties, of which there are too many to list here. For the purpose of this inquiry, the committee notes that Dr Batterham chaired the consultative panel that worked with the science community to develop the national research priorities announced in December 2002. He subsequently participated in the panel which resulted in the announcement

5 Submission no. 10, Australian Academy of Science, p.3

6 Submission no. 13, FASTS, p.3

7 Submissions no. 14, DEST, p.6

8 ibid.

in late 2002 of enhanced national research priorities. Dr Batterham also continues his membership of the Cooperative Research Centres committee, a position he held prior to his appointment as Chief Scientist, and he is an *ex officio* member of the board of the Australian Research Council.[9]

1.13 In addition to his part-time position as Chief Scientist, Dr Batterham works for three days a week as Chief Technologist for Rio Tinto (formerly CRA Ltd). At the time of his appointment as Chief Scientist in 1999, Dr Batterham was Managing Director, Research and Technology Support, Comalco. Dr Batterham's resume states that the Chief Technologist is responsible to the Group Executive Technology for advising on technology policy, strategy and future technology threats and opportunities, together with leadership and management of certain research programs undertaken externally to Rio Tinto as well as review of internal technology development programs.[10]

1.14 The committee heard evidence confirming that Dr Batterham performs both part-time roles from an office at Rio Tinto headquarters in Collins Street, Melbourne. Dr Batterham is reported as saying that his two roles are easily separated, each with its own in-tray. Paperwork is kept in a locked cabinet accessible only by himself and his executive assistant.[11]

1.15 The committee is of the view that this arrangement has contributed to perceptions of conflict of interest. DEST told the committee that of the $125,000 allocated for travel and secretariat support, $22,000 is used to reimburse Rio Tinto for the cost of a personal assistant based in Melbourne who handles Dr Batterham's diary and travel arrangements.[12]

Preliminary assessment

1.16 The committee notes the breadth of duties and influence of the Office of the Chief Scientist as described by a number of people who have worked closely with Dr Batterham through their involvement with PMSEIC and the CRC committee. However, Dr Batterham is not a public servant and the position of Chief Scientist is not a statutory appointment.[13] He is contracted to provide advice to Government. The committee finds that under these arrangements, any obligations relating to conflicts of interest or other aspects of conduct are contractual rather than statutory. Section 16 of the Chief Scientist's contract deals with conflict of interest, describing certain procedures 'if a conflict of interest arises or appears to arise'. Under section 14.2, the

9 ibid., p.7

10 Submission no. 18, Dr Robin Batterham, attachment 1, p.7

11 Richard Guilliat, 'The man in the middle', *Age*, 20 March 2004

12 Mr Colin Walters, DEST, *Hansard*, 2 July 2004, p.90

13 However, the Chief Scientist does receive statutory recognition in the *Australian Research Council Act 2001*, where the position is designated as a member of the ARC Board (section 12(b)(ii)).

Chief Scientist is required to behave in an honest and ethical manner and in accordance with the Australian Public Service (APS) Values and Code of Conduct contained in sections 10 and 13 of the *Public Service Act 1999*.

1.17 The DEST submission draws attention to sections 14.2 and 16 of the Chief Scientist's contract. It states that: 'The potential for conflict of interest issues to arise through concurrent employment with Rio Tinto has always been recognised and is explicitly dealt with in the Chief Scientist's contract of employment'. It also observes in passing that Dr Batterham '…is diligent in ensuring that his role as Chief Scientist is kept separate from his role as Chief Technologist at Rio Tinto'. However, the submission does not mention any practical measures that would enable Dr Batterham to separate his dual part-time roles. There is a reference only to the Chief Scientist being subject to conflict of interest rules put in place by the CRC committee and the Australian Research Council (ARC) Board. It does not establish how disclosure of conflict of interest in the Chief Scientist's contract of employment translates into an explicit and effective strategy for managing such conflicts. The committee notes that the Chief Scientist's contractual obligations raise very important issues that go the heart of this inquiry. The committee will address these issues in chapter 3.

1.18 The Coalition Government justified its decision to introduce a part-time Chief Scientist on the basis that a Chief Scientist should be a person with active employment in the fields of science, engineering, technology and innovation. That person should also be able to provide current and well-informed advice that is independent of the bureaucracy. According to DEST, Dr Batterham's employment with Rio Tinto was taken into account at the time of his appointment as Chief Scientist. The DEST submission argues that: 'Dr Batterham's continuing involvement in industry while he is Chief Scientist, gives his advice to Government greater currency and relevance'. DEST confirmed the change in policy at a public hearing. Mr Grahame Cook, Deputy Secretary, told the committee:

> My understanding is that the government at the time took the view that they would like to have somebody involved in this position who was an active, working scientist and who could bring the knowledge and currency of those activities to the task, and they saw that as providing a better basis of advice than a full-time Chief Scientist.[14]

1.19 The committee makes two other observations based on descriptions of the role of the Chief Scientist provided in submissions. First, there appears to be a tension between the public interest duties of the Office of the Chief Scientist and an emphasis on the commercial benefits of science, technology and innovation under Dr Batterham's incumbency. The submission from FASTS acknowledged that there is a view in the science community that Dr Batterham's emphasis on commercialisation has understated the value of basic and strategic research.[15] The committee takes this one step further and believes that tension between Dr Batterham's public interest

14 Mr Grahame Cook, DEST, *Hansard*, 2 July 2004, p.79

15 Submission no. 13, FASTS, p.2

duties and private commercial interests underpins conflict of interest allegations raised in the Parliament and the media. The allegations arise principally from his dual part-time roles as Chief Scientist for the Commonwealth and Chief Technologist for Rio Tinto. In the next chapter, the committee outlines that nature of allegations against Dr Batterham, analyses the main claims based on the evidence it received at a public hearing, and determines the exact nature of the conflict involving the Chief Scientist. Specifically, the committee determines whether there is a potential, apparent or real conflict involving the Chief Scientist's dual part-time roles.

1.20 Second, the nature of Dr Batterham's contract with the Minister for Science does not appear to be a true reflection of either the volume of work carried out by Dr Batterham as Chief Scientist, or his commitment to the part-time position. The importance of the Office of Chief Scientist is clear from the duties that Dr Batterham performs, especially his role in PMSEIC. These considerations give rise to the issue of whether the Chief Scientist should be a full-time position. The committee considers the advantages and disadvantages of a full-time position in chapter 3.

Chapter 2

Conflict of interest allegations against the Chief Scientist

> The trend of some defensive thinking…is to focus on actual, or provable, rather than potential conflict of interest. The problem with this, however, is that evidence of actual conflict can be difficult to come by, with partners very ready to acquit themselves of any such suggestion, even when the potential for conflict is palpable. In practice, the appearance of conflict is as dangerous as the reality of it, and is as damaging to the process, poisoning not only public perceptions of the political and administrative process but also the minds of some of those who are involved.[1]

2.1 Details of conflict of interest allegations arising from Dr Batterham's dual part-time roles are contained in an unpublished paper written by Margaret Blakers in October 2003 for Greens Senator, Bob Brown. The paper is entitled *The Chief Scientist, Global Warming and Potential Conflicts of Interest*.[2] It focuses on the Chief Scientist's advice to Government on the cost of mitigating greenhouse gas emissions. At the centre of the debate over greenhouse gas abatement is the cost and feasibility of sequestration technologies.[3]

2.2 The paper by Blakers, among other things, draws attention to a presentation given by the Chief Scientist to the Ministerial Council on Energy on 29 November 2002, and controversial data from that presentation being used in a PMSEIC working group report entitled *Beyond Kyoto – Innovation and Adaptation* which was presented to the Council at its meeting on 5 December 2002.[4] Membership of the working group consisted of Professor Chris Fells (Chair) and representatives from CSIRO, University of Queensland and Bureau of Rural Sciences. Rio Tinto Ltd was also represented by Mr David Cain, a coal specialist, who was recommended for the working group by Dr Batterham.[5] Senator Brown states in the preface that the paper was prepared as a result of 'increasing concern that the Australian Government is prioritising carbon sequestration over energy renewables…A chief adviser to Prime Minister Howard in this matter is the Chief Scientist, Dr Robin Batterham'.[6]

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1 'The conflict of interest bogy', editorial, *Canberra Times*, 5 November 2003, p.18

2 Margaret Blakers, *The Chief Scientist, Global Warming and Potential Conflicts of Interest*, Office of Greens Senator Bob Brown, October 2003

3 Sequestration means capturing and storing CO_2, either physically (geosequestration) in secured underground sites such as old gas fields and other geological structures, or biologically (biosequestration) which involves measures such as planting trees to take up CO_2.

4 *Beyond Kyoto – Innovation and Adaptation*, Prime Minister's Science, Engineering and Innovation Council, Ninth Meeting, 5 December 2002

5 DEST, Answer to Question on Notice, 19 July 2004

6 Margaret Blakers, *The Chief Scientist, Global Warming and Potential Conflicts of Interest*, Office of Greens Senator Bob Brown, October 2003, p.3

2.3 The allegations raised by Blakers have also been aired in the Senate and have received widespread media coverage.[7] This chapter summarises allegations raised by Blakers and by conservation groups about advice provided by the Chief Scientist to Government on qeosequestration.

The issues in brief

2.4 According to the account provided by Blakers, on 29 November 2002 the Chief Scientist gave a power point presentation to the Ministerial Council on Energy, comprising Commonwealth and state energy ministers. The presentation, entitled *Getting emissions (way) down – stationary power: a key target*, used a number of power point slides with titles such as: 'The answer: coal gasification and carbon storage' and 'Brown coal is the answer'. Dr Batterham told the committee that he used the power point slides as prompts for his presentation because he did not prepare speech notes.[8] Dr Batterham attached to his submission a copy of all power point slides for presentations given between 1999 and 11 June 2004. A particular slide included in the 29 November 2002 presentation is controversial because it provides figures on the cost per tonne of mitigating CO_2. The slide includes a figure of $10 for 'zero emissions coal', approximately $30 for gas combined coal, and approximately $60 for renewables.

2.5 Information used in that presentation compared electricity costs for different technologies. Data on the comparative costs of mitigating greenhouse gas emissions was similar to that included in the PMSEIC Working Group report *Beyond Kyoto—Innovation and Adaptation.* The report's consideration of what is likely to happen to sequestration over the next ten years states: 'Depending on the method of carbon dioxide capture and transport geosequestration costs have been estimated at from $10 to $50 per tonne of carbon dioxide abated'. The $10 figure was attributed to 'Roam Consulting 2002. Unpublished data'.[9]

2.6 Data used on both occasions by the Chief Scientist on the cost of abating carbon emissions using so-called 'zero emissions' coal were produced for Rio Tinto by Roam Consulting, a Brisbane based company specialising in advice relating to the Australian electricity market. The cost of $10 per tonne for 'zero emissions' apparently is between four and ten times lower than other published cost estimates. The *Beyond Kyoto* report lends strong support to geosequestration, recommending a national program to scope, develop, demonstrate and implement this technology. According to Blakers, the cost of greenhouse gas abatement is crucial because '…it determines the mix of future energy options, between fossil fuels like coal and renewables like wind

7 Simon Grose, 'Bob Brown playing the man and not the ball', *Canberra Times*, 25 February 2007, p.17; Richard Guilliat, 'The man in the middle', *Age*, 20 March 2004, p.24

8 Dr Robin Batterham, *Hansard*, 2 July 2004, p.46

9 *Beyond Kyoto – Innovation and Adaptation*, Prime Minister's Science, Engineering and Innovation Council, Ninth Meeting, 5 December 2002, p.26

and solar power'. Thus a national program in support of geosequestration would advantage coal and aluminium producers such as Rio Tinto.[10]

2.7 The use of data from Roam Consulting by the Chief Scientist and in the PMSEIC working group report was confirmed by the Minister for Science, Mr Peter McGuaran MP, in an answer to a question on notice:

> In the preparation of the report and presentation the Working Group received a briefing from Dr David Cain, General Manager – Energy, Technical Services Rio Tinto Ltd on modelling results that Rio Tinto had privately and independently commissioned from Roam consulting to consider what impact a range of alternatives might have on longer term greenhouse gas emissions. The Working Group accepted Dr Cain's finding and with the permission of Rio Tinto incorporated the results of this modelling into the report and presentation which was considered by the Council on 5 December…Separately the Chief Scientist for the purposes of a presentation to the Ministerial Council on Energy held on 29 November 2002 also drew on the Rio Tinto privately commissioned modelling from Roam consulting to highlight costs for new entrants to the electricity industry.[11]

2.8 Blakers summarises the potential conflict of interest involving the Chief Scientist in the following terms:

> At a time when climate change is a critical research and policy issue, to be simultaneously Chief Scientist for the government and Chief Technologist for one of the biggest coal mining and aluminium processing companies in the country seems fraught with difficulty...[T]here will be occasions where the Chief Scientist's public and private interests may appear to be in conflict.[12]

2.9 Submissions from the World Wide Fund for Nature Australian (WWF), Greenpeace Australia and the Australian Conservation Foundation (ACF) covered similar terrain.

2.10 According to Simon Grose, the arguments raised from different quarters amount to the same concern:

> …as both the nation's leading scientific adviser to the Federal Government and Rio Tinto's chief technologist, Batterham suffers a conflict of interest which renders his position untenable.[13]

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10 Margaret Blakers, *The Chief Scientist, Global Warming and Potential Conflicts of Interest*, Office of Greens Senator Bob Brown, October 2003, p.14

11 Answer to Question on Notice No. 1374, Senate *Hansard*, 15 September 2003, p.15216

12 Margaret Blakers*, The Chief Scientist, Global Warming and Potential Conflicts of Interest*, October 2003, p.10

13 Simon Grose, 'Bob Brown playing the man and not the ball', *Canberra Times*, 25 February 2004, p.17

2.11 The allegations aired in the Parliament and the media relate specifically to the nature and independence of advice provided by Dr Batterham to the Government on the cost and viability of geosequestration technologies. The WWF and the ACF told the committee that their organisations were concerned the Government was receiving unbalanced advice from Dr Batterham on Greenhouse policy because he filled the Chief Scientist position part-time:

> It is unbalanced advice on one of the most important and challenging issues facing government – and the government really does need very solid, well-rounded advice. We are concerned that the Chief Scientist is obsessed with one potential solution to the issue of greenhouse gases – and that particular solution benefits the company that he works for part time.[14]

2.12 Specifically, the WWF and ACF questioned the figure of $10 per tonne for 'zero emissions' which emerged from the unpublished data provided to Rio Tinto from Roam Consulting. Ms Anna Reynolds, WWF, told the committee that the figure is inconsistent with other published sources where cost estimates are in the order of $50 to $100 per tonne. She referred to the $10 figure as 'dodgy advice':

> I think on anybody's judgment this data is dodgy data. There is no better way for me to describe it. I am certainly concerned that the Chief Scientist would use that in his main presentation to government rather than use sources such as the International Energy Agency or the range of other academic institutions that have got published and peer-reviewed scientific data on that topic.[15]

2.13 In summary, the perception of conflict of interest has arisen because of the claim that Rio Tinto's commercial interests are significantly favoured by Government policy on 'zero emissions' coal. The Greens have argued that Government support for qeosequestration is based on unpublished and untested data from one consulting firm that is not consistent with a range of other published data. It is claimed that there has been an expansion of Commonwealth funding for non-renewable energy (fossil fuels) at the expense of funding for energy efficiency and renewable energy (especially wind and solar power). Ms Anna Reynolds told the committee that in her view:

2.14 …the Chief Scientist's strong enthusiasm and interest for geosequestration technology and his very effective work in promoting that to the key decision makers in government has probably been the main influence in this becoming the favoured approach to greenhouse gas mitigation by the government over the last 18 months to two years.[16]

2.15 At the heart of the conflict of interest allegations raised by the Greens is:

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14 Ms Anna Reynolds, WWF, *Hansard*, 2 July 2004, p.14

15 ibid., pp.16, 23

16 ibid., p.22

- concern about the direction of Government policy to reduce greenhouse gas emissions;
- the credibility of the Chief Scientist's advice to Government on the cost of capturing and storing CO_2; and
- the way Dr Batterham's advice has shaped Australian policy on global warming.

2.16 There is also concern about the Chief Scientist's role in a number of committees including the CRC committee and the Australian Research Council which has coincided with a significant rise in the level of Government funding for fossil-fuel dependent industries.

2.17 On 15 October 2003, Senator Brown spoke in the Senate about the evidence used by Chief Scientist before a number of committees, including PMSEIC. He stated:

> The apparent conflict of interest that is involved here is very serious. Hundreds of millions of dollars depend upon the advice that the Prime Minister and the government get from the energy sector as to where research and development dollars should go. It has to be the right advice: it has to be balanced, it has to be correctly attributed and it has to be the prevailing advice which is corroborated by peers. I am concerned that that has not been the case.[17]

Some issues raised by these concerns

2.18 The Australian Greens and peak environment groups are concerned about the influence of the Chief Scientist's high level advice on the direction of Australia's Greenhouse policy and the allocation of funds for fossil-fuel dependent industries and the renewable energy sector. There has been increased funding for geosequestration technologies, which will favour fossil-fuel dependent companies, including Rio Tinto, and a fall in Commonwealth funding for the renewable energy sector.

2.19 In the 12 months from November 2002, the Government committed $45 million to geosequestration research through the CRC for Greenhouse Gas Technologies (in which Rio Tinto is a core partner). The Government also provided Rio Tinto with at least $260 million in grants and loans. This includes an interest free loan of $35 million to the Rio Tinto Foundation for a Sustainable Minerals Industry (an advisory group to Rio Tinto) to carry out biological sequestration research, $125 million for a Hismelt plant in Western Australia and $102 for an aluminia refinery in Gladstone. The $35 million loan was provided under the Government's Strategic Investment Coordination program and is administered through the Industry department. It is repayable on 1 July 2024. The Foundation has a six-member advisory board which includes Dr Batterham. The Chief Scientist has also been a board member of Hismelt Corporation since 1989.

17 Senate *Hansard*, 15 October 2003, p.16536

2.20 With regard to the allegations, the Australian Greens have argued that the Chief Scientist and the Minister for Science, Peter McGauran MP, need to address the following issue:

- Justification for the derivation and use of the $10 per tonne cost estimate for 'zero emissions' coal;
- Why PMSEIC and the Chief Scientist used information provided by Rio Tinto's consultant, Roam Consulting, in presentations to Government, and whether PMSEIC and the Ministerial Council on Energy were aware that Rio Tinto had provided the information;
- Why the Government funded the Rio Tinto Foundation when it is part of a company with which the Chief Scientist is closely associated; and
- Any involvement of the Chief Scientist in the four mining CRCs in which Rio Tinto is a core participant.

These concerns came to a head on 15 October 2003 when the Senate passed a motion moved by Senator Brown calling on the Government to conduct an independent review of the advice Dr Batterham has given on geosequestration. The motion also requested the Minister for Science to make the position of Chief Scientist full-time and conditional on the office holder having no pecuniary interest which involves real or apparent conflict with any of the duties involved.[18]

The committee's view

2.21 The Blakers paper contains a series of questions about Dr Batterham's advice to Government. Moving beyond speculation and hearsay and identifying real problems and practical solutions is one of the committee's objectives in this inquiry. Certain questions arise. Specifically, do Dr Batterham's dual part-time roles involve a potential, apparent or real conflict of interest, or some combination of them? When does an apparent conflict of interest become real? And, does a perception of a conflict of interest really matter if the evidence is only circumstantial? These important conceptual distinctions are not entirely clear from the evidence before the committee.

2.22 Blakers describes situations that on the surface make the Chief Scientist's position untenable. However, the paper does not identify a real conflict of interest. Blakers stops short of suggesting that these public and private roles are in conflict because there is no hard evidence that would support this conclusion.

Assessing conflict of interest concerns

2.23 Conflict of interest is a complex subject that has received much attention in commentary on public sector ethics and public administration. The committee has considered conflict of interest in the light of this research.

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18 Senate *Hansard*, 15 October 2003, p.16534

Some conceptual issues

2.24 The committee was assisted in its deliberations by evidence from Professor Seumas Miller, Director, Centre for Applied Philosophy and Public Ethics.[19] It invited Professor Miller to a Public hearing to provide an expert opinion on a complex subject. Professor Miller provided a broad definition of conflict of interest:

> A conflict of interest arises for persons who occupy institutional roles – let us say a public servant who has a duty in relation to the public interest – when there is some other interest…which has a tendency to interfere with the judgment or decision of the occupant of that institutional role.[20]

2.25 He identified two basic types of conflict of interest: one involves a financial gain from behaving in a certain way, which can be either a direct or indirect pecuniary interest. The other involves a conflict of duties arising from two institutional roles. Professor Miller observed in the case of the Chief Scientist:

> On the one hand, as the Chief Scientist you have a duty to the public interest. On the other hand, as the chief technologist for…Rio Tinto, you have not just a private interest but a duty to the commercial interests of that company. Therein lies the problem, because where someone has duties that conflict we simply cannot appeal to their capacity to resist private temptations….[21]

2.26 Miller described two important conceptual distinctions – between potential and actual conflict of interest on the one hand, and between potential and actual conflict of interest and apparent conflict of interest on the other. The committee believes the second distinction is important in the case of the Chief Scientist. As Professor Miller explained:

> You can have a situation where someone has a potential conflict of interest but not an actual conflict of interest but the public takes the view that they have an actual conflict of interest. It may be difficult to eradicate that view because the public is really not in a position to assess the detail which would provide them with the evidence to reasonably make that judgement.[22]

2.27 When questioned by the committee about the potential for the Chief Scientist to have a direct or indirect pecuniary conflict of interest, Professor Miller reiterated a conflict of public and private duties inherent in serving two conflicting institutional

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19 The Centre for Applied Philosophy and Public Ethics is an Australian Research Council funded special research centre located at Charles Sturt University and the Australian National University.

20 Professor Seumas Miller, *Hansard*, 2 July 2004, p.25

21 ibid.

22 ibid., p.26

roles: 'The question that inevitable arises is: how do you discharge those two sets of duties when they come into conflict? That is the problem'.[23]

The Chief Scientist and conflict of interest: potential, apparent or real?

2.28 Many submissions touched briefly on the issue of potential, apparent and real conflict of interest. There is a widely held view that both a potential conflict of interest and the public perception of apparent or real conflict of interest involving the Chief Scientist's work are unavoidable. Conflict of interest is in the very nature of the role of the Chief Scientist, raising community concerns about conflict of interest. Dr Batterham stated in his submission: 'That there exists a perception of a potential conflict of interest is undeniable. This was recognised and implied in my original appointment in 1999 and was effectively noted again on my re-appointment in 2002'.[24]

2.29 Dr Batterham elaborated on conflict of interest at the public hearing when he told the committee that holding two roles, one as Chief Scientist and one as Chief Technologist for Rio Tinto, 'clearly allows for conflict of interest; that is undeniable'.[25] A number of submissions conveyed a similar argument. For example, Mr Peter Hoj, private member, PMSEIC, states that individuals of high calibre who occupy public and private business roles will unavoidably find themselves in situations where the potential for conflict can arise.[26] Another submission stated that a perceived conflict of interest between the Chief Scientist's position in government and his other roles and responsibilities is always a possibility.[27]

2.30 The view presented by FASTS is broadly representative of the submissions. When asked to respond to Dr Batterham acknowledging that there is a public perception of conflict of interest in regard to his work, Mr Bradley Smith said: 'We would agree that there is an appearance of a conflict of interest. The issue is whether there is in fact a conflict of interest…We have seen nothing that has demonstrated a real conflict of interest'.[28]

2.31 In summary, the evidence to the committee, including from the Chief Scientist and from those who expressed confidence in Dr Batterham's professional conduct, is that a potential conflict of interest is inherent in the dual part-time roles performed by Dr Batterham. There is a clear conflict between Dr Batterham's public interest duties as Chief Scientist and his private interest duties as Chief Technologist for Rio Tinto. The committee did not hear any evidence that would question this finding.

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23 ibid., p.29

24 Submission no. 18, Dr Robin Batterham, p.2

25 Dr Robin Batterham, *Hansard*, 2 July 2004, p.34

26 Submision no. 7, Mr Peter Hoj, p.1

27 Submission no. 11, Australian Geoscience Council Inc, p.11

28 Mr Bradley Smith, FASTS, *Hansard*, 2 July 2004, p.4

2.32 As mentioned in chapter 1, the committee also notes that the perception of an actual conflict of duties is created by the arrangement where Dr Batterham undertakes duties associated with both his roles from his Rio Tinto office in Melbourne. When asked by the committee about this arrangement, Dr Batterham told the committee:

> Let me say quite categorically that I do not allow visits from anyone or discussions with people which potentially span the two jobs. That includes correspondence, telephone calls, emails as well as visits. If they look ambiguous, the [Canberra] office…will say, 'This looks ambiguous,' and will go back to the originator of the request for whatever it is and ask: 'Are you wishing to speak with the Chief Scientist of the Chief Technologist? You can't have both'.[29]

2.33 Nothwithstanding Dr Batterham's explanation, the committee agrees with the view of Dr Jim Peacock, President of the Australian Academy of Science: 'The fact that [Dr Batterham] has two jobs suggests that he might need two offices. It is probably very difficult to keep the Chinese wall in place all the time in answering queries and so on'.[30]

2.34 The issue before the committee is whether there is any evidence to demonstrate a potential conflict of interest and a real conflict of interest involving Dr Batterham's duties as Chief Scientist. In order to form a judgment, the committee looked closely at the specific allegations against Dr Batterham by conservation groups, as summarised by Margaret Blakers. However, the committee was hindered in its analysis by the patchy nature of evidence, and by conflicting accounts of particular events.

2.35 To begin with, the committee holds the view that conflict of interest allegations surrounding the data from Roam Consulting on the cost of geosequestration are important because of the Chief Scientist's critical advisory and oversight role in PMSEIC and its various working groups.

2.36 The committee asked Dr Batterham if the Ministerial Council on Energy and the PMSEIC working group were aware that Rio Tinto had commissioned data used in his power point presentation. He told the committee that he was not aware of this fact.[31]

2.37 The important issue for the committee is that the unpublished and contested data from Roam Consulting should have been disclosed at the Ministerial Council on Energy and PMSEIC working group presentations. At stake is the independence and authority of the advice being provided by the Chief Scientist; in short, the credibility of the Chief Scientist's core role becomes an issue of concern. The committee takes special note of the views of Professor Seumas Miller and Dr Jim Peacock. Professor

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29 Dr Robin Batterham, *Hansard*, 2 July 2004, p.44

30 Dr Jim Peacock, Australian Academy of Science, *Hansard*, 2 July 2004, p.62

31 Dr Robin Batterham, *Hansard*, 2 July 2004, p.49

Miller expressed the view that in the light of Dr Batterham's circumstances, 'it would be problematic for him to be using…data sources without disclosing them, particularly given that he was…occupying the role of chief technologist for Rio Tinto. I think he should have disclosed that'.[32]

2.38 Similarly, at a public hearing, Dr Jim Peacock stressed that Dr Batterham's primary obligation is to Government: 'The representation of advice to the government should be based on the best possible assessment of [a] situation'. He went on to say that a Chief Scientist: 'should only be able to represent a statement or a position on the basis of a synthesis and analysis of all the relevant evidence, particularly scientific evidence, which is his particular skill'.[33]

2.39 In addition, the committee notes that the Chief Scientist is responsible for the content of PMSEIC working group reports. It therefore finds it hard to believe that Dr Batterham was, as he claims, unaware of the source of information in the *Beyond Kyoto* report which relates to the cost of geosequestration. Dr Batterham's statement is also at odds with an answer to a Question on Notice by the Minister for Science, Mr McGauran, which noted that the Chief Scientist's 29 November 2002 presentation to the Ministerial Council on Energy 'drew on the Rio Tinto privately commissioned modelling from Roam consulting'.[34]

Findings

2.40 The committee finds that there is a clear conflict of public and private duties arising from the dual part-time roles performed by Dr Batterham. His circumstances fall squarely within any mainstream definition of conflict of interest, including that provided by Professor Miller. For example, recent OECD guidelines on conflict of interest in the public sector define a conflict of interest as a conflict between the public duty and private interests of a public official. In this situation, the public official has private-capacity interests that *could* improperly influence the performance of their official duties and responsibilities.[35] The committee believes that Dr Batterham's conflict of duties underpins a public perception of a potential and real conflict of interest that is damaging to the Office of the Chief Scientist.

2.41 The committee does not believe there is any evidence to demonstrate either a direct or indirect pecuniary conflict of interest, or a real conflict of interest arising from the Chief Scientist's role in PMSEIC. It notes the view of one private member of PMSEIC that the Chief Scientist has no control over the recommendations of PMSEIC working groups and, importantly, does not seek to influence their outcomes.

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32 Professor Seumas Miller, *Hansard*, 2 July 2004, p.31

33 Dr Jim Peacock, *Hansard*, 2 July 2004, p.60

34 Senate *Hansard*, 15 September 2003, p.15216

35 ibid., p.24

Working groups operate independently and their recommendations are expected to reflect their own views.[36]

2.42 The committee finds that on one occasion Dr Batterham did use unpublished and unverified data supplied by Rio Tinto in a meeting of Commonwealth and state energy ministers, and failed to declare the source of the information. This creates the appearance of a real conflict of interest. The same data subsequently appeared in a high profile report prepared by a PMSEIC working group. It appears that the working group was not aware Rio Tinto had commissioned information attributed to a private company, Roam Consulting.[37] However, the committee finds that the Chief Scientist is not responsible for this oversight because he was not directly involved in preparing the presentation to PMSEIC and did not present it to the working group. The committee concludes that this case has contributed to a perception of conflict of interest which risks eroding public confidence in the independence of advice provided to Government by the Chief Scientist.

36 Submission no.1, Dr Leanna Read, p.2

37 ibid.

Chapter 3

Managing conflict of interest

> In a rapidly changing public sector environment, conflicts of interest will always be an issue for concern…A modern conflict of interest policy should seek to strike a balance, by identifying risks to the integrity of public organisations and public officials, prohibiting unacceptable forms of conflict, managing conflict situations appropriately…[and] ensuring effective procedures are deployed for the identification, disclosure, management, and promotion of the appropriate resolution of conflict-of-interest situations.[1]

3.1 The committee believes that the actual, potential and apparent conflicts of interest arising from the Chief Scientist's dual roles should be properly addressed and managed. Professor Miller told the committee that managing conflict of interest is partly dependent on the role of the person at the centre of the conflict allegation: 'If you take that role to be a very important one and if you take that role to be authoritative…then it looks as though you will have to take very seriously…any potential, actual or apparent conflict of interest that they might have'.[2] The committee views conflict of interest as compromising impartial and objective decision-making that underpins rational and democratic government. It is concerned that confidence in the integrity of public administration, political processes and government may be undermined by undisclosed or improperly managed conflicts of interest.[3]

3.2 It follows from this that the proper management and resolution of conflict of interest should be a priority. This issue is now being addressed in public sectors in Australia and abroad. The publication in 2003 of OECD guidelines on managing conflict of interest is an important milestone in the recognition of how conflict of interest in the public and private sectors has become a matter of public concern world-wide. Different types of conflict of interest have emerged from new relationships between the public sector and the business and non-profit sectors. The OECD guidelines provide a blunt warning that conflicts between private interests and public duties can result in corruption if they not managed properly.

3.3 The question before the committee is has the issue of conflict of interest been properly managed as the Chief Scientist and the Minister for Science have repeatedly claimed? This chapter examines Dr Batterham's contract of employment with the Minister for Science and the conflict of interest guidelines which apply to the Chief Scientist; it addresses the question of whether the Chief Scientist should be a full or

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1 *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*, OECD, 2003, p.23

2 Professor Seumas Miller, *Hansard*, 2 July 2004, p.26

3 Noel Preston and Charles Sampford, *Encouraging Ethics and Challenging Corruption: Reforming Governance in Public Institutions*, The Federation Press, Annandale, 2002, p.84

part-time position, or a statutory appointment; and it consider briefly whether there should be statutory criteria for the appointment of a Chief Scientist.

Assessing conflict of interest guidelines

3.4 From the time allegations against the Chief Scientist were first raised in the Parliament and in the media, Dr Batterham and the Minister for Science have intervened publicly on several occasions to reassure the public that potential conflict of interest is not unusual. They have attempted to shore up public confidence in the Office of the Chief Scientist by claiming that while a potential conflict of interest is inherent in the Chief Scientist's part-time position, it has been fully disclosed and properly managed.

3.5 In April 2004, the Minister for Science brushed aside conflict of interest allegations:

> I can assure readers that both the Government and the Chief Scientist are conscious of the need to avoid any conflict of interest arising from the Chief Scientist's role as Chief Technologist for Rio Tinto. Dr Batterham's contract includes provisions that ensure any potential conflict of interest is immediately declared and addressed.[4]

3.6 Dr Batterham's contractual obligation to avoid conflict of interest states that he is to identify and manage potential and real conflicts of interest. As previously mentioned, section 16 of Dr Batterham's contract of employment deals specifically with conflict of interest that might arise from duties performed in his part-time employment with Rio Tinto. It states:

> The Chief Scientist warrants to the best of his knowledge after making diligent inquiry, at the date of signing this Deed, no conflict with the interests of the Commonwealth exists or is likely to arise in the performance of duties under this Deed *except for a conflict that may possibly arise by virtue of his employment by Rio Tinto Services Limited*.[5]

3.7 After acknowledging that a conflict may arise, the contract states that the Chief Scientist is to notify the Commonwealth immediately in writing, make full disclosure of all relevant information about the conflict, and take all necessary measures to resolve or otherwise deal with the conflict.[6]

3.8 Section 14.2 of the contract also states that Dr Batterham is required to comply with the Australian Public Service Values and Code of Conduct. The Code of Conduct states that: 'An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment'. DEST told the committee that the APS Values and Code of Conduct were inserted

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4 *Australasian Science*, April 2004

5 Submision no. 14, DEST, Appendix B, p.23 (emphasis added)

6 ibid., p.24

into the contract because Dr Batterham's role in providing high level policy advice to senior ministers and the Prime Minister places him in a situation where he is operating in an equivalent way to a public servant: 'Clearly, ministers took the view that that was the safest way to go in terms of making sure that the standards of behaviour and conduct expected of [the Chief Scientist] were clear and transparent.[7]

3.9 In addition to his contractual obligations, Dr Batterham told the committee that he complies with conflict of interest guidelines that have been established by various bodies, including the CRC committee and the ARC.

3.10 Finally, at a public hearing the committee was told on a number of occasions by Dr Batterham and by Dr Geoffrey Vaughan, Chair, CRC committee, that a so-called 'firewall' has been put in place by Dr Batterham's employer, Rio Tinto. The firewall reportedly prevents Dr Batterham from lobbying the Government on Rio Tinto's behalf, and being personally involved in any of Rio Tinto applications for government funding through the CRC program.

3.11 The committee identifies two main areas of concern relating to these conflict of interest guidelines and procedures, and their application to the Chief Scientist. First, the committee heard evidence from FASTS about conflict of interest guidelines put in place by funding bodies such as the ARC and the National Health and Medical Research Council (NHMRC). It conveyed a general view that the various guidelines are robust for managing conflict of interest, and give every confidence in the processes and outcomes of those funding agencies. It claimed that the establishment of conflict of interest guidelines along these lines demonstrates that professional scientists who participate in these processes understand the rules of conflict of interest.[8]

3.12 The committee does not share the same level of confidence as conveyed by FASTS. The submissions to this inquiry, including a number from professional scientists, do not show a consistent level of understanding of the principles of conflict of interest. This is a view shared by Professor Miller, who told the committee:

> There were a number of submissions from scientists…and there did seem to be a degree of confusion about what a conflict of interest is. For example, some seemed to think that, if someone made a proper and reasonable judgment and was not affected unduly or unreasonably, they did not have a conflict of interest. That is just a confusion between being in conflict of interest and not allowing it to influence you. So I think there is probably a lack of perceptual clarity in relation to these maters…[9]

3.13 The APS guidelines, with which Dr Batterham must comply, require employees to 'take reasonable steps to avoid' conflicts of interest. Other operational

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7 Mr Grahame Cook, DEST, *Hansard*, 2 July 2004, p.81

8 Dr Kenneth Baldwin, FASTS, *Hansard*, 2 July 2004, p.3

9 Professor Seumas Miller, *Hansard*, 2 July 2004, p.30

guidelines relevant to the Chief Scientist, such as the CRC Committee guidelines, contain different criteria for what constitutes 'reasonable steps'. The committee is not persuaded by the Government's argument that a 'firewall' between the Chief Scientist's public and private duties represents an adequate defence of administrative arrangements. There has been a failure to maintain a clear separation between the Chief Scientist's two roles, both administratively and in relation to advising on issues of central and specific concern to Rio Tinto.

3.14 The Minister failed in his public duty to ensure that these differing requirements were not in conflict and, as a direct consequence of this failure of administrative arrangements, it was inevitable that there would be a perception of a conflict of duties in terms of the activities undertaken by the Chief Scientist.

3.15 Following from this, the second area of concern relates specifically to the CRC conflict of interest guidelines and how they apply to the Chief Scientist. The 'CRC Programme Code of Conduct and Conflict of Interest Guidelines' establish formal procedures for handling actual or potential conflicts of interest. The committee notes that the Guidelines recognise that perceptions of conflict of interest may be as important as actual conflict. The Guidelines provide three categories of conflict of interest to enable the CRC committee to determine the appropriate response:

- Category 1 conflicts involve those cases where the association with an application or an established CRC is of such a minor nature that it could not be reasonably construed as affecting the Member's ability to give the application or issue at hand full, unbiased and expert consideration.
- Category 2 conflicts involve those cases where there is a clear association with the application or an established CRC which should be specifically made known to the Panel or committee, but where it is not so direct that it should deprive the Panel or committee of the member's expertise and knowledge during the consideration of the applicant or the issue at hand.
- Category 3 conflicts involve those cases where there is clear personal involvement with an application or an established CRC – for example, a Member is a key researcher or is similarly very closely involved within and responsible for the success of a proposal.[10]

3.16 Members with category 1 conflict can participate fully in the committee's deliberations and recommendations. Members with category 2 conflicts can participate fully in the committee's deliberations in relation to the selection of an application or an established CRC, with important exceptions – most importantly, the person will not take part in any committee decision on whether or not to recommend the application for interview or for funding. Members with category 3 conflicts cannot

10 Submission no. 14, DEST, Appendix I, p.88

participate in any discussion on an application, and will play no role in any deliberation and decision on an application.[11]

3.17 The committee was advised that as a member of the CRC committee, Dr Batterham is deemed to have a category 2 conflict. In practice this means that while Dr Batterham can be present at a CRC committee meeting and contribute to technical discussion on a topic, he cannot be part of any decision-making process.[12] Dr Batterham told the committee that he does not believe his presence in the room materially affects the behaviour of people who are also present in the room: 'They are very distinguished people and capable in their own right'.[13]

3.18 At an estimates hearing in June 2004 it was asserted by Mr Colin Walters, Group Manager, Science Group, DEST, that, in any case, the CRC committee reached its decisions by consensus rather than by vote. Therefore, Dr Batterham's role in such decisions was not deliberative and as such was not an issue in terms of conflict of interest. The committee believes that this consideration, in so far as it is relevant, raises legitimate concerns about the CRC committee's processes. In reaching a consensus the CRC committee must inevitably take account of any contributions made to its discussions by Dr Batterham. It is not absolutely clear, therefore, that the CRC committee's consensus position on any matter can be said to be free of the effect of Dr Batterham's comments or views.

3.19 Further, while this arrangement on the surface is transparent, the committee discovered that the interpretation and application of the CRC conflict of interest guidelines to Dr Batterham is influenced to a large extent by the firewall arrangement with his employer, Rio Tinto. This issue came to light at a public hearing when the Chair of the CRC committee, Dr Geoffrey Vaughan, explained that:

> In the case of Dr Batterham…a special consideration was made because a firewall arrangement, we were advised, could be put in place. We have accepted that for Dr Batterham, with the company advising us that the firewall is in place. On any detailed issues associated with a CRC application, he will not be involved or be informed by them.[14]

3.20 Dr Vaughan went on to say that the CRC committee has been provided with a statement from Dr Batterham advising that a firewall is in place. The statement was confirmed in written advice from the Company Secretary of Rio Tinto to the CRC committee, dated 18 November 2002.[15] According to Dr Batterham, the letter states that a firewall is in place to ensure that he: '[does] not receive or discuss matters related to CRCs when a conflict of interest would be possible'.[16] A copy of the letter

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11 Submission no. 14, DEST, Appendix I, p.88

12 Dr Robin Batterham, *Hansard*, 2 July 2004, p.43

13 ibid.

14 Dr Geoffrey Vaughan, *Hansard*, 2 July 2004, p.68

15 Mr George Kriz, DEST, Answer to Question on Notice, 23 July 2004

16 Dr Robin Batterham, Answer to Question on Notice, 13 July 2004

has also been provided to DEST. Dr Vaughan advised further that he did not know how Rio Tinto enforced the firewall arrangement, but that he was 'willing to take people at their word. We believe they show integrity, and we accept that'.[17]

3.21 Yet the committee received no evidence to show how the firewall operates in practice, or even if the firewall exists. It is surprised to find that the CRC committee takes Dr Batterham and Rio Tinto at their word, especially when a letter from Rio Tinto is all that appears to prevent Dr Batterham falling under category 3 of the CRC's conflict of interest guidelines. The CRC committee has not made any attempt to determine how Dr Batterham complies with the firewall beyond accepting a letter from his employer which presumably only states that a firewall is in place. Dr Batterham has advised the committee that he has been provided with oral advice, presumably from within Rio Tinto, attesting to the efficacy of the firewall. Beyond that advice, Dr Batterham has not sought other advice as to whether the firewall is a valid mechanism for dealing with conflicts of interest.[18]

3.22 The main effect of the firewall arrangement is that Dr Batterham is unlikely ever to fall under category 3 of the conflict of interest guidelines in which he would be required to absent himself from any discussions and decision-making. Dr Vaughan clarified this issue following the public hearing:

> …Dr Batterham rarely has a level 3 conflict of interest which would cause him to be absent from any decision-making whether made by consensus or otherwise. This is because the CRC committee has accepted the 'firewall' arrangements that have been put in place at Rio Tinto. If it was felt by Dr Batterham, by any member of the committee, or by any Departmental officer, that a level 3 [conflict of interest] existed then it would be brought to my attention. I cannot remember any occasions when Dr Batterham was absent from discussions when he was in attendance at any particular meeting.[19]

Findings

3.23 The committee finds that the CRC guidelines and their application to the Chief Scientist are confusing and lack perceptual clarity on the issue of conflict of interest. At the very least, the committee believes that the CRC committee should obtain from Rio Tinto details of how the firewall which applies to the Chief Scientist is put into practice. Any firewall arrangements should also be formally recognised in the CRC committee conflict of interest guidelines.

3.24 The Committee finds that the Australian Public Service conflict of interest guidelines were compromised by the Government's administrative arrangements with regard to the office of the Chief Scientist.

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17 Dr Geoffrey Vaughan, *Hansard*, 2 July 2004, p.69

18 Dr Robin Batterham, Answer to Question on Notice, 13 July 2004

19 Dr Geoffrey Vaughan, Answer to Question on Notice, 13 July 2004

Recommendation 1

The committee recommends that the conflict of interest guidelines included in the Australian Public Service Code of Conduct should be reviewed to ensure that the broader conflict of interest concepts examined in this report can be addressed more transparently and rigorously.

A full-time or part-time Chief Scientist?

3.25 Nearly all the submissions to this inquiry addressed the issue of a part-time or full-time Chief Scientist. It is fair to say that the evidence before the committee on this issue is evenly divided. Those who support the status quo presented the committee with one leading argument. It was argued that a part-time Chief Scientist has an advantage in being able to retain a 'finger on the pulse' and remain well-connected in the science, technology, and business communities.[20] On the other hand, a full-time appointee could become remote from the needs of both business and science communities.[21]

3.26 At the public hearing, the committee asked Dr Batterham if he would have considered a full-time position. His response was candid:

> Not really. My reason for that is associated with looking at the value proposition of having a current network and current experience in one particular domain and bringing the knowledge that gives of how people operate...Looking at it from the Chief Scientist's side…it actually takes a while for your opinions to earn authority and credibility and for you to learn of your involvement with and the ropes of the numerous committees and so on…I think there is quite some advantage in the present arrangement.[22]

3.27 While the committee respects the value of Dr Batterham's reflections on his part-time position, it holds the view that submissions which support a full-time appointment presented a stronger case. The committee heard evidence from FASTS that a full-time Chief Scientist would play a larger role across government portfolios and would help encourage a whole-of-government approach to science and technology policy. This would be achieved if the Office of the Chief Scientist was restored to the Department of Prime Minister and Cabinet. A full-time Chief Scientist based in Canberra would have more time and opportunities to play a coordinating role between government, industry and the research sector. A full-time Chief Scientist would reflect the importance of science, technology and innovation for economic, social and environmental policies:

> Not only is the role of Chief Scientist immense; making it a full-time position sends a strong signal that the government considers science to be

20 Submission no. 1, Dr Leanna Read, p.1

21 Submission no. 7, Mr Peter Hoj, pp.1, 2

22 Dr Robin Batterham, *Hansard*, 2 July 2004, p.37

> of fundamental significance. We do not think that the position of Chief Scientist being full-time precludes a close and continuing contact with the research sector.[23]

3.28 The Australian Academy of Science also pressed upon the committee that the position of Chief Scientist is of such importance for Australia and for the Government that it would justify a full-time appointment: 'That is not to say that a person with a part-time appointment cannot do a good job. We just feel that if there was a full-time position they might be able to do a better job'.

3.29 FASTS provided an example of the practical benefits of a full-time position:

> A major area of concern is how Commonwealth and state jurisdictions operate and overlap. There are gaps. There is an enormous amount of work to be done through a whole range of particular areas. Clearly, if you are talking about a two-day appointment, you will be prioritising. There are things that will not get addressed. There is one area that a lot more could be done with where there are problems across a whole raft of particular areas which do not get addressed. That is an area that a full-time chief scientist could fruitfully address.[24]

3.30 However, some of the evidence suggested that conflict of interest does not depend on the status of the position. FASTS holds the view that a Chief Scientist is always faced with a potential conflict of interest, irrespective of whether they are full-time or part-time, because 'a recently active scientist will have prior commitments and may well be looking to their future prospects after the position'.[25]

3.31 The committee holds the view that those who support the current part-time arrangement have overstated the disadvantages of a full-time position without fully recognising, as the committee does, that creating a full-time position would substantially remove a structural impediment to managing the current conflict of interest situation afflicting the Office of the Chief Scientist. The committee believes potential and real conflict of interest would be reduced if the position of Chief Scientist was full-time.

Is there a need for a statutory appointment?

3.32 The committee is required by the inquiry's terms of reference to examine whether there should be statutory criteria for the appointment of a Chief Scientist. The evidence it received on this issue did not provide a great deal of detail. The submission from FASTS stated that there are grounds for the Chief Scientist to be a statutory position with defined reporting requirements, powers and selection criteria. Such an approach would have the advantage of:

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23 Mr Bradley Smith, FASTS, *Hansard*, 2 July 2004, pp.1-2

24 ibid., p.7

25 ibid., p.3

- providing closer linkages to pursue whole-of-government advice;
- providing some surety the position will be ongoing and not abolished at executive whim; and
- providing for public accountability.[26]

3.33 One submission expressed support for legislation to formalise criteria for the selection and appointment of the Chief Scientist without explaining how this would promote the independence of the Office.[27] Qualified support for legislation was offered by the President of the Australian Geoscience Council on the grounds it would '…fully recognise the importance of the Chief Scientist and ensure that no future government could easily abolish the position'.[28] However, there is no mention of conflict of interest or improving accountability.

3.34 Some of the submissions expressed reservations with proposals for a statutory appointment. Dr Geoffrey Vaughan, for example, argued that legislation might remove the current flexible arrangement which enables the Minister to appoint the best person for the position who can meet the needs of Government.[29] Appointment through legislation might also work against attracting the best possible candidates for the position of Chief Scientist.[30]

3.35 DEST advised the committee at a public hearing that a statutory appointment would affect the Chief Scientist's relationship with the department, but how the relationship would change is not clear:

> It would depend very much on what the scope of his function then was…If he were a statutory office holder then that would clearly change the relationship between the Chief Scientist, ministers, the parliament and the department. It would depend exactly on how the legislation was framed as to how that might work.[31]

3.36 In conclusion, although the committee can see some merit in a statutory appointment for the Chief Scientist, it believes the issue requires further investigation before it reaches a conclusion. On the whole, the Committee does not believe a statutory position is necessary to address conflict of interest and to ensure the Office of the Chief Scientist is open to parliamentary scrutiny. This is best achieved by making the position a full-time public service appointment.

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26 Submission no. 13, FASTS, p.4

27 Submission no. 9, Mr Andrew Waltho, p.1

28 Submission no. 11, Mr David Denham, p.3

29 Submission no. 8, Dr Geoffrey Vaughan, p.2

30 Submision no. 6, Dr Geoff Garrett, p.1

31 Mr Grahame Cook, DEST, *Hansard*, 2 July 2004, p.88

Recommendation 2

The committee recommends that in view of the responsibility and potential workload attached to the Office of the Chief Scientist, and in the light of the potential for conflict of interest associated in particular with a part-time Chief Scientist, the position of the Chief Scientist should be full time.

Recommendation 3

The committee recommends that guidelines, codes of conduct and procedures on dealing with potential and actual conflicts of interest, applying to holders of public office in the Australian Government, should be similar and consistent across all government agencies and bodies.

Recommendation 4

The committee recommends that the position of Chief Scientist should be appointed under public service conditions. In doing so, it also recognises the public education role of this position, and the possibility, given that science and scientific research is contestable, that the occupant of the position may express controversial views. The terms of the appointment should be such that the Office of the Chief Scientist will be subject to public accountability equivalent to that applying to other senior public servants.

Government Senators' Report

Although the committee majority's report found that Dr Batterham's public duties as Chief Scientist for the Commonwealth and private interest duties as Chief Technologist for Rio Tinto to be in conflict, Government senators do not accept that there is a conflict of duties.

While the potential for a conflict of interest exists as a result of Dr Batterham's dual part-time roles, the Chief Scientist's contract of employment includes procedures for identifying and managing conflict of interest, and refers specifically to the Australian Public Service Values and Code of Conduct. The evidence before the committee overwhelmingly shows that Dr Batterham has complied at all times with the terms of his contract and with other guidelines under which he operates.

It comes as no surprise to Government senators that the majority report concludes there is no evidence to demonstrate an actual conflict of interest arising from Dr Batterham's part-time role as Chief Scientist. Submissions to this inquiry testified to Dr Batterham's scientific credentials, professional conduct and valuable contribution to science and innovation policy. Witnesses who have worked closely with the Chief Scientist on the Prime Minister's Science, Innovation and Engineering Council (PMSEIC) and the Cooperative Research Centre (CRC) program told the committee that he always acted in an entirely fair and independent manner.

The specific conflict of interest allegations raised by the Australian Greens and conservation groups are baseless and have been shown to be politically motivated. The World Wide Fund for Nature and Australian Conservation Foundation could not substantiate claims of conflict of interest arising from the Chief Scientist's position on qeosequestration technology. Their concerns are misconstrued because they appear to arise from a dispute with Government over the scientific basis of Australia's greenhouse policy, rather than from concern about conflict of interest.

This inquiry's focus on the Chief Scientist's advice to government on geosequestration provides a narrow and misleading perspective on the range of issues and ideas covered by Dr Batterham in numerous public and private presentations. It also distorts the nature of the advice which Dr Batterham provides to Government. Dr Batterham told the Committee that geosequestration technology was only one of several options open to Government that would result in deep reductions in Greenhouse emissions. There is no evidence that Dr Batterham has single-mindedly promoted qeosequestration at the expense of other Greenhouse reduction strategies. Even if he had done so, Dr Batterham has no decision-making role.

Managing conflict of interest

There is agreement in literature on conflict of interest that the existence of a conflict of duties should not in itself be a cause for concern. Conflict of interest is endemic to public and professional life and is not in itself unethical. This is because public

officials who occupy senior positions are likely to experience potential conflict of interest as a result of their professional experience and social networks. The challenge is recognition and management of conflict of interest. It is in this context that Government senators agree with the committee majority's view that potential conflict of interest arising from the Chief Scientist's dual roles should be properly managed.

However, there is no evidence to support the committee majority's view that potential conflict of interest involving Dr Batterham's dual part-time roles has not been managed satisfactorily. Extreme care has been taken by both the Chief Scientist and his employer, Rio Tinto, to avoid the perception of conflict of interest. The firewall put in place by Rio Tinto is a case in point. Firewall arrangements are not an uncommon practice in the commercial world for addressing conflict of interest. It is therefore unreasonable for the committee majority to question the operation of the CRC conflict of interest guidelines when there is no evidence that they were not being adhered to. Apart from the Chief Scientist, the CRC committee accepts firewall arrangements for other CRC committee members who hold executive appointments in CSIRO or Government agencies such as the Australian Research Council.

Part-time Chief Scientist is the best option

Government senators support the current arrangement of a part-time Chief Scientist employed under a contract with the Minister for Science. Dr Batterham has demonstrated that a part-time Chief Scientist can make a high level contribution by remaining well connected with the science, technology and business communities. Government senators support the view of Professor Peter Andrews, Queensland Chief Scientist, that Dr Batterham has been able to use his experience and linkages to promote the importance of science and innovation to both government and industry.[1] There is no evidence to show that a full-time position would translate into more practical and tangible benefits either for government or the science community.

Senator David Johnston

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1 Submission no. 22, Professor Peter Andrews, p.1

Australian Democrats' Supplementary Report

Introduction

The Democrats are in agreement with the majority of recommendations and observations of the Chair's report. Accordingly, our supplementary comments and recommendations will be confined to additional issues or areas where we have different views from those covered by the Chair.

The Democrats acknowledge the useful information produced during this inquiry and its relevance to the current debate on the difficult issues surrounding the Chief Scientist.

The development of criteria for the appointment of the Chief Scientist through legislation

The Democrats strongly support the Chair's recommendation to make the position of the Chief Scientist full time. However, we believe that this is only one of several criteria that should be detailed in legislation. It also concerns the Democrats that much of recommendation 4 relies on the Minister of the day being agreeable to the terms set out in the recommendation.

One aspect that the Chair's report did not cover were comments relevant to the third term of reference, made in submission number 3 by Dr Kerr. Dr Kerr's submission states: 'The Australian Government should acknowledge, and then build on, the work of the UK's Nolan Committee'. The Democrats agree there is much to be learnt from Lord Nolan's work.

Lord Nolan headed the 1995 'Nolan committee' and managed to persuade the UK Government to accept that appointments should be based on merit. The Democrats believe that Nolan's seven principles of conduct which underpin public life are applicable to the case of the Chief Scientist.

One of these principles is particularly pertinent:

> Objectivity – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.[1]

Ensuring that appointments to the governing organs or public authorities are based on merit and that the processes by which these appointments are made are transparent, accountable, open and honest is something to which all governments should be committed. The Democrats have put up amendments designed to compel ministers to

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1 Summary of the Nolan Committee's First Report on Standards in Public Life – http://www.archive.official-documents.co.uk/ducument/parlment/nolan/nolan.htm

make appointments on merit on well over 23 occasions only to have Labor and the Coalition combine to block reform. Through this inquiry we feel another opportunity to improve the accountability of government may be lost.

One of the main failings of the present system is that there is no empirical evidence to determine whether the public perception of 'jobs for the boys' is correct, as the appointment of the Chief Scientist is not open to sufficient public scrutiny and analysis.

FASTS noted that the Chief Scientis''s contract had not been a public document to prior to it appearing in DEST's submission to this inquiry and the lack of transparency in the current process of appointment:

> The problem with a contract is that it is not necessarily entirely transparent—what are the selection criteria and selection processes?[2]

and went on to say:

> It is still about the contract to the extent that it is not a public document in the same way that a statutory or Public Service position is.[3]

A workable system to ensure the Chief Scientist is always appointed on merit needs to be established. The public needs to be reassured that there is an adequate system of transparency and independence where favours are not exploited and 'mates' are not rewarded. In making these statements, the Democrats are in no way criticising previous appointments or the Ministers who made them, but rather stating it is right and reasonable that the public which fund these positions should be given the opportunity to examine the appointment for themselves.

While the Minister initially held the view that the Chief Scientist was not a public servant and, therefore, was not accountable to Parliament, the Democrats share the Chair's view that the position is a part of Government machinery and must be accountable to the Parliament. Further to this, the Chief Scientist's public representative role both within Australia and overseas means that they inevitably represents the collective scientific voice of Australia. This adds strength to the argument for greater accountability:

> As the Chair's report notes, FASTS was supportive of the proposition of the Chief Scientist becoming a statutory position. However, it neglected to note two specific benefits of a statutory position listed by FASTS, namely, providing greater continuity and stability to the position but most importantly providing public accountability.[4]

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2 Mr Bradley Smith, *Hansard*, Canberra, 2 July 2004, p.7

3 ibid., p.8

4 Submission no.13, FASTS, p.4

The Democrats disagree with the Chair's statement that statutory appointment of the Chief Scientist is not necessary to address conflict of interest and to ensure parliamentary scrutiny. We believe that making the Chief Scientist a statutory appointment with appropriate criteria defining the position, including a transparent appointment process based on merit, is the best way to ensure that this occurs.

In conclusion, a position such as the Chief Scientist's, which enjoys a significant level of influence over Government, must be appointed in an open and transparent way against defined criteria. By establishing the criteria for appointment in legislation, the Parliament would be in agreement on the nature of the role and there would be a clearer starting position for examining any claims of a conflict of interest. This would also ensure that the Chief Scientist starts the role in a strong position with the confidence of both the Parliament and the scientific community.

Recommendation

That the position of the Chief Scientist is a statutory appointment and criteria for the appointment and the role of Chief Scientist are further developed in consultation with the science community.

Senator Natasha Stott Despoja

Australian Greens' Statement

The Australian Greens initiated this inquiry into the Office of the Chief Scientist. I am pleased to be able to endorse the findings and recommendations of the majority report.

Senator Bob Brown
Australian Greens
4 August 2004

Appendix 1

List of Submissions

1	Dr Leanna Read, Private member Prime Minister's Science, Engineering and Innovation Council
2	World Wide Fund for Nature Australia
3	Dr Trevor Kerr, Vic
4	Engineers Australia, ACT
5	CSIRO
6	Dr Geoff Garrett, ACT
7	Mr Peter Hoj, SA
8	Dr Geoffrey Vaughan, Vic
9	The Australian Institute of Geoscientists
10	Australian Academy of Science
11	Australian Geoscience Council Inc
12	Professor Edwina Cornish, Vic
13	Federation of Australian Scientific and Technological Societies
14	Department of Education, Science and Training
15	Australian Chamber of Commerce and Industry
16	Australian Conservation Foundation
17	Professor Helen Garnett
18	Dr Robin Batterham, Chief Scientist
19	Greenpeace Australia Pacific
20	Engineers Australia, NSW
21	DuPont Australia and New Zealand
22	Professor Peter Andrews, Qld

Appendix 2

Hearings and Witnesses

Canberra, Friday 2 July 2004

Federation of Australian Scientific and Technological Societies
Mr Bradley Smith, Executive Director
Dr Kenneth Baldwin, Chair, Policy Committee

Australian Conservation Foundation
Mr Erwin Jackson, Energy Reform Campaigner

World Wide Fund for Nature
Ms Anna Reynolds, Manager, Climate Change Program

Centre for Applied Philosophy and Public Ethics, Charles Sturt University
Professor Seumas Miller, Director

Dr Robin Batterham, Chief Scientist

Australian Academy of Science
Dr William Peacock, President
Professor Susan Serjeantson, Executive Secretary

Cooperative Research Centres Committee
Dr Geoffrey Vaughan, Chair

Department of Education, Science and Training
Mr Grahame Cook, Deputy Secretary
Mr Colin Walters, Group Manager, Science Group
Mr George Kriz, Chief Lawyer

Appendix 3

Answers to questions on notice and additional information

Canberra, Friday, 2 July 2004

Federation of Australian Scientific and Technological Societies received: 9 July 2004	Answers to questions asked by Senators Ludwig and Senator Stott Despoja
Dr Geoffrey Vaughan received: 13 July 2004	Answers to questions asked by Senator Brown
Centre for Applied Philosophy and Public Ethics received: 15 July 2004	Answers to questions asked by Senator Stott Despoja
Department of Education, Science and Training received: 19 July 2004	Answers to questions asked by Senators Carr and Stott Despoja
Dr Robin Batterham, Chief Scientist received: 19 July 2004	Answers to questions asked by Senators Brown and Ludwig

Additional information

Hearing: Canberra, Friday, 2 July 2004	Paper titled *'The way we work'* supplied by Dr Robin Batterham

Appendix 4

Chief Scientist's contract

Copy of the Chief Scientist's Current Contract

THIS DEED is made on this twenty-ninth day of May 2002

BETWEEN

COMMONWEALTH OF AUSTRALIA ('the Commonwealth') represented by the Minister for Science, the Hon Peter McGauran MP ('the Minister')

AND

DOCTOR ROBIN JOHN BATTERHAM

RECITALS

A. Dr Batterham has been engaged by the Commonwealth as a consultant from 1 June 2002 to 31 May 2005 to provide specialist advice to the Prime Minister and the Minister on matters affecting science, engineering and innovation (Specialist Advice) as the Prime Minister and the Minister request.

B. Dr Batterham has indicated interest in continuing to provide the required Specialist Advice.

C. The Commonwealth has decided to re-engage Dr Batterham to provide the Specialist Advice in accordance with the terms and conditions of this Deed.

D. For the purposes of this Deed, Dr Batterham is referred to as the Chief Scientist.

IT IS AGREED:

1. Period of Engagement

1.1 The Chief Scientist is engaged to provide the Specialist Advice from 1 June 2002 until 31 May 2005.

2. Chief Scientist's Duties

2.1 The Chief Scientist's duties include, but are not limited to:

(a) providing advice to the Prime Minister and the Minister on such matters affecting science, engineering and innovation as the Prime Minister and the Minister request;

(b) drawing to the Minister's attention emerging issues in science, engineering and innovation that may affect the national well-being or require attention by the Government;

(c) chairing the Standing Committee of Prime Minister's Science, Engineering and Innovation Council and acting as the Council's Executive Officer (this will include overall management of the Council's working parties and coordination of their reports);

(d) assisting in the coordination of government activities in science, engineering and innovation; and

(e) fostering close and effective working relationships between the Government and organisations with responsibilities for science, engineering, and innovation including particularly the Australian Academy of Science, the Australian Academy of Technological Sciences and Engineering, The Institution of Engineers Australia, and the Federation of Australian Scientific and Technological Societies.

3. **Remuneration**

3.1 The Chief Scientist will be remunerated for performing his duties under this Deed at the annual rate determined from time to time by the Commonwealth's Remuneration Tribunal. The current rate is $90,500.

4. **Allowances and Expenses**

4.1 When undertaking travel within Australia in the performance of his duties the Chief Scientist will be entitled to a travelling allowance, per overnight stay, as determined by the Remuneration Tribunal as a Tier 1 appointment.

4.2 When undertaking overseas travel in the performance of his duties the Chief Scientist will be entitled to a travelling allowance at a rate equal to the rate payable to the Secretary of the Commonwealth Department of Education, Science and Training.

4.3 When travelling by air in the performance of his duties the Chief Scientist will travel:

(a) if travelling with or representing the Prime Minister or the Minister, first class;

(b) in any other case, business class;

at the cost of the Commonwealth.

4.4 The Commonwealth will reimburse the Chief Scientist for reasonable expenses incurred in performing duties under this Deed other than those referred to in clauses 4.1 to 4.2 on the submission by the Chief Scientist of a correct invoice for payment.

5. **Security Clearance**

5.1 The Chief Scientist must at all times have a security clearance at Top Secret level.

6. **PAYG Tax and Superannuation Contributions**

6.1 The parties acknowledge that, in relation to the remuneration paid under clause 3 of this Deed, the Commonwealth will:

(a) make "pay as you go" withholding income tax instalments (PAYG);

(b) make compulsory contributions, on the Chief Scientist's behalf, to a superannuation fund nominated by the Chief Scientist and approved by the Commonwealth; and

(c) pay the balance of remuneration remaining after deduction of PAYG as directed by the Chief Scientist.

6.2 Any payments referred to in paragraph 6.1(a) will be deducted from the amount of the remuneration otherwise payable but any payments referred to in paragraph 6.1(b) will be in addition to that amount.

7. Official Passport

7.1 The Chief Scientist and the Minister's Department will endeavour to arrange an Official Passport to be held by the Chief Scientist for overseas travel.

8. Indemnity

8.1 The Commonwealth will indemnify the Chief Scientist for injury suffered and loss incurred in the course of performance of duties under this Deed.

8.2 Subject to the provisions of this Deed, the Commonwealth agrees to at all times indemnify and hold harmless the Chief Scientist from and against any losses, expenses (including without limitation legal costs and expenses on a solicitor/own client basis), claims, damages, or liability incurred or suffered by the Chief Scientist arising from any claim, suit, demand, action or proceeding by any person against the Chief Scientist resulting from any act or omission by the Chief Scientist in connection with the performance of his duties under this Deed, except where such losses, expenses, claims, damages or liability were caused by any irresponsible, malicious or culpably negligent actions of the Chief Scientist.

8.3 The indemnities referred to in clauses 8.1 and 8.2 will survive the expiration or termination of this Deed.

8.4 Where secretarial services to the Chief Scientist are provided by a third party, the Chief Scientist will, in accordance with relevant laws, effect and maintain adequate workers compensation insurance where that person is an employee of the Chief Scientist or will ensure that such insurance is current and applicable where that person is employed by another party.

9. Occupational Health and Safety Requirements

9.1 The Chief Scientist will observe and comply with the Commonwealth's Occupational Health and Safety Requirements when on Commonwealth premises.

10. Assignment of Rights and Obligations

10.1 The Chief Scientist will not, except with the prior written approval of the

Minister, assign any of his rights or obligations under this Deed.

11. Deed Material and Copyright

11.1 All property and copyright in any material produced in the performance of the Chief Scientist's duties under this Deed (Deed Material) will vest in the Commonwealth. The Chief Scientist will not use any Deed Material for any purpose other than for the purposes of this Deed without prior approval in writing from the Minister.

11.2 Upon termination of this Deed for whatever reason the Chief Scientist will hand over to the Minister all Deed Material in possession of the Chief Scientist.

11.3 In this clause and in clause 13 Deed Material means all material produced by the Chief Scientist under this Deed and includes reports, technical information, plans, charts, drawings, calculations, tables, schedules and other data.

12. **Protection of Personal Information**

12.1 The Chief Scientist agrees with respect to all services to be performed under this Deed:

(a) to comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* which concern the collection, security, access, data quality, relevance, use and disclosure of personal information to the extent that the content of those principles apply to the types of activities the Chief Scientist is undertaking under this Deed, as if the Chief Scientist were an agency as defined in the *Privacy Act 1988;*

(b) not to transfer personal information held in connection with this Deed outside Australia, or to allow parties outside Australia to have access to it, without the prior approval of the Commonwealth;

(c) to co-operate with reasonable demands or inquiries made by the Federal Privacy Commissioner or the Minister's Department in relation to the management of personal information by the Chief Scientist or breaches or alleged breaches of privacy;

(d) to ensure that a person who the Chief Scientist may allow to have an access level which would enable that person to obtain access to personal information (as defined in the *Privacy Act 1988*) is made aware of, and undertakes in writing, to observe the Information Privacy Principles referred to in paragraph (a) above:

(e) to comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to the handling of personal information as posted on the Federal Privacy Commissioner's website at www.privacy.gov.au , or as otherwise disseminated by the Federal Privacy Commissioner from time to time;

(f) to comply with reasonable directions of the Minister's Department to observe recommendations of the Federal Privacy Commissioner relating to acts or

practices of the Chief Scientist that the Federal Privacy Commissioner considers to be a breach of the obligations in paragraph (a) above;

(g) to indemnify the Commonwealth in respect of loss, liability or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of the obligations of the Chief Scientist under this clause or misuse of personal information by the Chief Scientist or disclosure by the Chief Scientist in breach of an obligation of confidence whether arising under the *Privacy Act 1988* or otherwise;

(h) to indemnify the Commonwealth in respect of loss, liability or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of the obligations of the Chief Scientist under this clause or misuse of personal information by the Chief Scientist or disclosure by the Chief Scientist in breach of an obligation of confidence whether arising under the *Privacy Act 1988* or otherwise;

(i) to ensure that records (as defined in the *Privacy Act 1988*) containing personal information provided to the Chief Scientist by the Commonwealth or other person pursuant to this Deed is, at the expiration or earlier termination of the Deed, either returned to the Minister's Department or deleted or destroyed in the presence of a person duly authorised by the Minister's Department to oversee such deletion or destruction; and

(j) to the naming or other identification of the Chief Scientist in reports by the Federal Privacy Commissioner.

12.2 The Chief Scientist shall immediately notify the Commonwealth if the Chief Scientist becomes aware of a breach of the Chief Scientist's obligations under clause 12.1 by the Chief Scientist or a subcontractor.

12.3 An act done or a practice engaged in by the Chief Scientist or a subcontractor for the purposes of meeting (directly or indirectly) an obligation under this Deed:

(a) is authorised by this clause even if the act or practice is inconsistent with a National Privacy Principle or an approved privacy code that applies to the Chief Scientist or the subcontractor; and

(b) is subject to the other obligations in this clause 12.

12.4 This clause survives the expiration or earlier termination of this Deed.

13. Confidentiality

13.1 The Chief Scientist will treat as confidential and will not disclose or make public any Confidential Information disclosed to the Chief Scientist by the Prime Minister or the Minister, Deed Material or any other material or Confidential Information acquired or produced in connection with or in performance of the Chief Scientist's duties without prior approval in writing of:

(a) in the case of the information disclosed by the Prime Minister, the Prime Minister;

A.M.G.

(b) in the case of information disclosed by the Minister and Deed Material, the Minister;

(c) in all other cases, the person providing the information or material.

13.2 For the purposes of this clause 13 Confidential Information means information that:

(a) is by its nature confidential;

(b) is designated by the person providing the information as confidential; or

(c) the Chief Scientist knows or ought to know is confidential;

but does not include information which:

(d) is in the possession of the Chief Scientist without restriction in relation to disclosure before the date of receipt in the course of performing this Deed;

(e) has been independently developed or acquired by the Chief Scientist; or

(f) is or becomes public knowledge other than by breach of this Deed or by any other unlawful means.

13.3 This clause will survive the expiration or termination of this Deed

14. Applicable Law

14.1 This Deed will be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and proceedings arising out of a dispute between the parties will be brought and heard in the Australian Capital Territory.

14.2 The Chief Scientist will, in carrying out his duties under this Deed, at all times act in compliance with the laws of Australia in an honest and ethical manner and in accordance with the Australian Public Service Values and Code of Conduct contained in sections 10 and 13 of the *Public Service Act 1999*.

15. No Power to Bind Commonwealth

15.1 The Chief Scientist will not by virtue of this Deed have any power or authority to bind the Commonwealth.

16. Conflict of Interest

16.1 The Chief Scientist warrants that to the best of his knowledge after making diligent inquiry, at the date of signing this Deed, no conflict with the interests of the Commonwealth exists or is likely to arise in the performance of duties under this Deed except for a conflict that may possibly arise by virtue of his employment by Rio Tinto Services Limited.

16.2 If a conflict of interest arises or appears likely to arise, the Chief Scientist agrees to:

(a) notify the Commonwealth immediately in writing;

(b) make full disclosure of all relevant information about the conflict; and

(c) take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the conflict.

16.3 If the Chief Scientist does not notify the Commonwealth or is unable or unwilling to resolve or deal with the conflict as required, the Minister may terminate the Chief Scientist's engagement, effective immediately.

17. Termination

17.1 The Minister may terminate the Chief Scientist's engagement under this Deed for any reason at any time.

18. Notices

18.1 Any notice, request or other communication to be given or served pursuant to this Deed by either party or its authorised representative will, unless otherwise specifically provided in this Deed, be in writing addressed as the case may be as follows:

or such other address in Australia as a party may nominate by notice to the other party.

18.2 Any such notice, request or other communication will be delivered by hand, or sent by pre-paid registered post, or sent by facsimile machine, to the address of the party to which it is sent and will be deemed to have been given with effect from the time at which it would have been delivered in the ordinary course.

19. Entire Agreement and Variation

19.1 This Deed constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Deed.

19.2 No agreement or understanding varying or extending this Deed, including in particular the scope of the Chief Scientist's Duties, shall be legally binding upon

either party unless in writing and signed by both parties.

EXECUTED as a Deed

SIGNED sealed and delivered by)
the Hon Peter McGauran MP)
Minister for Science)
on behalf of the)
COMMONWEALTH OF AUSTRALIA)
in the presence of:)

SIGNED sealed and delivered by)
DOCTOR ROBIN JOHN)
BATTERHAM in the presence of:)