



COMMONWEALTH OF AUSTRALIA

SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Reference: Annual report of the Commonwealth Ombudsman

CANBERRA

Wednesday, 26 November 1997

OFFICIAL HANSARD REPORT

CANBERRA

SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Members:

Senator Gibson (Chair)
Senator Murray (Deputy Chair)

Senator Heffernan
Senator Lundy

Senator Robert Ray
Senator Watson

Participating members:

Senator Abetz
Senator Bishop
Senator Bolkus
Senator Bob Brown
Senator Bob Collins
Senator Colston
Senator Conroy
Senator Cooney
Senator Chris Evans

Senator Faulkner
Senator Gibbs
Senator Harradine
Senator Margetts
Senator Murphy
Senator Neal
Senator Reynolds
Senator Schacht
Senator Sherry

WITNESSES

**SMITH, Ms Philippa, Commonwealth Ombudsman, GPO Box 442, Canberra,
Australian Capital Territory 2601 52**

**WOOD, Mr John, Deputy Ombudsman, GPO Box 442, Canberra, Australian
Capital Territory 2601 52**

SENATE FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

1996-97 Annual report of the Commonwealth Ombudsman

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Present

Senator Gibson (Chair)

Senator Lundy

Senator Robert Ray

Senator Murray

Senator Watson

The committee met at 12.43 p.m.

Senator Gibson took the chair.

SMITH, Ms Philippa, Commonwealth Ombudsman, GPO Box 442, Canberra, Australian Capital Territory 2601

WOOD, Mr John, Deputy Ombudsman, GPO Box 442, Canberra, Australian Capital Territory 2601

CHAIR—I declare open this public meeting of the Finance and Public Administration Legislation Committee to consider the 1996-97 annual report of the Commonwealth Ombudsman. From the time of the committee's 1991 review of the Office of the Commonwealth Ombudsman, we have taken a special interest in the office and its activities and have aimed to have regular meetings under our annual reports inquiry power to consider matters of mutual interest. I am sure Senator Watson, a fellow Taswegian and the sole remaining committee member who was present for that inquiry, will be particularly keen to follow up some of the issues that exercised the minds of the committee then.

I am pleased to welcome Ms Philippa Smith, the current Commonwealth Ombudsman, and the Deputy Ombudsman, Mr John Wood, in the 20th anniversary year of the Ombudsman's office. Would you like to make an opening statement before we go to questioning?

Ms Smith—Yes, thank you, Senator. I will try to be quick in flagging things that I think are important. I will not be repeating the annual report. It is, as you would appreciate, probably the major summary document for the Ombudsman's office in which we try to profile a number of specific cases but, more particularly, bring together the broader policy issues which I want to bring to parliament for its consideration. In the past, that has been fruitfully done by parliamentary committees on specific topics. I think that is a very useful way of progressing some of the issues of review because quite a number of them are quite complex.

Also, I would like to bring to the attention of this committee a number of issues that are specific to the operation and viability of the office. I bring those forward for your consideration. I might start with the policy issues and really do no more than flag where they are in the report. You can ask me further questions if you want.

Our assessment of what was the causation of complaints, generally, is provided on pages 5 to 8. I will not go through them. There are a range of things, including complexity and information. One of the issues that does need consideration though is that of whistleblowers. I raise it on both page 4 and page 12, pointing to the need for an overarching scheme to ensure that statutory authorities and GBEs are covered by whistleblower protection. The current arrangements that are being introduced in the bill leave that gap in coverage. My experience as Ombudsman is that it is from the statutory authorities that a great number of the whistleblower complaints come forward. So you really do need an overarching scheme and reconsideration of the independence of pursuing

those whistleblower complaints.

I also raise the issue of whistleblowers in the context of police complaints—a statutory authority obviously—on page 229. In the next couple of weeks I will be releasing the results of an ‘own motion’ investigation on police complaints. We looked at a range of complaints and at the problems that were there both for whistleblowers and for the supervisors of not having the experience or expertise in being able to handle that, and the various ways that harassment really does occur in the police forces still. I am pleased to say that the commissioner has taken our concerns on very fully. We will be releasing the report jointly and he has taken steps to introduce a manual and training programs within the police force. It probably stands as the best model in protocol of an agency trying to do something about the protection of whistleblowers. The police obviously have a long way to go on it but I am very encouraged by the results.

CHAIR—Are there three investigations still in progress?

Ms Smith—Sorry—

CHAIR—In the report, on page 229, you have mentioned five investigations, three of which were still in progress at the end of the reporting year. Are they still going?

Ms Smith—This was on a number of the own motion investigations. The whistleblower one is now concluded and I will be releasing it. There is one in terms of search powers that we are still proceeding with, and the other one was the use of the Intoxicated Persons (Care and Protection) Act, which relates to the ACT jurisdiction in particular.

The next issue I would like to bring to your particular attention is that of oral advice. We discuss it here in this report, particularly at chapter 3 on page 17, and also in the chapters relating to the Department of Social Security and DEETYA. It really does need consideration. It is an issue where the legal parameters of how compensation is paid do not take account of how services are currently delivered—that is, through oral advice. The legal parameters assume most advice is given out in written form. The practices behind the service delivery need a fair amount of attention too.

I bring to this committee both those issues as reported here and also a dilemma for my office. We have prepared a fuller report about some of those legal and service delivery issues in the form of a much more complete own motion investigation. My intent had been to make a report using section 19 of the Ombudsman Act to parliament, because it relates not to one agency but to a number of agencies.

The dilemma is that to do so I would have to print 650 copies. We literally do not have the money to do that. That is actually a photocopy of the report. One option I thought of may be for me to provide that as a section 35 report to this committee for you

to consider it further in that form. It is a bit of a dilemma for the Ombudsman.

Mr Wood—Especially as this would have been the office's first section 19 report.

CHAIR—The secretary has suggested we table this and put it up electronically. Then it is available for everyone. It gets around the problem to a reasonable extent.

Ms Smith—Yes.

Mr Wood—But we will still have to deal with the section 35 report.

Ms Smith—Yes, we can do that in a more limited fashion. I will provide you with a copy now.

Mr Wood—We will get a clean copy to you.

CHAIR—Thank you.

Ms Smith—The third issue is the defective administration scheme and how that is operating. Page 35 in chapter 5 of this report details the anomalies and contradictions currently in the three forms of compensation that are available, particularly the anomalies between the ex gratia arrangements and the new form of defective administration. There seems to be a strange sort of defining with bits of complaints being considered under one frame and bits being considered under the other.

Rather than making it more flexible, we now have the anomaly that cases that would have been paid under the old ex gratia arrangements are not being resolved under the new ones. It does need attention, with some of the other statutory arrangements, particularly the three-month statutory limit for some of the Department of Social Security payments which have meant that compensation has not been possible in circumstances where everyone agreed morally it should have been.

CHAIR—I think Senator Lundy has to go.

Senator LUNDY—Sorry. I have to attend my other meeting. Is it possible for me to follow up with some questions to you on notice?

Ms Smith—Yes, of course.

Senator LUNDY—Is that appropriate? Thank you. I will take that opportunity. Please excuse me.

Ms Smith—Contracting out is on page 59 in chapter 7. That obviously is important to us and our recommendations are on page 74 of the report. I know there is a

committee looking at that. I will be one of the people who are eagerly waiting the results of that.

Conflict of interest is on page 53. I just bring that to your attention because dangers in the erosion of values are now becoming evident to me. Although they might seem relatively minor at this point, they worry me because they are early signs of corruption in effect. That is happening in a range of areas, both in core government activities in-house and also with the new opportunities that are arising with contestability and some of the contracting out arrangements.

It is a mix of a slippage of values and inexperience: a combination of both. I would have to say that, when we have brought what we regard as being a conflict of interest to the attention of a number of department heads, the individuals that we are investigating have on occasions resorted to very legalistic mechanisms to resist any scrutiny.

Mr Wood—Or to slow the scrutiny down.

Ms Smith—Or to slow the scrutiny down; and so it is very slow, very expensive and protracted. I have been concerned by the failure of the CEO in a couple of instances really to take a leadership role of saying that these values are important.

With regard to the report in here on police, we have achieved a more effective arrangement in terms of the investigations we have done and the outcomes that we have been able to achieve, largely through administrative agreement and cooperation with the current commissioner and also through some increased resources that we have put in to investigate the more serious police complaints by supervising them earlier on and doing more own motion investigations. I would have to say, though, that that cannot be sustained into the longer term. We do need both legislative change to confirm those administrative arrangements and increased resources to sustain and increase the effort there. I will come back to that later.

We have made a submission to the Attorney-General about the reforms that we saw as being necessary for the police jurisdiction and the modus operandi. I would urge that that is considered sooner rather than later by the government.

With regard to the defence forces, I will quickly flag the own motion investigation we did about the defence forces' own internal review mechanisms. Again, we initiated that own motion investigation at the request of the Chief of the Defence Force, and I find it very encouraging that he would ask for that scrutiny himself. I think that needs to be recognised and recorded. The defence forces now have introduced a tripartite arrangement to introduce all the recommendations that we have made. It will require monitoring to see how it hits the ground.

Those are really what I would like to flag in terms of policy issues. I would like some way for this committee to carry forward, if it could, the discussion of those issues. I do not know if there are questions now or if you would like me to go on about the Ombudsman's own operation liability.

CHAIR—You keep going, and we can come back to the policy issues later on.

Ms Smith—There are two key chapters in this report; chapter 9 and chapter 10, starting from page 83. These chapters describe what we have already had to do, given the cuts to our budget—which, to remind you, were 19 per cent over two years—and given the 50 per cent increase in demand we have had to face over that period. There was a 19 per cent cut and a 50 per cent increase in demand.

The impacts of what we have had to do are described on page 106 of our report. We have cut staff by eight, so we have cut our staffing profile from 96 to 88. We have ceased the agency arrangement with the Tasmanian ombudsman. We have ceased the specialist deputy position for the defence forces. I might note there that the Ombudsman Act anticipates three deputies, and I now have one. I have scaled back the intercept audit, which is the audit of the NCA and the Commonwealth police intercept functions, to the bare statutory minimum. We know that we are not covering their decentralised activities in the areas at risk.

We have scaled back, almost to nothing, our targeted access and equity initiatives. We are referring more complaints to internal complaint mechanisms and other options, to the extent where the average level of discretions is now of the order of 60 per cent, whereas the traditional level used to be more of the order of 45 per cent. That is where we exercise discretion and refer people; we give people some level of advice, but we do not actively investigate the complaint. We cancelled the planned IT-software upgrades which were necessary for us to try to get to the last century, let alone this century, in terms of capacity.

That tells you what we have done already. What the report does not tell you is the likely scenarios for the future, for the Ombudsman's office. There are some critical time paths which this committee needs to be aware of for the Ombudsman's office generally.

First up, faced with a 19 per cent cut, in cancelling the IT-software upgrade I deliberately decided to retain that money—it would have been about \$500,000 worth—as a way of supporting a higher staffing profile than would have been the case otherwise. In so doing I thought I had bought myself, or the Ombudsman's office, three years of additional time of that slightly higher staffing profile.

Since then there have been a number of extra costs put on the office, including extra superannuation costing about \$100,000. We are facing the loss of free services from the PM&C; in terms of corporate services that would be worth about another \$100,000.

We are facing the fact that we will have to proceed with an IT upgrade because of the arrangements with the proprietary company we have at the moment, which make the support of our current system untenable. There are a number of other smaller extra changes—Comcare and the like. All of this has brought forward the date of no return for the Ombudsman's office, which means that that cash flow runs out in the financial year 1998-99.

My hope in creating that window space was that there would be debates about some of the jurisdiction issues, like the police and other areas, and that I would be able to retain the skilled staff rather than losing that experience. But the bottom line is that, if we do not get any additional funding, the staffing profile will have to be reduced again, by about May of next year, from 88 staff to 84. Four staff might not sound like a lot to this committee, but I can assure you that the impact for the Ombudsman's office is quite critical.

Page 107 of the annual report gives you a breakdown of how we divide the office up. There are some further breakdowns there about the geographic spread. So we have offices in Brisbane, Perth, Adelaide, each with four people; I have one person in Darwin. In each of those areas we are operating at or below critical mass. I then have specialist teams that have to deal with things like tax, social security, immigration, the Child Support Agency—it does not take you long to think of the specialist teams that you need. Then we have the major projects.

It is quite a complicated office to run. We have been doing it on 88 people. To talk about four people, you really are at below critical mass. That is the problem with small agencies. You cannot keep slicing them up further into bits and pieces: we are now below a viable mass and it will crumble.

I would have to say too, as a matter of warning, that I sustained us through the last little while through a policy of having achieved the use of secondments paid for by host departments. Currently, I have eight people on secondment paid for by host departments. To maintain the independence of the office, I ensure that they do not investigate complaints about their parent departments. But there are questions as to the sustainability or the willingness of departments to maintain that sort of support to the office because they are incurring their own cutbacks, and a number of departments have indicated that this is the last time.

Mr Wood—It is also a difficult issue, in that the ones that can afford to provide secondments to us tend to be the big departments, against whom we have the most complaints. So keeping them separate from dealing with complaints about those agencies becomes more and more difficult, as you would understand.

Senator WATSON—I am a bit concerned about this Hobart arrangement. I thought I was talking to one of your officers well after 1996. Would the lady have been

on secondment? Have you got somebody on secondment in Hobart?

Ms Smith—No. I have got nobody in Hobart at this point in time.

Senator WATSON—It is just that time flies very quickly.

Ms Smith—Yes.

Senator WATSON—This concept of 1800 phone numbers does not work. How many complaints are you getting out of Tasmania now?

Ms Smith—We are in fact getting more complaints. The number of complaints in Tasmania has increased by 17 per cent over that period—surprisingly.

Senator WATSON—Why did you close the office? It had had a very high level of complaints.

Ms Smith—I had to make cuts somewhere and it came back to a matter that for me to cut back—

Senator WATSON—It is a case of need, isn't it?

Ms Smith—Yes, I know, but for me to reduce a staff out of somewhere else—

Senator ROBERT RAY—It has a majority of federal Labor seats.

Ms Smith—It came back to this: I have only eight staff in Melbourne, who also have to run specialist teams and work about immigration and number of other portfolios. So it literally becomes a juggle of how to group things for most impact. I agree with you that—

Senator WATSON—I remember that a lady was talking about the possibility, and she mentioned this number at the time. She said, 'It just will not work, because the sort of people I deal with do not like talking on a phone.'

Ms Smith—Yes, I agree. It is desirable, for accessibility, to have an office in each capital city to follow up on complaints directly with people there, to talk to people directly. For me to reopen—to have a co-located arrangement—

Senator WATSON—It was a very cheap operation you had. You were provided with an office, I think, rent free or something, weren't you?

Ms Smith—No, that is not true. The cost of having a—

Senator WATSON—There were certainly a lot of concessions that were—

Ms Smith—No. I have costed having a co-located operation in Tasmania at \$110,000. If I get \$110,000, I can do it. For me to reopen the office and have one person there, I would have to reduce staffing by two people elsewhere. That is the trade-off.

Senator WATSON—You did get assistance from other departments to keep that open?

Ms Smith—Yes.

Senator WATSON—It was a very cost-effective office.

CHAIR—The load has gone up in the last 12 months. Am I right in assuming that a fair bit of that increased load has occurred because of the uncertainty associated with the many changes that the government has brought about in the last 18 months?

Ms Smith—Yes.

CHAIR—As a consequence of that, would you expect the load to come down again over time? What is your expectation?

Ms Smith—In the last few months the number of complaints has plateaued—which is a relief, I have to say. The major agencies that the growth of complaints have come from are Social Security, DEETYA, the—

CHAIR—The CSA?

Ms Smith—No, that has plateaued off. I think it comes about through a combination of things. One is uncertainty, one is just the changed legislative arrangements and the other is the changes themselves.

CHAIR—But as they settle down over the next couple of years, would you expect the complaint level to come down again too?

Ms Smith—No.

Mr Wood—I will give you copies of the figures from 1 July to yesterday for the major agencies. When we talked on an earlier occasion, I said my projections were that complaints this year would be about 10 per cent below last year. That was my estimation of it. In fact, there are some funny things happening. You will notice that the DEETYA complaints are actually up on last year, whereas, as Philippa said, the DSS Centrelink ones are down about five per cent. But they are not coming down as much as I thought they would at this stage, though there is another half of the year to go.

What Philippa says is right. You have a plateauing effect now. Whether it will stay at that level or whether it will change downwards is something we cannot predict at this stage. It looks like staying fairly high.

Ms Smith—We have actively entered into a strategy of trying to get the agencies to implement their own internal complaint mechanisms.

CHAIR—Can you expand that? How do you think that is going? What can be done to help in that regard?

Ms Smith—We did do a survey last year of what complaint mechanisms were there. Our survey result found that only 20 per cent of agencies had complaint mechanisms that met the minimum standards of the standards association.

CHAIR—I noticed that.

Ms Smith—Following that, we put out a good practice guide for complaint handling. I am pleased to say that a lot of agencies are now asking for copies of that and are trying to do things. Some of the complaints mechanisms that have been put into play are extraordinarily complex. If you were someone trying to complain, I think you would fall into a state of exhaustion before you got anywhere near the Ombudsman's office. That is of concern to me.

CHAIR—Whose fault is that?

Mr Wood—It is a bit difficult to say whose fault it is. In some cases it is because there still is not a culture in the organisation amongst staff. In some cases it is because there are too many tiers required in the escalation of the complaint to try to get it resolved. In some cases it is a lack of experience in implementing processes like this.

Ms Smith—We are going to have a particular focus in our major projects and policy work in terms of doing surveys of people who have complained to those internal complaint mechanisms to just see what has happened to them and to follow up on people who we have referred to those complaint mechanisms to see what has happened to them. So we are going to trace through their experiences and also to evaluate with the departments how they can improve those mechanisms.

Mr Wood—One of the things is that, when we refer somebody to an alternative mechanism, we are required under our legislation to be satisfied that it is a suitable avenue. Part of what we are proposing to do is to look at at least three of the big agencies that are now well into the process of establishing internal complaint handling mechanisms and to test, as Philippa said, both the experience of people who have come to us—and we have referred to that system—and the mechanisms that have been established by the agencies themselves to see how well they meet the kinds of requirements of a good

practice complaint handling system.

Senator WATSON—Some of it is time consuming though. It is all very good to say you have these mechanisms, but if they just sit on it for six or seven months when there is money involved—

Ms Smith—I could not agree with you more.

Senator WATSON—The concept works; in theory it is good. Can I have the name of your lady in charge of the Hobart office?

Ms Smith—There was no lady in charge. It was a general agency arrangement we had with the Tasmanian ombudsman, who acted as my agent in Tasmania.

Mr Wood—They provided the services on our behalf.

Ms Smith—So there was no one particular person.

Senator WATSON—That is why I said that. I knew it was a coordinated approach. So it really was not a full cost operation for you?

Ms Smith—We actually paid quite substantive amounts of money. It was not free in my point. In fact, it was more expensive than the co-located operation than we currently have in the Northern Territory.

Senator WATSON—But, at the same time, it gave you a wider access to people.

Ms Smith—Yes. It is one of the compromises—

Senator WATSON—That is what it is all about—enabling people from the more remote areas to have access. It is not always easy for people to go to Hobart or Darwin—

Ms Smith—It was one of the cuts we were forced to do because of the cuts on us. I have to say that it is not without, I think, detrimental impacts for our ability to provide our statutory function and to be accessible. Equally, we are now referring 60 per cent of the people who come to us to other internal complaint mechanisms. As we have just described, we are still uncertain as to the viability of doing it that way but we are trying to do the best we can. An office of 88, perhaps having to move to 84, cannot investigate the 25,000 complaints coming to it.

Senator WATSON—If you do not investigate them, the message will get out very quickly that there is no point in doing it. You might say your statistics are going down—

Ms Smith—I am not happy with this either, let me assure you.

Senator WATSON—We have to ask why the statistics are going down.

Ms Smith—The client satisfaction surveys that we do indicate that the confidence in the office is vulnerable, particularly for those people that we are referring away from the office. They come to the office in the expectation that we will actively investigate the matter. We give them advice but we are having to tell them, ‘Sorry, try this as an alternative’. That will erode the confidence of the office.

Senator ROBERT RAY—I just note for the record that there is always someone worse off than you. From the day we went into opposition, opposition staffing got cut from 84 to 61. And, with all due respect to your office, we have an even bigger task than you do. That is why I said to Senator Watson that this sort of a cut is sheer luxury.

Senator WATSON—I couldn’t appreciate that!

Ms Smith—I have not noticed much luxury in my—

Senator ROBERT RAY—You would be interested to know that the government have put up their own ministerial staffing in the last 12 months by 15, including five secret upgrades to senior adviser levels, so it is not an across-the-board cut in staffing for everyone. I am more interested in exploring other issues. Firstly, what is the real extent of the cut? Is it 19 per cent? Secondly, by what mechanism is the budget determined in the ERC process? Thirdly, I want to go a bit further on the eating away into your program, which you have mentioned, by way of non-supplemented transfer of responsibility, because that is an old Finance trick.

Just going back to the 19 per cent cut, by what measure do you make that 19 per cent cut? Is that from what was in the forward estimates? What formula do you use in real terms for cuts, taking into account inflation and everything else?

Ms Smith—It was just looking at the appropriation as it stood and the effective cut that occurred through both the cuts and the efficiency dividends.

Mr Wood—It was the appropriation we had in 1995-96, the base line, and then the amount that we were told by the Department of the Prime Minister and Cabinet.

Senator ROBERT RAY—So there was not a projected increase in your budget in the forward estimates; it was just going to be adjusted for the normal inflationary—

Ms Smith—That is right.

Senator ROBERT RAY—Yours would be a fairly easy one to calculate in real terms. So you are saying that there is a 19 per cent real reduction?

Ms Smith—Yes.

CHAIR—Just while we are on the actual numbers, page 324 of the annual reports says that total revenue from the government in 1995-96 was \$8.8 million and that there was virtually the same total revenue for 1996-97.

Mr Wood—As soon as we were advised of the amount that was going to be appropriated for us in 1996-97, that is when we instantly cut back on the budget. In other words, we had that advice earlier in 1996 so we cut back on the budget.

Ms Smith—For example, with the IT expenditures that we would have made, we immediately stopped those, and so there was a carryover.

Mr Wood—We lost six staff during that period of time, who we did not replace, so then we carried the money over—

CHAIR—So, during this current year, what is your expectation of total government revenue?

Ms Smith—This current year we have received \$7.7 million. Next year we anticipate \$7.8 million, because of the one per cent—or 1.5 per cent, I think it is.

Senator ROBERT RAY—What efficiency dividend was put on you for 1996-97?

Ms Smith—Was it 1.5? Yes, it was the standard one—

Senator ROBERT RAY—The standard one that—

Ms Smith—Yes.

Senator ROBERT RAY—Who represents you at the expenditure review committee?

Ms Smith—This becomes a critical issue, I think, and one I wanted to raise. If I can just backtrack one point you will understand our dilemma. I have gone to the Department of Finance and asked for us to be considered under the resource agreement arrangements. I have received a response back from Finance saying that we do not fit within the parameters for a resource agreement because we can control demand coming to us. In other words, they are saying—

Senator WATSON—How can you control demand?

Mr Wood—By exercising discretion—

Ms Smith—By exercising discretion not to investigate complaints.

CHAIR—Okay.

Ms Smith—They have also suggested that I set up direct memorandums of understanding with the Department of Social Security, DEETYA and the like. My response to that is that we are obviously trying to set up some effective internal complaint procedures but that you cannot ask an independent watchdog to be financed directly by the groups it is meant to be independently investigating and reporting to parliament about.

To get directly to your question, our problem has been that I am meant to be a statutory officer reporting direct to parliament. In relation to our financial bit, though, it is the Department of the Prime Minister and Cabinet which is the agency which puts forward any arguments for our funding and which has the final say about our funding as a line item. They have not been an advocate for our cause or interested in our dilemma in any way, I would have to say.

Senator ROBERT RAY—That is often the case.

Ms Smith—Yes.

Senator ROBERT RAY—They have got to put in a submission, et cetera, but when it goes to the Expenditure Review Committee, or whatever equivalent this government has got—I understand it is called the same thing—no-one takes any notice of the submission put in or anything else.

Ms Smith—The problem is that we are just one of the many line items. Because we come under PM&C it is the Prime Minister's prerogative, I suppose, to change, but I am not sure whether it is—

Senator ROBERT RAY—This is just the classic dilemma of Prime Ministers, be it of any political persuasion, not having the time to represent properly, for instance, the Office of National Assessments, the Ombudsman, et cetera. If they did have time, I would worry about what they were doing getting into that nitty-gritty because they are supposed to be going to generalities—

Ms Smith—Exactly.

Senator ROBERT RAY—I might say, Mr Chairman, that is one of the reasons I would clean all these areas out of PM&C and put them elsewhere, for political protection of any Prime Minister. It does not matter where you put them but—

Ms Smith—I would like to raise the New Zealand model—

Senator ROBERT RAY—We will come to that in a moment.

CHAIR—Okay.

Senator ROBERT RAY—I think the problem is that, one, you have got a department dealing with an independent group that they have no necessary desire to see well funded, so they can lower the funding there; then you have no-one to go in to bat for them because the Prime Minister is otherwise engaged—and so he should be. It is almost the case that a lot of these agencies need an independent advocate. We had the same thing with the parliament, where the President and the Speaker were represented by, of all people, the Minister for Finance. We are in the process of changing that around with a lot more successful results, but this has just left you in an impossible position, I would think.

Ms Smith—The New Zealand model, I think, is a constructive one to look at in terms of how that operates. That is where the parliamentary committee that the Ombudsman reports to makes a recommendation to the executive about the budget required. That is done after examining the end report and the anticipated future work plans of the Ombudsman.

Senator ROBERT RAY—If they want to take full responsibility for collecting all the money, they can have that; but you will never get that here. Maybe your mob is stupid enough to do it, but I bet they do not.

Ms Smith—I am looking, I suppose. But it is coming forward—isn't it?—with a practical resolution or model. There are two bodies, as I see it. The Auditor-General and the Ombudsman have a particular reporting responsibility to parliament and an oversight view of the government administration as a whole, so the reporting, and hence the funding relationship, does have to be different.

Senator ROBERT RAY—We cannot even control our own parliamentary funding for the parliamentary departments. We will not go into the details, but the security equipment in this building is just shot, and so all our staff are at risk, et cetera, et cetera. If you think there is any protection by having yourself represented by parliamentary committees with recommendations to the executive, that is wrong.

All I am saying is that you are barking up the wrong tree on that, and you really need to look for a method that will deliver a result. That sounds terrific in theory—we are just going through that in Victoria; the Auditor-General is going to be an officer of the parliament, and all the rest of it—but it does not necessarily get your money on the table.

Ms Smith—No.

Senator ROBERT RAY—That is all I am saying. Senator Watson, you looked specifically at me.

Ms Smith—I suppose what it probably does do—I would be pleased to hear of other options or alternatives that might be more successful—at least make more transparent the consideration in the debates.

CHAIR—We have separated that. The Audit Office, in now reporting to the audit committee of—

Senator ROBERT RAY—Yes, I know. It is a joke.

CHAIR—It is better than it was.

Senator ROBERT RAY—No, it is not. What you need—the way this parliament executive works—is a minister who believes in you to go in to bat for you. With due respect to John Howard or Paul Keating or Bob Hawke, they could never do that, because their mind is elsewhere, and so it should be. The real thing is: is there some other area we can place the Ombudsman's office, where they will have a friend at court to represent them and go into what is a dog-eat-dog financing argument in ERC and defend them?

Mr Wood—It is an interesting issue, isn't it? Prior to my current appointment, I worked in about 13 different departments. I cannot remember one of them where the department of state had a terribly friendly attitude towards the statutory authorities within the portfolio. So if budget cuts came, they tended to protect the department of state rather than the statutory authorities within. Would that be a fair comment?

Senator ROBERT RAY—That would be a very fair comment. It is not universally true. It would then depend on how committed the minister was to the Office of the Ombudsman and all it stands for.

Mr Wood—I suppose the essence of our argument is this—leaving what the specifics might be. I think the reason that Philippa raised the New Zealand model is that we actually have looked at it. And by all accounts, from both sides of the New Zealand parliament, it seems to work, and the recommendations of the committee have been accepted each time by the executive. Of course, bear in mind that the executive can say no. The Ombudsman will take the same cuts as everybody else; nobody is denying that that is an opportunity that is there.

I guess the thing that concerns us most is that there is no transparency currently, as you rightly point out. There is no current transparency in the advocacy in the assessment of what is the need of the Ombudsman's office. We can say that. Indeed, in 1996, we were not even invited to make a comment by the Department of the Prime Minister and Cabinet. They told us what the cut was going to be. There is absolutely no process to argue that there was a particular resource need there. That is the thing which is missing at the moment.

Senator WATSON—I think Robert has raised one issue about the need for a minister to go into bat for you. Another problem is that you do not have a process through which you regularly communicate or feed information to a committee of the parliament. The Auditor-General does that as a result of frequent audit reports. He notifies the committee, and they make investigations arising from the issues that are raised in his various audit reports. You come to us once a year, basically, you have a number of problems, and that is the end. It is an exercise. We might say that it is an interesting exercise but, in terms of changing anything, it is pretty useless.

To really do anything, I think you have to look at an appropriate joint committee. The House of Representatives treats the Senate committees as a bit of a joke, in terms of whether they are for real. While we might say, 'Yes, this is the appropriate committee to do it,' I would submit that perhaps, if we really want to get the parliament, as such, on side—which includes double our number in the House of Representatives—we have to look at a joint committee. That is not very popular with a lot of senators. But if we cannot do that, I think we have to do it through this committee here.

But we do have to set up some processes where you have a method of regular reporting to us and a means whereby we can take action on that. For example, at the moment, we are looking at it pretty late in the scene. You produce an annual report, and you tell us about the terrible actions of the tax office of the 218, C, et cetera. I also would like to know whether the amount of compensation paid to that person was adequate or not.

Ms Smith—It got better. The first offer was \$200. I think, from memory, the final amount was more in the order of \$20,000.

Senator ROBERT RAY—I just go back to the funding issue. I think we have gone through the actual cut, and we have gone through the transparency and methodology of setting it. But what worries me even more about this is the ability of starting to transfer costs onto you that just eat away your budget. You mentioned before that the super costs have been transferred to you. Are you saying there was no supplementation in that?

Ms Smith—No, there was not.

Senator ROBERT RAY—None at all?

Ms Smith—No.

CHAIR—But is that not in common with all agencies though?

Ms Smith—Yes, that is common across all agencies—the increased employer contributions that are required. That is common across all agencies. The more particular ones that are peculiar to us, or likely to be peculiar to us, are the outsourcing of the PM&C's corporate service function. Traditionally, we regarded that as a base from which

our funding was provided. We received a certain value of in-kind services. So we are now negotiating, or we will have to negotiate, with PM&C that, in fact, that was a value that should be assumed to have been provided to the Ombudsman's office. That could cost us another \$120,000.

Senator ROBERT RAY—So, in effect, corporate services are funded in the overall PM&C budget.

Ms Smith—Yes.

Senator ROBERT RAY—They will look after you to some extent. They then outsource them. Then they user charge you, which is putting another \$100,000 on.

Ms Smith—Yes.

Senator ROBERT RAY—I am just trying to work this out, I am not very good with maths. But those two things alone are another two per cent cut in real funding.

Ms Smith—That is right.

Senator ROBERT RAY—What about absorption of pay rises? Are they supplemented to you now?

Ms Smith—No, that is the 1.5 per cent we have. So all the certified agreement arrangements have to come out of that. I think it is a worry in the longer term for the office because, in the last couple of years, I have gone through line by line and stripped away every additional cost to an extent that other departments have not. Staff do not get trained; staff always travel economy, regardless of where they go; staff do not use spouse travel allowance. All those things went years back.

The problem is that we just will not be able to offer the salary increases or packages that other departments will be offering. Hence, again, our best people just will not be able to stay. So the relativity of where the Ombudsman's office sits just erodes over time.

Senator ROBERT RAY—On all these issues, who do you deal directly with in the Department of the Prime Minister and Cabinet?

Ms Smith—I do not report to anyone directly.

Senator ROBERT RAY—I do not necessarily mean who you 'report to'.

Ms Smith—My head of corporate services liaises with the head of corporate services.

Senator ROBERT RAY—That is all?

Ms Smith—Yes, that is it.

Senator ROBERT RAY—When do you get shown the finance greens—during the ERC process?

Ms Smith—No.

Senator ROBERT RAY—You do not even get shown those?

Ms Smith—No. We are treated as an outrider. We have to scream and yell for any consultation about things which obviously will impact on us directly.

Just getting back to the other, I agree in that I think there should be a more direct relationship, a more regular relationship. But this financial bit is becoming quite critical. I did see the New Zealand model as being one way of increasing its transparency. I would happily look at other models.

But I think you have to be careful, if you are looking at another minister to be an advocate, that it does not become an outrider minister, because then you lose the centrality. The symbolic thing about having the Prime Minister overlooking you is that it is symbolically saying that the Ombudsman overlooks government as a whole.

Senator WATSON—Philippa, could you give us a paper as to how you could interact with a committee of the parliament a little more effectively or meaningfully than currently applies?

Ms Smith—I would be happy to do that.

Senator WATSON—Compare it with how the Audit Office interacts with the Joint Committee of Public Accounts.

Ms Smith—I do have to say I think that relationship has to be strengthened.

CHAIR—I think it would be useful to have that done. Perhaps you could explore for us a few options, and then maybe we could follow them up with you.

Senator WATSON—Perhaps you might elaborate a little on your New Zealand model.

Ms Smith—Yes.

Senator WATSON—Senator Ray, what about your problem? Do you want that

addressed in this paper?

Senator ROBERT RAY—What is that?

Senator WATSON—The responsibility of the minister?

Senator ROBERT RAY—Either responsibility of the minister—

Senator WATSON—The repositioning of the portfolio. That might be part of it. Do you want a paper on it?

Senator ROBERT RAY—I think it can be part of this.

Ms Smith—I just flag: I will be putting a new policy proposal to the Department of Finance about the IT development because it is the only way forward.

Mr Wood—That is the only way that sustains our investigation officers. They enter all material that is done on a complaints management system. They are having to do more and more with less and less. It is just one thing they cannot do without; it is just impossible.

Ms Smith—The police jurisdiction is the other area that I just remind you about as needing a decision sooner rather than later, because that cannot be sustained. The last thing I bring to your attention is that my own appointment will come to an end in May of next year. The relevance of that to this committee is the importance of filling that position quickly so that the momentum of the office does not get lost. As I have just described to you, I am really quite concerned about the viability of the office. It needs a strong voice there.

Senator WATSON—Back in 1991 we were concerned about your involvement with the AFP and the amount of resources it was taking up and whether you were really making any progress there. Should that be removed from your jurisdiction, or not? That was an issue that was raised then, and I think we really should be looking at it now in terms of all these cuts. Should that go out so that you can concentrate on other issues? Police issues just keep going on and on.

Ms Smith—The submission I have made to the Attorney-General is a public submission—

Mr Wood—We could give Senator Watson a copy of it.

Ms Smith—Yes, we could give you a copy of that. But I think the Ombudsman's office has in recent times been effective and can be effective. But it needs legislative change to do that, to reinforce the administrative arrangements we have now. It is only

viable while the current commissioner is cooperative on those things; and also there is the matter of increased resources. We have costed it at \$1.3 million to cover both the AFP and the NCA to ensure that we can do something in the order of 40 direct investigations a year. They are the major projects, the demonstration cases. Over the last couple of years we have put in more effort there. It is the own motion investigation where we have looked at the treatment of youth, search procedures and whistleblowers where we have proven our effectiveness. If those two things can happen I would say it is at the heart of an ombudsman's operation to sustain it.

Senator WATSON—In terms of finance, if we recommended a situation that those departments that generate the most complaints have also to contribute—

Senator MURRAY—That is the old Auditor-General's trick.

Senator WATSON—Yes, but do we regard this office as important or do we not? If some departments are obviously way out of kilter, why shouldn't they contribute?

Senator ROBERT RAY—You are robbing Peter to pay Paul. Why not make the funds available for them to do it. It does not matter whether it is social security or the Ombudsman that absorbs the money; it is the same taxpayers' money.

Senator WATSON—Do we regard this office as important? This is what it is all about.

Ms Smith—That method may be possible, but it really does have to go to a central agency to collect—

Senator WATSON—That is all right, I do not mind that.

Ms Smith—and then the money comes to us.

Senator WATSON—Finance can collect it—

Ms Smith—Once you have a direct relationship with the agency being the holder of the purse strings, I then lose my independence about which complaints to investigate.

Senator WATSON—I mean just as a top up.

Senator ROBERT RAY—One of the previous ombudsmen went out and recruited cases. Back in the 1980s he went out and said, 'I need publicity to get funding.' He recruited a case and got people to take it. Come off it, it is not abuser pays. You have a funny idea of financing. A million dollars taken from the Department of Social Security and given to the Ombudsman still comes out of consolidated revenue.

Senator WATSON—I agree with the bulk of the funding but I think some additional funding could well be topped up.

Senator ROBERT RAY—Which social security recipient are you going to take it from?

Senator WATSON—They are all big departments; they are certainly a lot bigger.

Senator ROBERT RAY—But they have been squeezed with efficiency dividends.

Senator WATSON—Efficiency dividends cut hard into small departments.

Senator ROBERT RAY—Into policy departments, not line departments.

Mr Wood—There was one other thing I was going to give you in relation to costs and things like that. There are some tables there which show—

Senator ROBERT RAY—When was the decision taken not to fill the position of the Deputy Ombudsman covering defence matters?

Ms Smith—That was made at the time of the cuts. When the previous deputy left I made a decision not to fill that position as a way of meeting the necessary 19 per cent cut.

Senator ROBERT RAY—The defence department and the ADF in civilian uniform constitute 40 per cent of the Australian Public Service. I think it is a great pity to no longer have that position filled. On two occasions I referred something to the Ombudsman to look at, and losing that specialist person—

Senator WATSON—When you were a minister?

Senator ROBERT RAY—Yes. I found them terrific. We had no-one inside who could do enough independent inquiring. Someone always had some self-interest somewhere. Rather than wait for a complaint, it was ideal to say, 'Look, we'll invite the defence ombudsman.' The person was not appointed by the defence department; he was appointed by the Prime Minister.

Ms Smith—That's right.

Senator ROBERT RAY—So there was a separation.

Ms Smith—We still do have a specialist team, and I have taken a more active role in Defence matters myself. But I have to agree with you; all these things are whittling down our ability to be able to perform, although I think we have been quite successful.

CHAIR—On the other side of the coin, there is the issue of trying to improve the management within each of the agencies so that they can do their own complaint investigation. Is there some way that we can help in the communication process with the heads of agencies? You can you think about this and perhaps include it in the advice and options you are coming back to us on. I raise this because Senator Watson and I have been active on the public accounts committee. Three years ago when we were trying to push accrual accounting with departments and various agencies, we invited agencies in and asked them what preparation work they were doing and whether they were up to speed on accrual accounting because it was obvious that was coming.

Some of them had done nothing, a lot were as far advanced as they possibly could be and then there was a whole range in between. But, by doing that, by picking on a few and having them come and appear before us, I think we helped the communication process through to the chief executives. It was a worthwhile process to suggest to them that they should be doing something about it to make sure that they were up to speed with the best practice. Is there a way that we can help? Would that be worth while?

Mr Wood—It may well be. In fact, one of things that may come out of this major project that we will be doing in looking at internal complaint handling processes is that we come back to the committee and say, ‘Here are some general points.’

Senator ROBERT RAY—Senator Watson and I—a strange alliance—were just suggesting that, in our report on all of this, we require the three departments with the highest complaint rate to appear before us.

CHAIR—We were just broaching the same matter.

Senator ROBERT RAY—And, secondly, we might strike an award for the three departments with the best record so that we can carry that as a stick.

CHAIR—Yes, thank you. John, do you want to add anything on that?

Mr Wood—Just to say that, and this fits in with what Senator Ray and Senator Watson were just discussing, when we have completed this first exercise in looking at internal complaints handling systems—because it is one of the things that we will certainly be doing a report on—we can come back to the committee and perhaps discuss the ways in which that kind of knowledge can be better disseminated with some chief executives.

CHAIR—I think that would be useful.

Ms Smith—Yes.

CHAIR—If we could help improve the management within the broader perspective then that is a way of helping and lessening the load.

Ms Smith—Absolutely. That is why, in the current dilemma, we are maintaining our preventative focus both in work in internal complaints and the major projects because that is where you can look at the broader things and hopefully stem the tide of the repeated instances. If you look at our annual report that is where we have had some of our best outcomes.

The other point on communication with the departments, I think, probably goes back to that oral advice report I have just handed you. I saw the significance of that as it going across a number of departments and being quite fundamental to the way departments streamline themselves and administer their services.

Senator WATSON—Can we be assured that in your allocation money flows to those areas with the highest level of complaints. You can put a lot of money into one case whereas there could be thousands of cases that require your support. It is important that money does flow to those areas of greatest need. I know you have to prioritise things, and that sometimes it is important to take on particular issues which might take an unreasonable amount of your resources, but at the same time that has to be balanced with an adequate flow of money going to those areas of greatest complaint.

Ms Smith—I agree with you totally, and it happens in a number of ways. One is just dealing with the volume and that is why we try to capture what is behind those complaints. If things start bobbing up as issues, we use some of our major project or policy time to look at that more directly.

Senator MURRAY—I have gone through your report, and may I compliment you. I thought it was very helpful, quite incisive and, in places, courageous—so thank you very much. I wanted to ask you questions about two areas, if I may. The first is whistleblowers. The government adopted a very minimalist position with clause 16, I think it was, which they added to the Public Service Bill 1997. My party and I in particular attempted to expand that considerably to take in the whole gamut of whistleblowing and failed to get the support of the major parties. But both major parties were committed, in that debate, to the concept and to the desirability of progressing the whistleblowing area into legislation.

As a consequence, we were advised in debate that Dr Kemp had written to the Attorney-General—and I do not have the exact words before me so I will just paraphrase—requesting that he now appraise the progress that they have made, because this matter has been with them for a number of years under both governments, and make proposals for possible stand-alone legislation. I would not put it any stronger than that—appraise and propose—because I have not seen the letter. The question is: with your own strong background in the whistleblowing area and your comments on it, is there any part you intend to play or can play in terms of interacting with Dr Kemp or the Attorney-General or both of them with respect to this initiative from Dr Kemp?

Mr Wood—In fact, we had been doing so before the Public Service Bill 1997

appeared. We have been pushing this for some time. Indeed, we mentioned at the beginning of the hearings, when you were unable to be present, that one of the major things that we have tried to highlight is the need for overarching whistleblower protection legislation, for a number of reasons. One is that the provisions that were included in the

Public Service Bill 1997, as we said at the committee hearing, covered a minority of the sources of whistleblowing complaints. They predominantly have come from people not employed in the APS; they are other authorities, et cetera.

Senator MURRAY—I understand the background and I have read your stuff.

Mr Wood—The second part of it is that it does not cover people outside the Public Service. A significant number of whistleblower complaints come from people who are no longer working in government employ. Certainly the key characteristic of whistleblower protection legislation, where it has been successful, is that it also provides that protection to people out in the community. So, yes, we have been. I have spoken on a number of occasions with the Attorney-General's Department to try and push them along down this track.

Senator MURRAY—The reason I bring it to your attention is as follows. The coalition had whistleblowing provisions in their election policy. Both parties have indicated their support for stand-alone legislation if it is appropriately possible to do so. We now have a senior minister recorded in *Hansard* as having written to the Attorney-General to progress it. I think it has gone beyond where you were before, just from my personal perspective, so I would encourage you to accelerate it if you can.

Ms Smith—It is an issue that is important to us. At the political level we usually have to be invited to make a submission on those things. I would be happy to be invited to be part of those discussions. We have, in the past, put forward a number of models as to how that could practically work at an operational level. Various parliamentary committees have looked at this and we—

Senator MURRAY—I will discuss separately with the committee whether there is any way in which we can invite you to push that along.

Mr Wood—I think you can be assured that we will try to put our finger in.

Ms Smith—We will try to make some more active efforts towards consultation.

Senator MURRAY—I am in trouble with time because we are running close to it. The other area I want to deal with is the AFP. There is a bill before the parliament called the Crimes Amendment (Forensic Procedures) Bill 1997, which has just been reviewed by the Legal and Constitutional Legislation Committee who have issued their report. This bill considerably increases police powers to force suspects—not people who are charged, but suspects—to submit samples taken by appropriately qualified persons. It is my belief that

this increases police powers.

In view of your remarks and your history as an agency in terms of dealing with complaints, I think it holds the potential to increase the number of complaints because it is dealing with intimate samples taken from people. I do not know whether it is my function or whether it is possible, but I would like to invite you, if you are able, prior to that bill being debated, to review the legal and constitutional committee's report.

Mr Wood—I know we have looked at it, Senator.

Senator MURRAY—It has only just come out.

Mr Wood—We were involved in some of the discussions.

Senator MURRAY—That report was tabled either yesterday or last week, so I would be surprised if you had seen it.

Mr Wood—No, not the report, sorry.

Senator MURRAY—I would like to invite you to look at that report and to advise the committee if there are any areas which you would be concerned with from your perspective, to do with the powers that are granted under that bill and that report.

Ms Smith—We will have a look at that.

CHAIR—Senator Watson, do you want to ask one quick question?

Senator WATSON—I have also a request for a paper from Ms Smith, in relation to the Taxation Ombudsman. As you would know, following the Joint Committee of Public Accounts recommendations, the whole situation has changed. We now have an internal conflict resolution department; we have a taxpayers charter and the position of the tax ombudsman within your office. Can you give us an evaluation of that whole arrangement, and some recommendations.

Ms Smith—Yes, I can do that. We did, in fact—

Senator WATSON—In writing. We have got time.

Ms Smith—Yes—as to what is achieved and what its future would be?

Senator WATSON—Yes, an assessment of—

Mr Wood—How it is going?

Senator WATSON—That is right. Since we last looked at it in a comprehensive way there have been some new features in it. We want an evaluation from you as to how effective they are, whether they are achieving their purposes and what is the way forward: a recommendation to the committee—or conclusions to the committee might be better.

Ms Smith—An interim report.

CHAIR—I am sorry, we have run out of time. This has been a very interesting and worthwhile discussion. Thanks very much for your report and thanks very much for coming today. I think it has been a worthwhile discussion.

Ms Smith—Yes, indeed.

CHAIR—I look forward to receiving something in writing to you about a strategic direction, particularly with regard to funding and options there. We would be pleased to meet with you then, following on from there.

Ms Smith—Perhaps we should aim for the new year some time and a follow-up meeting—the earlier the better for me.

CHAIR—We will not be back till March, after the Constitutional Convention.

Committee adjourned at 1.57 p.m.