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Official Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

Reference: Inquiry into members of parliament staff

TUESDAY, 2 SEPTEMBER 2003

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SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

Tuesday, 2 September 2003

Members: Senator Forshaw *(Chair)*, Senator Watson *(Deputy Chair)*, Senators Heffernan, Moore, Ridgeway and Wong

Substitute members:

Senator Murray for Senator Ridgeway, Senator Webber for Senator Wong and Senator Brandis for Senator Heffernan

Participating members: Senators Abetz, Brandis, Carr, Chapman, Conroy, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Knowles, Lees, Lundy, Mason, McGauran, Murphy, Murray, Payne, Sherry, Tchen and Tierney

Senators in attendance: Senators Brandis, Carr, Forshaw, Moore, Murray, Watson and Webber

Terms of reference for the inquiry:

To inquire into and report on:

(a) the adequacy and appropriateness of the framework for employment and management of staff under the Members of Parliament (Staff) Act 1984 (the MOPS Act)

(b) the role and functions of MOPS staff in assisting and advising their employers and interacting with the Australian Public Service and other stakeholder groups

(c) the remuneration and conditions of employment of MOPS staff

(d) the means by which MOPS staff are accountable to government, the Parliament and the public

(e) suitable means by which the accountability of MOPS staff could be enhanced

(f) the merits of introducing a code of conduct for MOPS staff reflecting the Values and Code of Conduct of the Public Service Act 1999, the key elements such a code should contain and the process by which such a code should be developed and introduced

(g) suitable means by which the accountability of the Government for the employment of MOPS staff can be enhanced

(h) the role of departmental liaison officers and their interaction with MOPS staff and departments; and

(i) appropriate amendments to the MOPS Act flowing from the above

WITNESSES

Committee met at 9.09 a.m.

CHAIR—Good morning, ladies and gentlemen. I declare open this public hearing of the Senate Finance and Public Administration References Committee. Today is the first of two days of hearings for the committee's inquiry into the staff of members of parliament, who are commonly known as MOPS. The reference to the committee was made on 19 March 2003, and the committee has received 19 submissions, all of which have been published, except for two submissions that were received in camera. At today's hearing we will call a range of witnesses, including current and former Public Service officials and a number of academics who have expertise in the area under consideration.

I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I further remind officers that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. All witnesses scheduled to appear before the committee today and tomorrow should have received advice on the protections and obligations that apply to witnesses under parliamentary privilege. The committee prefers to conduct its hearings in public. However, if there are any matters that a witness wishes to discuss with the committee in private, they can make a request and the committee will consider that request.

[9.11 a.m.]

BELCHER, Ms Barbara, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet

CLARKE, Ms Kim, Branch Manager, Entitlements Policy, Ministerial and Parliamentary Services, Department of Finance and Administration

MASON, Ms Jan, General Manager, Ministerial and Parliamentary Services, Department of Finance and Administration

SHERGOLD, Dr Peter, Secretary, Department of the Prime Minister and Cabinet

SUUR, Mr Lembit, General Manager, Corporate Group, Department of Finance and Administration

WATT, Dr Ian, Secretary, Department of Finance and Administration

CHAIR—I welcome Dr Peter Shergold and officers of the Department of the Prime Minister and Cabinet, and Dr Ian Watt and officers of the Department of Finance and Administration. I invite you to make an opening statement to the committee, and then we will proceed to questions. Would you like to lead off, Dr Shergold?

Dr Shergold—I do not want to make an opening statement. There is a joint submission that has been made to you by the Department of the Prime Minister and Cabinet which attaches information provided by the Department of Finance and Administration. I think that submission takes the place of an opening statement.

Dr Watt—I would make the same point. We think we have covered the issues, as a starting point, in that submission, and it certainly takes the place of an opening statement.

CHAIR—Thank you. I will lead off with a couple of questions. Dr Shergold, you gave a speech earlier this year on 13 June, which is not part of your submission but has been well reported. In that speech you supported the system of ministerial advisers and particularly identified that they have a clear and distinct role. Quite a number of the submissions that we have received—and I assume that you or your department have had a look at other submissions—suggest that the role is not that clear and that, indeed, at times there is a degree of confusion about the role of ministerial advisers in the policy process. Would you care to expand upon your belief that it is a clear role and explain what that is, and maybe respond to some of the criticisms or comments of other witnesses to suggest that that is not the case any longer?

Dr Shergold—I am happy to do that. Back in 1972 when Prime Minister Whitlam for the first time introduced significant numbers of partisans to work for ministers, he did it on the basis that it would help to provide government ministers with more control over the policy making and that by having what was a relatively small number of such partisans that would help to ensure that there was competition in policy advice. Prime Minister Hawke back in 1983 coming into the

election was persuaded of that. As I remember, the initial proposal was to make it that five per cent of the senior executive service could be appointed on the basis of political partisanship rather than on Public Service merit. As it happens, and I think correctly, the approach that was taken was different: it was to increase the number of advisers who could work for government and indeed for the opposition. It was driven by that same view: that government needed its own advisers—partisan advisers—to play a complementary role to the Public Service.

Having been in the Public Service for some 15 or 16 years now in the Hawke, Keating and Howard governments, I would have to say that my experience is that that has worked remarkably well. It has worked remarkably well in part because ministerial advisers are located with ministers rather than located within the Public Service. It is a relationship which in the vast majority of instances works very effectively to ensure that the government of the day is not dependent on monopoly advice provided by the Public Service.

What I see is a much greater contestability now in the provision of policy advice to the government in which the Public Service necessarily has to be far more innovative, imaginative and creative in the policy advice that it provides which is responsive to the direction set by the elected government of the day. However, it is crucial and vital that the Public Service in providing that robust policy advice does so in a non-partisan way—in other words, that we can continue to serve successive ministers, successive prime ministers and successive governments.

The ministerial adviser, unlike those of us who are a professional administrative class, have fortunes that are directly tied to their minister, prime minister or government. They are partisan and appropriately partisan. They on occasions liaise with party organisations. They bring a different perspective to policy advice than the career public servant. As long as both sides understand that although they serve the same ministers and prime ministers they do so in different ways, that provides a healthy relationship. That was the point I was emphasising in the speech that you referred to.

CHAIR—I might indicate that we have had a request from the media as to whether they could take photographs during the hearing. In the usual manner, we will allow that to occur. Thank you, Dr Shergold. As you know, one of the key issues the inquiry will be focusing on—and it arises out of recommendations of the earlier report into a certain maritime incident—is the possibility of establishing a code of conduct for ministerial advisers. We have received a range of submissions and views on that. In the department's submission you comment on that. At the moment, the Prime Minister's guidelines operate, which you have referred to. On page 3 of your submission you state:

> The Prime Minister's *Guide on Key Elements of Ministerial Responsibility* makes it clear that Ministers are responsible for the conduct of their staff where they act at the Minister's direction and,—

and I want to emphasise these words:

> to the extent that they have the Minister's authorisation, take action on his or her behalf.

That seems to be very much the nub of one of the important issues that the committee is looking at, which is where ministerial advisers are acting or not acting with the minister's authorisation.

What are the words 'to the extent that they have the Minister's authorisation' actually intended to mean? What guidance do they give to the ministerial adviser?

Dr Shergold—You are correct in saying that the Prime Minister's *Guide on Key Elements of Ministerial Responsibility* does refer to ministers being responsible for the conduct of their staff. We have to remember that what we are talking about here is a relationship often between those staff and the public servants, so of course I am responsible for the conduct of my staff under the values and ethics set out in the Public Service Act 1999 and the guidelines recently issued by the Public Service Commissioner. That being the case, if there is any doubt or question at any stage that a request or a direction given by a ministerial adviser is being given on behalf of the minister, I would intervene to find out if that is the case. It is very rare that that would happen. I can remember a couple of instances where I myself have wanted to confirm with the minister that the request or direction which is being given is on the minister's behalf. But in most day-to-day workings you work on the assumption—and, I think, the correct assumption—that the staffer is representing the views and the authority of the minister.

CHAIR—Did you do that directly with the minister?

Dr Shergold—Of the two occasions that I can think of, on one occasion I did it with the ministerial adviser and on the other occasion I did it with the minister. It was a means for me to clarify the priorities that were being set by the minister.

CHAIR—What do you believe the guidelines mean in a situation where the ministerial adviser acts or gives a direction without the minister's authorisation? What do you believe the guidelines mean in respect of the responsibility that then attaches to the minister for the actions of his staff? Is it still complete?

Dr Shergold—It is clear to me that the minister is responsible for the actions taken by members of his staff on their behalf. If I have any doubt—and in both the instances I talk about it has been where requests have been made which seemed to be at odds with the priorities that had previously been set—I will ensure that the ministerial adviser is acting on behalf of the minister. You have to remember that to get this complementary role to work effectively, to get government to work effectively with a professional public service, requires a relationship of trust. It does impose significant responsibilities on the secretaries of departments to provide leadership to their departments. It is, for example, crucial for my staff to understand, if at any time they have any doubt about the request that is being made to them by a member of the minister's staff, that they would contact me and seek confirmation. That is part of the leadership that I would provide to a department. It is part of the leadership that Dr Watt would provide.

CHAIR—In a situation where information or advice is given to a ministerial adviser with the clear expectation and indication that it should be passed on to the minister, how would you seek to ensure that that occurs? Is there an acceptance that if the advice and information is given it will be passed on? I appreciate that this was very much at the heart of some, or most, of the issues in the CMI report and, bearing that in mind, what steps do you as secretary or your officers take to ensure that that advice and information is passed on?

Dr Shergold—In the normal day-to-day relationship I have with the minister's office and with the minister—or, indeed, the Prime Minister, of course—it is relatively easy for me to know if

the advice that is being required has been asked for by the Prime Minister or the minister. In the vast majority of instances where communication takes place between ministerial staff and departmental staff, there is nearly always a follow-up to requests that have been made and discussions that have taken place between the Prime Minister, the minister and the secretary. Usually, directions are set and then in matters of technical detail or in the preparation of legislation often it is followed through in relationships between the minister's office and others within the department. As I say, the key is that if anyone has any doubt at any stage either (1) that what is being requested is not appropriate, whether or not with the minister's authority, or (2) that the staffer is not acting with the minister's authority, then I would intervene, and I would expect my staff to alert me to any concerns that they would have on that issue. I would have to say that it is very rare indeed.

Senator MURRAY—Excuse me, I want to—

CHAIR—I wanted to also ask about the code of conduct, so I am happy if we carry on with this issue at the moment.

Senator MURRAY—Dr Shergold, I just want to pick up on a word you used in your response, just so I understand what the meaning was. You have used the word 'request' throughout your responses. Is it always by request, or are there ever orders?

Dr Shergold—It can only be a request. It may be that the minister has asked through a ministerial adviser for a brief to be available at a certain time. I suppose in that way it is in the nature of a direction, but you will do it as is appropriate within the time frame that is available. Whether or not the request comes from the minister or a member of the minister's staff, you would always identify what is appropriate and what the time frame is within which you think that request can be met.

Senator MURRAY—But the minister does not request; the minister issues an instruction and gets a response.

Dr Shergold—I would have to say that in my experience ministers very rarely issue an instruction in that way. They would nearly always say something like: 'I have an urgent meeting coming up. Can you get me a brief by four o'clock this afternoon?' I would indicate whether I can, and I would certainly always indicate that I will do all in my power to ensure that that request is met.

Senator BRANDIS—Dr Shergold, I want to explore a little further the concept of a member of a minister's staff acting on behalf of the minister. Your evidence, as I understand it, was that ordinarily it would be assumed that any inquiry, request or direction in the ordinary course of business by a member of the minister's staff is made on behalf of the minister. Is that correct?

Dr Shergold—That is correct.

Senator BRANDIS—I imagine that the concept of delegation must be very widely understood. You do not say, do you, that that is the understanding only in circumstances in which there is specific delegation by a minister? I imagine—but I invite you to comment on this—that there is an expectation among ministerial staff, in particular senior ministerial staff, that they

really are almost the alter ego of the minister, so they have a fairly wide-ranging authority to speak and act on the minister's behalf.

Dr Shergold—That is precisely my point. In terms of day-to-day operations, I would work on the basis that the ministerial staffer is working under the authority of the minister, as they would understand that on a day-to-day basis, for example, the assistant secretary they deal with in my department is speaking with my authority and that I am accountable for the actions of that assistant secretary. That is why I am saying there are very rare instances where something is asked that seems to be at odds with a previous priority set by the minister and where you would want to ask the adviser or the minister: 'Is it true that you want us to shift priorities in this way?'

Senator BRANDIS—The point I am getting at is that you or officers of the Public Service would not assume ordinarily that every request, direction or action by a member of ministerial staff has been specifically instructed by the minister. One would assume, as long as the action is in the ordinary course of business, that the member of the minister's staff might be acting under a general delegation of authority rather than in response to a specific instruction from the minister.

Dr Shergold—Precisely, just as my staff act under a general delegation of responsibility.

Senator BRANDIS—There would be no difference in the treatment of the response to a request, whether it were known to be made in response to a specific direction or whether it were assumed to be made not in response to a specific direction but under a general delegation of authority.

Dr Shergold—That is absolutely correct.

Senator BRANDIS—Thank you.

Senator CARR—Dr Shergold, could you enlarge on the occasions when you have indicated that you have felt it necessary to raise with a minister whether or not staff were acting consistent with the minister's instructions?

Dr Shergold—Without going into the detail, I can remember two occasions. One was when I was the CEO of ATSIC. A request was made by an adviser in Prime Minister Hawke's office and I wanted to question whether the request was made with the support of the Prime Minister. That was an issue that I took up with both the adviser and the Prime Minister. I think the second one was a more minor occurrence with Minister Nelson's office. It was to do with the priorities of the workloads of the department. I was aware that a request that was being made was going to stop the timeliness of a response that the minister had asked for the previous week. Therefore, I wanted to check with the adviser about what was the relative priority. Those are the two occasions.

Senator CARR—On both occasions, I take it the minister said that the adviser had been providing you with correct information?

Dr Shergold—I do not want to go into the details. Only on one occasion did I speak to the minister, who was actually Prime Minister Hawke. On the second occasion, the matter was simply taken up with the adviser.

Senator CARR—You do not want to enlarge on whether or not the advice tendered to you by the adviser was accurate?

Dr Shergold—Even though these are times past, I believe it is important that there is a relationship of trust between the public servant and the minister or Prime Minister. I think I have said sufficient to give you an understanding of (a) the rarity of the occasions and (b) how I believe it is appropriate for a secretary to respond.

Senator CARR—Thank you, and that is precisely why I am asking the question. In your experience, is it extremely unusual for an adviser not to be acting on the authority of the minister?

Dr Shergold—Yes.

Senator CARR—I was wondering if I could follow through with some matters that were raised in your submission—in particular those matters of your submission that go to the relationship between senior public servants and the government of the day. On page 2 you talk about 'frank and honest' advice. 'Frank and fearless' is the term that is often used. I presume you mean the same thing—that 'frank and honest' is the same as 'frank and fearless'.

Dr Shergold—Yes. As you are probably aware given the textural analysis that takes place on my speeches, I am averse to using the term 'frank and fearless' because, by becoming a cliche, it has lost power.

Senator CARR—Will you put the concept of 'frank and fearless' or 'frank and honest' advice in relationship to 'responsiveness to government'? Do you see that there are any conflicts between those principles?

Dr Shergold—No. In terms of the values that are set out for the professionalism of the Public Service under the Public Service Act, it is important to provide that frank, honest, robust policy advice which is, at the same time, responsive to the directions that are set by the elected government of the day.

Senator CARR—Yes, and you do not see that there is any conflict between those two principles?

Dr Shergold—No. I believe that it is important to understand what 'responsiveness to government' means, and it is in that way that I think the directions that I suppose were set by Prime Minister Whitlam and Prime Minister Hawke seem to me probably correct. My view from my experience in the Public Service is that the role of ministerial advisers is actually a very helpful one to the professionalism of the Public Service—in that the advice that I provide certainly needs to be responsive to the broad directions set by government but it does not need to concern itself with party political considerations, because within the minister's office there are advisers who will have those concerns.

Senator CARR—Yes. You are also noted for use of another term, 'bias for action'. Do you maintain use of that term?

Dr Shergold—It is certainly a term to which I am very much committed. I believe that there are two key elements of a professional Public Service—the first is to provide robust policy advice to the government of the day and the second and equally important is that, when the government of the day sets its policy directions and takes its policy decisions, the Public Service should implement those decisions faithfully.

Senator CARR—So you do not see any conflict between the three issues of 'frank and fearless' advice, 'responsiveness to government' and 'bias to action'?

Dr Shergold—No. I think it is important that you understand the relationship. If you did not have frank and fearless advice which is responsive to the government of the day, you could have the ludicrous situation where a public servant would be providing policy advice which was completely at odds with the mandate of the elected government. That is not the purpose of robust policy advice. The purpose of my advice within the broad directions set by government is to come up with imaginative ideas and in an objective way as possible to assess the pros and cons of particular policy approaches.

Senator BRANDIS—On that last point, you are conscious therefore, when you provide policy advice, of the government of the day's—what I think the British call manifesto commitments—election campaign promises, in effect, and you consciously have regard to them in offering the advice to government that you do. How particular a limiting factor are policy and political commitments to the detail of the advice that you give? Is it merely broad outcomes that you have regard to in shaping your advice congruently with the government of the day's announced election commitments, or does it go to the level of means as well as ends?

Dr Shergold—When I say that a public service should be responsive to the government, I am referring to the broad directions set by government. They may be set down in a manifesto or in a mandate, or indeed they may be generally known from the directions set during a term of government. Let me take two concrete instances. For example, when I was the CEO of ATSIC the government of the day had set broad directions about commitment to Aboriginal self-determination. In my view it would have been quite inappropriate to provide policy advice which said, 'Oh no, let's go back to an assimilationist policy.' It was clearly not the direction set by the government of the day. In working for Minister Peter Reith—and this is clearly a policy that was set down in a manifesto or the mandate of Prime Minister Howard's government when it came to power—there were clearly directions about industrial relations based at the enterprise level. It would have not been frank, fearless and robust to provide policy advice that said, 'Let's go back to a centralised system of wage fixing.' But within those broad directions, believe me, there is an enormous capacity for the Public Service to come up with imaginative options and indeed to put forward to the government what are some of the weaknesses or the challenges that need to be faced in the implementation of policy.

Senator BRANDIS—Senator Carr, I will not trespass any more on your time, but allow me one more question. Dr Shergold, what if you think, though, that a government's declared policy is just wrong? Let us say a party comes into government after many years in opposition and in a moment of robustness during an election campaign it makes a commitment to adopt a particular

policy. It is your considered view held in good faith that that is just not going to work and you consider, quite properly, that you are in a good position to make that judgment because the party that has just been elected to government has been in opposition for donkey's years and they just do not know as much about the way this policy is going to work as you do. So you have in good faith a belief that a particular declaration of intent is just not going to work. Do you go to the minister in the new government and say, 'With all due respect, Minister, I note what your party said during the election campaign; however, allow me to point out why this is not going to work'? Or do you merely try, accepting the commitment is a given, and devise an implementation strategy?

Dr Shergold—That is why I am trying to define responsiveness in terms of the broad direction set by government. It would certainly be my view that on any specific policy it is important to give robust policy advice on the difficulties of implementing a particular approach.

Senator BRANDIS—So within your definition of robustness, robustness goes so far as to say in a particular case to a minister, 'Even though you have announced this policy, let me explain to you why it's not going to work.'

Dr Shergold—Correct, but I have a very strong faith in the Westminster system, in which it is the elected government that sets those broad directions. There is a danger when a professional public servant starts to believe that they have some higher ethical duty to national interest.

Senator BRANDIS—Thank you.

Senator CARR—When did you take over as head of the Prime Minister's department?

Dr Shergold—At the beginning of February this year.

Senator CARR—And up until that time you were with Education?

Dr Shergold—For the previous 12 months.

Senator CARR—But there was no interregnum prior to February?

Dr Shergold—No.

Senator CARR—In view of the concept of bias for action and the questions that go to the role of the Public Service, I have before me a number of newspaper articles from the *Sydney Morning Herald* which outline what are claimed to be the actions of officers of the Prime Minister's department. They are with regard to what the officials of an ethanol importing company said, labelling PM's officials as 'ethanol spies'. These matters went to some events that occurred in September and August of last year, when you were not the head of the department, and indicated that on five occasions there were circumstances where officers of the Department of the Prime Minister and Cabinet sought to gather information concerning the importation of ethanol, which was perceived to be a threat to the commercial operations of a company operating in Australia: the Manildra Group of Companies. Do you recall those articles?

Dr Shergold—Yes, I do.

Senator CARR—Would you regard that as an example of bias for action?

Dr Shergold—As we seem to have returned to a Senate estimates hearing, I will take a Senate estimates approach and say that I am not going to comment on newspaper articles. What I can say categorically, even though I was not the secretary to the department at that time, is that the public servants within my department behaved entirely appropriately in terms of their professional commitments.

Senator CARR—Since you do not want to take an estimates approach, could I ask you a direct question: in undertaking this action, did the officers concerned act, as you say, properly insofar as they were acting on the instruction of the Prime Minister's office?

Dr Shergold—I cannot answer the detail of that. I will take it on notice. I have already indicated to you my absolute understanding that they behaved entirely appropriately. That would seem to me to answer your second question.

Senator CARR—Yes. So, as far as you are concerned, to act on instructions from the Prime Minister's office would be entirely appropriate in these circumstances?

Dr Shergold—Let us go back to the broad position that is being placed. It is entirely appropriate to act on the authority of an adviser in the Prime Minister's office, as long as the request itself is appropriate. Obviously public servants would therefore take account of issues of administrative law, due process et cetera.

Senator CARR—Why would it be necessary for officers to spy on a commercial—

Dr Shergold—Senator, you know, of course, that I am not going to just let that pass. This happens so often. I am not saying that public servants have spied.

Senator BRANDIS—Going back to your last answer, it seems to me that if your evidence to the committee is that Public Service officers behave with entire appropriateness and they would not be doing so were they obeying an improper instruction, then there could not have been an improper instruction?

Dr Shergold—Correct. I do not believe there was spying or acceptance of inappropriate or improper instructions.

CHAIR—Thank you for the leading question, Senator Brandis.

Senator CARR—So, if I use the term 'make inquiries' concerning the shipment of ethanol into Australia by the Trafigura group, would that be appropriate?

Dr Shergold—It is entirely appropriate that public servants make inquiries on behalf of ministers or prime ministers. It is one of the key roles that public servants have.

Senator CARR—That is the point I am making: in your view it is appropriate that officers act on advice from the minister's office—in this case, the Prime Minister's office—about the commercial operations of a company importing ethanol?

Dr Shergold—I am answering in a general way. I am not going to get into the position of commenting on newspaper stories that you have in front of you.

Senator CARR—This is not just a question of what newspapers say; I understand the Prime Minister made a comment.

Dr Shergold—Let me cut to the chase on this. I am saying to you very clearly that there is nothing inappropriate in what public servants in my department have done. They acted on appropriate authority, and seeking information is a day-to-day responsibility of public servants.

Senator CARR—I would ask you to take this on notice because I presume you will not be able to tell me now: were those officers responding to a direct request from the Prime Minister or a member of the Prime Minister's staff?

Dr Shergold—I will take that on notice but you will have gathered from the evidence I have provided so far that it is not an important distinction.

Senator CARR—I would like an answer to the question.

Dr Shergold—I will take it on notice.

Senator CARR—Thank you. Could I ask you about another example that—

Dr Shergold—Sorry, an example of what?

Senator CARR—Another example of relationships between public servants and ministerial officers, which is the point of this inquiry. I would suggest to you that it goes to the values of the Public Service and the nature of the role of the Public Service. You have asked us to be clear in the distinction between the role of the public servant and that of the adviser. You have said that it is important to provide robust policy advice which is nonpartisan.

Dr Shergold—Yes.

Senator CARR—You have also said that it is important to be innovative and creative, but nonetheless there is this clear distinction that needs to be maintained at all times of the different roles of the different functionaries within the system of government we currently have. With that in mind I would like to draw your attention to an article that is to be published this Friday in the *Griffith Review* by Mr Graham Dobell. Are you familiar with Mr Dobell's work as an ABC journalist?

Dr Shergold—Keep talking, Senator, about the article that is to appear.

Senator CARR—Are you familiar with Mr Dobell?

Dr Shergold—No.

Senator CARR—Mr Dobell is widely recognised as a man of some standing with a reputation for fine journalism. In fact, I understand that Mr Downer said words to that effect in

an interview with the ABC recently. Mr Dobell has written an article in which he says there has been a situation with regard to foreign affairs officers engaging in what he says is self-censorship.

... self censorship has become an ambassadorial art form; well-understood protocols ensure ministers are not told what they don't want to hear and professional discipline is reinforced by a 'culture of compliance'.

Are you familiar with the article?

Dr Shergold—I could not be, Senator—it has not appeared yet.

Senator CARR—I will help you out by seeking leave to table a copy of the article.

CHAIR—As there is no objection, leave is granted. I think it also should be provided to Dr Shergold.

Dr Shergold—I am very happy to deal with what I understand to be the question on the article that is to appear, which is on the nature of self-censorship. Is that correct?

Senator CARR—There are a few other things.

Dr Shergold—The view that self-censorship occurs in the Public Service.

Senator CARR—It goes further than that but let's just start—

Dr Shergold—Let me take that one first and then we will go further.

CHAIR—Excuse me, Dr Shergold; let us just finish the question and then you can comment.

Senator CARR—There are a number of matters that I wish to pursue in this regard, but it strikes me that this is a matter that the foreign minister has made a comment upon, so it is not exactly entirely unfamiliar to the service. Have you been briefed on this issue, Dr Shergold?

Dr Shergold—No. But I would like to talk about your issue of self-censorship when I have an opportunity to.

Senator CARR—You will get the opportunity. I just want to establish whether you have had any discussions about the appearance of this article.

Dr Shergold—But the article has not appeared.

Senator CARR—About the appearance of this article. Let me put it this way: you are about to receive a copy of the article.

Dr Shergold—No, I have not been briefed on the article that you are about to hand me.

Senator CARR—That is the point I wanted to get to.

Senator BRANDIS—Chair, I raise a point of order regarding fairness to the witness, and it is limited to that. I apprehend from the way Senator Carr's questions are going that he is now going to put to Dr Shergold a series of propositions or invite him to comment on observations made by Mr Dobell in an article that Dr Shergold, as we all know, has not had the opportunity to consider. It seems to me a little unfair to go about it in that way, particularly since the article is hardly a state secret. It could presumably have been directed to Dr Shergold's attention in time to give him the opportunity to get across it and consider it.

CHAIR—I do not think there is a point of order, Senator Brandis. I am conscious of the issue you have raised. If Dr Shergold has not seen the full article—and I have not seen it either—then that is a fact. As to whether Doctor Shergold is able to comment on or answer questions asked by Senator Carr regarding comments, observations or arguments that are in the article, I think Dr Shergold will be able to look after himself fairly capably in that regard. We can move on with the questions. From what I understood Senator Carr to have said, this has been drawn to the attention of another minister, namely Minister Downer. Whilst it may not have been published, it appears that it is at least known to ministers and officers of the government and the departments to some extent. Let us move on and see where we get to. Dr Shergold can always—

Senator CARR—Thank you. That is why I was seeking from Dr Shergold advice as to whether he had been briefed on the content of this material.

CHAIR—It would be important though, Senator Carr, to actually get to the question.

Senator CARR—If I could, with the extraordinary assistance that I am receiving here. Dr Shergold, in this article the former departmental DFAT secretaries, Richard Woolcott and Stuart Harris, both point to what they regard as the deterioration in the quality of advice coming from officers to government and, in particular—and this is where you get your chance to comment—they point to a culture of compliance emerging within DFAT.

Senator BRANDIS—Where do they say that? Can you direct us to the passage that you are asking the witness about?

Senator CARR—It is on the first page of the article, on page 67 of the review. I have just quoted from the passage at length.

Senator BRANDIS—You have not told us where it is, Senator Carr.

Senator CARR—I have. It is on the first page, page 67. It says:

> Welcome to 21st-century Australian diplomacy, where self-censorship has become an ambassadorial art form; well-understood protocols ensure ministers are not told what they don't want to hear and professional discipline is reinforced by a 'culture of compliance'.

Senator BRANDIS—Senator Carr, I do not want to accuse you of being intellectually dishonest, but a couple of questions ago you said that Mr Woolcott and somebody else said that, but in the passage you have just given us that is not attributed to them at all; that is not true.

CHAIR—Senator Brandis, it would assist if we did not engage, and you did not engage, in a debate.

Senator BRANDIS—I do not think it is fair to the witness and to the other senators on the committee—

CHAIR—Senator Brandis, I will make sure that the witness is treated fairly. If the witness has a problem, he can draw it to my attention. I do not need your assistance, with all due respect, to that extent.

Senator CARR—I have quoted one passage on page 67 and, since the senator is so keen for us to get the full detail of this on the record, I refer to the second paragraph on page 70, where reference is made to Stuart Harris, a former head of DFAT from 1984 to 1988. Further down that page there is a passage from another secretary, Woolcott, who was secretary from 1988 to 1992. It says:

Woolcott ... says senior public servants and ambassadors can no longer push arguments to government as they could in the past: 'Your Whitlams, Frasers, Hawkes and Keatings didn't object to senior public servants doing this. I feel now a culture of compliance has developed in the public service. It is unfortunate. Prime ministers and ministers say they welcome frank and fearless advice, but they don't always do that if it doesn't accord with what they want to do. I think the bureaucracy now is much more managed out of the Prime Minister's office than it ever used to be. People are a bit more worried about challenging what they perceive to be the established views of the Prime Minister or other ministers on an issue. Someone like Whitlam used to welcome that. Evans used to welcome it. Made them think, made them have another look at some of the policies. I think less of that goes on now.'

Would you care to comment on those views, Dr Shergold?

Dr Shergold—I am happy to comment on their views. Now having seen this article in the *Griffith Review*, though, I do note in passing that some of the comments you have brought us to bypass others, such as:

The aspirations to be an 'elite' service were killed off long before John Howard swept into power ...

So I think we have some selective reading of the quotes.

Senator BRANDIS—Surely not.

Dr Shergold—But I will deal with the issue. I remember, when I was an economic historian, reading a very good book on hooliganism over the last century. What became clear was that each generation believes the behaviour of the present young generation is much worse than it was in the past. I would have to say that there is a tendency, perhaps even amongst ex-secretaries like Stuart Harris and Richard Woolcott, to believe that things are not as good in terms of the frankness and fearlessness of policy advice as they used to be in the old days. The one advantage I suppose I have over them is that I am in the service now. On the basis of that and of experience with three governments, I can say that I see no change whatever.

The notions that ministers do not wish to hear policy advice or that public servants are cowed into not providing robust policy advice are, as I said on a radio station recently, balderdash and

poppycock. It is complete and utter nonsense. I have never worked to a Prime Minister or a minister who did not want to receive robust policy advice. It may be that, at the end, that policy advice was rejected, but they wanted to hear it. There is no evidence whatever that I can see that barriers are being put up to stop ministers or their advisers receiving strong advice from public servants. I see no evidence whatever that public servants are intimidated. I can understand the view that the removal of permanent tenure for secretaries by Prime Minister Keating in, I think, 1994 may have made the Public Service more cowed, but I see no evidence whatever of that being the case. I know of none of my secretarial colleagues who, in providing policy advice, are in any way intimidated by the fact that they no longer have permanency of tenure.

Senator CARR—That is pleasing to hear. The article goes on to describe how the various diplomatic cables have now changed in their formatting and that the opportunities for more junior officers to have access to those cables have now been restricted, and that is put down in part to the need to prevent officials from talking out of turn, be it to the media or to the opposition. What do you say to those types of suggestions? Has there been a change in the way that material is now being presented to government, to remove any critical comments about government's actions?

Dr Shergold—I can do no better than to quote from page 72 of the *Griffith Review*, which you have kindly provided me with. Unfortunately I lose a line with it being a photocopy—but I will start. It states:

> The man at the centre of DFAT, the secretary, Ashton Calvert, argues there was never a public service golden age—

something I entirely agree with—

> 'The implication seems to be that there was some previous period when public servants were free to decide ...

Unfortunately I then lose a line of text.

Senator BRANDIS—I think Senator Carr has the original there. To be helpful, he might pass it to you.

Dr Shergold—It would be helpful if I could read it out, because I think it is very important to quote from the present secretary; it seems to me that in this article he completely dismisses the propositions that have been put forward.

Senator CARR—So, in response to Mr Dobell's central allegation, in your judgment there has been no change to the formatting of material in diplomatic cables that go to government?

Dr Shergold—Doctor Calvert agrees that there has been cultural change, but he sees it more as a response to 'staff cuts, technological change and the complexity of issues modern government confronts'. He says that Foreign Affairs must be more of a team player in a whole-of-government process and, to quote, 'We most certainly are much better integrated and better embedded in the broader public service than before.' I must say that I could not have said it better myself.

Senator CARR—So, in your judgment, the claims made about the failure to provide critical advice to government are untrue.

Dr Shergold—I do not think I could have been clearer in what I have said. Yes, definitely untrue.

CHAIR—At least we have established that Graeme Dobell's article is very fair and reasonable in presenting views on the issue.

Senator CARR—Dr Shergold, I go to points that you have raised about the need for critical advice to government. I return to the period when you were the secretary of the education department. You took particular interest in the Crossroads consultation process, did you not?

Dr Shergold—I certainly did.

Senator CARR—People worked through to you on Crossroads matters?

Dr Shergold—They did.

Senator CARR—I have here a letter from the current secretary, Jeff Harmer. He refers to a number of reports which had material removed from them that was perceived to be critical of government in regard to the HECS policy changes introduced in 1996. The letter says that, in November 2002 or thereabouts, the department took the decision to remove material regarding HECS that has recently become the subject of media reporting. Were you the officer responsible for removing that material?

Dr Shergold—I am so glad you have asked that, Senator. No, of course I was not the officer responsible for the removal of material from those reports. Indeed, I believe the report in question was one that I had never seen. As I indicated to you, I think at the last Senate estimates hearing that we had together, I certainly had taken a decision that research undertaken internally would then become part of the internal policy advice which contributed to the government's decision on higher education reform. I think that was nine months ago.

Senator CARR—That is right. In this context, I am referring to five separate reports. There is a national report.

Dr Shergold—The national report was not one that I had asked to be changed.

Senator CARR—Mr Burmester was in charge of that particular one?

Dr Shergold—I do not know; all I can tell you is that I did not.

Senator CARR—But Mr Burmester was the manager of the higher education group at the time. That is true, isn't it?

Dr Shergold—He would have been the head of the higher education division at the time.

Senator CARR—Did Mr Tom Karmel report to him or to you?

Dr Shergold—No. I do not believe that Tom Karmel would have reported to Mr Burmester. My understanding of the reporting arrangements at the time—I am happy to have this checked by Dr Harmer—is that Tom Karmel reported to Wendy Jarvie, the deputy who had responsibility for research and evaluation.

Senator CARR—But not to you?

Dr Shergold—No, Tom Karmel did not report to me. Obviously, through my deputy, he would have reported to me. I thought you were asking about the direct reporting relationship.

Senator CARR—Yes. That is right. As you said, officers were acting on your behalf.

Dr Shergold—This Tom Karmel is the officer that I think you suggested may have been removed from his position.

Senator CARR—No, I said that there was a reorganisation of the research unit.

Dr Shergold—Yes.

Senator CARR—Mr Karmel was the head of the research unit in an acting capacity. I said that the jobs were advertised and that he did not secure that job.

Dr Shergold—Yes. I would like to correct that. You say these things, they get in the media, they are accepted as fact, and they are utterly wrong.

Senator BRANDIS—That is why he does it.

Dr Shergold—Let me put on the record that the selection process was a normal public service selection process—that is to say that I was not on the selection panel, but a representative of the Public Service Commission was. Mr Karmel applied for that job. He got that job, Senator. He won the position. Unfortunately, he was offered a better job at the same time and, in spite of my entreaties to stay with the department, he decided to take the other job. We now have it in the public arena and in newspaper stories that an officer was removed from that position, whereas in fact it is precisely the opposite: the officer in question won the promotion and decided not to take it.

Senator BRANDIS—Let us hope, Dr Shergold, that the media pays as much attention to your specific and emphatic refutation as it does to Senator Carr's false allegation.

CHAIR—Senator Brandis, I would request, for the orderly conduct of this committee, that senators do not interject, start asking questions or making comments.

Senator BRANDIS—With respect—

CHAIR—No. Just listen to me, Senator Brandis. If you wish to follow a particular line of questioning at a particular point of time and that involves interrupting the senator who is asking the questions, you can draw it to my attention and I will certainty facilitate that opportunity.

Senator BRANDIS—On a point of order, Mr Chairman.

CHAIR—What point of order?

Senator BRANDIS—The point of order is this: the approach that Senator Carr has been adopting with this witness, as must have been evident to you, with respect, has been to put to the witness a series of false propositions and then in subsequent questions to characterise the witness's earlier evidence in a way which, frankly, is quite dishonest. You, with respect, as chairman, ought to exercise some control over that abuse of the questioning process.

CHAIR—Senator Brandis, I do not believe there has been any abuse of the questioning process. There is no point of order. I call Senator Carr. As I have said, Dr Shergold, I would have thought, is handling himself well enough as an experienced public servant to answer the questions. If he finds himself in a position where he needs to draw matters to my attention, he can.

Senator CARR—Dr Shergold, could you please provide me with the date on which Mr Tom Karmel was advised that he had been appointed to that position as the head of the new research group within DEST.

Dr Shergold—I can do that. I can also provide a letter, which I think you have received from Tom Karmel, making it clear that he was not removed from the position.

Senator CARR—No, I did not receive a letter from Mr Karmel making it clear. I did receive a letter from him, indicating that he applied for the position and that another officer, Miss Borthwick—if I recall rightly—secured that position. That is neither here nor there. You are the one that has actually raised this matter; I have not. I really do not think this is—

Dr Shergold—No, it is importantly here or there. Miss Borthwick got the job when the person who had been recommended to the Public Service Commissioner—Mr Karmel—said he did not wish to take the job because he had had a better offer. It is precisely here or there.

Senator BRANDIS—That is set out in the letter, is it?

Dr Shergold—I believe there is a letter, and certainly I have the Public Service Commissioner's report.

Senator CARR—You said you were going to provide it.

Dr Shergold—I have the Public Service Commissioner's report, which I can provide.

Senator CARR—Would you provide the letter? You were saying that you wanted to table Mr Karmel's letter.

Dr Shergold—No. I said I will find out if there is one that is available to be tabled.

Senator CARR—I thought you said before that you had a letter that you would provide.

Dr Shergold—I said that I think there will be one that is available, and I will certainly table the Public Service Commissioner's report on the outcome of the selection process.

Senator CARR—Thank you. I have some correspondence from Mr Karmel, and my recollection of the nature of that correspondence is not as you have indicated. But, as I say, you are the one that has raised this matter. I would be interested to know on what date you reclassified the following reports: *HECS and educational opportunities* by P. Aungles et al; *HECS: The impact of changes* by Maureen McLachlan and Tom Karmel; and *University participation of persons from non-English speaking background: Impact of migration patterns 1991-2002* by R. Fleming and T. Karmel. These are various reports referred to in Senate estimates question 14904—you will need to check this, I have no doubt—where it was said that the two reports were to be provided to me but the remaining reports are in the nature of internal policy advice. I would like to know the date on which those remaining reports were reclassified from being forthcoming for publication.

Dr Shergold—I cannot give a precise date. I think that that question you are referring to is the answer that I gave you nine months ago.

Senator CARR—It was on 5 June 2003.

Dr Shergold—Chair, if I could have 30 seconds, I think I can answer this question, if you really want to go into this detail.

CHAIR—If you can check with one of your officers, that is fine.

Dr Shergold—I have a briefcase. I gave an answer at Senate estimates on Thursday, 21 November 2002. I was asked by Senator Carr about these reports. There is the report by McLachlan and Karmel. This is in November 2002. I responded:

> That is in the nature of policy advice that is being provided to the minister now in terms of the higher education review.

The *Hansard* then reads:

> **Senator CARR**—I see. So was the report commissioned by the department or was it an internal working document?
>
> **Dr Shergold**—It is internal. It is done by members of the department.

So back in November 2002 I had indicated to you quite clearly in Senate estimates that the reports that had been done by DEST staff were internal working documents which were now contributing to the higher education review.

Senator CARR—Thank you, Dr Shergold. So sometime between April 2002, when the reports were prepared as the underpinnings for the national report and were delivered presumably to you or to Wendy Jarvie, their status was changed from being forthcoming for publication, as listed in that report, to being advice to the minister.

Dr Shergold—Correct.

Senator CARR—Can you tell me the date on which—

Dr Shergold—No, of course I cannot. I could not possibly tell you date on which that happened. But what happened in that period was that the government made a decision to have a major inquiry into higher education. Therefore, it was my clear decision—and, I believe, entirely appropriate—that the internal policy advice provided within the department, not by outside consultants, would feed into the policy development on behalf of government. That is what happened in that period. From April 2002 a major review was established on higher education, as you are aware. Therefore, the material being prepared within the department became part of the internal policy advice that went to the minister. There is nothing unusual in that.

Senator CARR—So you personally made that decision?

Dr Shergold—Yes.

Senator CARR—You say this was advice that went to the minister.

Dr Shergold—It became part of the variety of policy advice that was going to the minister. You would remember the extensive consultation process that took place and the number of focus groups that were held. There was a series of discussions. The minister had his own advisory group. I established a team, which included Mr Aungles, to work on policy advice going to the minister. It became part of that mass of policy advice on which the minister and then the government took their decisions.

Senator CARR—Can you give me the date on which that advice went to the minister?

Dr Shergold—No. I would not know. I am not sure that those reports ever went to the minister. They may have, but I simply could not tell you that. I do know that they became part of the policy advice to the minister, which was developed in an iterative way. That is how policy is developed.

Senator CARR—These reports were not made available to the Senate because it was said that this was advice to the minister.

Dr Shergold—Correct—because it was done by people within the department.

Senator CARR—You have referred to correspondence from Mr Karmel. Presumably, you are aware of the public comment that Mr Karmel has made, that he is the author of these reports, he always believed that these reports were for publication, and that that is why they were listed in the first draft of the national report as being forthcoming. I am interested to know on what date they were transferred from being 'forthcoming for publication' and the date on which they actually went to the minister. This might seem like a pedantic point, but the question of whether or not they are advice to the minister determines whether or not they are available for publication. The fact that their status changed from being research reports for publication to advice to the minister is critical in whether or not these reports were in fact published. Would you agree?

Dr Shergold—No.

Senator CARR—Why not?

Dr Shergold—Because when the government decided to have a major policy review of higher education, I decided, in quite a standard Public Service way, that the advice that had been prepared—and which was continuing to be prepared—by officers within the department would be in the nature of confidential policy advice going to the minister. That is entirely appropriate in terms of the practice in the Public Service for the last 100 years.

Senator CARR—I appreciate the point you make, but, on the other hand, if reports are prepared which contain matters that are critical of government policy and the status of those reports is then changed—that is, they were prepared on the basis that they were going to be published and were changed to advice to the minister—have you not effectively suppressed those reports?

Dr Shergold—No.

Senator CARR—Why not?

Dr Shergold—If policy advice prepared for a minister is not made available to the opposition or to the media, that is not suppression; it is normal. That is what public servants do.

Senator CARR—The difference in this case—and this is why it is important—is that the authors of the reports had prepared them with a view to publication. They have stated on the public record that they were prepared as part of a national report. I have access to the documents which indicate that they were forthcoming for publication. You subsequently changed their status to make them advice to the minister.

Dr Shergold—I subsequently changed the status because, by the time they were ready, the government had decided it was going to undertake a major review of higher education and, therefore, the documents that had been prepared internally became part of that larger amount of policy advice that was provided to the minister.

Senator BRANDIS—So they were, in effect, superseded by events?

Dr Shergold—They were superseded by events and, of course, a number of the issues raised in that internal policy advice were further developed and expanded during the next six to eight months.

Senator BRANDIS—So in their pre-existing form they were also obsolete?

Dr Shergold—They made a contribution to the decision that the government took. These reports are essentially about the issues of fees and HECS. Those, of course, were precisely the issues that the government addressed earlier this year when they produced their policy on higher education.

Senator CARR—Dr Shergold, on what date did the government announce that it was going to have a crossroads review?

Dr Shergold—I am sorry, I am not in that department now. I would guess it was in March or April of last year, but you would have to talk to Dr Harmer to get the documents to confirm that.

Senator CARR—Was it not the case that these reports had been concluded by the time the announcement was made?

Dr Shergold—I am not sure. I do not think they were concluded, but I do not think that is material to the question you are asking me. Even if they had been concluded, they were reports done not by an outside consultant but by public servants within the department. As the secretary of the department, I decided that that material, along with other material and other policy advice that was subsequently developed, would be internal. It was in the nature of advice going to the minister. That is quite normal.

Senator CARR—How did these reports change from the time when they were completed—April 2002—to the time when they were published as a result of questions we pursued through the Senate in July 2003? What was the nature of the changes in the four underpinning documents?

Dr Shergold—I have no idea, because that was not something that I was involved in. I imagine it took place after I left the department. You will have to ask Dr Harmer and Mr Burmester.

Senator CARR—I will.

Dr Shergold—I have made it clear that I did not make any changes to reports that were then made public.

Senator BRANDIS—Surely, Dr Shergold, the question is not really how the documents changed but how the relevance or the utility of the documents changed in view of the announced review?

Dr Shergold—I will take the most obvious example. To the extent that these issues related to HECS—such as how to set HECS levels and what was the threshold at which HECS should start to be paid—that was fundamental to the questions that were asked of academics, such as Bruce Chapman at the ANU, and through the focus groups. In fact, they were further developed within the department in the next eight or nine months.

Senator CARR—That is right. These reports raised issues. There is a legitimate argument as to whether or not there is other research. But the nature of this type of research is such that there are going to be differences of opinion. These reports were groundbreaking in the sense that they challenged the conventional wisdom. At what point was Dr Karmel told that his reports were going to be advice to the minister?

Dr Shergold—I cannot give a date on that. Almost certainly, by the middle of 2002 it would have been clear that we had a major process in train for the development of a higher education policy package for the minister's consideration. It would have been clear because one of the two authors that you refer to, Mr Aungles, was part of the team that was brought together to develop options for higher education reform.

Senator CARR—I asked a specific question.

Dr Shergold—I cannot give you a specific date.

Senator CARR—Would you take that on notice?

Dr Shergold—I will take it on notice, but I very much doubt that there will be anything in the files of the department. I am happy to take it on notice.

Senator CARR—We will come to the question of record keeping in a minute. I have asked at what point were the authors of these reports told that their research was not going to be published. The subsequent reason for not publishing the report was that it was methodologically flawed. At what point were the officers concerned advised of that reason for non-publication?

Dr Shergold—Again, here things are getting remarkably confused. I think you will be aware that I have never argued that the reports were methodologically flawed. I understand that Mr Burmester took the decision on the documents that were to be published.

Senator CARR—So that was Mr Burmester's judgment?

Dr Shergold—In terms of the reasons for what was subsequently published or not published by the department, the decision rested with Mr Burmester—as I understand it from what Dr Harmer tells me. But really these are questions that would be much better dealt with in Senate estimates with the department in question.

Senator CARR—I appreciate that point and, as I have indicated to you and I am sure you were not surprised to hear, I have an interest in pursuing it in that quarter. I am raising this in this context. You have indicated to us that robust policy advice must be presented to governments. This is a clear case where you have a major public inquiry under way which is going to reshape the higher education system, and you have some breakthrough research—publicly funded research. Is this not the sort of information that should have been made public, since that was the purpose for which the reports were originally commissioned?

Dr Shergold—Absolutely not. With respect, I think that shows a fundamental misunderstanding of the Westminster system. What we are arguing about here is not the robustness of the policy advice that went to the minister; we are arguing about whether that robust policy advice that went to the minister should also be made available to you. Robust policy advice depends for its nature on the fact that it is given in confidence to the minister.

Senator CARR—These are reports that were commissioned for publication. Presumably you were worried about me getting them, but whether or not the public gets them is the point of this. Why shouldn't these reports be made available?

Senator BRANDIS—This is total distortion, Mr Chairman. You should exercise a bit of discipline over this. It is unfair and insulting.

Dr Shergold—Why should the policy advice developed within a department not be made available to the opposition or to the press? Because the Westminster tradition depends on frank and fearless advice being provided in confidence by public servants to ministers.

Senator BRANDIS—Do not expect Senator Carr to understand the Westminster system. They do not have it in North Korea!

CHAIR—Senator Brandis, if you do not have a question, do not interject. If you do have a question, do us the courtesy of letting us know. I make the point that Senator Carr's question did go to the issue of publication, which does not mean that just the opposition and the press get to see the report; it means everybody has access to the reports, including the public and the parliament.

Senator CARR—What is the role of evidence based policy-making in this context?

Dr Shergold—Evidence based policy making is crucial. That is why public servants have a key role in dealing with large amounts of information that may be publicly available, that may come out through consultations, and transforming that information into knowledge which is then made available and put at the disposal of the government of the day.

Senator CARR—So the minister presumably would be very interested in advice such as this, which would challenge some of the assumptions made about changing the payments or the level of the moneys that have been paid by students for the higher education scheme?

Dr Shergold—Absolutely he would. Among the range of issues that were being addressed is how HECS should be implemented. Should it be extended to other students? What would be the threshold level at which HECS cut in? So evidence based advice is crucial. The reports that you are talking about that were prepared internally were one source of that advice.

Senator CARR—I ask you again: on what date was that advice tendered to the minister? Were these reports ever given to the minister?

Dr Shergold—I have already indicated that I do not know if those reports where ever given to the minister. What I can say categorically is that the issues that would have been raised in those reports would have been part of the policy advice which went to the minister.

CHAIR—Thank you. I have allowed this series of questions and answers to go on because, whilst it clearly does relate back to some issues that have been raised in other proceedings—the estimates proceedings particularly—in my view it has been still within the terms of reference because it goes to issues of the relationship between the Public Service and the ministerial advisers of the minister's office. After a short suspension, I would like to return to some other issues.

Proceedings suspended from 10.35 a.m. to 10.50 a.m.

CHAIR—We will recommence the hearing with Senator Carr, who has a few more questions.

Senator CARR—Dr Shergold, we were talking about the evidence based research and whether or not advice is robust. In the case to which I referred there are these four underpinning reports for the national report by the Department of Education, Science and Training when you were secretary. You have indicated that you were the one who took the decision to change the status of the advice to the minister. Was there any discussion with any members of the minister's staff about that decision?

Dr Shergold—I presume there must have been, but it would not have been in terms of the decision to make them public. I think it would have always been assumed that, when you have a major policy exercise being developed over a nine-month period, the internal policy work that is being done will become part of the material that is available to the minister.

Senator CARR—Do you recall who you discussed this with?

Dr Shergold—No, I have indicated that I do not even remember if I did; I am presuming that I would have had such discussions.

Senator CARR—So you would not have spoken to Mr Hampton about this?

Dr Shergold—I think that is probably unlikely because, except for a couple of periods when he stood in, he was the media adviser and not the senior adviser. It would have been the senior adviser that I would have spoken to on a matter of policy.

Senator CARR—Not the higher education adviser?

Dr Shergold—I would almost certainly initially have talked to the senior adviser.

Senator CARR—Mr Hampton did stand in for the senior adviser on occasions.

Dr Shergold—Yes, I think that when the senior adviser was on holiday on occasion he stood in that position.

Senator CARR—Was it the case that Mr Hampton in fact stood in during the period when these decisions were being made about the status of these reports?

Dr Shergold—You would have to ask the department. I am not sure if they would even have the dates during which he stood in. You are basing your questions on the supposition that I sat down and we had a discussion about whether these reports would be made public or not. My recollection is that that is not the case. In terms of talking to the minister and his office about how we would develop policy options for consideration, I would have made it clear what was available publicly, what was available internally, what sort of consultation process was required and which people either the department or the minister needed to speak to. Development of public policy is very much an iterative process.

Senator CARR—Indeed. Of course during this period, the EIP branch, which produced these reports, published a number of reports on matters related to the Crossroads process.

Dr Shergold—These are reports by outside consultants?

Senator CARR—No, these were reports also undertaken by internal consultants.

Dr Shergold—Okay.

Senator CARR—Was the EIP report *Socioeconomic background and higher education participation: an analysis of school students aspirations and expectations* by R. James an internal one?

Dr Shergold—I do not believe it was, but I will take that on notice.

Senator CARR—What about the report *Mobility: Why do university students move*? by R. Blakers et al?

Dr Shergold—I will have to confirm it, but I think that both of those reports were undertaken by outside consultants.

Senator CARR—The point I am getting at is whether they are outside or inside. Reports were commissioned by EIP, some were commissioned by outside consultants and some of them were prepared by internal consultants.

Dr Shergold—No, it is not an internal consultant.

Senator CARR—Sorry, internal officers.

Dr Shergold—Yes, staff members.

Senator CARR—Officers. Are you saying that all reports prepared by officers of the department were categorised as advice to the minister during this period?

Dr Shergold—No. I am saying that the decision that I made was that those reports which were relevant to the policy development under discussion would have been characterised in that way. It is possible—I cannot remember—that if there was a report produced by that area on early childhood education, for example, that that may have been published. But if it was on higher education reform, no, it would have been taken within the ambit of the policy advice going to the minister.

Senator CARR—I ask you this: why were there some reports published and others not?

Dr Shergold—The predominant reason for that would be those that were undertaken by outside consultants as opposed to those that were developed in the department.

Senator CARR—So there were no outside consultants' reports that were deemed to be advice to the minister?

Dr Shergold—You would have to ask that question of Dr Harmer.

Senator CARR—You do not have the files.

Dr Shergold—I am sorry, I have not come here for a Senate estimates inquiry into DEST.

Senator CARR—I am not asking you Senate estimates questions—

CHAIR—Excuse me, it is not a Senate estimates inquiry, Dr Shergold, and I do not think you should make that sort of a comment. But I am going to ask you, Senator Carr, to quickly wrap this up, because I think there are some other issues that other senators want to get to.

Senator CARR—I appreciate that. When you talk about robust advice and providing frank and fearless advice, Dr Shergold, is it not the case that the reports that were categorised as advice to ministers had one characteristic in common—that is, they had information contained within them that somebody thought was difficult for the government and they had criticisms of the government's policy changes in 1996? Is that true?

Dr Shergold—I cannot remember the detail. They would have certainly been in the nature of robust advice. They would have raised concerns about HECS and fees and changes to those, but those were precisely then the issues that were taken up in the development of the government's higher education reform proposal.

Senator BRANDIS—And address.

Dr Shergold—And address; precisely. If you look at the government policy as announced, you will see that there are significant elements of that that raise the HECS threshold for example, that provide an increased range of scholarships and that significantly increase the number of students that can gain access to a loan scheme and the purposes for which they can get access to that scheme, and there are initiatives in terms of Indigenous students—all of those would have been in part a response to the internal policy advice that was being developed.

Senator CARR—So when we talk here about a culture of compliance, are you suggesting—

Dr Shergold—Sorry, where is 'here'?

Senator CARR—I raised it here today in the first series of questions I asked you regarding the comments made by former heads or secretaries of the Department of Foreign Affairs and Trade that there was a culture of compliance. I put it to you, Dr Shergold, that you do not necessarily need strong ministerial intervention if senior public servants are prepared to intervene in the policy formulation process to ensure that matters that are not comfortable for government do not actually go through the processes of being put before the minister. How do you respond to that proposition?

Dr Shergold—I respond to it in two ways. If it is a general proposition, of course I agree with it. If the inference is that I actually engaged in such practice, I reject it utterly. This is complete nonsense—nonsense that is bordering on fabrication. Let me make it absolutely clear: there is no evidence whatsoever in anything that you have suggested that Minister Brendan Nelson was not getting robust policy advice from the department in the development of higher education reform. All that is being argued about here is what of that advice should have been made public.

Senator BRANDIS—I suppose, Dr Shergold, your problem is that if the advice was not critical enough it would be regarded as part of the culture of compliance and if it was sufficiently critical as not to be part of the culture of compliance it would be regarded as representing a devastating criticism of the government's policies, whereas, in fact, any policy advice which is robust is going to involve an element of critique. Would you agree with that?

Dr Shergold—That is correct, Senator. My final proposition, and let me make it absolutely clear, is that I do not believe that in senior levels of the Public Service there is a culture of compliance. I have not known any minister of any political persuasion, from Robert Tickner on one side of the political spectrum to Peter Reith on the other, who has sought to doctor the advice that goes to them or prevent advice going to them. Ministers are sensible and rational. They want strong policy advice; they want to test their ideas. They may not accept that advice but as long as they know that the advice remains confidential and takes place within their own room then they will welcome it.

Senator CARR—The problem is, Dr Shergold—

CHAIR—This is your final question for the moment, Senator Carr. We are running out of time.

Senator CARR—I have a letter here from the secretary of the department which says that this material, which of course underpinned the national report, and the national report itself were not provided to the minister's office until well after these decisions had been made. I put it to you, Dr Shergold, that officers of the department who work directly to you—Mr Burmester could not have acted without your authority—took the decision to have these matters suppressed.

Dr Shergold—I am sorry; what are you actually putting to me—that the policy advice that went to the minister was being suppressed by me? Is that what you are putting to me?

Senator CARR—I am putting to you that this research material that you reclassified, which happened to be critical of the government—

Dr Shergold—As the internal policy advice.

Senator CARR—You reclassified that advice and you then indicated it may not have actually gone to the minister.

Dr Shergold—I am saying that the report may not necessarily have gone to the minister. I can give you a categorical assertion that the issues raised in those reports were discussed week in, week out with the minister in the development of the policy proposals that he brought forward.

Senator CARR—And at that point did the minister say to you, 'I don't want these documents to see the light of day'?

Dr Shergold—No.

Senator MURRAY—Dr Watt, this committee, in its guise as the legislation committee, last year reviewed the gold pass bill. In the process of that review, we had Western Australian

tribunal members appear as witnesses. In their evidence they discussed the technique they had used for evaluating remuneration and conditions, called a work value method. I assume you are familiar with that because it has a very common basis. As the Democrat's shadow minister of state that caused me to prick up my ears. I wrote to the minister using some excellent material that the library provided for me and asked the minister if the department conducted or would conduct a work value assessment of electorate officers. That was on 14 March 2003. I did so having a general concern that the turnover in electorate offices was higher than one would expect, certainly higher than I had experienced in my business life, and that the wages and conditions were not as good as they might be to keep the sort of staff that have to do the sort of work that is done.

I asked the library to do some cross-jurisdictional comparisons, as far as they could, to assist me—I know it is a crude comparison—in comparing the states and territories with the federal jurisdiction. For instance, you could draw a conclusion, although it is difficult to do so, that, in three of the states, overall electorate officers were better paid in terms of their wages and conditions than were federal electorate officers. And, not being a biased person, I do not think that they do the same quality and depth of work as they do in the federal offices, of course.

Dr Watt, is there a higher turnover of electorate staff, or higher than you would expect, relative to, say, the Public Service generally or, from your experience in the private sector, could that be addressed, assessed or researched in some way? Is it the intention of the department over a period of time, as a natural human resource management tool, away from the pressures of negotiating certified agreements, to have a work value kind of approach, particularly for electorate staff, but I would expand that to suggest all MOP staff?

Dr Watt—I will pick up on a couple of those issues and then pass over to Ms Mason or Ms Clarke. It is very hard to identify whether turnover is higher than expected. Electorate staff turnover could well be benchmarked against APS turnover but, for example, whether it would be higher than APS turnover is a moot point. Certainly the Department of Finance and Administration in the last two or three years has gone through some dramatic levels of turnover. I think I can match our turnover, unfortunately, against almost anyone's. On the issue of pay levels between state and federal public servants, anecdotally we find that state public servants are, on the whole, slightly better paid, certainly at senior levels, than federal public servants. I will pass across to my colleagues.

Senator MURRAY—Just before you do, in relation to the other part of my question, a part of professional evaluation in human resources is the use of techniques—benchmarking and so on—which are widely used. Because work value theory and practice is now better developed, is it something that you as a department in a general approach might be considering adding to your tool kit, as it were?

Dr Watt—We have used it internally on one or two occasions over the last 12 months within the department per se. It is a tool kit we do use. I am not familiar with where our thinking is in relation to electorate staff or MOP staff.

Ms Clarke—When the minister wrote back, he noted that a study had been undertaken a few years before the Miller report which looked at a number of aspects of electorate officer work, including issues to do with staff retention and initiatives that could be taken to best address that.

They were discussed with staff in the context of, I think, the 1999-2000 certified agreement. Many of those were rejected by staff and what staff ended up agreeing with was to have overlapping salary bands; that was their way of addressing some of the concerns they had. What was being said was that there had been a study undertaken and what had come out of it was in the certified agreement. I will now turn—

Senator MURRAY—Ms Clarke, before you turn to the next issue, just holding to that point, my difficulty with the minister's response relates to staff attitudes. They are very important in this. Members and senators, in discussions I have had with them, are concerned that three issues are picked up: turnover; attracting quality staff, because of the wages and conditions; and, even when you have them, keeping them. Staff may have one view but senators and members have a different need.

Ms Mason—We note that turnover figures for MOP staff is one of the issues the committee has put to us, and we are working to extract something useful on that over the next short period of time. The turnover figures for MOP staff are likely to be artificially inflated because, for instance, if a staffer were to finish with one employer one day, take a short break and then commence with another employer, as is reasonably common, that would show as turnover, when in fact, in practice, it is virtually a continuation of MOP(S) employment or similar to that. As far as attracting quality staff, I think that the certified agreement that was certified by the Industrial Relations Commission on 20 August goes some way to improving the terms and conditions of employment for MOP staffers and, hopefully, will assist in attracting and retaining high-quality staff.

Ms Clarke—In research that the library did we had a very close look at it. I think you highlighted that it was very difficult to compare like with like in both the state and the federal MOPS sectors. I have not got the research with me, but I looked at New South Wales, for instance. They appeared to have a higher rate of pay, but they did not pay any overtime. They paid an allowance for overtime and that was that. You did not have the option to have overtime, so you were not getting paid for every hour worked. So there were differences in the way things were organised that made those comparisons very difficult to make. In one case, in Tasmania, there was no data available because it was all done on AWAs. It was very hard to compare like with like but, as Ms Mason says, the 19 per cent over three years has certainly addressed some of the wage concerns that staff had.

Senator MURRAY—Ms Clarke, as you know, senators and members come from diverse backgrounds—thankfully—and some have well-developed human resources skills and management skills and others do not; they have different skills and attributes. I have noted, again from discussion with various senators and members, that some senators and members' offices have an exceptionally high turnover and others do not. If you did a comparison between those senators' and members' electorate offices with the lowest staff turnover and those with the highest, I suspect you might find that the highest turnover was three or four times as high as the lowest. That would seem to me to go to perhaps not the character but to the human resources management ability of those senators and members.

I would be glad if you could correct me if I am wrong, but I have never seen in my seven years in this place any program which offers to senators or members or their offices advice or ways of better management when there is such a high turnover—which can be easily identified, I

would assume, from your statistics. I do not suggest that they should be outed in a public manner, but it does generate a high cost. If you lose people, you have got to replace them, and it is a cost to the Commonwealth and a cost to the member or senator. I wonder what you have to say about your cross-comparisons within senators' and members' offices of turnover ratios, and what mechanisms you employ as a department to try and reduce that.

Ms Clarke—I would like to talk in relation to staff, because that is our area of expertise and interest. There is at the moment a training needs analysis under way and staff are being contacted with a view to having a Web based questionnaire that asks them what sorts of training requirements they have. The consultants we have employed will also be going out to senators and members asking them what sort of training they would like or they think their staff require. That is happening now and over the next few months, so we will be expecting issues such as that to be raised in that context. If people feel the need for some HR training, we will be able to identify that in the process and subsequently develop or get someone to develop some training modules to provide it, if that is what staff are interested in.

Senator MURRAY—But what I am identifying for you is a problem which a senator or member might not be aware of. Because they operate on almost a cellular basis, they might not realise that their high turnover is unusual relative to other members and senators and they might not realise that it is a consequence of their own managerial ability. I say to you that that is an inefficiency that we have got, and I would expect your department to pick up and provide personal advice to the member or senator concerned. I do not think it is a matter for the parliament as a whole or for publication, but it is a matter of getting that more professional input in situations where the member or senator may not have that particular aspect to their background.

Ms Mason—Senator, if I could comment: it is difficult to draw inferences about differences in turnover rates between offices. Turnover may occur for a range of reasons. Coming back to what I think is your underlying point—that is, support, training and assistance provided to our various clients in management practices—I understand that our account management area has provided some sessions for senators and members on performance management issues in which they have sought to provide information about good practice and good process. In addition to that we do have the account management unit staff help desk. There were approximately 20,000 calls to the help desk during 2002-03, of which around 60 per cent related to employment matters. So there is fairly significant use of that opportunity to seek assistance, guidance and support in staffing related matters.

Senator MURRAY—By staff or by members and senators?

Ms Mason—It is a mixture. We do service inquiries from staff members but also from the employing senators and members.

Senator MURRAY—I do not want you to do an analysis of the whole 20,000 calls, but perhaps you could take a snapshot of a week's calls and see what percentage are from senators and members as opposed to staff.

Ms Mason—That is something we could take a look at.

Senator MURRAY—I do not have any more questions on this particular area but I do have some on other areas, which I can return to later.

Senator WATSON—In relation to the issue pursued by my colleague Senator Murray, I think you need to take great care in taking a global position for each office. For example, looking at my own office it would be much more useful if there were an evaluation on a classification type basis. I find that the most junior position is one where you generally have the highest turnover, where you deliberately encourage young, bright people to come in, use it as a learning experience and then step up within 18 months to two years time. Whereas you tend to keep the more senior positions for a much longer period of time—maybe 10 or 15 years if you are lucky enough to stay there that long. I think you have to be very careful about taking global positions and comparing office by office. As Senator Murray acknowledged, different senators have different approaches to their staff in terms of encouraging young people to get a start in life, say, just after university.

Dr Watt—I think Ms Mason made the point that it is very hard to draw inferences from office by office data, because of a variety of things. It will affect turnover, classifications; that is one point you have made. Taking a very small sample is another particular circumstance. You can understand why turnover would be higher in some regions than others and so forth. It is a vexed statistical question.

Senator MOORE—I think I should start by putting on record how much I loathe the term 'robust' in discussions about communication. The term has now taken over the debate. I will say that straight up. I have much the same questions for Dr Shergold and Dr Watt in their positions as department heads in terms of the actual operation of the complementary relationship to which Dr Shergold referred between ministerial staff and people who work in the department who are full-time professional public servants. I am interested in the information that is provided to the public servants as to how they respond to questions or requests or communication from people who work in ministerial offices and whether in fact there are clear protocols in place in your two departments. I know you can only speak about your own departments in this way. Is there a clear protocol as to who can take these calls and how they are responded to? Dr Watt, how does that work for the Public Service members of your department?

Dr Watt—If you are asking me whether we have a written protocol on these issues, the answer is: no, we do not. The officers—predominantly the SES—would deal with the ministers' advisers. In many cases contact would be initiated by a minister's adviser on an issue. Certainly that is as common as it is for an office to initiate it. The SES themselves, in dealing with those contacts, draw on a great deal of experience. I do not think my SES would be in any doubt that they are made very aware that if they have any reservations about the nature of contact—they may on the odd occasion—they are to escalate that issue very quickly through their senior managers and ultimately to me. But the overwhelming bulk of that day-to-day contact—because it is day to day on many issues—goes forward quite happily, quite harmoniously and quite productively without anything needing to get to my desk.

Senator MOORE—We would expect that.

Dr Watt—I would hope so. Otherwise the relationship could not work.

Senator MOORE—The ongoing expectation is that, in the majority of cases, things work fine.

Dr Watt—I think it is more than the majority. It really is the vast majority—99.997 per cent.

CHAIR—Could I clarify: you are talking about ministerial advisers. There are, of course, the DLOs. Are you including them as part of your response in terms of the interaction between the Public Service and the minister's office? I understood that one of the primary purposes of the DLO—departmental liaison officer—is just that.

Dr Watt—Certainly some interaction with the minister's office is via a DLO, but I think it is fair to say—and I am casting my mind back across a number of different minister's offices—that again, the vast majority of it is directly between the adviser and the Public Service officer involved in the issue—not via a DLO.

Senator MOORE—But the expectation is that that communication is with senior public servants as opposed to people in the lower ranks.

Dr Watt—By and large it would be with senior Public Servants. The vast majority in my department would be with the SES. There would be some with section heads—that is the EL2 people, and they are team leaders. There would occasionally be interaction lower down. This is often a source of great encouragement for the junior officer who gets the call from the minister from time to time—as I have seen occur in previous departments—or from a senior adviser, saying 'Tell me a bit more about this piece of work you have done', but most of it is at senior levels, because these are the people who deal with the minister and his office on a day-to-day basis.

Senator MOORE—Dr Shergold, you have been filled in on the question. In terms of the way it operates in your department, is it similar?

Dr Shergold—Yes, it is. There is no written protocol. However, in my first weeks in the department I had two all-staff meetings where I addressed the relationship between public servants and ministerial advisers, and I made it clear that if there is ever a cause for concern they should contact me. That speech was then put up on our intranet, so it is available for staff.

Senator MOORE—So it is almost a de facto protocol.

Dr Shergold—It certainly gets my staff to understand my expectations of them and of the relationship they have with the Prime Minister's office. In terms of the DLOs, Ms Belcher gives them a briefing before they take up their position.

Senator MOORE—My understanding is that the DLOs have quite a clear expectation of their role and with whom they speak, and that is in writing. Is that right, Ms Belcher?

Ms Belcher—No, Senator. There is no written instruction to them on who they might deal with in the department and the minister's office. They would be able to speak to anyone in the department, as necessary. What they do have is a very clear understanding of their role as public servants and not as political advisers.

Senator MOORE—So that is clarified and it is in your paper, in that they are not political advisers. What I am trying to get my head around is how something can be clear, beyond question, if it is verbal. One of the processes for assessing someone's performance is actually making sure that they are fully clear on what the expectations are and how they then operate. I am interested that neither department—in particular the DLOs—seems to have a clear written protocol for the communication processes.

Dr Watt—I am not sure that that is quite correct. Just as Ms Belcher briefs the PM&C DLOs who go to the Prime Minister's office, so our head of Corporate briefs our own DLOs. When they go up, they sometimes come and talk to me about their role before they go, and I encourage that. We also have performance agreements between the DLOs and head of Corporate, which would take into account these sorts of matters.

Senator MOORE—Is there a clause in the performance agreement about the interaction between their ministerial position and their home department?

Dr Watt—I could not comment on the specific nature of those performance agreements, but I think there is a fair amount of material in there which spells out our expectations in terms of their communication with their home department.

Senator MOORE—Are they in general terms? I understand you cannot give us clear detail of the individual performance agreements, but what kinds of issues are covered in that process?

Dr Watt—Again, I am not able to comment on specific performance agreements—

Senator MOORE—As we agree.

Dr Watt—but I can take it on notice and look at it for you. I am not privy to the individual performance agreements of all my officers.

Senator MOORE—No, but my question is: regarding the core issues that would be covered in a performance agreement for someone who is taking on such a sensitive and highly advantageous role for their career, what kinds of communication protocols would you be looking at in that performance agreement?

Dr Watt—Again, I can get some information for you before we finish this morning, if that would help.

Senator MOORE—Okay. Ms Belcher, would they be similar kinds of core issues that you would be talking about with your people?

Ms Belcher—Yes, it is a general discussion of expectations. We have a fairly informal system whereby we seek feedback from the office in which the DLO works and also from people within the department about the success of their relationship.

Senator MOORE—Dr Shergold, earlier you said that the environment of trust is so important in discussions with your staff members, so they can turn to you if there is a concern. Dr Shergold and Dr Watt, if a complaint or a concern is raised by particularly a junior member of your

department about some interaction they have had with someone from a minister's office, what is the expectation of the process to follow that through?

Dr Shergold—In terms of my department now and, indeed, the departments I previously headed, the expectation is that, if there is a concern about a direction they have been given or something they have been asked to do—

Senator MOORE—Or any interaction.

Dr Shergold—Yes, anything like that. In the first instance, they would talk to their immediate supervisor and, if there is a concern, then it would come to me. In both of the instances that I raised that I can remember, the issues came to me when a more junior SES officer felt that there was a need for me to clarify with the office what the situation was.

Senator MOORE—They were the two instances to which you referred earlier?

Dr Shergold—Yes.

Senator MOORE—I did not pick that up earlier. I thought they were your own personal experiences, but they actually came from your department.

Dr Shergold—They were both issues in which a senior executive had been asked to do something and where there were concerns about how that related to existing priorities. They came to me to talk about it and then I talked to the office.

Senator MOORE—Dr Watt, is that similar in your agency?

Dr Watt—Should such matters occur they would be, as I said earlier, raised initially through a superior officer and, if necessary, with me. I would then clarify them as necessary with one of the minister's senior advisers, the chief of staff or the minister.

Senator MOORE—In your own experience have you had any similar situations to those referred to by Dr Shergold?

Dr Watt—No, not specifically.

Senator MOORE—In terms of the other way around, if there were an issue in any minister's office about one of your staff members, what would be the expected protocol in that case?

Dr Shergold—The expected protocol in that situation almost certainly would be that either the senior adviser or the minister—usually the senior adviser—would raise any issues of concern with me.

Senator MOORE—And that would be with them raising it directly with you about anyone in your agency?

Dr Shergold—Yes, but again it happens very rarely. If you had a situation where an adviser felt that they had asked for something to be done by a senior executive and it had not been done

in a timely fashion, the expectation would be that, if they were unable to resolve it with the officer in question, they would do it through me.

Senator MOORE—And is it similar in your case, Dr Watt?

Dr Watt—The expectation would be similar.

Senator MOORE—We will go on to the issues of record keeping later, so I will not go there now. I have a general kind of question. Have you seen all the submissions that we have received?

Dr Watt—Yes.

Senator MOORE—A common theme in some of the submissions is the public perception that there is a lack of clarity about the interaction of the ministerial staffers and the Public Service and the whole difficulty in being able to trace through levels of accountability. That has come out in a number of the submissions. I would like to hear from both of you, Dr Shergold—and I know you touched on this in your earlier evidence, but I would just like you to flesh that out a bit—and Dr Watt, from your perspective. Could I have your comments on the fact that a number of people have taken an interest in providing submissions to this inquiry. It is not something you just do, saying, 'I'm a bit bored today; I think I'll write a submission.' These people have a genuine interest. Why do you think there is this uncertainty or feeling of lack of clarity in the community?

Dr Shergold—In large measure because the complementary but different roles of advisers and public servants are not understood and, in part, because there has been, I think, a quiet revolution in the nature of our representative democracy. Ministerial advisers have been focused upon, but I think it is much more wide ranging. That quiet revolution is that the world in which public servants now work is far more contestable in terms of the policy advice that is provided and the government services that are delivered. And it is not just because there are ministerial advisers; indeed, in my view, the big shift has been in the growth in importance of university researchers and think tanks and the professionalisation of advocacy organisations—not just business and unions but also community organisations. The result of that, I think, is that a minister today has a much wider range of policy advice going to her or him than a minister did, say, a generation ago, or even 15 years ago. I do not believe that the public at large, or even some of those who have made the very good submissions that you have received, fully comprehend the changing nature of how public policy is now made. It is, in my view, a much more demanding and challenging role for public servants than in the old days.

Dr Watt—It is very hard for me to comment on why the community has perceptions, because I am only one member of the community. But I do think that people do, as Dr Shergold says, miss not only the contestability of advice but also the openness of advice that is now available to governments. Ministers not only lock into advice processes from the APS—I have never yet found a minister who was not very interested in advice that his department could give him or her—but also focus on advice that is available from other sources. I think ministers are very omnivorous in the information and advice they collect, and I think people miss how open the advice process is now. I think that may be why they think that somehow something is ill at ease.

CHAIR—Dr Shergold and Dr Watt, you use the term 'advice'—and I think you used the word 'information' as well, Dr Watt—and that is understandable, but I put to you that the major concern is that what might be information or factual material that should be presented to or get to the minister does not, or there is a claim that it does not. That is pretty much what has been behind a lot of the concern of the public, particularly about some of the major issues that have arisen that we know about—for example, the certain maritime incident and the intelligence issue, which is the subject of another inquiry. So, whilst we can have a debate about the processes involving policy advice, there is also this other area of material that is either requested or should be passed on, because it is relevant to circumstances, somehow does not get to the minister and then consequences follow. To me, that is what a lot of the concern out there in the community seems to be.

I would like you to answer Senator Moore's question in the context of that type of information rather than policy advice, which may be rejected or accepted but, if factual information that should be passed on and should be made known to the minister is not made known, that is a different issue altogether because it is not something that a minister can necessarily reject. If the government is proceeding on a certain course believing something to be the case and it is not the case, how do we deal with that?

Dr Shergold—We deal with it in part by having a professional public service. I suppose in a sense we are making the distinction here between policy advice that may go to a minister or Prime Minister for agreement and, as is often provided, information for noting—that is to say, information that a minister or Prime Minister needs to be aware of and which will feed into actions they might take or policies they might develop but is not specific policy advice.

CHAIR—Or relating to statements that they have made publicly or in the parliament. Let's get to the nub of the issue: I am talking about where there is information that contradicts, if you like, what has already been put into the public arena or into the parliamentary arena.

Dr Shergold—I think, if you were looking at the areas which would be absolute priorities for a department, one would be where a statement had been made in parliament which the public servant believed to be wrong in any way. It would be instantly reported to the minister or Prime Minister because we are aware of how important that is in terms of misleading parliament. That is why you will find in any department that there are people who very carefully watch parliament, particularly question time, and check the text afterwards to make sure that nothing has been said that could be factually incorrect in any way. That is a very high priority for the Public Service, and any Prime Minister or minister would want to know instantly if there is any cause for concern in that regard.

CHAIR—Could I just interrupt again? We are not here to go over the certain maritime incident inquiry again, but that is clearly a background to—

Senator BRANDIS—Then put it to rest.

CHAIR—It is a background to this inquiry, Senator Brandis, and, as you well know, it was one of the recommendations. We are still to hear the response of the government to the recommendations of that inquiry and it was almost 12 months ago. I can distinctly recall the Prime Minister—and I saw it on TV—when he was commenting about the statements that

children had been thrown overboard, saying, 'If those allegations are correct,' or words to that effect. So there was a qualification in the Prime Minister's comments at the time on the basis that this was what he had been informed but he needed to be in full possession of the facts. I took particular note of it, thinking, 'Let's see what develops.' Of course, we then got into the position where that was never corrected. So there was an awareness, at least with the Prime Minister at the time, that those allegations needed to be verified. I make that point to draw attention to the fact that there was a breakdown somewhere along the line, clearly, in the process of the advice and of the information to correct the record getting through to the minister and the Prime Minister.

Dr Shergold—Our obligation, as set out in the values of the Public Service, is to provide advice which is timely and accurate, among other characteristics. The difficulty is that there is sometimes a tension between those two objectives. That is why I think it is important that, when advice comes forward which has not yet been substantiated, it clearly identifies that fact. So we need to distinguish between information which has been shown to be correct and information which may be emerging but is not yet substantiated. One of the trickiest elements, I think, in terms of public service is getting the right balance between timeliness and accuracy.

Senator MURRAY—A point of clarification: does that timeliness and accuracy change according to the political cycle—for instance, in an election period as compared to another period? Is there a heightened level of awareness of the need in those circumstances?

Dr Shergold—I am not sure if it is the election cycle or when actions are under way—as was the case in that instance. I was not directly involved in the certain maritime incident, so it is difficult for me to comment except from the outside. However, for example, in terms of the conduct of the war with Iraq, there is a constant pressure because you are dealing with a real-time situation where government has to take decisions in an ongoing way. It is vital to be sure that the information that goes to government to take those decisions is as accurate as possible and clearly distinguishes, for example, what is proven as against what might be intelligence or analysis. In those sorts of situations where a government is faced with making very fast decisions, the Public Service has a key role to play in being timely but clearly distinguishing the nature of the information going to government upon which decisions are taken.

Senator MOORE—I will follow on in terms of clarifying the situation for the training that you give your staff, particularly your senior staff who are the ones most regularly expected to deal with ministers and ministers' offices. You enunciated your views in terms of the focus of the public sector and how it has changed, the contestability of advice and all those things. Is that focus clear in the process of training staff members so that they know the view of the public sector in which they are operating and what your expectations are as department heads? Is there a clear expectation, in the absence of any written protocol, that any contact from a ministerial adviser is in fact for, by and of the minister as opposed to for, by or of me who happens to be an adviser? They are two questions but, in the interests of time, we could knock them over together.

Dr Shergold—I think that it is broadly understood. For example, the Australian Public Service Commission has taken a lead role across the Public Service in ensuring that the issues of values and ethical standards are known across the Public Service. They certainly provide training which deals with the issue of public service in an environment of competition and contestability. I think that most agencies, certainly the ones in which I have served, do address those issues—

for example, in terms of induction training that is provided to the graduates who come in. Many agencies now—including my own—make sure that, as part of the training that is provided to graduates during the course of their first year, they get to understand the role of parliament, they go along to parliamentary committees, they get to understand the role of a minister's office or the Prime Minister's office, and they get to meet with the Prime Minister's office or the minister's office to understand those roles. So I think there is a high degree of understanding of that changed environment. My hypothesis—and it is no more than that—is that I do not believe that changed environment is as well understood outside the Public Service.

Senator MOORE—Could you address that second point concerning the expectation that the staff in your department have when they are contacted by someone from the minister's office—whether that person is speaking for the minister as opposed to themselves.

Dr Shergold—Yes, I think that is well understood in that it is indicated to staff that, if they ever have doubts in that regard, to contact their supervisor or indeed to contact me.

Senator MOORE—So it is understanding by exception?

Dr Shergold—That is correct. You work on the assumption that those in the minister's office are acting with the authority of the minister.

Dr Watt—Just to take the latter point first, the expectation in my department is that any contact between an adviser and a staffer is on behalf of the minister. That expectation is very high. If they thought anything but that, I would expect my staff to escalate the issue very quickly to senior officer level. In relation to the first point, the vast bulk of contact between ministers' offices and Finance staffers is at the SES level or at the level of very experienced team leaders. There are people often with 10, 15, 20, 30 or even more years experience in the Public Service. They know their way around. They have a very good sense of the appropriateness of those contacts.

Through various induction programs—we have the regular new starters program, for example, and we have the induction program for graduates, which started last year—we do try to instil in some of our newer team members the same sorts of values and ethical expectations that we have of our senior officers. My sense is that my officers are pretty well equipped to deal with those sorts of issues.

Senator CARR—Dr Watts and Dr Shergold, if the assumption is that ministerial advisers are acting on the authority of the minister, is it the assumption also that advice to the ministerial adviser is also advice to the minister?

Dr Shergold—Yes, it is. Advice that you give to the ministerial adviser is certainly always advice to the minister. The reason I have any hesitation is that so much of the contact on a day-to-day basis is part of an iterative process. For example, the sort of contact that takes place if there has been a decision to develop a piece of legislation or a regulation is clearly something that is decided between a minister and the secretary. But a lot of the detail of that will take place between the ministerial adviser and the department. You cannot tell at what stage that ongoing discussion gets elevated again to the attention of the minister, but you work on the basis that the advice that you are giving to the adviser is advice to the minister.

Senator CARR—So there is no distinction between formal and informal advice in that regard?

Dr Shergold—There is a distinction between written and oral advice and different forms of written advice, whether it is in a paper brief or, increasingly, in an email interchange. In terms of record keeping, no, I do not believe that to be the case. Whether the communication takes place by paper brief, by email or by phone call, there is an obligation where necessary to keep the record of how policy has developed.

Senator CARR—Are emails part of the official channel of communications?

Dr Shergold—Not all emails. Most departments, with the support of the National Archives, have now developed systems to ensure that emails—that record of interchange—that are part of communication with the minister's office on the development of policy are kept—they are part of the records—just like written briefs were kept in the past.

Senator CARR—So the report in the *Griffith Review* this week that says that emails are not regarded as part of the normal process is inaccurate, is it?

Dr Shergold—That is inaccurate if that is what this article says.

CHAIR—Just to follow that up, Dr Shergold, you are on the record as advocating that one of the lessons to be learned out of the certain maritime incident issue was the need to maintain appropriate records. What follow-up have you undertaken or has been undertaken through the service and, by implication, with the advisers to ensure that those records are kept or improved?

Dr Shergold—Most departments—with varying approaches, because they are developing their own IT systems—are now keenly aware of the need to keep records of electronic communication, as opposed to paper communication, in a way that meets, for example, the archiving standards. That is vital because so much of the iterative development of legislation or policy now takes place through email communication. Obviously email is used for many other purposes, so you do not collect all email communication. But, where it is clearly involved in policy or implementation issues with the minister's office, most if not all departments are now working on ways to ensure that that electronic communication is retained.

CHAIR—Did you take any specific steps to draw awareness to that, given your own comments, which I think were reported in the *Canberra Times* in April this year, that this is an important requirement?

Dr Shergold—In both my previous departments—that is, DEWR and DEST—I initiated new IT programs and protocols to ensure that email communications were being appropriately kept and managed as records.

CHAIR—Senator Webber has been waiting patiently. We are running substantially over time but hopefully we can complete the department shortly. If we cannot, we may have to make arrangements to come back at a later stage but hopefully we can avoid that.

Senator MOORE—Dr Shergold, could the committee have a copy of the minute you posted to your department that outlined your expectations for these communications?

Dr Shergold—Yes, I can make that available.

Senator MOORE—That would be great. Thank you very much.

Senator WEBBER—Dr Shergold, I was intrigued by one of your statements earlier this morning. I am trying to recall it—it has already been a very long morning, particularly for someone who caught the midnight horror to get here. I think I am right in recollecting that this morning you made some comments about moving away from the statement of frank and fearless advice. Is that correct?

Dr Shergold—Yes. The point I was making is that I believe in frank and fearless advice, but the difficulty is that that term trips off the tongue too glibly now; it has lost its power by becoming a cliche. That is why I would use, for example, the term 'frank and honest'—or 'robust'—policy advice—

Senator WEBBER—You have upset Senator Moore.

Dr Shergold—so that the message remains heard.

Senator WEBBER—Surely all advice would be honest; that is a natural assumption and we would not have to say that. I would have thought that frank and fearless more clearly characterises—

Dr Shergold—I believe advice should be frank, fearless and honest. I prefer to use the term 'robust' simply because it captures attention more than the term 'frank and fearless' which, as I say, has lost its power through becoming a cliche. That is why I do not use the term. I believe in the sentiments that underpin it.

Senator MURRAY—To the parliamentarian, the term 'robust' means that people are being rude to each other.

Senator WEBBER—That is why Senator Moore actively dislikes the term 'robust'.

Dr Shergold—I would not use it in that sense.

Senator WEBBER—As someone who, a long time ago, was employed under the MOP(S) Act—and I have also been a state ministerial staffer—I think it is a term that still has a lot of currency. I find it interesting that you see that. I would have thought that using the term 'fearless' would counteract any perception that advice or interactions were compliant, which is the point that Senator Carr was drawing out. But if we are going to move away from that term—

Dr Shergold—It is a personal view. I am simply moving away from that descriptor, not from the value. The value is enormously important. I believe in advice that is fearless and responsive to government.

Senator CARR—And that is why it has a bias to action?

Dr Shergold—The bias to action predominantly refers to the commitment to implement government policy. As I say, there are two things: the preparation of policy advice, on the basis of which government takes decisions; and, of equal importance, the public service has a role in implementing those decisions once they are taken.

Senator WEBBER—I accept what you are saying. Maybe I am being very semantic, but I see 'fearless' as having a very strong definition and a different meaning from 'robust' or 'honest'—that is, you can give honest advice but be scared; you can be robust but it is not necessarily that. We have a very different definition of 'robust', as Senator Murray has said, in our realm of perhaps accepting advice rather than offering it.

Dr Shergold—One of the terms that I like that the Public Service Commission uses, in respect of the qualities required of senior executives, is 'the need to be courageous'. That is a term that I remember we discussed at some length. I think it is correct. There are times as a public servant when you need to show courage.

Senator MURRAY—Dr Shergold, I think I have heard you twice this morning use the term 'Westminster'. I personally prefer the term 'Washminster', which, as I discovered in somebody's writings, first appeared in the early eighties. I prefer it because it emphasises the separation of powers, which is one of the crucial elements of the American system. In Washington they have recognised that people who work for the executive, as opposed to people in the government, should be accountable to Congress, and they do appear before committees, where they have executive authority. In England, as I understand it, advisers to the government—indeed Mr Campbell has just done that very thing—are designated as to who is classified with executive authority and therefore is accountable to the parliament.

In both cases, as I understand it, they may of course claim executive privilege, as indeed do public sector employees such as yourself, where it is policy advice or where it is confidential to matters between you and the minister or the Prime Minister. There is no objection from the professional public service to being accountable to parliament: they come before us and they operate in a way which is well understood within our system. Is there any in-principle objection therefore to someone who acts with executive authority on behalf of a minister doing the same thing?

Dr Shergold—Public servants are not accountable to parliament. We are accountable through our ministers to parliament, and that is an important distinction which I think goes to the heart of the Westminster system.

Senator MURRAY—It is not a distinction I accept, by the way.

Dr Shergold—I understand.

Senator MURRAY—I just want you to know that I do not accept that.

Dr Shergold—The general proposition is that public servants are responsible through their ministers to parliament, and of course we are subject to the investigation and evaluation of the

Australian auditor and so on. Some of those who appear before you may believe that we have become a 'Washminster' system. I do not, because the essential element, as I understand it, of a 'Washminster' system is that large amounts of the senior executive of the public service are partisan and are changed when governments change. That is the heart of what happens in the Washington system.

Senator MURRAY—Can I clarify for you my use of the term. My use of the term refers to the way in which the parliament is set up. 'Washminster' is most commonly used with respect to the way in which the Senate and the House of Representatives interact and the way in which the separation of powers is reinforced in the notion of the Senate versus the government.

Dr Shergold—I was coming to that. It is because, I believe, the great bulk of senior executives in the American federal service are politically partisan and, indeed, are appointed by the President that they are subject to so much scrutiny. We do not have that situation. Our senior executives are non-partisan. Initially, in 1983, the incoming Hawke government contemplated moving to something similar, where five per cent of the senior executive were going to be partisan appointments, not appointments made on merit.

Senator MURRAY—You said that earlier.

Dr Shergold—They decided not to take that approach but rather to have ministerial advisers located in ministers' offices. My personal view is that that is preferable because it helps to distinguish the two roles. If I have a problem with what is happening in Westminster at the moment it is that the distinction between the political appointees and the civil servants is not clear. That is to say that the political appointee in the Blair government is classed as a temporary civil servant and works alongside the permanent civil servants. The distinction in their roles, I believe, becomes blurred. I think it is much clearer in this country, where the advisers sit with ministers and are geographically separate from the public servants. Also, their conditions of appointment are seen as quite different. For what it is worth, my personal view is that over the last 20 years we have got it pretty right.

Senator MURRAY—May I say—and I do not say this in any confrontational way—that one of the reasons I disagree with your view that you are accountable to the parliament through the minister is that, if the Senate so wishes, both in terms of its powers and its standing orders, it can order you to appear before this parliament and it can order you to answer questions. Of course, you can always take a right of silence, but it can make you appear. The parliament has accepted that it will not, or should not, deal with people who fall under the MOP(S) Act on that basis, although I presume it might be able to.

I want to come back to the belief that those who operate with any executive or administrative authority—in the full meaning of that term—should therefore be accountable to parliament. We have to discuss how we will frame and devise that and put in the proper protections so that people are not wrongly brought before parliament. It seems to me that the Americans and the British have tried to deal with that issue—namely, the accountability of someone who acts with executive authority even though they are an adviser—and it is the problem that we have been addressing here this morning, just from different directions. And it is not one we can walk away from. I do not think it is particular to the CMI issue, the Education issue or anything else. I think it is a general problem we face. With that summary, my question to you is: are you, in principle,

supportive of the view that anyone who acts in an executive or administrative capacity should be accountable for their actions and, in doing so, under the powers and standing orders of the Senate, to the Senate?

Dr Shergold—In principle, I believe that all those in the positions to which you refer should be accountable. I believe that public servants are accountable through our minister and that advisers are accountable through their minister. The question—and it is for the government to decide—is whether the government want to move beyond that. There are levels of accountability at the moment. As I understand it, the purpose of this committee is for you to consider whether they are appropriate. But, at the end of the day, it is a matter for government decision.

Senator MURRAY—There are two separate routes, as I understand it so far. If I can have the latitude to make the remark in this early stage, it seems to me that there are two areas that the committee is moving towards so far. One is either a sort of code of conduct approach, which is another form of internal regulation, management and structuring of people's relationships to improve it. The other approach, which we have not yet developed, is whether attached to that or in addition to that there should be enhanced accountability to the parliament itself of MOP staff who act in executive authority, which is not the situation at present.

Dr Shergold—Senator, as I repeat, that is a matter for the government to decide. I have given you my personal views on Westminster and Washington and the difference between them, but I do not want to provide my personal views as an indication of the way that government ought to decide. All I would emphasise is that, through the Public Service Act, through the guidelines provided by the Public Service Commissioner, through parliamentary committees and through the Prime Minister's key guidelines, there are processes and structures of accountability already in place.

Senator MURRAY—Dr Watt, do you have anything to add to the discussion and discourse we have had?

Dr Watt—I do not think so.

Senator WATSON—Dr Shergold, what more can be done to make more transparent the different roles of advisers versus senior public servants?

Dr Shergold—I think, in part, there is a responsibility on the Public Service itself to be very clear in its documentation about what the contrasting roles are. I must say that the Public Service Commissioner's guidelines, which were issued last week, are an important step forward in distinguishing the complementary roles that are played.

Senator WATSON—Do they go far enough?

Dr Shergold—My view is that the guidelines do go far enough. It is important to understand that we are not talking about rules or prescription here; they are guidelines for the heads of agencies and public servants to take into account in terms of their dealing with ministers' offices. We have to remember that, after 77 years, parliament took a very important decision in 1999 by giving us a quite different type of Public Service Act. We moved from a highly prescriptive, rules driven Public Service Act to a values based Public Service Act. I think that has to be the

basis on which the ethos, traditions and standards of the Public Service are preserved and that has to be the basis on which we distinguish the roles of the ministerial adviser and the public servant.

Senator WATSON—That values approach is relatively new and needs some embellishment or filling out, and that is why I asked you the question.

Dr Shergold—That is why, as I say, the guidelines and the guides to best practice that are put out by the Public Service Commissioner play a valuable role.

Senator WATSON—Do you think the Senate estimates calling of senior public servants before it is leading us more and more towards the Washington system as opposed to the Westminster system and are parliamentarians tending to get their responsibilities in terms of questioning somewhat blurred?

Dr Shergold—I think the fundamentals of the Senate estimates process are right. The committees provide a very important mechanism for parliament to scrutinise the actions of public servants. If I have a problem it is that too often the questions move away from issues of estimates, budgets, administration and decision making into the making of public policy. I do not believe that is healthy, because the system does depend upon the fact that public servants are able to provide advice to the elected government of the day in confidence.

CHAIR—The estimates committees do not just primarily deal with budget estimates. They also involve examination of annual reports, which often contain a lot of policy information. I have a couple of further questions. Dr Watt, what sort of training programs does the department offer or make available for ministerial advisers? Do they avail themselves of those programs or the programs that are generally available for MOPS employees?

Dr Watt—I think Ms Mason or Ms Clarke are well equipped to answer that.

Ms Clarke—We provide a range of training that both electorate and personal staff can avail themselves of, and they frequently do. For instance, we have an induction session for new starters, and some old hands occasionally turn up to that. That is targeted at electorate staff, and we offer sessions up here for both personal and electorate staff.

CHAIR—When you say personal, are you including ministerial advisers?

Ms Clarke—Yes.

CHAIR—That is what I really want to focus on, given that they have a different role, as we know, to electorate staff.

Ms Clarke—MOPS staff at the level of adviser and below have a range of professional development training offered to them through the certified agreement. Specific training programs that have been sponsored by the Special Minister of State are offered. There are also ad hoc professional development programs and computer systems training. Funds are provided to political party secretariats and Independent members to conduct training for their staff as well. There is quite a range that we do offer. As I mentioned to Senator Murray earlier, there is a

training needs analysis currently under way, where we are seeking to identify new aspects of training that are required. We have previously had a training needs analysis to identify the kind of training that was being sought, and that was offered. That included communication, writing and all those sorts of things. We are looking to revamp that and see what is on offer now.

CHAIR—Is there anything that is specifically directed at the ministerial advisers and people in similar positions, given that they are going to have a much greater interaction with public servants and with the Senior Executive Service of the APS than other MOPS employees?

Ms Clarke—I am not sure whether I can answer the question you are asking. Certainly with our induction program—which was offered more generically—we had the Public Service Commission come in and give a segment, up here in Parliament House, on dealing with public servants, our code of conduct and how that applies, and how we support ministers. That information was given out and is available on the web site of the induction package.

CHAIR—Let me go to the issue which has occupied a lot of the submissions which have been made to the committee, a potential code of conduct for MOPS employees or some MOPS employees, such as non-electorate staff. I note, Dr Shergold, that in the submission from the Department of the Prime Minister and Cabinet you state that the decision to introduce such a code would be:

...essentially one for those who employ the staff ... An alternative would be to apply a code only to non-electorate staff.

I would be interested in hearing you comment further. I appreciate that there might be some policy considerations here, but we have had a range of proposals put to us. There are models which exist in other countries and, indeed, in Queensland. I will give you the opportunity to comment if you would like to—and I would appreciate it—on the views that have been put forward, in the context of how such a code might impact upon the relationship between ministerial advisers, ministerial staffers and the departments.

Dr Shergold—As the submission points out, it is for the government to decide if there should be a code of conduct for ministerial staff. I am happy to make three points. The first is that there is guidance on conduct. That guidance sits within the Prime Minister's guide on key elements of ministerial responsibilities. The second is that all ministerial staff, as with their ministers, are obliged to follow the law. A ministerial staffer cannot decide to take actions that the minister herself or himself cannot take. I suppose the third comment I would make is that if you had a code of conduct introduced for ministerial staff, it would then beg the question of whether a code should also exist for the staff of other office holders—perhaps even the electorate staff of senators and members. So the issue is, if you were to go down this track, how far you would move.

CHAIR—I appreciate that. I suppose I am trying to ascertain whether or not you have any comments to make about that issue. Let me put this to you: it is clear, for instance, that the electorate staff of both opposition members and government members—particularly backbenchers—would not be, as part of their duties, involved in—

Senator CARR—Exercising executive authority.

CHAIR—They would not be involved in policy interchanges with senior levels of the Public Service, certainly not from the opposition's perspective. So there are functions that are undertaken by the ministerial advisers and ministerial staff that are clearly different from—

Dr Shergold—Can I make this issue clear. Senator Murray said something and then I heard what Senator Carr said. We do need to make it clear that ministerial staff cannot exercise executive authority. They can influence executive authority but they do not exercise it themselves.

Senator CARR—So you have never known a circumstance, Dr Shergold, in your 18 years of public service, where a ministerial adviser has sought to exercise executive authority?

Dr Shergold—I do not know about seeking. All I know is that they cannot exercise ministerial authority.

Senator CARR—So with regard to the matters that were raised in the children overboard affair, there was never a circumstance where advisers were seeking to exercise ministerial authority, in your experience?

Dr Shergold—As I say, I cannot comment on what ministerial advisers may seek or not seek to do. What I am stating categorically is that they cannot exercise that executive authority.

Senator CARR—And they never have in your experience?

Dr Shergold—It is not possible. This is why the *Guide on Key Elements of Ministerial Responsibility* is important. It says:

Ultimately, however, ministers cannot delegate to members of their personal staff their constitutional, legal or accountability responsibilities.

Senator CARR—Absolutely. We understand the legal situation. The question is: have you ever come across a circumstance where a ministerial adviser has sought to direct a public servant?

Dr Shergold—That could start a very long discussion here.

Senator CARR—I would like a simple answer.

Dr Shergold—I can do that; I can give a simple answer. You will often have a ministerial staffer say to a public servant, 'The minister would like to have a brief prepared for the meeting that he is having tomorrow.' That is quite normal. That, in a sense, you may define as a direction. What I am saying is that that is not exercising executive authority. The person—the staffer—is requesting that on behalf of the minister. That is the nature of the great bulk of relationships between public servants and ministers' offices.

Senator MURRAY—So if the Senate standing orders were changed, and they simply said that any adviser to the government who acted in an executive capacity, in any case, would be

accountable to the parliament, you would not object—because, as far as you are concerned, it does not happen?

Dr Watt—Having it in the standing orders allows it to happen.

CHAIR—Dr Shergold, I think that question was directed to you.

Dr Shergold—The position is quite clear. I think the issue that you are addressing is whether the existing prime ministerial guidelines, which are quite clear on this matter, are sufficient. The fact is that those ministerial staffers are accountable through their ministers, and it is the ministers who wield the executive authority. They are the ones with the constitutional and legal authority.

Senator MURRAY—The difficulty is that I do not believe you, and it is not in the sense of—

Dr Shergold—That is certainly robust!

Senator MURRAY—It is not in the sense of calling you untruthful, but it is in the sense that, in my experience of ministerial advisers, they carry the authority of the minister and exercise that authority.

CHAIR—They try.

Senator MURRAY—They do. You must recognise that shadows like me, who deal with a vast variety of ministerial advisers, are fully aware of the power of their utterances and the ability of an agreement with them to translate into an outcome. I think that is entirely proper. I do not disagree with it. What I am saying to you is that if on the non-government benches you experience the actuality of executive authority in those persons, then the framework within which that happens is less important to us than the reality. We are trying to address that situation, in those narrow circumstances, as to when those people should be accountable to us as opposed to being accountable to the minister only.

Dr Shergold—I hate to disappoint you, but I am not sure that I do entirely disagree with you. I think we may be talking past each other a little, because I am saying who wields the executive authority, and I think you are suggesting to me that, on certain occasions, political advisers, by their behaviour, act as if they wield executive authority. In terms of the role of the Public Service and its relationship with ministers and ministers' officers, I assume that, on day-to-day matters, those who are the ministerial advisers act with the authority of their minister. But in terms of actually using executive authority, it is the minister who is responsible.

CHAIR—Could I just go back to the comment in the department's submission, Dr Shergold, where it says, 'An alternative would be to apply a code only to non-electorate staff.' Obviously there is a reason why that comment was made. I would like to know why that is stated there.

Ms Belcher—We saw a distinction between staff who work for office holders, be they ministers or shadow ministers, and those who work just within an electorate office on the business of assisting the senator or member in that electorate capacity. When I say that we saw a

distinction, I am not saying that it is a distinction that would necessarily have to be drawn, but it is one that could be drawn.

CHAIR—I thought that was the case, but I wanted to have that clarified. A question to both of you: have the departments prepared responses to the recommendations of the report of the Select Committee on A Certain Maritime Incident, and have they been given to the ministers?

Dr Shergold—We are in the course of developing responses.

CHAIR—It has been almost 11 months. How long do you think it will be before the responses are completed and then given to the minister?

Dr Shergold—As always in these situations, Senator, you will understand that that is a matter for the government to decide.

CHAIR—I am asking about the department's work in preparing—

Dr Shergold—The departmental approach across government is under way. Some of the issues are very broad and go across the range of Public Service agencies—for example, the issue that you raised of records management and record keeping.

CHAIR—There are 13 recommendations, from memory. I am particularly interested in recommendation 11—which, no doubt, we will shortly come to with the Public Service Commission—which is about convening a working group for senior officials of the Department of the Prime Minister and Cabinet and senior parliamentary officers of both houses of parliament to develop a code of conduct for ministerial advisers, and so on. Can I take it that, given the response to the recommendation has not been finalised and presented as yet, that has not been acted upon?

Dr Shergold—Correct.

CHAIR—Thank you.

Dr Watt—Senator Moore left me with a question about performance agreements with our DLOs. The relevant officer is here, if Senator Moore would like the information.

Senator MOORE—That would be lovely, thank you.

Dr Shergold—Earlier, in an interchange with Senator Carr, I was asked about documents that could be tabled. These are the documents that clearly indicate that Dr Tom Karmel was not removed from his position. I will table for you an exchange of letters between the Public Service Commissioner and me. Those letters of July last year make it clear. A letter from me says:

... the Selection Advisory Committee assessed Dr Thomas Karmel as the most suitable candidate—

in other words, he was selected for the position—

However, since finalising interviews, Dr Karmel has accepted an offer of employment as the new Managing Director of the National Centre for Vocational Education Research and has confirmed that he no longer wishes to be considered for the Chief Research Officer position in DEST.

I have the return letter from Mr Podger, the Public Service Commissioner, which says:

Having considered the information provided against requirements for selection at this level and the certification of the process by my representative—

that is, the Public Service Commissioner's representative—

on the selection advisory committee, I am satisfied that the selection exercise meets all requirements of the Act, Regulations, and the Commissioner's Directions.

Finally, I will table an email from Tom Karmel to the *Sydney Morning Herald*, which says:

I would appreciate it if you could clarify the circumstances in which I left DEST—

I put in parentheses that the *Sydney Morning Herald* did not do so—

I left DEST to take up the position of managing director, National Centre for Vocational Education Research. Prior to taking up that position I had been acting group manager of the Research, Analysis and Evaluation Group. I left DEST to pursue a different career path, not because of any lack of opportunities at DEST.

I will table those documents in the hope that there will be a clarifying statement at some stage in the Senate.

Senator CARR—Was Dr Karmel ever advised that he had actually been appointed to the position?

Dr Shergold—Yes, I had a discussion with Dr Karmel.

Senator CARR—But did that occur after he had withdrawn from the position or before?

Dr Shergold—I certainly had a discussion with Dr Karmel about whether he should take the position that I had offered him in the department or whether he should take the other position as head of the NCVER.

Senator CARR—Was he ever advised that he had been successful in his application?

Dr Shergold—Yes, he would have been because I discussed with him which of the positions he should take.

Senator CARR—Was that after he had advised you he wanted to take the NCVER job?

Dr Shergold—He came to me to seek my advice on the dilemma he had, where he had been offered two jobs. I think it is pretty categorical, if I may say so. He is not someone who was removed from his position or failed to gain a promotion.

CHAIR—Thank you. Welcome, Mr Suur.

Mr Suur—Senator Moore, as I understand it there were two questions that you were pursuing. The first was: what do we do as a department to brief our departmental liaison officers about their role before they take up their appointment with our ministers. We have two ministers and a parliamentary secretary and a total of four departmental liaison officers in those offices. The second was: what do we do in relation to the performance agreements to make clear their role to communicate and facilitate relationships between the department and the ministers' offices. Have I got those two questions right?

Senator MOORE—They were the particular questions. I was interested in performance agreements with other members of the department as well on that particular issue. But if I can get the information from you for the DLOs it will be a very good start.

Mr Suur—Thank you. Let me read you some examples of things that are in the performance agreement for our current DLOs: to ensure that there is effective communication between the offices of the ministers and the parliamentary secretary; to manage the relationship between the respective ministers, the department and the advisers to the minister; to ensure the department is kept abreast of issues raised by the minister and his advisers to ensure the department can take necessary action; to provide frank and factual feedback to the department on the service provided to the minister; to provide constructive suggestions to the department on ways to improve the service to the minister; to demonstrate judgment in balancing competing demands on the department while helping to ensure the minister's priorities and timelines are met; and to facilitate regular discussion between the departmental liaison officers in all ministers' offices and the parliamentary secretary's office and seek a constructive exchange of ideas.

There is a lot of stuff in there that goes to their facilitation role—from keeping communication channels open to ensuring that departmental officers and the department understand what the requirements of the minister's office are and that the department is in a position to respond to those requirements.

Senator MOORE—Thank you. I want to ask some more questions on this general issue of Dr Shergold and Dr Watt. One of the core aspects that you have spoken about is the accountability of your staff members. You have both said they—through different ways but nonetheless through ways that are clearly understood by your staff members—understand their accountability to their department, to the minister and also in their processes. Do they have confidence that there is that same degree of accountability on people who work in the minister's office if there is a difference between the Public Service and the minister's office?

A public servant knows that if they do something wrong there will be a process that comes out of that. That is very clear in their understanding with your training in the way the act works and the penalties involved. Do your public servants who are involved in this process so intimately have confidence that if the fault is not in the Public Service but in the minister's office some process will be followed?

Dr Shergold—It is a difficult question to answer because I do not know in a real sense without doing a staff survey what my staff's view on this is and therefore what I say is necessarily my personal reflection. It is certainly well understood that I am accountable for the department and what the chain of accountability and responsibility is and what processes exist under the Public Service Act. I believe that certainly at senior levels they would have a pretty clear understanding of the role of the minister's office and they would certainly be aware that the ministerial adviser is responsible not to me as the public servant but to the minister. It is the minister that is the head of their chain of accountability. That certainly would be understood.

Dr Watt—That would be the case in the Department of Finance and Administration. Again, this is a personal view; you cannot give it any other way.

Senator MOORE—Absolutely.

Dr Watt—I do not have the basis for it but my sense is my staff understand my accountabilities very well and I think they understand ministerial staff accountabilities very well. I think also that my staff would appreciate that if there was a breakdown in the relationship it would be pursued by both the minister's chief of staff and by me and in our respective ways.

Senator MOORE—Would you both agree that that would be an absolutely basic element to the complementary relationship that you have both said you think is in place?

Dr Shergold—Yes. It is essential for complementarity and it is essential for the continued maintenance of a relationship of trust between the Public Service and the minister's office.

Dr Watt—And you cannot operate without that.

Senator MOORE—Absolutely.

Senator WATSON—Dr Shergold, as one who has watched the performance of departmental secretaries before parliamentary committees for over two decades now, I must say that I have not only enjoyed your interchange this morning but I also believe that your views will ultimately find their way into student reference books and Public Service training manuals.

CHAIR—Is there a question here, Senator?

Senator WATSON—Thank you for today's contribution.

Dr Shergold—Thank you very much.

CHAIR—I will finish with one further question. Can you give us an indication as to when the responses to the recommendations of the certain maritime incident committee report will be finalised within the departments to then go to the relevant ministers?

Dr Shergold—I cannot.

Dr Watt—We are not directly involved, only tangentially.

CHAIR—Thank you, it has been a very robust hearing this morning. I thank Dr Shergold, Dr Watt and other officers of the two departments for appearing. There are a couple of technical issues that require some statistics—

Dr Shergold—We are working on a response to those, Chair.

Dr Watt—As we are too.

CHAIR—I might just indicate that it may well be necessary for us to request you to come back at the conclusion of the hearing or at another time, depending upon issues that may be raised in the rest of the hearing.

Dr Shergold—I understand.

Dr Watt—Mr Chair, do you have a sense of when that might be?

CHAIR—I think we can let you know later today or tomorrow morning. We are on a tight time frame so we will certainly cooperate with you in that regard. I thank the officers for their time.

[12.38 p.m.]

PODGER, Mr Andrew, Public Service Commissioner, Australian Public Service Commission

ACTING CHAIR (Senator WATSON)—Mr Podger, welcome to the committee. We appreciate your contribution. I presume you understand the rules: that you are protected by parliamentary privilege. Do you wish to make an opening statement?

Mr Podger—If you do not mind, I would like to make a few comments picking out some of the points in my submission. The submission is set in the context of substantial change in public administration over the last 25 years and, in particular, on increasing emphasis on responsiveness as well as efficiency, effectiveness and outcomes in public administration. The corresponding move to more devolved flexible and values based arrangements has, however, been based on a continuation of the traditional and enduring Public Service attributes of being apolitical, impartial, professional and accountable and also of merit based decision making. As noted in my submission, I see the increasing role of the ministerial advisers as one of the means by which public administration has become more responsive to the elected government. The role that advisers play has helped to preserve the apolitical nature of the Public Service, and I note that Dr Shergold also mentioned that before the MOP(S) Act of 1984 there had been suggestions of an alternative approach whereby some senior executive service people would be appointed through a political process.

While the role of the advisers has preserved the apolitical nature of the Public Service to some extent, it has raised challenges for the critical relationship between public servants and ministers and their offices. Successfully addressing these challenges and establishing a constructive relationship of trust between the Public Service and advisers requires a sound understanding of their respective roles and responsibilities as well as a spirit of cooperation and good communication. The creation of a separate employment framework both recognises and reinforces the different roles and responsibilities concerned and is a key protection of the apolitical nature of the service.

Many Westminster based jurisdictions do not have such a clear and separate employment framework for ministerial advisers. My submission refers to a number of other jurisdictions' arrangements, including those of the UK, where the status of special advisers as temporary civil servants has been seen as problematic by some people. The Committee on Standards in Public Life, chaired by Sir Nigel Wicks, has, for example, recommended that special advisers should be separated out as a category of government servant distinct from the civil service. The committee also recommended a clearer statement of what special advisers cannot do and a stronger statement about their lack of executive powers.

Another important facet of our arrangements in Australia is that the role of advisers is essentially one of support and facilitation and not delegated authority. Advisers provide important guidance about the minister's policy and wishes and, by doing so, help APS employees to be responsive. However, they do not have legal authority to direct Public Service employees. The Prime Minister's *A Guide on Key Elements of Ministerial Responsibility* implies

that ministerial advisers are essentially extensions of their ministers. On this basis, advisers are directly accountable to their ministers, and the ministers accept accountability for the actions of their advisers. This is an important point to remember when considering issues of public scrutiny and accountability.

As I put in my submission, to the extent that advisers do have delegated authority and are not just extensions of the ministers, the case for executive privilege may be weaker and the case for more direct scrutiny and accountability may be stronger. There are, however, a number of options available and the issues involved will need very careful consideration by the government and the parliament.

On the broader issue of the role and functions of ministerial advisers, it is important to recognise that these may not be amenable to a tight definition—the evolving nature of the role and the slightly different approaches under different governments over the last 30 years illustrating a continuing degree of fluidity. The Prime Minister's guide provides some clarification of their roles and responsibilities, and advises both ministers and advisers on personal ethical behaviour, as a code of conduct might do, particularly about declaring and avoiding conflict of interest.

While I would caution against a highly prescriptive approach, there may be benefit in drawing on aspects of the 1999 reforms to the Public Service and the Parliamentary Service to articulate values and principles that clarify key relationships and behaviours and to review the code of conduct now implicitly set in the Prime Minister's guide. I believe this could help promote professionalism amongst what has become an important component of the executive arm of government.

In my submission I referred to two key documents being developed by the commission relating to the application of values to Public Service employees. One of these documents was a revision of the guidelines on official conduct last issued in 1995 relating directly to the values and code of conduct in the Public Service Act and providing practical guidance to help APS employees make appropriate judgments. The other document was a good practice guide to agencies on embedding the values, based on studies of management systems and procedures in six agencies. I am pleased to inform you that these products were released last week and I am able to provide them to the committee. The committee may be particularly interested in the advice provided to promote appropriate and close relationships between the Public Service and ministers and their advisers.

CHAIR—Thank you. I will pick up where I left off with the previous witnesses, Dr Shergold and Dr Watt, and that was in regard to the recommendations of the report on a certain maritime incident, which, one, recommended that an inquiry of this nature take place and, two, recommended that a working group be established, convened by you. I take it that you are not able to act upon those recommendations, pending the government's response. Or do you see yourself as having the ability to take an initiative of that sort yourself, irrespective of whatever the government's views might be about the committee's recommendations?

Mr Podger—Because I do not have any direct statutory responsibility in the area of advisers, I think it would be inappropriate for me to just volunteer advice on that. I think that is a matter for what the government's response is to the parliamentary committee's report. I have provided

advice to the Prime Minister's department around what that response might be. I have, as I have said, done some further work in the area of my statutory responsibility—that is, in promoting the APS values and code of conduct to public servants and, in particular, their responsibilities in the relationship with ministers and ministerial advisers.

CHAIR—On page 10 of your submission you say:

As a number of senior Public Servants have stated, ministerial advisers have been a protection against the politicisation of the Public Service.

And in a footnote you indicate who those senior public servants are. You are of course aware that a number of former senior public servants—for example, John Menadue and Mr Barratt—have had the opposite view: that there has been politicisation of the Public Service, and they particularly refer to the noted issues surrounding 'children overboard' and, more recently, intelligence advice or non-provision of advice from the ONA to the government. I give you the opportunity to respond to those criticisms. These criticisms have been made by people who have had a long experience in the Public Service previously.

Mr Podger—Certainly there have been differences of view—as there always will be amongst any group of experienced public servants, current and past. While I have seen some of the reports of the views of Mr Menadue and I have seen Mr Barratt's submission to this inquiry, the point I was making in my opening statement is that I think the introduction of ministerial advisers has, in a structural sense, helped to protect the professionalism and apolitical role of the Public Service. But there is also a challenge in making the relationship between the Public Service and ministers and their advisers work well. I will say something about that in general terms. This issue of the intersection of politics and administration has always been at the centre of debate in public administration. For 100 years it has been the key issue in any part of the literature on public administration.

Senator MURRAY—It goes back a bit further that, too.

Mr Podger—It relates to the balancing of critical principles, the responsiveness of the Public Service to the elected government—that is, the democratic principle that we must abide by—along with the apolitical professionalism of the Public Service. These principles are, for the most part, complementary, but sometimes they are in tension. I believe that the intersection has become more acute in the last 15 years or 20 years than it was in the past. If you look at the pressures on ministers and on governments from the media, a better informed public, better resourced interest groups and so on, you see that that pressure has increased a great deal. And the management of the political side has become a much more professional issue in the last 20 years, in my view.

On the other side of the equation, the pressures have increased as well. The Public Service is much more transparent than it was before. The panoply of the openness to decision making, the administrative law arrangements and freedom of information processes and the Ombudsman—all those sorts of pressures—within the Public Service has added to their requirements to be impartial and to be able to justify a professional set of decision making. Both sides have had added pressure in the last 20 years and, not naturally, the intersection raises a few more acute

challenges than would have been the sorts of experiences that some of the commentators from the past have experienced.

CHAIR—On page 13 you discuss executive privilege and on page 14 you state:

To the extent that advisers *have* delegated authority and *are not* just extensions of their Ministers, the case for executive privilege *may* be weaker and the case for more direct scrutiny and accountability *may* be stronger.

You highlight the phrases 'have delegated authority' and 'are not just extensions of their ministers'. That indicates to me that you believe that that actually happens—that ministerial advisers are exercising delegated authority and are not just extensions of the minister. That runs counter, I would suggest, to the belief we have heard this morning that, at the end of the day, the ministerial adviser is always acting on behalf of the minister. What is your response to that?

Mr Podger—I do not think so. I think, in fact, the whole—

CHAIR—What is your understanding? What do you mean by having 'delegated authority'?

Mr Podger—The thrust of the argument in the submission is to reinforce what I regard as being important—that is, that the advisers do not have legal authority. They cannot direct public servants. They do not exercise legal delegations. If that is so, the argument for them to be held directly accountable and appear before committees is reduced. If, however, they start to exercise a separation from ministers, the issue of their direct accountability to parliament becomes a much stronger argument. In the material we provide in guidance to public servants we do mention quite clearly—and Dr Shergold quoted from the Prime Minister's guide—that advisers cannot direct APS employees. That is mentioned there. Of course, in day-to-day arrangements they will be advising public servants of what the minister's views are. They will be saying, 'The minister needs this or wants that.' That, for the most part, will be exactly right, and the system will move smoothly on the basis of trust and understanding that that is exactly so. Where there are questions and where it may not be so, public servants have a duty to test that. If they are not sure, they have a duty to test: 'Is this with ministerial authority or not? Was the minister's direction well informed or not?' Those are the sorts of issues I believe a professional public servant should be pursuing. I do not regard passing on views from the minister or asking for things to be done for the minister as delegated authority.

CHAIR—I did not think you did, but what seems to come through in your comment is that you believe there are, or have been, situations which would give rise to a belief by a public servant that an adviser is potentially going beyond their authority. Is that the case?

Mr Podger—From time to time there will be differences that need to be resolved and clarified. That is the nature of these critical relationships. Most senior public servants go out of their way to form a good personal relationship with advisers and to make sure it is one of trust—and a very constructive one. I believe that does happen. But there will be occasions, perhaps when there is a sense of urgency on an issue, where there will be issues to be resolved and questions raised. This is not something new; this issue has been around, in my own experience, under a number of governments.

Senator MURRAY—Mr Podger, just remind me: is there a specific provision in the MOP(S) Act that ministerial advisers do not have nor can they exercise delegated executive authority?

Mr Podger—I am not aware of a specific provision in the act, no.

Senator MURRAY—I could not recall it either. That might be one way of clearing up a grey area, because both your predecessor as a witness, Dr Shergold, and you have emphasised that that is the practice and intent.

Mr Podger—That is one option I suppose. In my submission I have indicated a preference for a less legal approach which is via a code of conduct arrangement and a set of values. I wish to clarify something: when I look at values in a code of conduct, values are about relationships and personal behaviours. A particular part of the values in the Public Service Act are to do with our relationships with ministers and the parliament. I see some advantages in a parallel arrangement for advisers, one of which would be to reinforce their appreciation of our legal obligations to be apolitical, professional and so on and our accountability requirements. That complementary set of values would reinforce an understanding of the relationship.

Senator MURRAY—Do you think there should be a provision in the Prime Minister's guide or in some protocol format for there to be an ability for people in the Public Service to formally report any adviser who seeks to exercise or does exercise executive authority or administrative authority? I do not think there is any in practice at the moment.

Mr Podger—I would caution against too legalistic an approach in what has to be a good working relationship. Certainly, in our advice to public servants we talk about ways in which to resolve differences if there are differences. Such differences are not frequent but they do occur. As Dr Shergold said, you would expect it to be handled either directly between the public servant and the adviser to try and settle it there or the public servant would go up the line in some way to resolve it. We mention in our guidelines extreme situations where it may have to be raised outside the portfolio. That is an extreme situation; I have not directly experienced that myself.

Senator MURRAY—One of the difficulties that I and a number of my non-government colleagues have is our experience of the relationship between advisers and the public sector. The reality is of the exercise of executive authority on behalf of the minister in specific circumstances. By and large that works perfectly well in the design of legislation, the decisions over what changes shall be made to bills and that sort of thing. It is quite practical. But at times it can raise real dangers. If the chief of staff of a minister rings a middle-ranking public sector person who perhaps is not familiar with all the nuances of both the Public Service Act and the MOP(S) Act, they are likely to obey the command because they will see it as a command.

Mr Podger—The issue only arises if the command was not authorised—that is, that the command from the adviser was not consistent with what the minister wanted. Ministers will use their advisers quite extensively, given the workloads they have got, to manage a great deal of the relationship with the department, including down the line. The issue arises if there is a question of that instruction actually having ministerial authority—and that is of concern. What we would advocate within the Public Service is good practice within departments and, where there is a question mark, it will allow that to be raised without undermining the relationship of trust and

cooperation. These things only occur on occasions, but there has to be a process for handling that. When it is handled and if the adviser was issuing an instruction that did not have the authority of the minister, it will be resolved.

Senator MURRAY—The difficulty the parliament has through its committee system is that there is no mechanism for determining whether the adviser acted with or without the minister's authority. If a minister claims they did not know such a thing happened, you cannot test it. You can test it with the Public Service because its officers will come before committees and will subject themselves to examination. That is the difficulty we face. So, unless you are prescriptive about what they may not do in law, you end up with these grey areas.

Mr Podger—There will always be some grey areas.

Senator MURRAY—I accept that.

Mr Podger—I guess the thrust of my submission was to try to limit those grey areas by clarifying that there is not executive authority; that their authority derives from the minister and that they are exercising it on behalf of the minister and that, where there is a question, we can go back to the minister to confirm an instruction. There is of course in practice, given the numbers of advisers and the degree in which they are operating, occasions where a minister does not know exactly what an adviser has done and, hence, there is this issue about whether, because the minister does not know the minister should not be held directly accountable. That is a difficult issue to resolve. Whether you need to have some firm rules about that, I am not sure. In the case where a minister says, 'I was not aware that my office was told,' it is not as if the minister is not held in some way politically responsible. It is not as if the system does not pass on some of the opprobrium associated with that. The issue is: is anything more required? I think that is a matter for debate here rather than accepting my views. I think there is political process that does not necessarily require a legal answer.

Senator MURRAY—Your submission and your evidence today have indicated that the nature of the political/governmental interchange in other countries and here is changing all the time and requires new processes and new ways of management to be continually introduced to adjust to greater scrutiny, greater transparency and greater demands for accountability. You have just said effectively that—and I think it is a practical consequence—ministers have less responsibility for the actions of others than they used to. That implies to me more responsibility on behalf of the others, and that requires them to be accountable. My question is: if other jurisdictions—United States, United Kingdom, Canada and Queensland, as I understand it—are moving to be more prescriptive, should we automatically reject that route?

Mr Podger—I have not suggested that we automatically reject that route. Indeed, I have clearly suggested that there would be advantage in some statement of values and a code of conduct. I personally believe that that would be beneficial for public administration generally. What I am expressing caution about is how legalistic one would be about that. When you look at the United States, of course, you are talking about a large number of executive appointments of people who have delegated authority. It is quite different. There you are not talking about ministerial advisers; you are talking about the broader executive arm of government and the equivalence of our ministers and senior public servants who are partisan political appointments

exercising congressional powers, if you like, through their laws. We are not talking about that here.

Senator MURRAY—But we are talking about the personal staff of government numbering, rounding it off, 372 at present, of which you might regard the very top echelon in status terms as ranking with the very highest members of the public sector. They carry great moral authority.

Mr Podger—I am not sure what the question here is. All I am saying is that I would be a bit cautious about how legalistic the response is. But I am certainly saying very firmly in the submission and here today that there would be some advantage in some statement of values and a bit more about a code of conduct. My purpose in putting that is to raise the professionalism, if you like, of ministerial advisers who now play a much more important part in public administration than 20 years ago. It is not to try to constrain their role unduly; it is in fact to recognise it and to give it a stronger professional footing. The professionalism of advisers has increased over the years, but I would like to see that taken a bit further.

Senator MURRAY—The question I intended to put at the end of that introduction was in relation to my belief that the upper echelon, as I call it, of those government advisers is moving towards expressing greater authority in the system, along the lines that are occurring in other countries around the world, such as the United States. From what people have told me of how it was and how it is, my understanding is that that is happening, in the same way as you have just outlined how the nature of the public sector and the executive authority has changed over the last 20 years. Perhaps in the end the question is: if we accept that proposition, does self-regulation have to be accommodated by additional constraints or prescription in the law? If so, what kind? My opening question posited one of those kinds.

Mr Podger—I am not too sure I can add much more to what I have said, other than to draw attention to the point I raised in the submission about the importance of executive privilege. The good operation of the executive arm of government does require a considerable degree of confidentiality around the minister, which is most obvious with the ministerial advisers, but it is also obvious in the relationship with the Public Service. The Public Service has adjusted over the last 25 years to the panoply of administrative law which has opened up and made more transparent its processes. I am thinking particularly of things like freedom of information legislation and also the processes of the Senate committees. But we have, nonetheless, within that adjustment, tried to preserve this important executive privilege, which is necessary for governments to be able to take considered decisions in the public interest.

Senator MURRAY—Which the Americans retain, despite the fact that their officers are still required to appear before congressional committees. They claim executive privilege when they appear before those committee in certain sectors.

Mr Podger—I touch on that in the submission and say that, in the event that the government and the parliament wish to open up so that advisers would appear before committees—and I hasten to say that that is not what I am recommending, but if you wish to go that route—you would have to look very carefully at how to manage that. We do have some guidance from committees to public servants on that. I think you would have to enunciate stricter rules in terms of limiting what an adviser would have to answer if you are going to maintain executive

privilege. I have not gone into any details on that, but I think that would be an issue you would have to look at very carefully.

Senator MURRAY—Thank you, Sir.

Senator WATSON—Major General Stretton appears to take the view that the increasing importance of the role of advisers, as evidenced by ministers' refusal to allow their political staff to be called before parliamentary committees, has resulted in an erosion of the power of the parliament in recent years. Would you like to comment?

Mr Podger—I am not quite sure I fully understand the argument. The parliamentary oversight of the executive is exercised in both chambers and through the committee processes where public servants appear, so I assume the argument is because there is a lot of activity within the executive arm, within the ministers' offices, that in years gone by may not have happened in ministers' offices but might have happened elsewhere. I understand the argument, but I guess my point in the submission is that I do not think that argument is all that strong if we clarify, as I think the Prime Minister's guide has—and we have in the guides we have given—that the advisers do not exercise legal authority. I think that is the point. If they did, I think there would be an area of concern.

Senator WATSON—But I think Major General Stretton makes the point that, with the increasing role and apparent responsibilities of ministerial advisers, this in a sense has resulted in an erosion—to use his words—of the power of parliament, in terms of their ability to question and in terms of accountability.

Mr Podger—I do not think I can comment any further than I have on that, Senator.

Senator WATSON—There are two views, and I think there is some relevance in terms of what Major General Stretton has raised, because of their increasing prominence and importance within the system, that parliament perhaps has been denied some opportunity for questioning.

Mr Podger—This issue has of course been argued in this place over particular issues, such as a certain maritime incident and whether or not advisers should be called. If I look more generally—

Senator WATSON—It is far wider than that.

Mr Podger—If I look more generally, I would have thought that the transparency of what happens within the executive arm of government and the access of parliament to information about that has increased substantially, not decreased, over the last 20 years.

Senator BRANDIS—I suppose the problem, Mr Podger, is that, if a ministerial adviser is to be treated as the alter ego of a minister and to be exercising his authority for all customary purposes, one could say that nothing that the adviser does is something for which the minister could not be held accountable. However, if the minister is able truthfully to say, 'I wasn't told about a certain fact by an adviser,' you get a Chinese Wall situation; so that, whereas the minister is at one level accountable for anything done in his name, if the question is about what the minister knew, he may, although accountable, not be culpable. I suspect that is sort of the point

that Major General Stretton is making, but we will develop that with him. Would you care to comment on that?

Mr Podger—I think that is a good presentation of it. If the minister is not culpable but is still to be held accountable, he can still say, 'I didn't know,' and then the political process—

Senator BRANDIS—Truthfully say, 'I didn't know.'

Mr Podger—That is right. And the political process will end up working out what level of criticism the minister has to bear on that. To turn around and say that, because of that, necessarily the adviser ought to appear before committees, is a step that I would not say is necessarily right. I think there are political processes here that do not entail that. I can see that, if it became the norm that ministers were forever saying, 'I didn't know that'—and it happened all over the place—and all sorts of advisers were exercising actions independent of the minister, the situation would be different.

Senator BRANDIS—Mr Podger, I agree with you. I do not favour compellability of—

CHAIR—Senator Brandis, do you have a question?

Senator BRANDIS—I am going to ask for him to comment on this. I myself do not favour the compellability of ministerial staff, and I was a dissenting member of the certain maritime incident committee. I think the distinction you have drawn, Mr Podger, between dealing with this at a governmental or institutional level on the one hand and the minister being judged at the political level on the other hand is a useful distinction. Perhaps therein lies the answer.

Mr Podger—Clearly there are going to be differences of view on this. I guess my purpose in raising that was to ensure that there is an elucidation of this and a teasing out of the points before the committee comes to its own conclusion.

Senator CARR—Mr Podger, it is good to see you again. In terms of the discussion I had this morning with Dr Shergold, I am interested in pursuing the question of the relationship between ministerial advisers, ministers' offices and departmental officials. Both you and Dr Shergold have emphasised the importance of ensuring that the healthy relationship is based upon an understanding of the different roles—I think that would be a fair description of both sets of evidence we have heard today—and also the importance of ensuring that there is robust policy advice that is non-partisan coming forward from the Public Service. It is on that theme that I am pursuing these matters. I would like to go to a few examples that occur to me where the practice may be somewhat different from the theory.

Firstly, the issue of the responsibilities of ministerial staff hinges on whether executive authority is in fact exercised—that seems to me a critical issue—and how we respond. This committee arose from consideration of the certain maritime incident issue—that is, the 'children overboard' affair. Page 71 of the report of that committee specifically talks about the pressure being mounted by ministerial officers to ensure that certain photographs were released for public purposes. I will just refresh your memory on that particular matter. The report goes to the issue of the Prime Minister's press officer, Mr O'Leary, advising Minister Reith's press officer, Mr

Hampton, that there was a need to have urgent clearance of certain photographs that the Prime Minister had referred to in a press conference earlier on the day of 10 October. The report said:

This backdrop appears to have led the Minister to seek immediate authority to release the photographs from the Chief of Defence Force, rather than to go back through the official Defence clearance process. It also appears to have led Mr Hampton to neglect or downplay the concern expressed by Brigadier Bornholt, Military Adviser, PACC, that the photographs might not depict the events of 7 October at all.

The report goes on to say:

Mr Hampton had contacted the Brigadier's Staff Officer, Captain Belinda Byrne, early in the afternoon of 10 October seeking information about how many children were among the 14 manoverboards from SIEV 4.

When Captain Byrne relayed the information that this may not have occurred at all, the ministerial officer:

... 'was agitated and told her that there were photos of children in the water'.

Further, an attempt was made by a ministerial adviser to directly contact the commander of the RAN vessel. All of this seems to me—and I ask your view on this—to be evidence of a case whereby staffers are seeking to exercise executive authority.

Senator BRANDIS—Mr Podger, before you answer that it should be made clear to you that Senator Carr has been reading not from the evidence but from the extremely controversial and contested conclusions of the majority. He said it was the report. It was not the report; it was the majority report.

Senator CARR—Sorry; I am reading from a document—

Senator BRANDIS—You are reading from the majority report. You are not reading from the evidence. Those conclusions were extremely heatedly contested, so that is a partisan set of propositions you have just put to Mr Podger.

CHAIR—Senator Brandis, you have made your point. I think Mr Podger understands the question, and I assume he understands that Senator Carr was reading from the report.

Senator BRANDIS—The majority report.

CHAIR—He was reading from the report.

Mr Podger—I would prefer not to get involved in the details of that particular case, because there is such a political debating point about what did or did not happen and what conclusions to draw. I will pick up some aspects which, however you wish to view the material about that incident, I think are amongst the lessons that the Public Service needs to draw. I was interested in Peter Shergold's comment this morning—and I have heard him raise this before, particularly in private forums—that in advising ministers, particularly when things are required urgently, we need to clarify where the information being provided has been proved and where it is still subject

to processes of checking. That is one of the lessons Dr Shergold has been passing on which I think is a useful one.

Senator MOORE—Can you repeat that? I am sorry, but I missed that argument.

Mr Podger—When one gives advice to a minister and one adds what the facts are, one should clarify which of the so-called facts are known and which are yet to be properly verified. Dr Shergold has particularly talked about that as being relevant to his department and other departments during the Iraqi conflict situation. He was very much of the view that, when advice was going forward, there was a need to clarify where the intelligence was firm and where it still required more verification.

Senator MOORE—So that is the status of the information?

Mr Podger—It is the status of the evidence lying behind the advice provided. I think that is a useful lesson to take from the CMI episode.

Senator CARR—I appreciate that. The question arises as to whether or not advisers have exercised executive authority. That is the nub of the matter. In my reading of the report, that is an example of how departmental officers have been confronted with a situation where ministers' officers have sought information which has not been properly checked, and have demanded it immediately. Where they could not get it, they kept going through the system to the point where they sought to actually approach the commander of a naval vessel, which by any stretch of the imagination is way outside the normal Public Service processes. Is that not an example you might put of executive authority being exercised?

Senator BRANDIS—If it were true.

Mr Podger—I do not know the details of all that—although I have obviously read it—but let me make what I think is an important point: was the adviser, in making whatever request the adviser made, doing so on behalf of the minister?

Senator CARR—That to you is the critical issue?

Mr Podger—That to me is the critical issue. If in fact a Public Service employee has an instruction from an adviser where there is no doubt at all that that is what the minister's view is, then the Public Service employee will do it. You can call that exercising executive authority; I do not. I see that as being the adviser acting on behalf of the minister. The issue arises when there is uncertainty about whether that is the minister's wish.

Senator CARR—That is right, and this is a case in point.

Mr Podger—The other issue can arise where it is the minister's wish, but the public servant knows that the minister's request may not be a well-informed one. There can be occasions where a clear direction is coming down but it is the duty of the public servant to say, 'I'm not too sure that that instruction, that decision that the minister has taken, is based on all the facts, and it is my duty as a public servant to go back and say, "Can we check that the minister was well informed when taking that decision?"'

Senator CARR—That is right. In the circumstance where a minister wants information immediately, that would tend to act as a frustration of the minister's will, would it not?

Mr Podger—I am sorry. Could you repeat that?

Senator CARR—The public servant may ask whether or not the minister has made a decision based on reasonable grounds when the minister wants information immediately which may not have even been checked and may be outside normal Public Service processes. The very fact that the public servant asks for a clarification may well be seen as frustrating the will of the minister.

Mr Podger—It may be, but a constructive relationship—where the advisers and the Public Service understand their complementary roles—should allow a public servant to ask that question or indeed to seek counsel from the secretary or whoever about the request.

Senator CARR—In the values and code of conduct document which you released last week, which I have had the opportunity to look at, I notice there are some 20 additional pages of material. There are quite significant changes to this document.

Mr Podger—There are significant changes in content and in particular areas where there have been developments over the last 10 years, which we felt we needed to address.

Senator CARR—I think there are about 20 additional pages, give or take a page here or there, but there is a significant change in the document. You emphasise the question of the importance of trust in the relationships.

Mr Podger—Indeed.

Senator CARR—Do you think that it is necessary to emphasise that now? Have there been circumstances that have led you to the view that there needs to be a greater emphasis on those issues?

Mr Podger—No. I think the issue of trust has always been important. You can look at this in the context of the big change of the last 20 years or so, which has been to improve the responsiveness of the Public Service to the elected government. You can see that through a series of changes, starting off following the Coombs royal commission report and then subsequently. But, in looking at that, it is important that public servants understand that issue of trust and cooperation and not feel as if they have independence of the government of the day. I have highlighted in a number of speeches I have given that the values of apolitical professionalism and impartiality do not include independence. We are in fact responsive. The issue of emphasising trust is part of the Public Service understanding how important that responsiveness is.

Senator CARR—In that process, questions have arisen today, and I have referred to the *Griffith Review* comment on the situation in the department of foreign affairs where two former secretaries have indicated their unhappiness about changes that have occurred. They think that a regressive change has occurred. One refers specifically to a culture of compliance. Others have referred to processes, and I have mentioned many today. There are examples where it is alleged that public servants at senior levels take on a more political role in the process of policy

formulation and of matters relating to information that should normally be made public. I speak of research reports, and I have referred to some of those this morning. Can you see a situation where, if there is a culture of compliance within the Public Service, this relationship issue becomes immaterial because public servants at the senior level act on behalf of a minister in a political way irrespective of what they are told directly? They do not require direct instruction, for instance, to act in certain ways.

Mr Podger—I spoke earlier about the intersection between politics and administration, which has always been a matter of debate in public administration, and about how it has become more acute, in my view, in the last 20 years for a range of reasons. I am not suggesting that there has been any major shift to a compliant attitude. Indeed, the smart minister and the smart adviser know that if the department starts to behave that way then it might sort things out in the short term but it will catch up with you in the long term. They appreciate that the frank and fearless advice, if you like, is in their political benefit in the longer term, notwithstanding that it might be somewhat uncomfortable in the short term.

In trying to promote professionalism in the service, I have seen that one of my roles is to remind all public servants of the professional standards and so on that we ought to be retaining in the service. I do not think things have particularly deteriorated but I do think the pressures are greater than they were 20 years ago. This is not one side of politics versus another; it is simply facing reality that the intersection has become more of a challenge that we have to rise to and we have to make sure we make it work well.

Senator CARR—The problems arise in these contexts: whether or not in the value based Public Service that you are championing there is an assumption that those values are shared. My concern is that, firstly, where you have, for instance, the case where former Minister Reith said he did not have to correct the record because he was not told that he was providing information incorrectly, there is no way of checking that; and, secondly, with regard to this climate within the Public Service where there is fear or where people are self-censoring there is really no need for the ministers to intervene.

Senator BRANDIS—We have had no evidence of a climate of fear, Senator Carr.

Senator CARR—Would you agree that that is a possibility?

Mr Podger—I see that my role is to remind public servants of the values and the professional responsibilities they bear. As I said in the submission, because of the increased role now played by advisers in the system, I think there would be benefit in further improving the professionalism amongst advisers, whereby a clearer statement of values and a code of conduct would, in my view, be of assistance. I know there are others who have a different view on that, but my view is that that would help the professionalism of both sides. One aspect would be a reminder to advisers, just as I am advising public servants, about what it is that makes the Public Service the institution that it is within our democratic process. I do not mean by any of that to suggest that there is suddenly a major problem today. This is an issue that has been growing for the last 20 years. My view is it would be best to put it on the table and improve the professionalism on both sides.

CHAIR—Thank you, Mr Podger. We will adjourn, and during the adjournment we will make an assessment about when you will be able to appear again to finish your evidence, if that is required.

Proceedings suspended from 1.35 p.m. to 2.06 p.m.

STRETTON, Major General Alan Bishop, AO, CBE, (Private capacity)

CHAIR—Welcome to the inquiry and thank you for your patience. You were here this morning when I read out the introduction in regard to the way in which committees of the parliament operate, and you should have received the advice concerning the protections and obligations that apply to witnesses under parliamentary privilege. We do prefer our hearings to be in public but if there is something that you wish to raise with the committee in private, we would consider any such request at that time. You have provided us with a written submission and we certainly thank you for that. Would you like to make some opening comments and we will then proceed to questions.

Major Gen. Stretton—Thank you.

Senator WATSON—You might like to comment on some of the matters that were raised today by some of the other witnesses.

Major Gen. Stretton—Yes, I will do that. Although your terms of reference are very wide, my submission relates only to your terms of reference (d) and (e) that concern the accountability of the MOP staff to parliament and the public. My remarks will be confined to the ministers' staff appointed under the MOP(S) Act who work in ministers' offices other than in electorate offices. When you read that I was dealing with ministers 30 years ago when the political staffs were first introduced, no doubt you would have considered that I am well past my use-by date. That might be so, but I appear to be the only witness with a practical suggestion as to how political staff can be made accountable to parliament and the public. Over the years, I have observed the growth in power and influence of these political staffs. It came to a head in the recent inquiry into a certain maritime incident when certain ministers refused to allow their political staffs to appear before a parliamentary inquiry. That was the straw that broke the camel's back and that is the reason why this inquiry has been set up. The main item in it is accountability and that is why I am confining myself to what I believe is the crux of the matter here today.

I was invited by your secretary to make brief comments on other submissions, which I would now like to do. I would have to say that I was absolutely astounded to read on the first page of the submission from the Public Service Commissioner:

> The increasing role of ministerial advisers is one of the most significant means by which public administration has become more responsive to the elected government.

That is what he says on page 1. Of course, the contrary is true. The truth is that the increasing role of ministerial advisers, with their lack of accountability, is one of the significant means by which ministers avoid public scrutiny and thus are able to keep the parliament and the public in the dark.

I have read

most of the submissions to this inquiry, including particularly those from the Department of the Prime Minister and Cabinet, the department of finance and, indeed, the Public Service Commissioner. I have read a lot about the relationship between ministers and public servants. I have read about the Prime Minister's guide on the elements of ministerial responsibility. I have read about codes of conduct, guidelines for official witnesses and even about the contracts for secretaries of departments. I have read a lot about ethics and morality—and I am sure you are going to hear more about that later—but nowhere have I read any practical recommendation as to how MOP(S) Act staff can be made accountable for their actions to the parliament and to the public.

My submission gives a simple solution to this problem. The problem, of course, is that ministerial staff have gone far beyond their original role of giving advice and personal assistance to ministers. According to the Clerk of the Senate, Harry Evans, they make decisions, purportedly on behalf of ministers; they give directions to departments; they control access to their ministers; they determine what information reaches their minister, including information from the minister's own department; and they manage the media. They have become experts in that last role—as spin doctors—designed to confuse and mislead the public. How can they do all this? They can do it because, at the moment, their actions are not subject to parliamentary scrutiny. The parliament or the public cannot discover what ministers knew or did not know about any particular matter. One can easily imagine why ministers or shadow ministers would not be keen to change the present system.

How has this lack of parliamentary scrutiny been allowed to occur? The answer is simple: it is because the MOP(S) Act does not address the problem; it is silent. The simple remedy is to insert in the MOP(S) Act a clause stating that persons appointed under that act can be compelled to give evidence before any duly constituted parliamentary committee provided that such evidence does not include advice given to a minister. In my view, the minister accepts full responsibility for his decisions, and advice tendered by his personal staff is privileged information. That, of course, came out this morning in the questions asked of Dr Shergold about when information becomes advice and therefore should not then be disclosed to the public. I agree with Dr Shergold that advice provided by personal staff to a minister should not be subject to scrutiny..

If you put such a clause in the MOP(S) Act, as I have suggested, there has got to be provision to exempt evidence that might damage national security, jeopardise public safety or disclose cabinet deliberations. However, safeguards would have to be provided in any legislation to prevent ministers using these exemptions to deny parliament the facts about their own actions. You have got to have those exemptions in, but you should take away from the ministers the right to decide whether or not their personal staff should be allowed to appear. A decision about cabinet deliberations, for instance, should be a matter for the Prime Minister to decide. Also, if there were matters such as public safety, the person to decide that should be the director-general of intelligence, not political ministers who want to keep their staff from appearing before committees such as yours. What I am saying is that the only way you are going to make them accountable is to put it into legislation, and the piece of legislation that is appropriate is the MOP(S) Act. Some of these safeguards that I have mentioned would also have to be put into it.

There is another area of evasion of responsibility. The problem is that it is difficult to know whether information given to a minister's office actually reaches the minister. This was alluded to this morning. I am talking about officials or public servants giving information to a minister's

office: does it reach the minister? You are never quite sure. It suits the minister to say, 'No, I never received it.' There is a further thing that was alluded to this morning, and that is whether directions coming from political staff actually came from the minister himself. That is another problem. These problems can also be overcome simply by putting it into legislation in the MOP(S) Act. The legislation should be that any information given to the minister's staff is deemed to have been received by the minister; likewise, any information or directions coming from the minister's office is deemed to be given by the minister—unless there are compelling reasons to the contrary. So if the minister is saying, 'This information might have been given to my political staff in the office, but I did not receive it,' there would have to be compelling evidence to that effect when that official came under parliamentary scrutiny.

The question of a code of conduct, or devising a set of rules, is outside my submission. I am dealing only with accountability, and I do not believe codes of conduct relate to that. You can say ethically what they can do and what they cannot do, but the crux of the matter is getting them to appear before committees such as this. There is an option that might loom up when you come to discuss this matter, and you might think it is something that is going to solve the problem. That is, you are all aware of the government guidelines for official witnesses, which relate mainly to public servants. You might think it is an option—'Let's put appointees under the MOP(S) Act into that category, and this will solve our problem.' Let me tell you: it will not solve the problem at all.

There is nothing in those guidelines whatsoever that compels a public servant to appear before a parliamentary committee without their minister's consent. You can go through that act and see that the minister decides almost everything—who is going to appear and what he is going to say. In fact, the submissions are all approved by the minister. If the minister does not agree, you are not going to get anyone here by just changing those guidelines. If you think that is an easy way out, it is really, quite frankly, a Clayton's decision. You will find nothing in those guidelines that can even compel a public servant to appear without his minister's consent. You can get a public servant before the Senate in other ways—for instance, by a resolution of the Senate. In fact, if you look at those guidelines, you will find it mentioned in brackets that the only way you can make a public servant appear here without his minister's consent is, indeed, by a resolution of the Senate. Finally, before I close—and I am sorry Senator Bartlett is not here at the moment, because he raised this point—I want to address the separation of powers and the Constitution.

Senator WATSON—It was Senator Murray, I think.

Major Gen. Stretton—It was Senator Murray—I stand corrected; I am sorry. Under the Constitution, ministers form part of the executive government. These days, party whips ensure that government members of parliament vote in accordance with cabinet decisions. In other words, the parliament votes, in general terms, in accordance with what the executive cabinet decides. The power of parliament has therefore been eroded by the executive and—unfortunately I have to say this; I am representing the public here—we see too many cases where members of parliamentary committees listen to outstanding arguments about why something should happen and then vote on party lines. That is just a waste of public money and an exercise in futility. Your committee is going to be severely tested—and I am talking about the representatives of the major parties—as to whether you are going to risk incurring the displeasure of your political masters and thus nip your promising careers in the bud—

CHAIR—That's before the public do it!

Major Gen. Stretton—or, alternatively, strike a blow for the power of parliament. You have a great opportunity to try and put some teeth back into the parliament and you can do that by voting for the two simple amendments I have suggested to the MOP(S) Act. As I look around this afternoon at those senators who are here, I am sure you will all have the guts to take this robust and courageous step.

CHAIR—Thank you, Major General. I would like to ask you a question at the outset, and I appreciate we are conscious of the time. You spoke about a minister being deemed to have received advice or information even where it may not have been passed on. One of the key issues that arose in the certain maritime incident saga was that certain reports from the Office of National Assessments were relied upon by the Prime Minister and the minister, which I think it would be fair to say were heavily qualified when they were given. In particular the Prime Minister referred to reports from the ONA just two days before the election but omitted to point out that there was a qualification—a covering letter—from the ONA to that effect. This is a circumstance where advice and information is provided but is not fully outlined in detail, so a misunderstanding or an impression is created which is not true and which is not later corrected.

You have had long experience in the Public Service and in the intelligence area. You might like to comment on the sorts of situations that could arise, like that one, where there has not been a failure to communicate the advice but rather a failure at the ministerial end, either with the adviser, the minister or the Prime Minister—in other words, misuse of that advice—and how that might then be addressed.

Major Gen. Stretton—That is a hybrid sort of situation. The situation I referred to originally was where the minister's office is informed about something, which then blows up, and the minister says, 'I was never told.' On the other hand, if whatever happened was great, the minister will say, 'I was told; that was my idea.' You have raised something that is in between those. If I now put on my old intelligence hat, and think back, things have not changed.

The nature of intelligence is such that you receive a whole lot of reports, some of them conflicting, from all sorts of sources. That raw intelligence should always be kept away from ministers because they will select out of it what they want. From reports, they can select anything they want and make any point they want, because they are all conflicting. We used to grade some of the reports from A1 to A6. First of all, we would grade the source. If he was not a good source he would be A6. It his information was crook, that too would be A6.

But ministers are politicians—if you give them that raw intelligence they are going to use it. Therefore, a great onus falls on the assessment staff. I am talking about the Office of National Assessments and other assessment staff—the Defence Intelligence Organisation. Only the processed, analytical side of the intelligence should be given to ministers. That is how it always was when I was a member of the National Intelligence Committee. It seems to me that intelligence assessment staff should be reminded of these things.

I suppose I have to be careful what I say—though we are being honest here—but the person running an assessment organisation is dependent on the government for the money to run his organisation. When he gets something that looks fairly good, and rushes up to the government

and says, 'Look at this intelligence,' although, as the Chair pointed out, he puts qualifications on that intelligence, the tendency of the government is to drop the qualification. I believe that this is what has been happening. To answer your question, firstly, I believe that assessment staff should be reminded about what they should be passing on to ministers and, secondly, that ministers should use the full information and not cut bits out of it to suit themselves.

Senator WATSON—The comparison between departmental staff and advisers is not as clear as I think you would like to make out. From your experience and intelligence you would appreciate that material coming to hand is, to use your word, 'filtered', because the parliamentarian must select that which is beneficial for the political process. Also, in a sense the highly paid ministerial adviser also receives material which I would think he would have to filter out to some extent. In the first case, that filtering out process is not subject, I don't think, to parliamentary scrutiny—

Major Gen. Stretton—No, it is not.

Senator WATSON—Why should the filtering out process by the adviser then be subject to parliamentary scrutiny as to what information he received and how he conveyed that to the minister? That is the dilemma that I see. You cannot have one rule for one and not for the other.

Major Gen. Stretton—I think you can. I will give you a robust answer. The senior political adviser—which I will call him; we know what I am talking about—is giving advice to the minister, and, as I said earlier, I believe advice to a minister is executive privileged information. The intelligence people giving an assessment to the minister are not giving advice to the minister. They are giving an assessment which they have drawn up from a number of sources; they are not giving advice. So I see a distinct difference between the intelligence assessments going up and, information coming from political staff.

The chief political adviser in a minister's office and the minister are so thick and hand-in-glove that I do not think there are many secrets between them. I cannot think of an example where a political adviser had got hold of something that was a bit dodgy but in the party's interest and where he would keep that away from the minister. He would be the first one into the office to plonk it on the minister's table. That is my assessment.

CHAIR—In the incident that I referred to, it was not intelligence; it was reports of what was alleged to have occurred on the vessel.

Major Gen. Stretton—I think that is intelligence.

CHAIR—In the context that it is not necessarily the same as what happened in respect of the more recent issues over intelligence on Iraq's weapons, because the incident either happened or did not happen on board the vessel.

Major Gen. Stretton—I do not want to open up the other inquiry, but some of this confusion was indeed caused within the Navy itself.

Senator MURRAY—I think there is a subtext behind some of what you are saying. Let me express it this way. An intelligence officer in the government or a policy officer has security of

tenure which is not affected by elections. A minister and his or her political adviser are acutely conscious of the short term: their actions, their performance will affect their job security. In a natural human way then I think you are more at risk with the political persona than you are with the government persona, because they have got more at risk. Therefore, at times you may find people who go that yard too far. That is one of the reasons that the political environment has such strong motivation towards transparency, accountability and openness—being responsible to parliament as a minister.

It seems to me that what you are saying, if you combine it with what I am saying, is that the minister is fully responsible to parliament and the government officers are fully responsible to parliament, through the estimates processes and so on, but in the middle is someone whose actions might on occasion be absolutely critical to a particular circumstance and whose motivations are affected by short-term, very human considerations. Therefore, to my mind there is even more need to ensure propriety in how they operate. Do you agree with that?

Major Gen. Stretton—I agree entirely. You are saying that the political staff will support their minister at all costs—including, probably, the cost of truth—because their very employment and livelihood depends on it. I agree that that is what is going on. I believe this committee has an opportunity to put some accountability into it so that the public will know what is going on. If you do not do something positive along the lines I have suggested or if in your deliberations you do as many committees do and break up on political lines, then nothing is going to be achieved. Accountability is the crux of this inquiry. The only way you are going to get accountability is to legislate for it, and you should be making that recommendation.

Senator MURRAY—I want your reaction, as a person with long experience, to my thesis. My belief is that we have more and more prescriptive legislation—in fact, the Institute of Company Directors sent me a graph some years ago which said we have had more legislation in the past 10 years than in the previous 90—because we can less and less rely on people to do the right thing. The argument has been put to us that, in dealing with this conundrum, we should avoid being too prescriptive. My reply is that we cannot be sure enough any longer that most people, or nearly all people, will do the right thing, and therefore we do need extra prescription which we might not have needed before. I did not put this to him, but Dr Shergold implicitly said there is no such thing as an earlier golden age; it has always been thus. I would like your reaction. Do you think there is any merit to what I have been saying?

Major Gen. Stretton—I agree with you 100 per cent. The fact of the matter is that unless you put some legislation in you are not going to get the result that you should be getting from this committee. That is the whole nature of it. Some people say that we do want any more legislation. Look at the legislation that is coming out. I am suggesting two lousy paragraphs in the MOP(S) Act; it does not enter into the equation. I just cannot understand why in all the submissions I read from erudite public servants—and I have a lot of time for them—there was not one thing that made any recommendation as to how to make these staff accountable to the parliamentary committees. So what was all that about? Perhaps I am just a simple solider, but sometimes when you are simple you can get to the crux of a problem.

Senator CARR—Have you read Don Russell's submission?

Major Gen. Stretton—No, that is one I did not read; I am sorry.

Senator CARR—He does deal with the issues of accountability and implementation. His argument is that there should be a series of changes to overcome this obvious difficulty, the firewall that you speak of. At the core of it, if I read it correctly, he says that there should be a situation where advice to the ministerial adviser is automatically assumed to be advice to the minister. That is the first point.

The second point is that ministerial office holders have the option of acknowledging whether or not advice was tendered. If it was not tendered, the proposition is that advisers are obliged therefore to front the normal accountability mechanisms of the parliament. The third element of his submission, if I recall it correctly, is that there should be a restoration of tenure for the senior Public Service so that, where there is complaint by public servants, there is a chain of command and people in command within the civil service have the capacity without fear of retribution to raise concerns about the behaviour of ministerial staff. What do you say to those sorts of propositions?

Major Gen. Stretton—I would say that, not having read his submission, I think it is quite remarkable that his first two recommendations are exactly the same as mine—or virtually.

Senator CARR—He is clearly a very clever man.

Major Gen. Stretton—Not only is he very clever but he has come to that view without reading my submission. The third point to comes back to what I think you are alluding to. The head of a department used to be referred to as a permanent head, but we have moved away from that. Obviously—it has happened—he can be sacked at the whim of his minister. I take it that Mr Russell is saying that we should have more permanency at the head to stop that.

Senator CARR—He says tenure, not permanent heads. He talks about tenure.

Major Gen. Stretton—Yes. Obviously, if there is more tenure you are more likely to give the fearless advice that everyone was talking about this morning. I think that there is something in that as well. Compared with most other people in the community today, the tenure of public servants is pretty good. If you work for a bank or something, you are not sure whether you will be here tomorrow. I think a public servant has more security of tenure now than most other elements in the community do. I was looking at the top of it, where, indeed, a great change has taken place with the heads of departments. I would like to see a bit more security of tenure there, which I think will help them if they are going to give advice to the government that is not in accordance with government policies.

Senator CARR—I have an entirely open mind on this, but one of the issues that I think we have to confront is enforceability. How do you find a mechanism that means it can have real teeth and not just be sidestepped?

Major Gen. Stretton—I will tell you how: you put a simple paragraph in the MOP(S) Act—

Senator CARR—I have heard you say this.

Major Gen. Stretton—making them accountable.

Senator CARR—That is terrific, but we spend many millions of dollars a year on making ministers accountable. It is not quite as simple as that, in my experience. The point is that administrative practices which are simple, which actually require compliance, often have greater force than devices which are wide open to abuse, such as a legal framework that can be easily sidestepped. If the accountability provisions that currently exist are actually applied, would that not be a stronger position to be in?

Major Gen. Stretton—There is no accountability to parliamentary committees that I am aware of that applies to political staff of ministers. That is why we have this inquiry: to try to address this problem and make them accountable.

Senator CARR—I take it that you heard the submissions of Dr Shergold this morning, who was basically telling us that everything is pretty good at the moment and there are no real problems.

Major Gen. Stretton—That is right.

Senator CARR—You do not share that view?

Major Gen. Stretton—No, I do not—and I do not need 17 advisers with me, either, to come to that decision here on my own; I feel a bit like the Lone Ranger. My view is exactly what I think you are getting at. Remember, I am representing the public here today, and I am sure they do not think that everything is hunky-dory or that everything is going along smoothly. There is an apprehension out there that they are not getting the true story on a number of issues which we are all aware of. Frankly, I would not expect the head of the Department of the Prime Minister and Cabinet to come in here and say, 'This is terrible,' and so on. After all, he is not quite sure of his security of tenure! I have no worries about security of tenure, so I can speak quite frankly and openly.

Senator CARR—I accept what you say: that it is not unreasonable to expect the head of the Prime Minister's department to tell us that things are going very well. It should not surprise any of us at this table that that is the case. You have obviously mixed with a lot of retired former senior military officers, and I presume you also mix with serving officers from time to time. Do you think the opinions that you have expressed have currency within those circles, whether it be amongst retired or currently serving officers?

Major Gen. Stretton—I also have contact with senior public servants. I think that there is a lot of currency when it comes to the personal staff of ministers not being accountable. When a parliamentary committee tries to inquire into something like a certain maritime incident and cannot really get to the bottom of it because these ministers will not let their political staffers appear and tell the truth, I think the people you asked me about, retired people, are quite worried about that. I think the issue of accountability has only come up in the last 12 months. I think there were not enough incidents before that to bring it to the public attention in terms of what it all meant. Now, of course, it is out on the public record.

Senator CARR—A lot of these things become public because members of the armed forces or senior elements of the Public Service make it their business to ensure that this information is made available; that is, there is an unauthorised disclosure. Otherwise, the public probably

would not know about it. We certainly would not necessarily have much to go on in terms of our jobs if it were not for whistleblowers in one form or other. Do you think there is a problem with politicisation of the Public Service? Is this what people are responding to?

Major Gen. Stretton—I still believe that the Public Service—and I am talking about 90 per cent or more of the Public Service—does give their ministers, the government, objective and well balanced submissions. Obviously, in an organisation the size of the Public Service, with a high number of people in the SES, some people—a very small minority—are going to be looking to their futures and do not give this fearless advice; I think somebody said 99.7 per cent do. In general terms, I would have to agree with the Secretary of the Department of the Prime Minister and Cabinet in what he said this morning, in that I think the Public Service, overall, do a pretty good job. I do not think they have become politicised like, for instance, in the United States—which is a different category altogether.

Senator MOORE—You have contributed to this inquiry because you have a personal interest in this area, but in one of your previous answers you said that the public do not think what is going on is hunky-dory. Do you think that the issues being raised about accountability have actually been picked up by the public? Is there public interest in this?

Major Gen. Stretton—There is more interest than there used to be. One thing I find most distressing is when you get into a debate about, say, why we went into Iraq and the question of that intelligence and—although there is a greater awareness than there was previously—the public are not out really demanding the truth; it seems that they put that in the background and get on with their lives. They do not seem to have the sort of response that I would have expected them to have. So there is a certain apathy in the public. We can go to war on what may seem to be spurious grounds, and the public generally accept that. We are just lucky that we did not have a number of casualties and that things did not get a lot worse. If they had got worse, all these things that I am talking about and the anger of the public would come to the fore. But we had no casualties and, although we still have 1,000 defence people in Iraq, they are not in combat jobs. If we had a big force still there and we were suffering casualties like the United States is, I think you would find a great clamour in the public to know more about the intelligence that sent them there in the first place. But, because there were no casualties and we have gone back to normality, I do not think it has become the major issue that I hoped it might have become.

Senator MOORE—Your premise is that actually directing, through the MOP(S) Act, ministerial staffers to appear before committees would create an environment where there would be greater accountability. I think that is a step, but my concern is that once you start bringing in all the preclusions about what can be used to say that there is no necessity to answer, you actually then begin pulling back the accountability aspects. We can get anyone to come and talk to a committee, but once you actually say 'confidential', 'cabinet-in-confidence', 'military security', 'private business arrangements'—all the different things—you actually weaken the premise of getting someone to come to a committee. How do you balance that?

Major Gen. Stretton—I did say that the decision as to who should be exempt under these various matters should not be in the hands of the minister; that it should be in someone else's hands. As you rightly are suggesting, ministers will use that to make sure no-one comes before the committee. There has to be some provision for exemptions. You might have to set up some sort of commission or something that will decide these things. You might give it to the judiciary.

You might have public servants or a committee of people to do these things. But, as you rightly say, it cannot be left in the hands of the minister whose personal staff are being required to attend.

CHAIR—There being no further questions, I would like to thank you for appearing before the inquiry today and for your submission. We appreciated it very much.

Major Gen. Stretton—Thank you.

[2.54 p.m.]

TIERNAN, Ms Anne-Maree, Doctoral Candidate, School of Politics and Public Policy, Griffith University

WELLER, Professor Patrick Moray, School of Politics and Public Policy, Griffith University

CHAIR—Welcome to the hearing. I apologise for the delay in your appearance, but these things do happen from time to time. You have been provided with advice on the protections and obligations that apply to witnesses appearing before parliamentary committees and the parliamentary privilege that attaches thereto. We prefer our hearings to be in public, but if there are issues you wish to raise in camera we would consider such a request. Do you have any comments to make about the capacity in which you appear today?

Prof. Weller—I am appearing as a person who has had an interest in such subjects over some 25 years.

CHAIR—We have received your submission, and we appreciate that. Would you like to make some opening comments before we proceed to questions?

Prof. Weller—I would like to make two brief comments. The first point is that our general proposition would be that we should design some sort of code of conduct for ministerial staff—a code of conduct which makes it clear what their responsibilities are and how they relate to the public service. At the moment we have codes of conduct for public servants and for ministers, and we have a group in the middle for whom there is no clear indication of where they stand. Their role has changed quite dramatically over the last 25 years. The cost is now some $37 million, if you work it out—there are 370 of them. They play a substantial role and the theories which underlay the MOP(S) Act and their appointment at the time of the Whitlam government, when they were first appointed, do not seem to have kept up with the numbers, experience and influence of, ministerial staff who now are very substantial actors in the political process—and quite properly. The argument is not whether they should exist or not but what should the code of conduct be? How should we understand what their roles are? Particularly as the Prime Minister noted yesterday that they have often ceased to be public servants. There are, more and more, people being appointed by ministers and coming from outside the public service, so they come without any experience of the public service and the different roles that the public servants and the ministerial staff should play.

The second point is the question of accountability. We know that whatever the theory says about everything that goes to a minister's office is deemed to be known by the minister or every request that comes from a minister's office is deemed to be directly from the minister, that is no longer true. We know that much of the responsibility is, in practice, delegated. We know that much of the time ministerial staff are anticipating what ministers may want in the information that they are trying to collect. It is of course impossible that 30 people in a prime minister's office are all working hard and collecting information and the prime minister knows everything that all of them know. There would be no point having 30 people there if that were actually true.

You can quote a former adviser to a prime minister suggesting that it is a bit like a coffee filter—a vast amount is poured in one end and is dripped out the other end on the basis of what the prime minister requires at any given moment. We also know that on various occasions information has not been passed on and this at different times has led to resignations of ministerial staff. We know that the system as it is devised under MOPS does not work perfectly.

It seems that we have reached a situation, when we talk about accountability, where there is a need for some sort of accountability for this large number of people on the public purse with somewhat ill-defined responsibilities. Our proposition is that, when there is an inquiry into particular events, it is appropriate that the chief of staff, the head of the office or the principal policy adviser appears before such committees as this. Not to explain what advice was given to the minister or the prime minister—heads of departments are already absolved from that; it is a matter of policy and they do not respond to those questions—but at least to explain what the management was, what happened to the papers, what happened to the information that came into the office and where it went after it got to the office so that there is some sort of management accountability. This would extend the accountability that has developed in relation to the public service over the last 20 to 25 years to what has, since that time, been a new growth area in the functions of executive government—the ministerial staff.

We are suggesting a degree of increased accountability in ministerial offices personified probably by the chief of staff who is responsible for the management of the office to allow parliament to exercise some sort of scrutiny. It is not an open slather but nor is it saying that the system works perfectly at the moment, because the evidence suggests over the last 10 or so years that it does not.

Ms Tiernan—The other major thrust of our submission, I suppose, was that while the accountability issue is a very important one and one that people have become very concerned about, fundamentally a lot of the issues and anxieties are about the management of the staff. A lot of the points that we made in the submission are about the lack of management in what is now a substantial and complex organisation of 372 people. While we acknowledge that the accountability arrangements are crucial, here is a system that has evolved—it has not been designed. Therefore, you are getting problems, difficulties and confusion because of the lack of design that is implicit to the system. A lot of the assumptions and the beliefs on which the system is operating have become outdated by practice, and that has been apparent in a lot of the evidence this morning.

The staff need to be managed. Any organisation needs an appropriate set of governance arrangements—a big complex one working in a political way certainly needs to have those arrangements. The current system makes ministers responsible for that management—creating an additional burden on ministers to do something they do not have the time to do. In practice, ministers are delegating that authority to their chiefs of staff, and hence our recommendation regarding the chiefs of staff—often people of substantial experience and equivalent to first assistant secretaries in the Public Service in terms of their remuneration and the levels of responsibility that they are exercising. So they are not 25 years old and inexperienced, they are people to whom you could appropriately delegate that authority and, in practice, that is happening anyway.

A lot of the issues that we were emphasising in the submission were about the need for management, the need for a more robust system of management of the ministerial staff. The other point that we made a number of times in the submission is the lack of transparency about the system. I am doing a significant study at the moment of ministerial staffing arrangements under the Howard government, and I learned more this morning from the department of finance submission than I have been able to find out in a lot of the research that I have done so far. So transparency is a crucial issue that needs to be looked at as well.

CHAIR—Thank you. If an accountability mechanism was established whereby chiefs of staff and ministerial advisers were required to appear before committees in specific instances—I think that is what you were getting at—how do we ensure that such a procedure is not perceived to remove the responsibility of the minister?

Prof. Weller—It seems to me that you are perceiving to remove something which only half exists at the moment. We have had a number of occasions where the buck has actually stopped at the ministerial office. Mr Anderson had two members of his staff resign because information on road funding did not get passed on to the minister. Likewise on the travel rorts situation, Mr Grahame Morris resigned for similar sorts of reasons—information was not passed on. So I think the notion that the minister is responsible for the office is akin to an old-fashioned notion that the minister is responsible for everything that goes on in his or her department. That never actually existed, although it is technically at the core of ministerial responsibility. The minister answers for his or her department. The minister explains to parliament the shortcomings that might occur within the department, but the minister does not resign over it and is not personally responsible for it.

Senator BRANDIS—Isn't there a very clear distinction between the matters concerning which a minister has discussions with his public servants and the matters concerning which a minister might have discussions with his advisers? In particular, one would not expect a minister to be having discussions with public servants about politics.

Prof. Weller—No.

Senator BRANDIS—But that is exactly what a minister would be expected to be having discussions with his advisers about—political strategies, tactics and political implications. Not just a policy but the political approach to issues of the day.

Prof. Weller—Yes.

Senator BRANDIS—You seem to be agreeing with me. Don't you think that suggests a fundamental distinction between the extent to which there ought to be accountability between the department and ministerial staff?

Prof. Weller—I hope I was very careful in saying that the accountability should be for what happened—the paperwork coming in, the advice that was coming in—not for the conversations which were being held with the minister.

Senator BRANDIS—I understand the distinction of course, but I suggest to you that that is a distinction that might be more vivid in theory that in practice. Let me give you an example: let

us say that an issue arose as to whether or not a minister was aware of a fact at a given point in time. If members of the ministerial staff were answerable to parliamentary committees, could they not be asked, 'Did you have a discussion on this topic with the minister on or before such and such a date or did you convey a piece of information to the minister on or before such and such a date?' I would not have thought that was a question about policy; it would be a question about whether an event had or had not happened.

Prof. Weller—Yes.

Senator BRANDIS—And yet I can readily imagine circumstances in which, in the rush of political events, it would be almost impossible to have a free and unconstrained discussion with a minister about an emerging political circumstance if the advisers felt they were under the constraint that they might, at some time in the future, be required to expose publicly the fact of discussions having happened. Can you comment on that?

Prof. Weller—It is a fair comment. The question seems to me to be if the department, for instance, has provided a piece of information to the adviser and the department is working on the assumption—and this is the old constitutional myth, as I would call it—that informing the adviser is the same as informing the minister and if you then reach a situation in which the minister states, 'I was not told', then somewhere there is a problem. The problem exists that the advice was not passed on to the minister despite the assumption that the minister knows because the staff is told. If they are the facts, then it seems to me not unreasonable that a parliamentary committee—not on a fishing expedition but investigating a particular set of propositions—

Senator BRANDIS—But parliamentary committees are always going to be on fishing expeditions because the opposition quite properly is going to try and explore areas of vulnerability of the government. That is quite proper.

CHAIR—Senator Brandis, let Professor Weller answer the question.

Prof. Weller—But there is a difference between a fishing expedition that examines what ministerial staff have been doing and a fishing expedition which looks at a particular case and asking what sort of evidence might have been presented in that sort of case. Those are the ones which, again, I hope I was quite careful in trying to express what I referred to. Otherwise you end up with what I have referred to elsewhere as a black hole. It goes into the minister's office, the minister states the minister did not know and there is no accountability anywhere for the sorts of things that happened. That is the black hole I am interested in trying to close when I talk about accountability. I am not going to suggest it is a perfect solution, but I am suggesting it is possible to say the minister was or was not told a piece of information which has come from the department.

Senator BRANDIS—I would like to finish on this point, Chair. Professor Weller, the problem is the course you are recommending seems to me, as a matter of commonsense and practical politics, more likely to turn the black hole into a bottomless pit.

Prof. Weller—I thought black holes were bottomless pits.

Senator BRANDIS—Touché—a black and bottomless pit. If I can use an example that is very pertinent to us, last year you wrote to book about the children overboard inquiry called *Don't tell the Prime Minister*, which I interpolate to say you published it before the evidence had finished. The gravamen of your thesis, as I understood it, was that there was something a bit odd about the Prime Minister not having been informed about certain alleged events.

If ministerial advisers were operating under the constraint that they never knew whether or not they might be cross-examined by a parliamentary committee about what they told ministers or what information they conveyed to ministers on a given time—and these conversations happen in real time before you can anticipate what the political implications of them will be—don't you think it more likely that ministers would be told less or the information would be more guarded, so the very vice against which you warned in your essay would be exacerbated?

Prof. Weller—I would guess that the opposite would actually happen. Let me make two points about that, since you have brought it up. We know from the evidence that was available when I wrote the book—and there was not a lot more that came out—that a number of advisers who spoke either to the ministers or to the Prime Minister had been informed of the doubts, at the very least, about the incident and certainly about the incorrectness of the photographs. The Prime Minister assures us that he did not know. The only reasonable assumption you can make is that he was not told, even by people who knew. And he says that, had he known, he would of course have corrected the public statement. The only reasonable proposition was that, in an election period, people chose not to put the Prime Minister in a position where he had to stand up publicly and say 'Sorry, I got it wrong.'

I have been assured by people since then that on any occasion the minister or Prime Minister was wrong and these people found out he was wrong they would almost run to tell him he was wrong —and they may do in that sort of period. The only evidence that we had, which your committee collected, was to suggest that they had not run to tell him that he was wrong; they had actually left it until after the event. I think we would actually be in a position in which, knowing that they might be called before a committee, they would be more likely to abide by the constitutional notion that telling me is the same as telling the Prime Minister. But that of course is something which becomes supposition to be tested if it ever happens.

Senator BRANDIS—Quite. I think one of the human dynamics of this—

CHAIR—Is this a question, Senator Brandis?

Senator BRANDIS—Yes, it is. One of the human dynamics of this is that ministerial staff, because of the different function they have from senior public servants, do feel a quite proper concern to protect the interests of their minister, just as opposition staff members would feel a corresponding imperative to protect the politician they serve—public servants do not, or should not.

Prof. Weller—It is precisely because they feel the desire to protect the Prime Minister or their minister and are therefore not passing on information that the idea that telling the staff is telling the minister is not a viable proposition—on your own explanation.

Senator BRANDIS—But I did not embrace that theory. I understand the theory, but I have not embraced it myself; I just invited you to comment on the consequences.

Prof. Weller—If you embrace the notion that telling a staffer is telling a minister, the notion that they are attempting to protect the minister suggests a flaw in the system which is fairly substantial. It seems to me that that is the sort of flaw that we need to try to somehow close—the notion that something comes back after the event saying, 'Not seen by the minister.'

Senator BRANDIS—It is only a flaw depending on your definition, Professor. If your definition, or the metaphor you use, is that the ministerial staff are not the minister's alter ego but a filter, from a constitutional point of view, what is conceptually wrong with the idea that staff can act as a filter for information?

Prof. Weller—I do not have anything wrong with the notion, because staff must and will act as a filter. As I say, the Prime Minister has 40 people in his office. They must act as a filter for information. But if they are acting as a filter for information, you cannot take the proposition that telling a staff member is the same as telling the minister. Therefore I would argue that we have to have some sort of accountability that goes with it when they choose to act as a filter.

Senator BRANDIS—I can understand why the last proposition could follow from the two previous propositions, but I am not sure why it necessarily does. Let us take transparency as an absolute value—which would seem to be close to what Ms Tiernan was saying. I dispute entirely that transparency is an absolute value.

Prof. Weller—You said earlier that, inevitably, we have some sense of delegation. It seems to me that if you delegate you create an accountability for that which you have delegated. If you are delegating to the staff the right to act as a filter they should be accountable. If that means material is consequently not coming to the minister, because of that delegation and that filter, it seems to me they are therefore accountable for that filtering.

Senator BRANDIS—Dr Shergold's solution to that conundrum was to say that the minister is responsible at the political level and can be punished at the political level—as, arguably, Mr Reith was—for a delegation which operates as a constraint on the passage upward of information. The minister might be politically culpable, and that is the sanction. You do not need the additional mechanism of requiring the kind of accountability by ministerial staff to parliamentary committees which is appropriate in the case of public servants.

Prof. Weller—One argument is that the system works. But I do not think, from looking at the system and the problems that have occurred in the last 10 to 15 years, that it does work, because I do not think the other side of the proposition—which is that ministerial staff with delegated authority are acting with the minister's knowledge—is sustainable either.

Senator BRANDIS—It is what a lawyer might call a deemed liability. If you delegate and, as it were, turn a blind eye, you are deemed to be liable for that which you do not know, whether or not you in fact know it. But the minister pays the price in the political marketplace.

Prof. Weller—The other is plausible deniability. We want to be able to explain that we know so much but not more in certain circumstances. There are two ways of looking at the same

question. My question is: do we make people accountable for what has been delegated to them de facto, if not de jure?

Senator BRANDIS—I think even the word 'accountable' is one of those words, like 'transparency', that tends to evoke a warm response in intelligent people. A more appropriate word might be 'responsible', rather than 'accountable'. Responsibility can have implications other than disclosure. It might, for example, mean that somebody is punished at the political level, as Mr Reith arguably was, albeit without an accountability process of the kind that you have described. That might be the more appropriate solution.

Prof. Weller—I am not sure Mr Reith's punishment was that onerous.

Senator BRANDIS—His reputation was played fast and loose with.

Prof. Weller—There are political sanctions.

Senator BRANDIS—That is my point.

Prof. Weller—I accept that. But it seems to me that there should also be some administrative procedures by which we maintain some sort of accountability for what are fundamentally important actions by a group of people who did not exist 25 years ago. Even at the time of the MOP(S) Act, if you looked at the Fraser government the Prime Minister's office was fairly strong but the majority of others did not even have press secretaries. We hear a lot about the Prime Minister's office. There has been growth in all the other offices as well, and the people do not have the same sort of profile but do have the same sort of influence within that portfolio.

Senator BRANDIS—I will finish on this point, Professor Weller.

CHAIR—Order! This started as a short interruption to my question—

Senator CARR—Very rude too, I might say.

CHAIR—but I have allowed you to continue.

Senator BRANDIS—It has been very illuminating—at least, it has to me.

CHAIR—Please ask questions rather than make points.

Senator BRANDIS—I will finish on this. The proposition I put to you, Professor Weller, is that the series of propositions you just expressed only follows if you think that the political sanctions, as they currently exist, are insufficient. Do you agree with that?

Prof. Weller—No, I do not agree with that, because I think there is also a proposition that an understanding and tracing of the administrative process is desirable when particular investigations are taking place.

Senator BRANDIS—So you think it is intrinsically desirable?

Prof. Weller—I think it is intrinsically desirable. I think what happened in your inquiry last year is that, basically, you hit the ministerial staff, and there were no questions there. It was a very interesting inquiry. Some of the answers which it would have been useful to know were intrinsically impossible to find. I do not want to know who gave advice to whom or who gave the political advice, although we got some of that from the affidavits which came out to the Bryant inquiry. But it does seem to be worthwhile for people to say, 'I got this information and this is what I did with it.' I think if we are going to question public servants then ministerial staff, who after all are payed for by the taxpayer, should also be publicly answerable for their actions.

CHAIR—Senator Murray, I think you had some questions.

Senator MURRAY—I was just seeking a short interruption of an exceptionally short interruption from Senator Brandis. I have lost track of whom he interrupted, it was so long ago! My short interruption was to be this: the weakness in the discourse between the two of you, and what was missing in your answers, Professor Weller, was that you cannot test the liability and, therefore, you cannot impose the political punishment if you cannot get at the people who can tell you what the liability was. That is where the whole thing falls down. You can scoff at accountability all you like. Accountability means pitching up here and answering the questions, which they did not do. The minister was not punished, and neither was the Prime Minister punished.

Prof. Weller—We do not know who said what to whom. That is the answer. There have been occasions when ministerial staff have been held accountable but not necessarily through the process of these committees. There are other mechanisms, and sometimes it is the political process which catches up with them.

Senator MURRAY—No, the reverse applies: if those people had been questioned and it had been established that the minister and Prime Minister were truly not guilty of anything, Mr Reith might still have his job here in the parliament.

Prof. Weller—I think that, by the time these had come, he had already chosen to go.

Senator MURRAY—That was one short interruption. I have one other question.

CHAIR—Maybe something good did come out of that inquiry!

Senator MURRAY—One of the problems we have not approached here is the assumption that the minister answering for his department—both the Public Service and his personal offices—is present to answer the questions. In fact, in the Senate, as the house of accountability, that is often not so. You have a minister at the table who is not the minister responsible, who does not know how the office works and who might know some or all of the personalities but probably more on a social or occasional basis. So you get that extra degree of separation. I think Ms Tiernan was alluding to that earlier: the difficulty with accountability is the degrees of separation from the person who actioned the circumstance. In those situations it would seem to me to reinforce your idea that senior personal advisers—not necessarily chiefs of staff; probably those within the category of seniority—should front up because there is no-one else. There is not the minister who was there and there is not anyone else who can answer. What do you say to that?

Ms Tiernan—I think you can expect that that will be resisted. People will not want to front up and answer those kinds of questions. We suggested the chief because the chief is a senior person—the most senior person in the office. I am not sure why you would say it should not be the chief but someone else.

Senator MURRAY—I did not say it should not be the chief. I would not necessarily restrict it to the chief; I would restrict it to senior advisers—in the same way as we do not restrict the Public Service to the secretary; you have the first assistant secretary and the second assistant secretary and other secretaries. There is a certain level of people who come here.

Prof. Weller—It would not have to be the chief of staff. We mentioned it because it was an identifiable person in each office who might therefore be conscious of the fact that he or she could be called.

Senator MURRAY—I do not think it is so much about that. I would rather you focus on this issue of a degree of separation because, more commonly than not, we have a minister representing a minister here, not the minister responsible.

Prof. Weller—The decision would obviously have to be made by the parliament—that ministerial chiefs of staff could appear before Senate committees—which raises some interesting interjurisdictional or inter-house issues. But there are no restrictions on public servants appearing. Because the Prime Minister is in the lower house, his secretary still appears before Senate committees. It therefore does not seem to me to be impossible to make the same sort of suggestion about ministers who are in the lower house.

Senator MURRAY—I am not sure you have understood my question. Let me try one last time. You have indicated that one of the problems with the accountability process is that key participants in that process are not able to be made accountable.

Prof. Weller—Yes.

Senator MURRAY—I am asking the question: do you consider that, where the minister directly responsible is not available to be made accountable—which is more frequently the case than not—the problem is made worse by that circumstance?

Prof. Weller—Yes. I was assuming that I agreed with you and then moved on to the next point, which is that it is then a question of whether or not the chiefs of staff of ministers in the House of Representatives could be called before a Senate inquiry, which is the case with departments, although, of course, there is a ministerial representative there. So in a sense I was agreeing with you and moving on to the next point.

Senator MURRAY—Thank you.

Senator CARR—If I could take you back to your submission, this morning we have heard at length the views expressed by the head of the Department of the Prime Minister and Cabinet, Dr Shergold, that in essence things are pretty good and there are no real problems at the moment. I did not expect him to say much else but, nevertheless, he did say it. He also said that he thought that the critical ingredient to the success of this great mixture is the capacity to have

complementary but different roles for the ministerial advisers and senior public servants. He then went on to say that the critical issue here is one of trust. In your submission you point to your research work. Ms Tiernan and you have presumably undertaken research work on the two key points about the confusion of roles and the level of trust that indicates that the system is not working. You say:

Our research has identified a pervasive atmosphere of uncertainty and mistrust in the relationship between ministers and the public service ...

What is the basis for that statement?

Prof. Weller—The basis for that statement is a book I wrote a couple of years ago on secretaries of departments. I think we perhaps overstate it there, but there is a certain unease which has certainly developed—

Senator BRANDIS—Was that document—

CHAIR—Order, Senator Brandis!

Senator CARR—Let him finish the question. You will have plenty of chances to give him a hard time.

Prof. Weller—over the last decade. It is partly connected with contracts; certainly, if you talk to every secretary of departments, it is about the growth of ministerial staff; and it is partly about the greater accountability. So there is a range of issues which has made what was once a very cosy relationship a lot less cosy, a lot more competitive and a lot more contested. There is an unease which I think you can trace quite a long way back. Contracts came in in 1993-94, so it was at least then, but people were being shifted around some time before that. It is a combination of factors, which I think is the evolving world. The days in which the minister spoke to no-one but the heads of departments and very few others, which existed in the sixties, have long gone.

The second point is that this is not a universal factor. You can find secretaries of departments who get on extremely well with ministers of either side and you can find the same secretaries do not get on with other ministers, equally of either side. So you have a rise and fall of relationships. Somebody said to me once, 'The relationship between a minister and a permanent secretary or a departmental head is like a horse and rabbit pie: one horse, one rabbit. The problem is in deciding which is which.' At times the minister is dominant and at times the public servant is the more dominant of the two forces in those sorts of cases. It varies. McEwen and others were extraordinarily dominant ministers, Whitlam was an extraordinarily dominant minister, and I will not name the rabbits but there were some of them, too, at different times, and everyone could probably mention them.

Senator BRANDIS—I think that during the Whitlam government some of those public servants felt that they were bunnies.

Prof. Weller—I do not think they felt that they were in the spotlight that much.

CHAIR—Senator Brandis, you might concentrate on the hare! Stop interrupting.

Prof. Weller—I have completely lost my train of thought.

Senator MOORE—I might step in there.

Prof. Weller—Step in and help.

CHAIR—Could you please not interrupt, Senator Brandis.

Ms Tiernan—I have similar findings in my interview data from my study: people being unsure about what is going to happen if they do not do what a ministerial adviser asks them to do or people being concerned that what they are saying is being misconstrued. It is around the multiplication of channels into the department. It goes to the question of experience that was raised this morning. Dr Watt said that it is mostly SES people who are dealing with ministerial offices. The change seems to have been in the last five to six years and, probably starting from the Keating government, it is coming in at lower levels of the bureaucracy where people are not so sure—not as au fait—about dealing with ministerial offices. It makes them very nervous.

Prof. Weller—When you get rung up and told, 'I want this now,' it is all very well to say, 'Go to the secretary and complain that you are not being properly dealt with or your issues are not being addressed adequately,' but it does make the middle ranking SES people comparatively nervous about what is happening in those sorts of circumstances. Again, I can trace back to staffers who have done that over the last 10 years. It is part of this notion of functions and precisely what the role is. You do not have to go to the extent of saying, 'I am your boss and I am your boss's boss,' which was of course the CMI incident, but there are other cases. I have talked to staff who have said that they used to pick up the phone and yell down the phone, 'I want this now. You are being too slow.' Does the minister know that this is happening? Some of the time they may; some of the time they may not.

Senator CARR—Would you concur that there is this climate of fear that I speak of in some quarters?

Prof. Weller—I think 'climate of fear' is fairly extensively overstating it. Of all the people I have come across, none of them were scared of their minister, although several of them said that several of their colleagues were. It is all second-hand and that is the problem with the discussion. They say, 'I am fine—'

Senator CARR—We have a similar problem with universities: one university is terrific but everyone else's is in crisis. But the evidence that is coming through to me suggests that there may well be a culture of compliance or self-censorship developing. Would you agree with that conclusion or contention?

Prof. Weller—In my book on the children overboard issue, I commented that there was a growing emphasis on a willingness to provide the evidence rather than to check the evidence. I argued that there was a decline in the necessary scepticism that goes with frank and fearless—if you want to use that term—advice. The rush in that instance was to say, 'Here is a story which has been passed on by phone. How can we find evidence that backs it up,' when they were not looking for evidence—which was equally there, saying, 'This did not happen at all.' It is a climate to some extent of a bias towards action, if you like, but I would not like to turn it into

suggesting that that is what is delivered. Communication has got so fast now that things can move along the line without being checked in the way that they used to be. Mobile phones, faxes and emails mean that things whip along—

Ms Tiernan—Without the kind of quality checking that would have once happened—that is, going up through a hierarchical arrangement.

Senator CARR—Have you come across this bias for action before?

Prof. Weller—It is a new expression. I have heard it in effect many times before: people saying, 'We are not worried so much about record keeping; we are worried about getting things done. That is what we are going to be judged on.' It is the 'can do' generation. The Thatcher line 'Are they one of us?' did not mean, 'Are they conservatives?'; it meant, 'Do they have a bias for getting things done very quickly without the necessary advice?'

Senator CARR—Do you think that that is evident in the Australian Public Service?

Prof. Weller—I think that there has been a push more and more. It is pushed towards outputs—that is not a bad thing in itself—and towards getting some quick results. That is part of the notion of being responsive to the government. I think the balancing act there is being responsive and sceptical. This is not saying that the government is wrong or that we are not doing what the government wants. There were questions raised this morning about the best way to do it. Senator Murray asked a question about what a public servant would do if they thought the government was wrong in a commitment. The answer I would have received from two or three senior public servants in those conditions is that they would have said to the minister, in effect—I am sure they would not have said it in these words—'If you want to go to hell, don't go to hell in such a bloody silly way; I will help you get there in a way which protects you.' So on a number of occasions like that the public servant would have said, 'If that is what you want to do, there are better ways of doing it than the way you are proposing.' That is not saying, 'We aren't going to do it.' It is saying that there are good and bad ways of achieving that sort of objective.

Ms Tiernan—Perhaps that is where some of the uncertainty is: how far to push and how often to push something, rather than anything else.

Senator CARR—Finally I turn to the issue of remedial action. I take it from what you are saying that you believe the current situation is not satisfactory.

Prof. Weller—Yes.

Ms Tiernan—Yes. I think the current system does not serve ministers as well as it might.

Senator CARR—I have referred to Dr Don Russell's submission, which runs counter to the proposition you are putting to us in terms of the new regulatory regime that you are suggesting is required. Have you had a look at that submission?

Prof. Weller—Yes.

Ms Tiernan—Yes, a quick look.

Senator CARR—Can you give me your response to it? What would be your critique of this model?

Ms Tiernan—How do you critique someone who has worked in the Prime Minister's office?

CHAIR—Just be fearless and frank.

Ms Tiernan—My understanding of what Don Russell has said, and I have heard his public comments on other areas, is that he has suggested the head of the Prime Minister's office plays an important role in setting the tone across government and that that person is the notional head of the staff. So I do not think that is too different from what we have suggested. I think he has been quite clear that the responsibility for managing the system needs to stay with the political executive. I do not particularly have a problem with that. I think that is a more practical approach to the extent that you will get more cooperation if people feel they are not ceding something that they will lose control of, which I think are some of the concerns that Senator Brandis was expressing—concerns about spending your whole life in committees answering questions about things that are not material. I do not have a particular problem with Don Russell's proposals there. He talked about some of the same issues as we did, such as the need to train people, the need to be clear and the need for a demarcation of roles.

Senator CARR—Those are all the points of agreement. I am interested in the points of disagreement and, in particular, where he says that there is no need for a code of practice because, in effect, you are legitimising the separation of responsibility from the minister.

Ms Tiernan—Isn't he saying that the code of how we want things to be done around here is for the Prime Minister and the Prime Minister's chief of staff to enunciate?

Senator CARR—He says all that, but he does explicitly say that it would not be appropriate to have codes or, for that matter, for advisers to appear before parliamentary committees unless the minister gave them up by saying that they have not actually fulfilled their functions. He works on a number of assumptions; namely, that advice to the office is in fact advice to the minister and that ministers will act consistently with their responsibilities to parliament. Where that does not happen his proposition is that, in essence, the minister has the capacity to cut adrift a wayward staff member. He takes the view that the minister cannot reasonably be presumed to know everything that goes on his office, given that he has a staff of 30 or thereabouts, which is essentially your point. He goes on to say, however, that the responsibility in a political system such as ours lies with the minister. What do you say to that?

Prof. Weller—In theory, it is right. I would not want to put words into his mouth, but he will probably tell you that anything he knew the Prime Minister knew—and it may or may not have been true; they had a very close working relationship.

Senator CARR—The point on that occasion is that it is only when the Prime Minister says it is not true that it makes a difference.

Prof. Weller—I am sorry, you have lost me.

Senator CARR—What he is saying is that if the minister says, 'I was not informed'—as happened with Howard in the 'children overboard' affair—then those staff would appear before parliamentary committees.

Prof. Weller—Yes, but that is actually asking for a big political decision from somebody to cut them loose, which has happened. It has happened in the past. I would actually prefer not to leave everything exclusively in the executive's hands in those sorts of circumstances.

Senator CARR—That is the point. We have to grapple with this issue.

Prof. Weller—I think I am coming back to the notion. Intrinsically, that it is useful to know that these sorts of things happen—not easy, but intrinsically desirable if there is to be an investigation.

Senator CARR—Surely it happens where the minister says it has happened or, more to the point, where the minister says, 'I was not advised.'

Prof. Weller—Yes, but the moment the minister says, 'I was not advised,' you cannot hear them and you cannot see them.

Senator CARR—Under this proposal, you automatically get the staff member to appear. It would therefore be very serious for a minister to say, 'I'm cutting loose my chief of staff.'

Prof. Weller—Yes.

Senator CARR—What is wrong with that?

Ms Tiernan—It might give you an issue of recruitment and retention, I would suggest.

Senator CARR—That might be the point.

Prof. Weller—I think it is an alternative way of skinning the cat. I do not think there is only one way of solving these sorts of problems.

Senator CARR—The reason I am asking you these questions is that, as I said before, I am personally of the view—my colleagues may well have a different view, and I suspect they do—that these issues are seriously matters for judgment.

CHAIR—Major General Stretton will be interested to hear of this.

Senator CARR—I would like to know whether, in your judgment, the proposals that Dr Russell has put to this committee are workable. That is why I am asking you. If you cannot answer—because I have sprung this on you—you may wish to take this on notice and come back to us with an examination of the detail of the submission.

Prof. Weller—It is possibly workable.

Ms Tiernan—There would be a bad atmosphere in the office, though, if that were the case.

Senator CARR—But that is exactly the point.

Prof. Weller—But that says the atmosphere has gone anyway.

Senator CARR—That is exactly the point. If you do not have the confidence of your minister, you should not be there.

Ms Tiernan—But if you do not have the confidence of your minister, you probably are not there because you have probably been cut adrift already—

Senator CARR—That is the point. I am saying—

Ms Tiernan—and then your responsibility to appear is negated.

Senator CARR—All I am saying is that the evidence would suggest that, under the current arrangements, a minister can simply say, 'I wasn't told; I'm not accountable,' which is the thesis you are putting to us.

Prof. Weller—And indeed can then promote all the people who did not tell him.

Senator CARR—And that is exactly what happened with Ross Hampton—promoted to a more senior position, you could say—and a whole series of other people.

Ms Tiernan—The system does not preclude that.

Senator CARR—How can we fix it?

Prof. Weller—That is one way; our way is another way. I am sure you can come up with a third.

Senator WATSON—I am having a bit of trouble accepting some of your alleged practices, Professor—for example, this climate of fear from advisers going into the middle ranks of public servants. I just do not accept that. The usual practice is either to go through the head of the department for the more serious issues or to have a parliamentary liaison officer who takes the issue and directs the question to the relevant official. If it is highly sensitive, it goes up; maybe if it is purely administrative, it can go down. But it still comes back through the parliamentary liaison person or the top. I am talking about the federal level.

Ms Tiernan—We are talking about the federal level.

Senator WATSON—That is why I have a lot of difficulty about this climate of fear and almost intimation that you are expecting.

Ms Tiernan—The telephone and email—

Senator WATSON—That is not the way we operate.

Prof. Weller—Certainly—

Senator WATSON—Maybe in a state jurisdiction—

CHAIR—Order! It is important that only one person try to speak at a time, for the purposes of Hansard. I think you have asked the question, Senator Watson. Would you let the witness answer?

Prof. Weller—With respect, Senator, it would be very nice if things went through the head of the department or the liaison officer, but—certainly from the people I talk to around the Public Service—that is no longer true. Some of the evidence we heard this morning was that people would ring around—certainly all around the senior executive service from the minister's office and increasingly down into the lower ranks—and a person would get a phone call saying that they were the relevant person and that the minister wanted to know such and such.

There were neat days when everything did go through very careful channels. That is no longer true. If you look at the evidence in the CMI inquiry last year, the press secretary rang all around the defence department asking for evidence to back up the story which they had received and occasionally bullied on the phone some of the people whom he was asking for evidence. There were comments such as 'I'm your boss and I'm your boss's boss so you'd better get this back to me'. This is not the polite way of going through a departmental liaison officer. Things like this may be done with the authority of the minister; they may not be. But it is certainly no longer true that we have things done through neat channels anymore. That is what makes people down the line nervous about the way that people are treating them.

Ms Tiernan—That is where you get problems—the immediacy and proximity of having people in the minister's office who can make quick phone calls, and telephone and email are the instruments of choice.

Prof. Weller—Do not get me wrong: many ministers' offices work very smoothly with the departments and people are perfectly happy. This is not saying that all ministerial staff behave in an improper way or even that a majority do or even that a large minority do. But some do.

Senator WATSON—But if we accept what you say, that comes back as a reflection on the departmental secretary for not doing his job. If I were one of those people, I would immediately report it to the departmental secretary and expect some action.

Prof. Weller—That is the theory. But people are also conscious that, if you are a junior SES officer and you start complaining to the secretary about the minister's office and the secretary starts talking to the minister about it, your own future may have question marks put against it at the same time. There is a dual tension which exists in many of those circumstances.

Ms Tiernan—That is a very important point: the extent to which ministerial officers are involved in the performance appraisal of departments. If you look in departmental annual reports, the satisfaction of the minister and his or her office with the service being provided by that part of the department is one of the performance indicators. People are very conscious of

that. If I do not show myself as being able to handle these kinds of interactions, my performance might be called into question.

Senator WATSON—You speak of inadequacies, inherent dangers and the need for a clear framework that recognises the challenges and the difficulties of working with the minister. You talk about the need for transparency for the ministerial staff system and about clear parameters. But I thought Dr Shergold outlined to us very clearly those parameters this morning. That tended to be supported by the next witness. I am looking to you for more solutions than calling for transparency and clear parameters, which I believe appear to be there—whether they are working or not is another issue.

Prof. Weller—The principle parameter is in the ministerial guidelines.

Senator WATSON—Yes, but I am looking for the solutions to the overall problem.

Prof. Weller—It talks about the fact that it may not exercise executive authority. This morning you got a bit into this circular idea that they can never do anything improper because they cannot exercise executive authority. It seems to me that the solutions are fairly clear about how and why and with what prior consent ministerial staff can and should operate in conjunction with the departments. This is what we talked about when we discussed a code of conduct. This is not something which would necessarily be parliament driven but it would explain to both sides where they stand in relation to one another and where they stand in relation to what they can reasonably do. Departments would know how far they could be pushed in these sorts of circumstances.

Most of the time it works comparatively smoothly. But there are occasions when people push too hard, a lack of trust forms and you actually develop the sort of relationship which you developed in CMI, for instance, in which everything had to be cleared with the ministerial press office before anything was allowed to be made public about the ongoing conflict in Afghanistan and other things like that. That is when you can develop a lack of trust and things like that can occur.

What we need to do is to actually spell out the only part of the system which is not spelt out at all. All we have is that ministers cannot delegate their authority to ministerial staff. But what they do, how they do it and all these sorts of things seem to be part of an empty hole. If we can answer those questions then it seems to me we will be acknowledging a new part of our constitutional framework—a new part of our executive government—and seeing how it would best fit in.

We will not get it right first time, if we try. It will be a developing set of propositions but it seems to me that people can say, 'Hey, this is what I'm expected to do.' And if, as I am assured, more and more ministerial staff are not people with a public service background but are brought in from business, unions, the party and from wherever else they come from, it provides them with some assistance when they start about what is expected of them. With respect, I am not sure that the department of finance training is as high-powered as it might be for understanding some of the sensitivities.

Ms Tiernan—I want to clarify this point about transparency. In our submission we were very careful to say that we think that the system is overdue for reform and that it is very important to reform it, but let us reform it on the basis of a very good understanding of it. We are all still talking in very large generalities about how the system is working. It is very hard to get a descriptively accurate account of how the system is working because of the obsessive secrecy—I have mentioned it several times in the submission—about the ministerial staffing system. The dilemma in pulling out actual numbers of staff has been a problem hitherto, although the submission from Prime Minister and Cabinet and the department of finance lays that out. There is a lot of secrecy about how this system works. Why is that when it is publicly funded?

So the issue of transparency for me is not knowing what the chief of staff says to the minister or what the press secretary says to the journalist whom they are briefing, it is knowing how many people are there, what their roles are, what they are doing, and what their qualifications and experience are to have these roles. To my mind it looks like the kind of reporting that you have about the public service that people used to say could not happen—it would undermine the quality of the system. I just do not think that is true. We do not know how many of the current staff have a public service background; we have no idea, although that information would be easily obtained by doing some sort of analysis of that. Senator Murray asked some questions about analysing retention, turnover and those kinds of things. These are all very important things that you need to know about your important political institutions within the executive, and this is one of them. That is the kind of transparency that I am talking about.

Senator WATSON—I am seeking the pillars for this clearer framework that you are talking about. Firstly, you have given us transparency of the role of advisers. Secondly, you have spoken about a code of conduct. Can you continue?

Ms Tiernan—Yes. A clearer administrative framework is another one. At the moment the administration is in cells. I think that is how you described it this morning. This is actually a system that has a lot in common across the different offices. We need to think of it more as an organisation and an institution rather than as a set of idiosyncratic arrangements across different offices, because it actually has common characteristics and features that you can describe. A clearer set of administrative arrangements would not have 17 people from two different agencies; there would be a clear responsibility for the system. At the moment I think that is with the Special Minister of State, but if the system is being notionally run from the Prime Minister's office, which it always is, it might be more appropriate to have the system administered from PM&C. There is a range of legislative, administrative and management framework issues that you could establish quite easily.

Senator WATSON—So you are suggesting a bureaucracy within the bureaucracy?

Ms Tiernan—No, because I think that would be resisted. I am not suggesting it should be a mega bureaucracy but it should be a level of bureaucracy appropriate to something that costs the amount of money that it does and has the important ability to influence things that it does.

Prof. Weller—And the final clause is the accountability we were talking about.

Senator WATSON—That is the third one. Are there any other pillars of this framework that you were talking about?

Ms Tiernan—Not that I can think of, no.

Prof. Weller—I hope that keeps it standing.

Senator WATSON—The last one is administrative transparency, is that right?

Prof. Weller—Yes. We know how many ministers there are, we know how many MPs there are, we know how many public servants there are but we do not know how many ministerial staff there are.

Ms Tiernan—We do but we had to find out through an inquiry.

Prof. Weller—And there is not an annual report which explains where and who they are. It seems to me again that part of the public purse is that—

CHAIR—My staff tried to work out those figures. It took a lot of work to get some estimates.

Ms Tiernan—But it shouldn't, should it?

CHAIR—Then we received the submission.

Prof. Weller—It seems to me that as long as the public purse is paying for it, there ought to be some accountability.

Senator MURRAY—The two of you may not be aware of it but the Labor Party and the Democrats, on my initiative, got the first ever report into parliamentarians' entitlements—the auditor's report—in 100 years. The second part of that is an auditor's report on staff, and that will come out this month or next month, as far as I am aware, so you should watch out for that. That will give you much of the framework. For parliamentarians around this table who came in in 1996, when I consider what we get now in terms of management analysis systems, a simplified bureaucracy and so on, listening to you I hear echoes of the problems we had in 1996 which we now do not have. What you are suggesting is a very rational movement forward; it is a useful analogy to pay attention to.

Senator MOORE—I have a couple of questions, and they lead on from the last point. All the way through your submission, a key point is the difficulty in obtaining information. How did you go about getting it? Did you send letters to the Special Minister of State requesting this information?

Ms Tiernan—I am pursuing interview data. I watch the Senate estimates committee with great interest. It is a combination of letter, documentary and interview data.

Senator MOORE—This morning, when I asked Dr Shergold and Dr Watt about the lack of clarity and awareness of the system, both of them responded that there was no difficulty, that all their staff were fully aware of how they interacted with the ministerial staff and that they were fully aware of their responsibilities, although neither department had a formal protocol for how those areas interacted.

Prof. Weller—I make two comments. First, those are the two departments that would probably interact more readily with ministers than most others; you are actually putting down some of the other departments. When you ring up the department of health—an SO2 or something—and say, 'This is the minister on the phone,' or, 'This is the ministerial staffer on the phone,' they will stand to attention and drop the phone in fright because they just are not used to that sort of thing, and I am not sure the protocols would work down there.

Ms Tiernan—There has also been enormous stability, particularly in the Prime Minister's office. There have been five years of practically no change in personnel there. So you would expect the PM&C people to have established a set of relationships.

Senator MOORE—But if the information is readily available through that sector, you would question why it would not be readily available to the public. That is my issue.

Ms Tiernan—It is because it is construed as partisan—that someone wants to do something to embarrass the government. That has been the response that I have had to inquiries. I have been very careful to say, 'I am interested in an institutional look at this thing and trying to understand it.'

Senator MOORE—And the response has not been effective?

Ms Tiernan—The response has been suspicious, but that is not unique to this government. Jim Walter did a study of ministerial staff in which he said exactly the same thing 20 years ago. It is ruthlessly insider.

Senator MOORE—Except that it is publicly funded.

Prof. Weller—It is publicly funded but—

Ms Tiernan—It was smaller then, so it is more of an issue now.

Senator MOORE—The other statement that you make in your submission is that the myths on which the system is based no longer ring true. On my reading of your submission, you have said that there is a range of myths, but the one that is mentioned is the issue of ministerial responsibility. You have already debunked the—

Prof. Weller—There are two myths. One is that you tell the staffer and the minister knows; and the other is that the adviser asks and the minister asked the adviser to ask. Neither of those two is true—I do not think they were ever entirely true. But they were the sorts of myths which grew up under Whitlam and Fraser when everything was very much smaller, and I think since then it has just become much more impossible for either of those two propositions to stand.

Senator MOORE—The final point was in terms of the acceptance that you have for some form of code of practice or a process—that is, how such a thing would be implemented and how it would be maintained. I know you have read the other submissions. There are a range of suggestions, and the criticism is that, by introducing a range of regulations, you are not actually getting results; you are just getting regulations.

Ms Tiernan—I think that is what government ministers have said, and you can imagine that that will be the reaction.

Prof. Weller—I think the first step is to create a set of expectations and a set of understandings about what is or is not reasonable in these sorts of propositions. We do not have that yet. The Secretary of the Department of Finance and Administration and the Secretary of the Department of the Prime Minister and Cabinet say, 'We've got some understandings but they're not written down—they're verbal or they were in a speech and you'll see them when you get the copy that you ask for.' It seems to me that we need to go a stage further than that, given the weight of the organisation and the machinery. If first we can get some notion of 'Here's a code of conduct; here's how we expect to behave', then we can gradually work through and say, 'People are breaching that; what should we be doing with it?' To try and put in a too prescriptive one with too many sanctions first up is unlikely to get any support at all. I think talk about a code of conduct and a set of expectations will gradually allow this to evolve, which I think is much more relevant in those sorts of circumstances.

Ms Tiernan—As we have said several times, it has to be something that will work for ministers; otherwise, they will not be interested in it. It is not about prescribing or—

Senator BRANDIS—I want to revisit something that emerged a little earlier about transparency. I asked you earlier, Professor Weller, whether you thought transparency was something intrinsically good, and you told me you thought it was. Does that do justice to your response?

Prof. Weller—Transparency on certain conditions. I have never suggested the advice that is given to ministers or the political discussions that people have should be transparent.

Senator BRANDIS—That is what I am getting at, Professor Weller and Ms Tiernan. You are familiar, I am sure, with the distinction that is sometimes drawn in moral philosophy between things that are inherently worth while or things that are good in themselves and things that are worth while because of the outcomes they produce but are not necessarily inherently good in themselves. The proposition I would put to you is that, when it comes to public institutions, transparency is not an intrinsic merit but a functional merit. In other words, if it produces better policy outcomes or makes the institutions function better, more conformable to core values, then it is a good thing but it is not intrinsically a good thing. If I may, I will give you a couple of examples—you have anticipated one. Nobody suggests that cabinet discussions should be transparent, or at least not until the suspension of a long period of years.

Prof. Weller—Too long, I might add.

Senator BRANDIS—Another, even more striking, example is that nobody—or nobody sensible—has for a moment suggested that decisions of the High Court should be subject to a process whereby the judges who deliver them could be interrogated or examined as to the process of reasoning by which they came to those decisions, who they spoke to about them or what influenced them to write their judgments in a particular way—and those decisions are unappealable and unreviewable collaterally—yet there are very few decisions that any Australian public institution makes that are more important than the decisions of the High Court. What is it about the relationship between ministers and their staff that takes that part of the institutional

structure of our democracy out of that category of, say, cabinet discussions or High Court decisions—which of their nature are not transparent and, I would put to you, ought not to be transparent? Why are they in that category of things in which, as you say, transparency is intrinsically desirable?

Prof. Weller—If asked to define whether it is intrinsically desirable, my comment would be that, in a democratic state, the bias should be towards transparency unless there is a good reason why it should not be. For cabinet, it is of course desirable. I had the advantage some years ago in that Malcolm Fraser gave me access to all the cabinet papers. He gave me that access in 1985 which was just 18 months after he had finished in government. I found almost nothing in those cabinet papers that would upset or worry anyone were they now made public. I wrote about a lot of them and no-one actually noticed. I think we overdo the secrecy. If ever I were to be convinced of that, it would have been during the exercise of writing a book on Malcolm Fraser.

My tendency would be to ask for a good reason why it should not be transparent, rather than why it should be. I can see good reason why political discussions or political advice from an adviser to a minister should be maintained as confidential so that they can be free-ranging discussions. I cannot see the same sort of logic for saying whether or not I told you information came from my department or not—or whether I passed information from my department on—should be a protected subject to the same degree, given that political advisers are now playing a significantly powerful role in our political system.

Ms Tiernan—We might not know the detail of what is deliberated in cabinet, but we know a great deal about how it works, who is there, what they are doing and how the rules work. It is the same for High Court judges. We know how they are appointed, who they are and their gender breakdown. That is the kind of administrative transparency that I think—

CHAIR—And what they are told.

Prof. Weller—And they have to give reasons for their decisions.

Senator MURRAY—And what submissions—

Ms Tiernan—That is right. So I do not think we need to be involved in the detail and, for reasons already discussed today, I think it would be entirely inappropriate. In terms of the infrastructure—the arrangements—I do not see why ministerial staffing should be any different from cabinet, High Court judges and so on. But it costs a lot of money. There are a lot of people and it is a big and complex organisation.

Senator BRANDIS—I am not going to disagree with you about the infrastructure arrangements but obviously that is quite a separate category of consideration from, if you like, the intellectual input—what is said to whom, on what occasion and for what motive.

Ms Tiernan—But I think everybody accepts that that should be privileged between the people in that relationship.

Senator BRANDIS—I am not sure that has been accepted.

CHAIR—Senator Brandis, we have gone on for quite some time. Unless you have specific questions for the witnesses, as interesting as this discussion might be, we do have other witnesses who have been waiting very patiently, and I would like to draw this to a conclusion now.

Senator BRANDIS—Let me draw it to a conclusion by asking this question: in a couple of short sentences, what do you say is the principal functional reason why it is necessary that, to the extent you have suggested, ministerial staff ought to be answerable?

Prof. Weller—Because they are powerful players in the game who have an influence on the outcome. In particular inquiries, the Australian public—if you would like to put it in those terms—should be able to know what role they play, since we know what role everyone else plays.

CHAIR—That being the ministers and the Public Service?

Prof. Weller—Yes.

Senator WATSON—I would like to make an observation following on from Senator Brandis's questions. Whether transparency is inherently good or not I do not think is important. What I think is significant is that transparency is one of the best detergents we have.

Prof. Weller—Detergents?

Senator WATSON—Detergents.

Ms Tiernan—Detergents!

Senator WATSON—It washes out the problems.

Ms Tiernan—For sure!

CHAIR—Professor Weller, I had one or two other questions which I will put to you in writing or give to you on notice. They relate specifically to your submission.

Prof. Weller—We will be happy to respond.

CHAIR—Thank you. Your attendance this afternoon is appreciated.

[4.10 p.m.]

UHR, Dr John Gregory, (Private capacity)

CHAIR—Welcome. Thank you for your extreme patience, Dr Uhr, as we have delayed you somewhat in providing your evidence. You have been provided with details regarding the processes of the committee and the operation of parliamentary privilege. As you are aware, we prefer evidence to be taken in public but, if you feel it is necessary, you can ask us to take evidence in camera and we will consider that request. Do you have any comments to make on the capacity in which you appear?

Dr Uhr—I am a senior fellow in political science at the Australian National University.

CHAIR—We have received a written submission from you. I invite you to make some opening comments, and then we will proceed to questions.

Dr Uhr—As a former Senate committee secretary, I am really keen to try to help the committee break this logjam. At the moment you have a set of possibilities, or options, that are very difficult to try to balance. On the one hand, you have a no accountability claim—let us call it the 'Don Russell option'—which says that the call is really with ministers. If they want to release their staff for accountability purposes, that is their call. It is a kind of 'Trust the minister' game. That is consistent, generally, with the way ministerial responsibility is acted out, and it has a lot of reasons going for it. I would not walk away from it, but it is not the option I support. On the other hand, you have the all accountability option—the 'General Stretton option'—which says, 'Let's whack a provision in the law and give them a legal obligation to front up every time a parliament committee has the whim to call them.'

These two options are really quite opposed. I want to try to find something that runs between the two of them that allows the committee to take forward a narrow ambit claim for accountability. The beginning of that is to accept that ministerial staff serve an absolutely vital political role. They are public assets. They have great public value, precisely because of their political role—not their bureaucratic or administrative roles—in helping ministers do their jobs. They are really part of the ministerial team. Ministers cannot function without them. We ought to welcome them and value them for their potential to contribute.

The second part is to recognise that, if there is a lot of power there, as with ministers they should be regulated in some way. There really needs to be some codification of professional conduct for ministerial staff, similar to the Prime Minister's code of ministerial conduct. In fact, I would take the Prime Minister's code as pretty much the spirit—and perhaps even some of the letters—for a ministerial staff code. In particular, in sections 5 and 6 of the Prime Minister's code wherever it says 'minister' I would substitute 'ministerial staffer'. Then I would add one other important rider that I think should really form the heart of a ministerial staffer code, which is that ministerial staff have to respect the code of the Australian Public Service, which parliament has entrenched in the Public Service Act. Ministerial staff have an important role—they are absolutely essential adjuncts to ministers and they work closely with the Public

Service—but they have to respect the legislated code that parliament itself has put in for the Public Service.

When we come to the accountability provision, my contribution is to say that ministerial staff are accountable to parliament in relation to their compliance with their own code. That is really the nub of the matter. They are not necessarily accountable for the advice they provide to their ministers and they are not necessarily accountable for their own performance on the job, generally speaking, but they are certainly accountable to parliament to the extent that they are complying or not complying with the code of conduct. It is the code that forms the bridge of accountability.

Where do you put the code? You can put it in the MOP(S) Act. You can do a Stretton, whip up a paragraph and whack it in the MOP(S) Act. That is not my preferred option. I would rather see some sort of reconstruction of parliamentary responsibility that allowed parliament itself to declare the code, not to entrench it as an aspect of public law but to allow each house of parliament to start to declare resolutions on ministerial responsibility that include provision for ministerial staff. Take a leaf out of the Blair book. The first constructive thing that Blair did, when elected way back in the mid-nineties, was allow parliament itself to resolve what the terms and the content of the ministerial code should be. Do not just leave it at the discretion of the chief minister, either there or here, but make it a matter of parliamentary resolution. I think that is what each house of the Australian parliament should do as well.

I have no dissent from the content of the current Prime Minister's code, I would just like to see it as a parliamentary resolution rather than as a prime ministerial edict which is too rarely implemented. The addition that I would want to see there is this provision calling upon ministerial staffers to abide by the Public Service code in their dealings with Public Service employees.

In the brief submission that I have given you, I have suggested that the mechanism to make this really work, ideally at the maximum level, would be a ministerial standards committee in each house. That ministerial standards committee in each house would jointly have the responsibility for appointing a ministerial standards commissioner who would have the burden of investigating, in the event that there were allegations of suspect conduct, breaches of the code by ministerial staffers.

What does an investigator do? They investigate and report back to the committees. What are the sanctions then in the event that the investigator discovers a breach of the code? That is really subject to the parliamentary process where the committee can take that up with the minister and that becomes something for parliament itself to resolve. We are looking at political conduct: the political use and abuse of high political office. There is no way you can automatically work out what the appropriate sanctions are going to be. It is going to be a call about the instance that is under investigation. The investigator can report the facts but the significance of those facts is really something then for political discussion between the relevant committee and minister. The sanctions are those that apply to ministerial responsibility but, in my model, ministerial responsibility is going to be enlivened by virtue of it being subject to a parliamentary resolution, instead of just the Prime Minister's wink, nod or whim. Thank you.

CHAIR—I want to begin in relation to your concept of a ministerial standards commission. I understood you to say that both houses would have their own structure which could then appoint a single commissioner. How would you try to ensure commonality between the two given that, if it is dealing with ministers and ministerial staff, you nevertheless have a different political complexion in each chamber? The government clearly has a majority in the House of Representatives at all times. There is also this issue of the houses operating independently in terms of the administration of their own committees and who they can call and so on.

Dr Uhr—Because of the independence of each house, I would give each house the responsibility to establish such a committee, and I would give each committee a whole-of-government responsibility. I would let the parliamentary process determine which committee was going to take priority.

CHAIR—But you could end up with vastly different standards applying to the same ministers, if you like.

Dr Uhr—You would have a common text for the ministerial standards supported by both houses and each committee would be designed to monitor and implement a common set of standards. Each of them would have at their disposal the common investigator—the standards commissioner—who could investigate. It is really the investigation that I think is a crucial aspect because in most of these cases—imagine the inquiry last year—you do not really have access to the people who have the truth of the matter. What you have to do is empower an investigator with the proper authority to compel witnesses to bring forward the evidence and then report back to each committee.

CHAIR—Thank you.

Senator MOORE—Why not a joint house committee?

Dr Uhr—I think there should be capacity for the committee to meet together as one joint committee, but I would not want to take away from the power of either house to determine its own affairs. Ministers come and go. Sometimes the allocation of ministers covers a certain waterfront in the Senate, and with a reshuffle suddenly you have lost access to those ministers. I think if each house supports a common ministerial code which includes provisions for ministerial staffers, each house has full responsibility to police the waterfront of government activities. Just as the Senate, in its estimates committees, investigates the waterfront of government activities, it does not confine its investigation just to those portfolios represented in the Senate. It has direct access to the whole of government. So too should a ministerial standards committee in the Senate have direct access to the whole of government, not just that aspect of government that is currently represented by Senate ministers.

Senator MOORE—Your proposals actually look at a major overhaul of the whole operations of accountability.

Dr Uhr—You could have a modest, minimal version which is a variation on the Stretton model by whacking into the MOP(S) Act or somewhere like that a code of conduct for ministerial staff that has the crucial proviso that compels them, in their dealings with Public Service officials, to abide by the Public Service code. That is really the heart of the issue: the use

and abuse of their own office when it comes to their dealings with public servants, and the degree to which they overextend the office that they have by directing public servants. You could certainly do that. I think in the last month we have had so many instances where parliament has shown itself to be unable to get ahead of the curve on ministerial responsibility. For witnesses to invite the committee to start looking into ministerial staffers as well is to invite the same sort of lacklustre performance. I would rather see parliament restructure the framework of ministerial responsibility by exercising some leadership and making the standards by which ministers are assessed back to their houses a matter of the house's public record. At the moment we are simply relying upon the Prime Minister and hoping that he will judge his own team by his own standards. That seems so weak, so paltry.

Senator MOORE—Senator Brandis is not here.

Dr Uhr—Silence is consent.

Senator MOORE—I am interested in the arguments that you have raised in a very reasoned way, looking across the board. Senator Brandis's final question to the last set of witnesses was about the intrinsic reason for having transparency. I would be really interested to hear your response to such a question.

Dr Uhr—I am rather on the Brandis side on that. I can see important reasons for the confidentiality of what happens in ministerial offices as it relates to the advice that goes to ministers. If I were a minister I would want my staff to be speaking frankly and fearlessly, and there may be a degree of confidentiality that provides a kind of precondition for that. It is only in relation their code and whatever goes into the code that I would want them to be accountable to the parliament. The crucial issue then is what goes in the code. To me, the cue to what goes in the code is exactly what the Prime Minister has put in his own code of ministerial responsibility, in sections 5 and 6. Section 5 deals with areas of conflict of interest for ministers; section 6 models the partnership between ministers and public servants. Something very similar can be done for ministerial staff. It is in relation to their compliance or failure to comply with that code that I would hold them accountable directly to parliament, not in relation to the advice that they might be giving—except to the extent that in the giving of advice or the management of advice they might be breaching their own code.

Senator MOORE—Which takes away the whole thrust of the argument about why you cannot have any regulation.

Dr Uhr—Yes. I am trying to find something between the two opposed poles.

Senator MOORE—Thank you.

Senator WATSON—Dr Uhr, your proposals have some merit, but inevitably, over time, will ministers not attempt to circumvent the sorts of rules that you have put forward? For example, we may see the emergence of what happened under the Keating regime—ministerial consultants who are outside the code of conduct that you were speaking about, as it applies to advisers. I would not be all that much against getting specialist advisers who have technical expertise. But if we implement your proposal, I can see the emergence of consultants or some other manifestation to get around the strict rules that you have put before us, good as they might be.

Dr Uhr—It really depends upon precisely what is drafted into the ministerial standards code. I would have it drafted in such a way that anybody employed by a minister to provide services to the minister is subject to the code. The code, as I say, is at its most forceful in compelling those people to abide by Public Service codes in their dealings with the Public Service. It is there that we are getting the areas of most intense conflict: in the bullying or alleged bullying of public servants by ministerial staffers. It is that area that I think is calling for the most constructive treatment by parliament. Parliament has really left it in a void. I think there is an opportunity here, now, to try to exercise some leadership and identify the standards appropriate to ministers and people working for ministers, including consultants of the type that you describe.

Senator WATSON—Thank you.

Senator MURRAY—Dr Uhr, maybe I misunderstand you, but I disagree with your fundamental premise on the basis that I read it. In the paragraph on the basic problem, as enunciated in your submission, you say in the first sentence:

Opinions differ, but in my view the most challenging problem facing the Senate Finance and Public Administration Committee is how best to regulate the *political* conduct of ministerial staff.

You end your paragraph on the basic problem by saying:

Rather, we are talking about the use and abuse of official position and power: ie, disputes over the appropriate *political* use of the power available to ministerial staff.

If you had substituted 'executive' for 'political' I would have agreed with you. To me the abuse of executive power is the issue. I think their political role is not the concern or interest of parliament; it is the executive role.

Dr Uhr—I accept that. It is a friendly amendment that I would take on board. They are part of the executive team, and we want to know what standards they are abiding by insofar as they are helping the executive to get on with the business of executing government. It is there that the trouble is obviously arising. At the moment, we have got just a few implications in the Prime Minister's code as to what those standards should be. We can invite the Prime Minister to elaborate and put a supplement out to his code. That would be one useful option; but, again, it is the Prime Minister who is determining and authorising that, and it is the Prime Minister who has responsibility for investigating and policing. That does not seem to be good enough. You can go to the other alternative and legally try and lock something into the MOP(S) Act. That might be reaching too far. There is something in between, and that is simply to have each house resolve what the standards are going to be for ministers and for those people working as part of the executive ministerial team and then to have that stipulated in such a way that the community can see that parliament can be called upon to investigate their compliance with that code.

Senator MURRAY—I am glad that we are in agreement. That is good. I suspect you were here when Dr Shergold gave evidence—

Dr Uhr—It seems like a week ago.

Senator MURRAY—For us, too—especially for Senator Webber, who is looking remarkably spry for someone who has been on that midnight horror.

Dr Uhr—We have all just had one.

Senator MURRAY—One thing he said absolutely appalled me, and that was his acceptance—in fact his promotion—of the view that members of the public sector only appear before Senate committees and parliament at the largess of the minister. I have three propositions. Only parliament can tax the people; therefore, parliament has the right to question anyone who has a significant role to play in the collection, spending and administration of that money. That means that nobody under the powers and standing orders of the Senate can refuse attendance. We have the power to trial and jail people if they do.

What has arisen about accountability is convention. Would you agree with me that the convention is that they are not asked policy questions. The convention is that they are not required to answer questions in certain areas. There is nothing in the Australian Constitution or the Senate powers which say that you cannot ask anybody a question and demand that they answer it. Of course, they will have the right to silence under Australian law and precedent. I return essentially to the proposition that was being addressed at the last interchange between the professor and Senator Brandis. Do you believe that all things should be open and available, unless there is a good public reason, a good practical reason, for them not to be rather than the other way around?

Dr Uhr—Yes, I accept your general orientation that there is nothing in the Constitution that stops parliamentary accountability of public officials broadly defined. There are good conventions sometimes called public interest grounds, public interest immunity, where parliament will concede that it will not push too hard. The examples that Senator Brandis had a moment ago about certain areas of government decision making that might have good reasons to remain confidential might well fall into that public interest immunity lap. General Stretton identified a whole range as well.

The issue, though, that might have supported the witness that you were referring to earlier this morning was that parliament really has done very little to declare the reach of its own accountability. It is an instance-by-instance activity. What I am suggesting here is that there is an opportunity for the committee to recommend to parliament that parliament really learn from the instances that we have had over the last 18 months and start to lay down some guidelines for ministers and the people working in the ministerial or executive arm of government.

Parliament has not done that before and so you have had a warfare of conventions, a kind of 'trust me' convention from ministers that is not incompatible with responsible government: 'We are the winners. We won the election. We have got the executive power. Trust us to get on and use it wisely.' And there is another set of conventions, particularly illustrated by the Senate, which is: 'We've got no good reasons to trust you. We would rather make an accountability claim.' I think parliament has to take that forward and not just leave it as a kind of tussle between conventions but start to codify and lay down its own guidelines.

The executive is doing the decent thing, as you heard from Mr Podger earlier today, and released new fresh guidelines last week on ethics in government. They are only guidelines, but

they are attempts by the executive to self-regulate in the areas that it is permitted to under the Public Service Act, which parliament has passed. I think now we need the companion set of regulations or guidelines coming out of parliament to help fill in the area where parliament wants to exercise its own accountabilities.

Senator MURRAY—Let me lead you across a new and interesting bridge. It might be a bridge too far, but let us try this. You heard me earlier say that anyone significant should be accountable. In a sense, the professor picked up on the same concept. He said that chiefs of staff or persons of that seniority—and that is my addition—should be the sorts of people that can be called to the committee.

You also heard me say earlier that the big three are the collection, expenditure and administration of public moneys. If you go that chief-of-staff, senior-person route for somebody who spends or administers public moneys in the broadest meaning of that, why shouldn't chiefs of staff of parliamentary parties also be accountable? The chief of staff of the Democrats or the chief of staff of the Labor Party, who is responsible for ticking off all the travel arrangements and the administrative arrangements of the staff under their control, has an executive function in that sense of spending public moneys.

Dr Uhr—I guess there are two categories or classes of officials we are now looking at. One is executive officials—ministers being the main players but ministerial staff being adjuncts to them. The issue is to what extent ministerial staff should be accountable. My claim is that they should all be accountable in relation to their compliance with the code. Others have made the claim that they should be accountable full-stop, in which case I think you are going to get a perennial battle over their political and policy influence, which will not necessarily help anybody. It will actually spoil the process rather than clarify it.

Then there is the second category, which you have just identified, which is people in receipt of public funds, and they are not necessarily confined to executive officials. There can be leaders of parties that have no executive office at the moment who might well be under an obligation of accountability to explain their use and abuse of public funds. I agree with you. Accountability generally is fuelled by the receipt of public funds and, if you can identify a public fund, a trail, I see no good reason to not go down that trail—but in relation to the management, use and abuse of those public funds, not more generally about the interests of the party.

Senator MURRAY—I asked the question deliberately because members and senators are obliged, under the much-improved accountability regime we now have, to sign off, authenticate and make accountable—make public, in many respects—their expenditure. What you spend on travelling, travel allowance, printing and stationery and so on is all public, but there is the missing area of the non-electorate staff, for which nobody is accountable. There is no sign-off, no management report, nothing.

Dr Uhr—I accept that. It strays a little from the core provisions of the MOP(S) Act, which was the initial trigger for this. But I am persuaded and I need no further persuasion from you—I accept it—that people in receipt of public funds have, on the face of it, an obligation to account for their use or abuse of those public moneys.

Senator MURRAY—I have the submission from the Department of the Prime Minister and Cabinet, which has got schedules of staff numbers from the department. It does not have a page number, unfortunately, so I cannot refer you to it but it says at the top: 'Staff Numbers', 'Personal Staff Government/Non Government and Electorate Staff'. It has personal staff of government at 371.6. My understanding of the estimates process has been that you can pretty well get anything you want—what levels they are at, how much money is spent and so on and so forth. It has personal staff non-government and electorate staff at 686.

It seems to me that the accountability for the way in which moneys are spent is quite strong for the government and the electorate staff but not for the personal staff non-government. So you can do one of two things, and I would ask you what you think is necessary: you can either get a certification process—a sign-off or reporting process—and go that far, or you can go as far as an estimates process and get people across the table to explain themselves.

Dr Uhr—As I mentioned before, I am persuaded by your orientation to this, and I guess the estimates model is the appropriate model. In the core cases that we are looking at here, the issue is not so much financial management as the use and abuse of executive office. I think the important task here is not simply to make a claim for accountability; the important task is to identify accountability in relation to what. I think either you can leave it to the Prime Minister to elaborate his own ministerial code and clarify it by explicitly covering ministerial staff in ways that would satisfy us or, more maturely, parliament can exercise some leadership and pass a resolution, or indeed something more firm than that, identifying precisely those standards.

It is precisely because it is not solely in relation to money that parliament needs to come clean; otherwise, there will be this endless tussle. We have seen it rehearsed in the many hours of hearings today, where people have claimed that they want to get into the minds of ministers and be able to work out what it is they are advising their staff and what they are receiving from their staff. I think in some ways that is a no-go area and we ought to be concentrating on conduct, rather than other areas of advice, and the issue is to lay down some conduct guidelines.

Senator MURRAY—My last question is this: you seem to posit two extremes—in my mind, anyway—and say that it is difficult to bring the two of them together. But I cannot see why your approach cannot sit comfortably with Major General Stretton's approach. Essentially, he is saying, 'Put a small element into the act which says the following things,' and you have provided the expanded version of that. The entry into the act would simply say there should be a code of conduct which they must follow, and you have said, 'Let the parliament develop that code of conduct.'

Dr Uhr—That is true, and I identify that mine is more or less compatible with his. What was missing from his that I want to keep the focus on is that we are looking at people who work for ministers and, ideally, we should be looking at a renovated, refurbished—better—framework that is more effective for ministerial accountability. He was leaving ministers out of the loop altogether and concentrating purely on MOP staff. I am trying to take the MOP staff and identify them according to the class of political actor they are, which is executive official, and try and work out some way in which parliament can clarify the standards generally for executive officials and then work out bridges of accountability over which parliament can invite executive officials to come closer.

Senator MURRAY—Thank you.

CHAIR—Dr Uhr, I want to go to a report from, I think, June of last year by the *Canberra Times*, where you talked about the confusion that existed within the children overboard incident. We have talked a lot today about accountability and proposals to make ministerial advisers accountable to the parliament in one form or another. However, what about addressing the issue of clarifying more particularly the roles, and the distinctions in the roles, between ministerial staffers and proposals that could be implemented to ensure that that situation does not occur again, as distinct from it occurring and then us having to deal with it subsequently?

Dr Uhr—I would take two pages out of the Blair book this time. In trying to rethinking British governance, one of the first things Blair did, constructively, was to give ministerial standards more bite by making sure they were identified as parliamentary standards and not just his standards. We have seen examples—tragic examples, in a way—of how strong the accountability process is in the UK parliament. So the first page I would take out of that is to invite parliament to do what Blair did and either explicitly support and endorse the Prime Minister's codes or come up with something better.

The second page relates to the working or professional relationship between public servants and ministerial staffers. We do have in Australia within the Public Service Act sufficient guidance for public servants; what we do not have is guidance for ministerial staffers. The British one points in the right direction by making as the core of the advice for ministerial staffers that they can do nothing to call into question the integrity of the public service. They have to respect the rights and responsibilities of public servants and to understand that they are complementary to that; they cannot override it in any way. I believe that is the second page of the Blair book that we should take out. We can add to it in ways that would more properly identify constructive assistance for ministerial staffers, but that is the place to begin in terms of role clarification—which I took to be your question.

CHAIR—I understand what you are getting at. How would we get to the point of doing that?

Dr Uhr—It has been partly done by the Prime Minister already. I really do support the so-called ministerial guidelines because sections 5 and 6 itemise for ministers the dos and don'ts. What we have is a kind of lacklustre record of investigation and policing of it, but the standards or the benchmarks are adequately identified. Section 6 identifies relationships in theory between ministers and their departmental heads in a way that identifies the complementarity. We can learn from that, adapt it and, where it says 'ministers', read in 'ministerial staffers'.

CHAIR—Do you see that being done perhaps by way of legislative amendment or regulation to the MOP(S) Act?

Dr Uhr—I am not necessarily in favour of a legislative solution. Look at the power that the estimates process has in terms of accountability. What supports it? A set of privilege resolutions by the Senate, where the Senate declares its hand to be an honest player. So there is nothing to stop each house resolving to be in support of a set of resolutions on ministerial standards and to leave it at that and let them modify over time.

CHAIR—One thing that this committee has been involved in—particularly Senator Murray and Senator Watson; it commenced before I became the chair or a member of this committee—is the situation where much more outsourcing and many more contracts were being entered into by departments. We know this has been a trend over recent years and, to be fair, it has occurred under governments of different political persuasions. I am speaking of contracts with outside consultants to perform a lot of tasks that previously would have been performed one way or another by the public service. Through the estimates process you could potentially obtain information about such things, but it became a little more difficult when people with the companies or the consultants who were directly involved in doing such work could not be called before the committee; also there are issues of commercial confidentiality that arise. One step that was taken by the committee and then endorsed by the Senate was the making of a Senate order which requires all departments to publish details of contracts so that at least there is a start to identifying what is happening. Might that type of approach be followed here?

Dr Uhr—Certainly; I think that has a lot going for it. It is a resolution that can be modified and amended over time. It does not require a formal act of parliament, but it is a formal action by a house of parliament in identifying what it expects of a range of executive agencies and offices. The issue in question here is for parliament to identify the appropriate benchmarks, not just to say that it has a range of people over whom it wants to exercise a claim of accountability. The issue is trying to constructively add to government by identifying the appropriate benchmarks so that parliament can back off and leave it to these people to manage their own affairs by knowing what the limits are. At the moment the only limits they have are a kind of a wink and a nod from the prime ministerial code. If I were a ministerial staffer, I would love it.

CHAIR—One of the things that does exist in other countries' jurisdictions is ethics support for political staff—ethics councils and advisory commissions and so on. We do not have that system in Australia. Do you have any views about that?

Dr Uhr—I have looked at the Queensland submission from the integrity commissioner. That picks up some of the advisory role by having an official who can act as a sounding board for executive officers who are uncertain about whether they are straying from the identified code. The ministerial standards commissioner that I have identified could have that role as well. That is not to say that the Prime Minister's department cannot have an officer who is also responsible for advising the Prime Minister particularly on that. But there is nothing to stop parliament itself identifying somebody like a ministerial standards commissioner who could proactively assist executive officials by offering advice to them, where necessary, and reporting back on a periodic basis to the committee to say, 'Things are in better shape than they were when I first arrived.' That would help parliament and it would help the community as well.

CHAIR—There being no further questions, Dr Uhr, we thank you for your evidence and for being prepared to wait so long today to give it. I hope that you have taken the opportunity to listen to the questions and answers and the debate and that it has been of some benefit.

Dr Uhr—It has been a robust day, and I thank you.

[4.47 p.m.]

MALEY, Dr Maria, (Private Capacity)

CHAIR—Welcome. At the risk of repeating myself, our apologies to you also for keeping you waiting—not quite as long as we kept Dr Uhr waiting—and delaying your appearance. We appreciate your patience. You have been made aware of the rights and obligations relating to appearing before the committee and the details regarding the application of parliamentary privilege. Also, as you would be aware I am sure, we prefer all evidence to be taken in public, but you can request to go into camera if you feel it is necessary and we will deal with such a request at that time. Are there any opening comments that you would like to make?

Dr Maley—When I put my submission in to the committee, I was employed at the Australian National University, but I need to point out that I am no longer teaching there. I am appearing as someone who has done some research on ministerial advisers. In fact, I did a major piece of research in 1995 and 1996, which was my PhD. It was about the behaviour of ministerial advisers in the Keating period. It was based on 41 interviews with advisers and my interviews with 13 ministers who worked with those advisers and with 10 public servants who worked with those groups of advisers and ministers. Those public servants were at the assistant secretary and first assistant secretary level, which was the level that the advisers were dealing with.

The value of that study is that I wanted to look at what advisers did on a day-to-day basis, and so I was not just studying a particularly controversial moment. I wanted to see what non-controversial things happened on a day-to-day basis across a range of portfolios. I interviewed junior as well as senior ministers and junior as well as senior staff. I think I got a very comprehensive picture about how advisers operate, how they work with their ministers, how they work with senior public servants and how they work together as a group. I speak to you today on the basis of that research.

CHAIR—Thank you. Is there anything else you want to add before we go to questions?

Dr Maley—Yes, very briefly. In my submission I have put forward the view that advisers exist only as extensions of ministers and that, as they are the ministers' agents, that should be their status. In the study that is how ministers saw their advisers and how the advisers saw themselves. That was the fundamental basis to the relationship. I think it would be dangerous to start to legitimise an independent status for advisers as possessors of executive authority. They should not have that, as it would drive a wedge between them and their ministers, and the ministers ought to be the ones taking responsibility for their actions. Reasserting that link is the key to improving their accountability.

I do not believe that it is impossible for ministers to take responsibility for the actions of their staff, and I think the degree to which the numbers of staff make that impossible has been overstated. When I did my study in 1995-96, a senior Keating minister had seven political and policy advisers and one media adviser, and a noncabinet minister had 3.5 advisers and may or may not have had a media adviser. When we talk about 300 staff the numbers look huge. But, in

reality, the people who actually issue instructions on behalf of the minister comprise a relatively small group and, in my view, ministers can take responsibility for and can know of what they do.

At the same time I think there is an urgent need to clarify what is appropriate behaviour of advisers and to better regulate and manage that behaviour. In my study there was a complete lack of guidance given to advisers about how they should behave. There was no training. They were thrown straight into the job and usually took their cue on how to behave from the minister or their peers. Usually they said it took them a year to get on top of the job and understand how to do it, and often they only stayed a couple more years after that. I think there is a real need for guidance for advisers.

Many of those coming in from outside the Public Service had no understanding of administrative law or the basis of Public Service principles. A code of conduct would be very useful in articulating those values and also in making it clear that the minister and the government want them to behave that way. I think there is a problem with advisers dealing inappropriately with public servants, but they need to know that they are dealing inappropriately with them. They also need to know that the minister will not tolerate that and that he or she wants another type of behaviour.

Just in closing, I think the code of conduct could be very useful in not only promoting appropriate behaviour but also broadening the control of advisers. When I did my study, the minister was the only person who had control over their advisers and who had responsibility for their behaviour. But if you were to mimic the Public Service code of conduct, where the head of the department has responsibility for selecting an investigator to investigate breaches of conduct and then the head of department has responsibility for choosing and bringing about sanctions, you could empower the Prime Minister to select someone to investigate breaches of the code and also to recommend sanctions. In that way you could broaden the responsibility from where it just rests with the minister to where it rests with the whole of government, because I think the government as a whole should have responsibility for their behaviour.

Senator WATSON—Who should draw up this code of conduct that you refer to and who should enforce it?

Dr Maley—I think it should be done in a consultative way, involving ministers and staff; possibly it should be broader than that, with the parliament and the Public Service having input as well. It could be fairly basic, in a sense, and be modelled on the ministers' guide to behaviour: acting with integrity and honesty, not knowingly deceiving or misleading the parliament or the public, and respecting the nature of the Public Service and not asking them to do things that would be inappropriate. A code of conduct could state that it is assumed that advice that has been provided to an adviser has been provided to a minister. You could put statements in the code that strongly reinforce that link.

As I mentioned, I think perhaps the Prime Minister and the Prime Minister's office should be empowered in administering the code. Some of the advisers I interviewed who worked for the Prime Minister were frustrated at their inability to act against advisers in other ministers' offices whom they saw as being incompetent and dangerous because they were not trustworthy. But they really were not empowered to act against those advisers—this is in my study—and they felt

they should have been. So I think broadening the responsibility to the Prime Minister and the Prime Minister's office would be useful.

Senator WATSON—Basically, apart from the code of conduct you refer to, your submission is pretty much the status quo. Am I correct in that saying that?

Dr Maley—No, I do not think so, because I do think there is a problem. The problem is that the accountability of ministers for their advisers' behaviour is not strongly enough acted upon at the moment. I think that needs to be reasserted and that structure needs to be tightened. I do not think the status quo is right. As I have just said, I think advisers' behaviour does need to be far better managed and regulated than it currently is.

Senator WATSON—You have used the words 'acted upon'. Dr Uhr put forward the concept of a ministerial standards commissioner who would report back to the parliament, which would provide a few more teeth and a parliamentary input. How would you view that?

Dr Maley—How would that person receive information about the behaviour of advisers? Would they be an investigator?

Senator WATSON—Yes. They would be a recipient of information and an investigator, and they would be responsible for reporting to a parliamentary committee.

Dr Maley—As I said in my submission, I think it is important to see advisers as agents who are acting for their ministers. Any proposal to bring advisers before parliamentary committees or to get them to testify before commissioners would have to involve very strong protections on the privacy of the minister's transactions with that adviser. At the moment we do not have those sorts of mechanisms to protect ministers, who are very exposed in their relationships with their advisers and who I think have a right to have their privacy protected. Until you could establish a strong system there, I do not think it would be appropriate.

Senator WATSON—With these people being paid from the public purse, shouldn't the parliament have some input in terms of enforcement of codes of conduct and that sort of thing?

Dr Maley—Certainly I think parliament should hold the government and the ministers accountable for how they are managing their staff and how they are administering a code of conduct. I think ministers should be answerable for employing staff who are not competent and for allowing them to remain on their staff and not acting against them.

Senator WATSON—Would you like to comment on the Blair government's approach of handing it over to the parliament? Is that relevant to the Australian situation?

Dr Maley—I am not familiar with the full extent of that government's approach. I know that their code of conduct for advisers is different because advisers there have a very different status, as they are temporary civil servants. I know that really differentiates their approach from that taken here. I think we are in a better situation here, where such staff are not treated as public servants but recognised as quite a different category of political personal staff.

CHAIR—You mentioned a moment ago something that is also in your submission. You state:

One of the prime ministerial advisers in my study said that the Prime Minister's office had a responsibility to monitor and control the behaviour of ministerial advisers generally; however, by and large this did not occur.

You argue that it should occur—that the Prime Minister's office or the Prime Minister should have a greater say there. What was the basis for your observation that the Prime Minister's office had the responsibility? Does that come from any specific instrument or decision?

Dr Maley—No, I think that was the problem. The Prime Minister's staff felt they had responsibility for ensuring that advisers worked well together and that the government was cohesive and operating effectively at the adviser level; ministers expected that of them. In fact, some of the ministers I interviewed were critical of the Prime Minister's staff for not `knocking heads together' a bit more than they did. They had that expectation of the Prime Minister's office that they would have a level of control over the staff and how they operated together. So that was the perception of the advisers and the ministers there, and yet they really did not have a mechanism to do that and relied on their own power or on how much power they could get if the Prime Minister wanted to get involved in talking to a minister about it; they did not have any mechanism or any articulated responsibility, though it was implicit.

CHAIR—How much of that might have related to just the internal workings of the government and the ministry in the political environment, if you like, as distinct from the role of ministerial advisers in liaising with, interacting with, the Public Service and across departments? If ministerial advisers are political advisers, as we understand, as well as having these other roles liaising with the Public Service, one is going to expect that, with competing ministers, competing political considerations within parties and within government and so on, we are always going to hear about frustrations of people within ministers' offices and within the PM's office. It is nothing new.

Dr Maley—I think it is right to say that the way advisers dealt with their departments was rather unknown to people such as the Prime Minister's advisers. They did know, as you say, about how the advisers worked together and how they negotiated with each other. They had a very fine sense of people's reputations in that environment. In relation to how the advisers worked with their departments, that was fairly atomised, actually. People possibly did not have a great idea about how advisers were behaving with their own departments. That was more under the control of the office. Perhaps the senior adviser or chief of staff of an office could have some role in monitoring the behaviour of advisers with their departments. They would have a better knowledge of that.

CHAIR—I want to raise another matter, which I know Senator Carr would have wanted to ask about. You would have heard other witnesses speak about this earlier. What is your response to the proposals in Don Russell's submission? From what I gather, you would tend to support some, if not all, of his views. Could you comment on that?

Dr Maley—I thought it was a very interesting idea to create a mechanism to give ministers an incentive to actually take responsibility for their staff. It was quite a punitive mechanism in the sense that if they didn't then their staff would testify before committees, which would be something that ministers would not take lightly. I thought that it was a very interesting idea; it was really directed in the right way, which was to force ministers to be more open and

accountable to the parliament. I thought that was a good idea, but I would have to look further at the detail of it.

Senator MOORE—I have asked a couple of witnesses this question. With the exception of the people who study this as an academic exercise, do you think that anyone cares about the process? Is the issue of ministerial staffers' responsibility and the role with the Public Service resonating in the community? In your experience—because it is obviously an issue for you—is there a sense that the community cares?

Dr Maley—I am probably not well placed to answer that because I am an academic who takes a great interest in this, so my own sense of it is heightened. It obviously is reported in the media and that is some gauge, but I would not be able to comment on community views.

Senator MOORE—You have heard a lot of the evidence today about people's awareness of the system. We have heard quite divergent views. Some witnesses have said that there is a very strong awareness within the Public Service of the way the system works, what their responsibilities are. That, of course, is unwritten, but they have this knowledge. Then we have heard some other witnesses say that it is very difficult to find any information at all about the way particularly the members of parliamentary staff process operates. What is your version about just how freely available and how aware people are of the system?

Dr Maley—I found my analysis of how the advisers and the public servants interacted very interesting. The senior public servants who were dealing with advisers on a day-to-day basis had a very clear understanding of protocols and there was a clear distinction in their roles—clearly non-political or clearly political—and yet there was a lot of tension between them because they were overlapping in the work they did and coming from entirely different perspectives. I found that those senior public servants had a very clear idea of how to behave. They were not always happy about it. There was very vigorous pulling and pushing going on in the way they worked together, and there was a lot of tension, but that tension could be managed well or not managed well. In fact, I asked all the ministers about this tension and nearly all of them found it was a positive thing. They thought it was a creative tension. In fact, one minister said she thought that the department was a useful brake on overenthusiastic advisers and that advisers were a useful prod on departments to be more responsive. So ministers found the struggles that went on quite creative. They were not worried by that.

At the time of my study—I cannot speak for now—people were quite engrossed in those relationships. Unlike what has been said earlier today, advisers generally did not go to all the various levels within the government. They had certain assistant secretaries and first assistant secretaries that they were responsible for working with, and they had very stable relationships, where they were speaking to the same people many times a day, and those relationships developed, over time, ways of trusting and working together. It was not the scattergun approach of just ringing anyone in the department. There were very strong links between certain individuals in offices and certain individuals in departments, and they worked out how to work together.

I do not know whether I put this in my submission, but there was an interesting link between ministers and secretaries. Some of the ministers I interviewed deliberately met with their secretary on a weekly basis, with no advisers present. The ministers who did that saw that as a

very important protection for them and a way to get direct communication from their departments. They wanted to know if there were problems with their staff. It was also a way, if a policy issue was stalled in the office with someone, for the secretary to simply say, 'What happened about this and that submission?' The minister could then go out and be furious with an adviser about not bringing that to their attention. The ministers who had that process in place saw that as being very important.

Senator MOORE—Was there any correlation between those ministers and their various assessments of active, inactive and passive advisers that you define in your study?

Dr Maley—Probably not. There were certain ministers who were cautious operators—that is probably how I would describe those ones. The active advisers tended to work with very dynamic ministers—that is, ministers who had an agenda and wanted to see the Public Service implementing it. That would probably be the way that they were marked out.

Senator MURRAY—You said that advisers exist only as an extension of the minister. It seems to me that that statement was once made about public servants, and ministers were regarded as being absolutely responsible for their departments and everything that happened in them. They took full responsibility. Those days have long gone. Do you not think that your statement is a little historical now—in other words, things have moved on very quickly, even since the days when you did your survey?

Dr Maley—Actually, I do not think so, because the nature of public servants and ministerial advisers is still so different—the basis of their employment is so fundamentally different. Advisers are the personal staff of office holders. They are not public servants: they do not have the sorts of protections around their employment within a career service that public servants do; they are able to be terminated at will by their employer; and they do not have the sorts of responsibilities that public servants have. I think they are vastly different on the basis of their employment and their role, and that will always be the case, unless we decide to put them under the Public Service Act or something like that. That still pertains—it does not matter how many there are. They are a vastly different type of employee.

In terms of the change since the Keating period, there has not been a great change in numbers. I quoted the numbers seven and 3.5, but I noticed in the numbers provided by the Department of Finance and Administration that there are only 15 more staff in total today than there were in the Keating period, so we have not expanded much beyond that. Therefore, I do not think it is a myth and I do not think it is outdated to say that ministers can still—working so closely, as they do, with staff who are personally employed by them—take responsibility for those people.

Senator MURRAY—You have placed a great emphasis on the number of staff and on how they are employed. Isn't that, in many respects, irrelevant to the committee? What the committee is concerned with is whether such persons act at any time with executive authority which is distinct from that of the minister; in other words, they are not just going through instructions, they are actually acting on their own judgment. In those circumstances, because they are paid from the public purse and because they therefore are involved in the daily activity of government, from an accountability point of view they should be treated no differently to a public servant.

Dr Maley—I would agree were that the case, but my view is that that should never be allowed to be the case. Advisers have no justification for exercising or wielding any executive authority because they are unelected. Who are they? They do not have any status which would enable them to do that. My view is that what we have to do is prevent them from behaving like that and ensure that they only operate with the minister's authority when they are acting with the Public Service.

Senator MURRAY—If that is so, it brings us back to the discourse I had with Dr Shergold—and perhaps others did as well—about proscribing or outlawing certain kinds of behaviour through the act and accompanying the act with the additional expanded protection of a code of conduct which is properly enforced. The proposition I put when I asked the question was: would he accept that the act should say that an adviser may not act with executive authority or administrative authority and just outlaw it?

Dr Maley—I think a statement like that would be a good thing to have in a code of conduct. In my study, that was not how advisers saw themselves behaving, and it was not how ministers saw their advisers behaving. Ministers were generally not worried about what their advisers were doing. They felt they knew what they were doing and that they were operating within parameters that had been agreed or authorised by them. The ministers who I interviewed did not see that as a problem. The advisers I interviewed had a keen sense of when they needed to go back to the minister and get authorisation for something. That was something they were always monitoring to see if they could keep operating along a certain path or if they would need to go back to the minister and check. That was a very important dynamic in the relationship. As far as the public servants went, they had a concern about when advisers were operating with authorisation and if they were accurately reflecting the minister's views. That was always something that was in their thinking and they tested it out at times by saying, 'I would like that in writing.' I think that will always be there. It is something that public servants dealt with by asking for things to be given in writing.

CHAIR—I would like to go to one other issue, which has not specifically been put forward by any of these submissions but is certainly raised in a number of them; that is, we have a range of different types of employees under the MOP(S) Act. Clearly most, if not all, of the focus on this issue of accountability relates to ministerial staffers.

It has been suggested by some others that maybe there needs to be a review, if you like, of the structure of the MOP(S) Act to take into account these different types of employees. Somebody I think mentioned that it was introduced in 1984. As a result of your work, do you have any comment about that? It certainly would have to be looked at if a proposal was ultimately adopted about accountability or even potentially the introduction of a code of conduct. We would have to look at who the act would apply to.

Dr Maley—Yes, I think it is very true that electorate officers are an entirely different type of employee to ministerial advisers that operate in Parliament House.

CHAIR—I do not know if I agree with that completely, except that they do give political advice, but they certainly do not have the relationship with the Public Service and/or the ministers. That is certainly the opposition's point of view.

Dr Maley—It is that interaction with the Public Service that really needs to be focused on with the code of conduct. However, they do have a lot of dealings with the public so, in a sense, you could imagine a code of conduct for them that may govern a number of other types of appropriate behaviours that are more focused on their dealings with the public perhaps. I think that could be a good idea to split the act in terms of dealing with the two types of staff.

CHAIR—I know both from my experience as a senator and from the experiences of my staff that oftentimes the problem you run into when dealing with the Public Service is getting the information out of them. It is not because they do not necessarily want to give it to you, it is because they have responsibilities to their staff and, increasingly, you run into difficulties concerning privacy considerations. We have a lot of representations from constituents who want us to pursue a matter on their behalf, and when you go to the taxation department or to Centrelink, for very legitimate reasons, you hit a wall and then you have to work your way through that. Oftentimes, we find that we have to go direct to the minister's office, to the DLO and even to the advisers in order to ensure that the issues are taken up. I thought I would just raise that at the end of the day. As there are no further questions, thank you for your appearance today and for your submission, Dr Maley.

Dr Maley—Thank you.

[5.17 p.m.]

PODGER, Mr Andrew, Public Service Commissioner, Australian Public Service Commission

CHAIR—Welcome back to the inquiry. Thank you for agreeing to be recalled this afternoon. We appreciate that you have made yourself available. I think there are a few other issues that senators wish to put to you.

Senator MOORE—Thank you for coming back, Mr Podger. I do apologise for calling you and your staff back. One of the things that I want to explore with you concerns the degree of awareness within the Public Service agencies of this issue and your role in the Public Service Commission as a coordinator when secretaries and members of staff get together to talk about things that are important to them. Is the issue of the interrelationship between public servants and ministerial staff one that is of importance to public servants? Do they choose to talk about it through the commission process?

Mr Podger—Yes, and they always have done. It is a very standard part of our training of people who are looking to senior positions in the Public Service to talk to them about values and behaviours, particularly the values relating to the relationship between Public Service, the government and the parliament. For example, as a matter of course all our orientation programs for new SES people would include a session with me about the values, and this particular issue is always on that agenda. I would have to say, and not surprisingly given the public interest in this over the last two years, it would probably be the issue that is of most interest amongst people moving into more senior positions.

In conjunction with the Department of the Senate, the Attorney-General's Department and the Department of the Prime Minister and Cabinet, we also provide regular training courses on issues to do with parliamentary privilege and public servants appearing before parliamentary committees. That always raises issues about public servants' obligations to the parliament, their position of trust and so on with ministers, and the fact that they have to manage both those sets of relationships. It is very much a standard part of our training and discussions within the Public Service. At the commission we have been doing a bit of work in trying to get an assessment of how agencies are managing this. I reported in last year's *State of the service report* on the survey we did of agencies and the procedures they have. This year we are doing a survey not only of agencies but also of employees. We have asked some questions in this area to check not only the views of the agencies but also the perspective of staff, amongst the many other issues that we have raised in this survey.

Senator MOORE—Mr Podger, can the committee see the questions—in terms of format—that you have asked them?

Mr Podger—I would have no difficulty in providing you with those questions. We will be reporting on that in our report. The JCPAA has agreed for us to report in November rather than October. It has been a bit difficult to try to meet the same timetable as other annual reports when

we are drawing on a post end of the year survey of agencies, so we will be reporting on this in November.

Senator MOORE—One of the things that is of interest is the varying approaches across the different agencies. With the decentralisation of management to different agencies, it has lost that kind of centralised approach to issues such as developing guidelines and assessing people working in these areas which are so sensitive. In your research, particularly last year, because you are going into another round which gives you that reinforcement of whether the same trends are following through, was there a wide variation between departments in the way they handled the interaction?

Mr Podger—Last year 88 per cent of agencies reported having some procedures or guidelines on interactions with ministers and their staff. The ones that did not tended to be the small agencies, and my presumption is that that is because a lot of those do not have as many direct relationships with ministers and ministers' staff. They are not involved in the policy side of things. Around seventy-five per cent of agencies use a central coordination function for quality assurance on written material to and from ministers' offices and on specifying such things as minimum classification level for sign-off of briefs and minutes. There are also figures in our report on the number of agencies that require significant email communications to be retained and on issues around record keeping. I suspect that that is an area where improvements are under way, with a lot of work coming from Archives and others to help agencies in this area—very much responding to repeated comments by the Auditor-General in that field. I suspect that some of the figures we have which are at the lower end will be higher when they come through.

Senator MOORE—Is there a concept of this practice when it comes to this particular part of interaction?

Mr Podger—The second report we issued last Monday on embedding the values is like a best practice guideline to senior managers. It is primarily based on studies of six agencies. There is a companion volume with quite a lot of detail of case studies from those six agencies across the whole gamut of values, ethics and so on. You will see within that, in fact, a couple of best practice examples in this broad field. One is from Transport on the way they manage linkages with ministers and offices, and one is from Centrelink on the training they provide for staff on appearing before parliamentary committees. The intention had been to use that as a base for stimulating discussion across the service on good practice.

Senator MOORE—Mr Podger, I have not seen those documents yet. After we have actually had a look at them, there may well be some supplementary questions which we will put to you on notice.

Mr Podger—Certainly.

Senator MOORE—It just seems that everyone who is working through these issues is actually trying to come up with what the core responses are. The process of acknowledging that there is an issue is a good thing in itself. I have a copy of the new guidelines that have been released in terms of the public sector but not the values document, so we will get that as soon as possible.

Mr Podger—As I said, the documents we released on Monday were revised guidelines on official conduct which are aimed at all public servants—particularly managers, but more generally too.

Senator MOORE—That was yesterday?

Mr Podger—It was last Monday, a week ago. The second document we released was more directed at managers and it was about the systems and procedures that they ought to have in place to embed the values. As I said, we drew on these six agencies. We also drew on quite a lot of international material—particularly from the OECD and what they have seen as good practice. So you will see that a lot of the stuff we have got reflects what we think is international best practice.

Senator MOORE—This morning, we heard from Dr Shergold and Dr Watt. One of the things that Senator Carr was exploring with the two department heads was concerns about the public perception of the public sector, as well as the public perception of the system. Both Dr Watt and Dr Shergold stated that in their departments and in their opinions the complementary relationships are working very strongly and that there is a strong level of knowledge and awareness within the service and, from their point of view, within the ministers' offices about what each other's responsibilities were and how they could work effectively together. I would like a general comment from you about your perceptions of whether that strong complementary relationship is effectively working across the public sector.

Secondly, I would also like some comment—and I understand it will be subjective—about the various public articles that have been around about concerns about the politicisation of the public sector and the role of the public sector in decision making and also about the stuff, particularly from the *Canberra Times*, about interference in the way things operate. You are very much aware of all the media that is around, and I would like some comment about whether there have been any questions raised in the community about the independence and strength of the public sector.

Mr Podger—I will answer that in different parts. In my own experience—not only as commissioner for less than the past two years but as head of the health department for the previous six years and as head of housing when Mr Brian Howe was my minister—the relationships between the Public Service and advisers have generally been very good. I was quite interested in Prime Minister Howard's comment in 1996 in which he talked about his experience when he had been the Treasurer and the degree of alienation between advisers and public servants at that time. Coming back into the ministry, he expressed a view about how improved that relationship was in 1996. Looking over my career, that is true—the Public Service has adapted to the need to be much more responsive than we were in the seventies. We have improved a long way, and part of that improvement has been the strength of the relationship between the Public Service and advisers.

I am aware that there is some unease in areas of the public about how well this is operating. Some of the criticisms are grossly exaggerated. For example, in the commission I deal a great deal with senior appointments in the service—that is, the senior executive service: not so much the heads of agencies but all the positions below that. In the Public Service Act it says quite clearly that those appointments are not to be in any way directed by ministers. I have not seen any pressure of that sort in my experience. In terms of the issue of politicisation of appointments

within the service, I would have to say that there is no sign of politicisation in that process in appointments that come through anywhere that I see.

I think issues have arisen on occasions where there has been some misunderstanding by some advisers of the values of the service and the importance of our apolitical and professional role. I have not seen that as an endemic problem, but we would be silly to pretend that it has not arisen from time to time. I hasten to say from personal experience that this is not an issue of party politics; this is an issue that happened from time to time under the Hawke-Keating government and happens from time to time under the current government. I guess my role is to try and promote the values to APS employees and give some sort of a public profile to the importance of these issues. That is part of my role. I am also pleased to see my colleague the head of the Department of the Prime Minister and Cabinet has similarly taken a higher profile in recent times promoting the APS values and how important they are to the service. I think that is one way of giving a bit of leadership to the service on these issues.

Senator MOORE—If you are a member of the Public Service, you have a clear understanding from when you are appointed about your accountability and the results of you doing something that brings into disrepute the public sector. There is a process in place and you are told about it. If anything goes wrong, you know that there will be a level of accountability. I would be interested to know whether, given your experience, you believe that the public sector workers feel that same degree of accountability occurs in ministerial offices, where people are working closely together at senior levels. Dr Watt assured me this morning that 98 per cent of the time—or some high 90s per cent of the time—everything is fine, and we accept that, but I want to focus on the small number of cases when a crisis does occur. If you do have a crisis which is somehow shared between the ministerial staff and the public servant, the public servant knows what the outcomes of his or her action could be. Is there faith that there is a similar awareness of what the implications of their actions would be for the minister's staff?

Mr Podger—In some respects the advisers are more sharply accountable than the public servants in their role as an extension of the minister. If they get it wrong, they lose the confidence of the minister very quickly and their rights, if you like, are far more limited in some respects than the public servants'. In the guidelines for public servants that we issued we talked a little bit about the ways of handling issues and challenges should they arise. One of the things I will be reporting on in this year's *State of the service report* will be the perceptions of those who deal with ministers' offices on that. In a preliminary examination of the material so far, not surprisingly it would appear that challenges arise quite frequently. I suspect that has always been true. It also appears at this stage that most of those challenges—not every single one—are resolved effectively, which is an interesting sort of result. We are still going through our data and checking that a bit more.

We advise that people should try and resolve an issue directly between the APS employee and the adviser. If there is an issue, they should raise it up the line. If necessary, they should raise it with the secretary. Under certain circumstances—and this is very unusual—the secretary may wish to raise it with the head of the Department of the Prime Minister and Cabinet or with me. If that should happen, the minister should always be kept informed—that is the advice here.

In my experience as head of a department I used to have regular informal meetings with the principal adviser or the chief of staff, one or the other, where we discussed the relationship, how

it was going and what issues were arising. There were always issues on both sides. For example, the adviser would say to me, 'Look, this area of the department is not quite as quick to respond as these other ones. Is there something we can do to sharpen that up?' And we would talk about that. I might say, 'Look, I think some of the advice coming from this area is something you really ought to listen to because it is actually raising some important issues of due process or whatever and needs to be taken very seriously rather than just simply glossed over.'

I used to have those sorts of discussions on a very regular basis, and they would iron out of a lot of the snags in the relationship that might be occurring around a large organisation with a minister with a substantial office. I would advocate to my colleagues to do that sort of thing, and I think most of them do. That was supplemented by some broad protocols about advisers not contacting people too far down the line as a matter of course, unless they really had to. If they did have to go down the line, they would understand that there would have to be some upwards management of that to ensure the quality and the overall checking of the advice and the responses that were being provided by the department. I think most agencies have either written or unwritten guidance of that sort.

Senator MOORE—Some of the information we received indicated that there used to be a myth that people who worked in ministers' offices often had a Public Service background. A couple of the submissions mentioned that there would be a degree of knowledge. If you are a serving member of the Public Service and you choose to be recruited, not as a departmental liaison officer but in some other way, to go and work in a minister's office, what is the process for making that choice and then returning to the Public Service? Is that easy to do?

Mr Podger—As a general rule, yes, it is. Indeed, I believe the relationship between the advisers and the Public Service is helped by a number of the advisers having had experience in the Public Service. I cannot remember which one, but one of the submissions has some data on that. I believe there is still quite a substantial number of advisers who have had experience in the Public Service, and I think that is a good thing. I also think it is a good thing for the Public Service to have people who have worked as advisers in ministers' offices and who have an understanding of the way this place operates and the pressures that ministers face. That direct experience is of huge help to have within a department as well, not just as DLOs. Mostly, a person would go on leave without pay, and then they would be able to come back into the service at the level at which they had left.

Senator MOORE—And that is a delegation within each individual department?

Mr Podger—Yes.

Senator MOORE—You ask for leave without pay within your own department, it is approved—or not—and then, when your term finishes, you ask to come back.

Mr Podger—I would be very surprised if any agency were reluctant to give that agreement very readily. It is a standard approach. Can I answer a question that Senator Carr asked me just before the break? He raised a question about trust. I think by implication he was wondering whether we were raising the issue of trust as something new because it was a bigger problem than it might have been in the past. I reflected on that in the break, and I found that the last document issued in 1996 by the management advisory board and the management improvement

advisory committee—for which most of the work was done in 1995 and 1994—actually also refers very directly to this issue of trust. It has always been an issue. Making the relationship work well requires a degree of trust. I do not think that, all of a sudden, this has become an issue in the last 12 months. I think having a relationship of trust has always been at the heart of making this thing work.

Senator WATSON—A different approach was put to us this afternoon, and earlier in a submission, by Dr John Uhr. His approach is that parliament must take greater responsibility for the management of the public accountability of ministerial staff. He says we are dealing with the 'conduct of a largely unregulated group of politically-powerful public officials'. Do you agree?

Mr Podger—I do not have the submission in front of me, but I did read it just before I came forward. There are a number of variations on a theme here. I have been suggesting benefits of having some statement or articulation of values in a code of conduct. Senator Murray has been suggesting that there be a more specific provision within the MOP(S) Act about the authority or the lack of executive authority of advisers. John Uhr is saying that this issue is in the political arena and is more an issue for parliament to look at. He is suggesting some approach, under the presiding officers, where there might be some ministerial standards arrangement.

I am conscious that the Canadians have played a bit with this notion of an ethics adviser. It was up until this year an adviser to the Prime Minister. I think they have now passed the legislation to make it a statutory position—not without some debate in Canada. My comments earlier still stand. There needs to be some caution about how far you can go in directly regulating what is going to end up being a political discussion and debate. The view I have been putting is that political discipline might be guided by a clearer statement of values and a clearer code of conduct, but I am not sure it is sensible to put them into a formal structure or process. In a sense, these are variations on themes that are being put to the committee.

Senator WATSON—Taking this concept a little bit further, we have talked about a standards commission or an integrity commissioner. How do you view that in terms of transparency and accountability to the parliament?

Mr Podger—If you go down this route it is going to prove to be quite a difficult process in terms of how you handle the references and how politically the whole thing would operate. I am uncertain as to how you would make it work. I would feel very uncomfortable about being put into that sort of a position, given the nature of the political business in this building.

Senator WATSON—Having said that, what are the risks and advantages of going down that path? You say you feel uncomfortable. Can you elucidate the risks as well as the advantages of going down that path for us?

Mr Podger—I had seen some benefits in building on what has already happened in terms of the Prime Minister's guide to his ministers, which includes some guidance to the ministers' personal staff. A clearer articulation of those would provide useful broad political discipline. In regard to turning that into a specific way of investigating a particular complaint, you are in a much better position than I am to comment about how you would make that operate, given the experience of privilege committees and so on in this place. I am not sure how well this would operate with that process.

Senator WATSON—But you have not articulated the advantages or the risks of going down that path for me. You caution—

Mr Podger—I am hinting that I am not too sure that it would actually operate other than as a political debate. I am not too sure that it would actually enhance the way in which the process would operate. I cannot see that it would add a new dimension that one would have faith in.

Senator WATSON—It would certainly make it more transparent. These people are paid out of the public purse.

Mr Podger—I am not too sure I can add any more to my answer. I am making, I suppose, a personal judgment from my experience. Senators here are in a far better position to comment on that than I am. Trying to overlay that level of direct procedural discipline in this place over ministers I doubt would add more to it than the existing processes of scrutiny of ministers in the two chambers.

I have seen the advantage of having a clearer code of conduct for advisers, associated with a statement of values, as a useful way of reminding advisers of their professional role and providing in that sense a promotion of their professionalism and their understanding of the role and the corresponding role of the Public Service as a way of improving that relationship and professionalism. I am not too sure that I am after a system which actually administers detailed processes in relation to breaches of that code. I still think that that is likely to be left to the political process.

Senator WATSON—Don't you think there is a need for a mechanism to ensure that the so-called boundaries that you have established are not breached and that there have got to be sanctions for breaching?

Mr Podger—This is in the political milieu; it is a little bit different to within the Public Service itself.

Senator WATSON—But they are paid by the public purse.

Mr Podger—For that very reason, I believe a clearer statement of the values and code of conduct would be useful. I am simply raising the practical issue of whether some further machinery for investigating breaches would actually work or whether the existing machinery would be aided by having a clearer statement but does not need anything more than that. I see this as an option. I see some weaknesses in practice on it, but it is a variation on a theme and I guess I have been proposing something a little bit less than this option.

Senator WATSON—It has also been put to the committee that there needs to be a better framework and that that framework has to have a number of pillars, including the codes of conduct et cetera and a number of other features. How do you view that concept? I know it is a departure from the existing protocol, but is that worth pursuing? We are talking about pillars such as more transparency and the code of conduct as well as administrative transparency. Some of those things seem to be lacking at the present time, and they are the deficiencies that were worrying some members of the committee.

Mr Podger—Maybe it would be helpful if I clarified what I mean by a statement of values and a code of conduct. At the end of John Uhr's paper there is a statement, which I strongly support, which says that any such code of conduct or set of values would clarify that the ministerial staffer must not 'interfere with compliance by public servants with their own code'. One of the issues here is an appreciation of the responsibilities of public servants and an appreciation that advisers should not act in a way which might try to induce public servants to do otherwise than abide by their values and code of conduct. You will see that that is one of issues that is also raised in the UK code, and it is raised, I think, in the Queensland one you referred to, Chair. I would see that as an important part of any statement of values.

In trying to clarify the Public Service values for the purposes of promoting them to APS employees I have seen value in grouping our values under four headings: the relationship between the Public Service and the government and the parliament; the relationship with the public; the relationship with the workplace; and personal behaviours. Those headings are quite useful to think about here. Clearly, the relationship with the government and the parliament would be a different set of principles than those the Public Service has. But the other ones, I suspect, would be almost identical to the sorts of values and the code of conduct we have about personal behaviours, relations with the public and workplace arrangements. But there would be some variations in particular in the first group, given the different sets of responsibilities they have with ministers as opposed to what we have.

Senator WATSON—Are you familiar with the code of conduct for special advisers as enunciated by the Blair government?

Mr Podger—Yes.

Senator WATSON—Could that be implemented, because again that was drawn up by the parliament as opposed to the Prime Minister? There is some symbolism certainly in that, isn't there? There has been talk about the erosion of the power of the parliament in terms of accountability for the power that is exercised by these powerful advisers.

Mr Podger—One of the benefits of the Public Service Act in 1999 was that it was passed by the parliament in a bilateral way. That helped in the Public Service.

Senator WATSON—It did not really cover the people we are talking about.

Mr Podger—No, it does not. If we went down the route that I am proposing, which would involve some extension of what is already in the Prime Minister's guide, there would be some advantage if that were seen by the parliament as the way to go. If you put it in legislation and you added to it a machinery for handling breaches, I am not too sure whether that would work in practice. Bearing in mind that the advisers are part and parcel in my view of ministers, if you are applying this directly in a discipline over ministers, you have to think about why you would do that differently from the normal accountabilities you have in this parliament.

Senator WATSON—Do Dr Uhr's proposals include mechanisms for dealing with recalcitrant advisers? Is that an essential feature of what is being proposed? After all, Dr Uhr says that he prefers the third path of the three alternatives that he puts forward.

Mr Podger—I am not sure I can add much more to what I have said. In a sense Dr Uhr has put a variation on a theme that is in a number of submissions. My preferred one is a less legalistic formal process around it, but I do believe there would be advantage in a clearer statement of values and code of conduct, which I think would aid the professional role of advisers and their relationship with the Public Service.

Senator WATSON—Do you think there should be a parliamentary oversight of the numbers or a total budget for ministerial staff? I know there has not been an explosion, but that is not to say that there will not be an explosion in the future.

Mr Podger—The Wicks committee in the UK has talked about trying to put something in a formal way on that score. The issue of the numbers is a matter of continued debate within the parliament and whether there needs to be an absolute cap. In my submission I have said that there is an issue about the numbers and that at some point, if we kept expanding on them, making the system work would become more difficult. We have reached a bit of a plateau in the last few years and I would see some advantage in staying where we are rather than expanding further.

One of the issues of the important element of trust between a minister and the Public Service and the complementary role of advisers is that advisers have a role that should not subsume the role of the Public Service. It should get the best out of the Public Service to make sure that a government is able to exercise its democratic rights and the agenda which it has been elected to pursue. But there is a risk. If you have a lot of advisers, the mechanics of that is that you run the risk of their being the trusted group and the Public Service being the not trusted group. If there are too many of them, you get that overlay which none of us would like to see. I caution on allowing the growth to increase willy-nilly, but the truth of the matter is that it has been plateaued out for some years and I do not see the current number as a problem. I hasten to say that the number in Australia is a lot more than in the UK and, for the most part, we have been able to make that work very well.

Senator MOORE—On Senator Watson's point, this morning Dr Shergold said that in the new environment a greater contestability of advice is being given to ministers and that we had moved away from the monopoly advice in the public sector. Does that fit in with your view of the way it operates in terms of the wide range of advice sources which ministers now have, of which only one is the public sector?

Mr Podger—I think Peter is absolutely right. He has been right to highlight that, and he has not been the first one to highlight it. I can remember Mike Keating highlighting this issue a few years ago. Both of them have embraced the issue, saying that it has been good for our democratic system to have that wider range of advice coming to governments. I put a slightly different twist on it. Peter presented it as being that, therefore, the advisers are only one part of the process and these other things are a more important part of the story—and I think that is correct. But the other twist on it is that this is the very reason why ministers do need advisers. There are now a wider range of pressures on ministers, and they need a resource to help them manage that. If that resource were purely within departments, there would be some pressure on departments to be more political than there has been. This resource to help ministers manage that political agenda has been very important.

CHAIR—I note that comment was made in one of the submissions—I am not sure whether it was in yours or in another one. Following on from that, could it be argued that that actually enhances the accountability of the minister, even in circumstances where he or she may not be supplied with the information, the advice or whatever. In other words, in order to deal with the greater demands upon ministers today, they have been given more staff, more ministerial advisers and so on. That then should not be used as an excuse for ministers to say, 'I did not get the advice or the information from that particular adviser.' It does not relieve the responsibility on the individual employee if they should have passed the advice or information on and did not. Do you see the point? There is a catch-22—an irony—here, in that having all these additional staff in order to assist you can at the same time be used as a mechanism to, as it were, create a fog or the firewall that has been talked about.

Mr Podger—I have seen that point raised in a number of places, and I suppose there have been some examples to suggest that is so. I think for the most part, however, the advisers have helped ministers and made ministers able to be more responsive to the many pressures and interest groups which in a democracy you would wish them to do.

CHAIR—I will go to a couple of other questions. I am conscious that we have kept you very late, Mr Podger. I appreciate that. In your submission you state at page 9 that two key products are at an advanced stage of development: a revision of the *Guidelines on official conduct of Commonwealth Public Servants—a summary* and the *Good practice guide to agencies*. Are you able to indicate—

Mr Podger—They were released last Monday. They are here. I think I provided them to the committee.

CHAIR—Thank you. We will incorporate those as an appendix to your submission. You have referred to the UK position and what is happening in Canada. The parliaments of those countries are looking at how they might strengthen concepts of accountability and so on. Doesn't that suggest that we are a long way behind? If they already have procedures and regulatory systems in place and are looking to improve and strengthen them, shouldn't we, at least on that basis, be more proactive than we are?

Mr Podger—I have two comments on that. I think that in some respects we are well ahead of most of the countries that I have mentioned. We have a more accepted approach of ministerial advisers who are politically appointed and separate from the Public Service. We have the advantage of having the MOP(S) Act, so they are not under the Public Service Act. Some of the others are yet to make that distinction and are looking to do so.

In Britain, they are still getting used to the fact that a more responsive government would be aided by some more advisers, and they are still trying to map that out. They have not had as much experience with that as we have had. Interestingly, some of the things they are looking at have been to question whether their public service is as responsive as it should be. For example, I know that they have been debating the particular way civil service commissioners provide advice on senior appointments to the public service—whether ministers ought to be given more than one name for appointments of heads of agencies and things of that sort—to allow ministers to have a look at it. There are issues both ways when we look at the UK.

That said, obviously in terms of my submission to you, I think there is some advantage in picking up aspects of what they have done. I certainly would not see that they are somehow way ahead of us. I think there are certain things we can learn from them but I think there is quite a lot they could learn from us.

CHAIR—I raised it but to be fair. I suppose it is more relevant to comments made earlier by Dr Shergold that there is a recognition in those parliaments—in those governments—that this is an issue they are having to look at at the moment, even though they have, at least in some respects, a more defined system involving the accountability of the parliament in this regard. So it suggests at least that not everything is okay.

Mr Podger—I guess all I am saying is that this is an evolving area and we would be silly to stand still. We should be looking at where we can improve.

CHAIR—Yes. Particularly given that, in more recent times, their parliament has been confronted with some of the very issues that we have been focused on, including the establishment of committee inquiries into intelligence regarding the Iraq war and weapons of mass destruction et cetera.

I would like to move to the issue of the engagement of departmental liaison officers. As we know, the number of those positions has been growing. At page 19 of your submission you state:

> ... it is important … that the number and functions of DLOs are regularly scrutinised, partly to ensure that DLOs are not doing work more appropriately performed by MOP(S) Act staff.

Referring to Dr Russell's submission again—and he is appearing tomorrow—he argues that there may be no clear role for DLOs any more, at least on one level, if a minister's office is to function separately from the department. I would like you to expand on your comments. In particular, who would you see performing scrutiny of the functions performed by DLOs? Presumably you have some concerns. Are you aware of instances where the lack of a clear delineation between the two has arisen as an issue?

Mr Podger—I would like to make a couple of comments. I believe that DLOs are a critical part of making the relationship work; I think they play a very important role. Indeed, in my experience, ministers and departments make a mistake if they only put in very junior people who manage only the paperwork. I think it is always wise to put in somebody with a bit of experience and judgment who can play a positive role within the minister's team, but recognising that they are in fact public servants.

I have given advice to people who take on DLO jobs over many years and the advice is always in those two parts. Firstly, while you are in the minister's office you are part of the minister's team. You are there to help the minister and to work with the advisers there and that is really important. You should not be seen by them as a spy from the department. You have got to be there and be trusted as part of their team. Secondly, you are a public servant and your specific role is not to enter into the partisan stuff. But you can help the advisers there to find out who to talk to, where further information might be found and so on. Providing that extra support rather than just being a paper shuffler has always been the better way to operate, in my experience.

CHAIR—What if they need to be located in the minister's office? I acknowledge that in one respect I might be being a bit of a devil's advocate here, because I know from my own experience that I have utilised the opportunity to deal directly with departmental liaison officers in certain ministers' offices and I have found them very useful—extremely helpful. But if I could make the same phone call to that person in the department, I could probably still get the same advice and the same assistance.

Mr Podger—But it might take you somewhat longer, and the DLO—

CHAIR—Not necessarily. Let me give the example of the Child Support Agency. Members of parliament get a lot of issues raised with them about problems with child support. They actually have established a point for members and senators to liaise directly with, because they appreciate that this is an area where we get a lot of constituent issues raised with us. We have the opportunity to deal directly with those public servants, but they are not necessarily located in the minister's office as DLOs.

Mr Podger—I was not taking the perspective of the DLO's role in helping representations that are made to a minister to be directed to the right area of the department. I was thinking more of their role in assisting with the coordination of material for ministers for ministerial decision making. My strong advice to ministers has always been to not have only a junior person who helps to manage the paper. That is an important part of the workload; a lot of ministers have thousands of pieces of paper going through their offices every week and you need a resource to help manage that, but I always have advised them to have somebody who is more than that, who is able to participate in the office discussions of policy issues and can say to them when they are having these discussions: 'You may want to get a bit more information around this. I think there are people in the department who you really ought to be engaging with to bring to bear on this because I think that your discussion is more limited than it should be.' That capacity is very hard for a junior person to have.

It is a way of helping in the relationship between the minister and the office and the department to ensure that the expertise in the department is actually brought to bear. Sometimes things are running so quickly that there is a risk that the information is not brought in. A DLO can help to handle that. It ends up not being just a DLO. You hope, as was mentioned earlier by Dr Maley, that in most cases particular advisers have forged very close links with particular areas of the department—they know each other and they know how it is working—but a DLO who can add a level of policy experience and discretion is very important. It also is quite a good demonstration to the office and to the minister of the quality available in the department. I have always seen it as part of selling my department to have a good person there.

CHAIR—The question I put to you at the outset of my comments—and I admit I have probably taken you away from it—was in relation to your comment about the need to regularly scrutinise the number and functions of DLOs. How do you see that being undertaken? Who would do it? Who would be responsible for it?

Mr Podger—Essentially that is now done via the Prime Minister. The Prime Minister has directions to ministers on the number of the DLOs; if there is a variation on that, there has to be a process of seeking the Prime Minister's approval. We would provide extra DLO support for a period if there were a particular pressure. If there were a major issue that is leading to much

more correspondence or whatever, we might provide that. But there are guidelines from the Prime Minister on how to manage it to ensure that this is not seen as just a general support. The issue becomes most sensitive, of course, in the election period and I have quoted in the submission the guidance that there is about the handling of that.

CHAIR—Do you have any concerns the other way around, with employees in a minister's office who are also MOPS employees performing duties that might otherwise be undertaken by the Public Service?

Mr Podger—In a sense, yes. I think my advice is to ensure that the advisers take advantage of the expertise that is in the department. There have been occasions where, in the rush of things, they have decided they know enough and can get on with it. That can quite frequently trip the minister up. If you have got the relationship right, that does not happen. It can be an issue where sometimes, particularly when you are dealing with whole of government, the advisers work with the other advisers and, as they are all working together to make it happen, they have not actually drawn on the respective expertise from the different agencies. I think that that is something that, if we got the relationship right, would not happen. But it is sometimes a risk.

To talk a little more about this issue of public servants coming under the MOP(S) Act for a period, the Prime Minister issued a direction in 1999 that provides for mandatory granting of leave without pay to work under the MOP(S) Act and for a right of return to the agency. There actually is an instruction of the Prime Minister on that.

Senator MOORE—I know they are on record somewhere, but can we get a copy of that? I like to keep my knowledge up to date.

CHAIR—Could you tell us what the levels of the DLOs are?

Mr Podger—I would have to talk to the Prime Minister's department, which normally coordinates that.

CHAIR—I am not seeking it on an office by office basis. Given your comment about not having junior people in there—

Mr Podger—There is general guidance on that that comes from the Prime Minister's office and the department. For the most part the senior DLO will be an EL2, just below the SES. As I said, I always look to get one of my best EL2s—somebody who I think has got prospects of being in the Senior Executive Service. It is good experience for them and there is a return in terms of development as well as providing services I have just been talking about.

CHAIR—You have had instances drawn to your attention of where those DLOs have been requested or directed or put under pressure to perform work that would not necessarily be appropriate for them?

Mr Podger—Not in a major way. The issue there has not in my experience been a substantial one. It is something I simply give advice on; just be careful of. I have not in my experience seen a big issue.

CHAIR—You would hear about it if it happened—is that the point? Would it go to the department and maybe stop there?

Mr Podger—I think I would. I am just reflecting on a couple of instances over my career. They have not been ones where there was an easy answer for it. What I have welcomed is the DLO ringing and saying, 'I have got an issue; how do I manage this?' It has been something we have been able to work our way through. It has not been a major problem. Some of this issue about the DLO resources is more difficult than that; that is, they are doing quite proper work but that proper work may be seen to be freeing up wider resources. I am talking about in, say, an election period being quite clear that not only are they doing the job they should do but they are not in some indirect way making it easier than they ought to in the political hothouse of an election. That has been an issue from time to time.

CHAIR—As there are no further questions, I thank you, Mr Podger, for appearing today and agreeing to come back. We will adjourn until tomorrow morning at 9 a.m.

Committee adjourned at 6.15 p.m.