



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES
COMMITTEE

Reference: Australian public service employment matters

FRIDAY, 5 MAY 2000

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SENATE
FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

Friday, 5 May 2000

Members: Senator George Campbell (*Chair*), Senator Watson (*Deputy Chair*), Senators Hutchins, Lightfoot, Lundy and Ridgeway

Substitute members: Senator Allison for Senator Ridgeway and Senator Faulkner for Senator Hutchins

Participating members: Senators Abetz, Allison, Brown, Brownhill, Calvert, Chapman, Conroy, Coonan, Crane, Eggleston, Faulkner, Ferguson, Ferris, Gibson, Harradine, Knowles, Mason, McGauran, Murray, Payne, Tchen and Tierney

Senators in attendance: Senators George Campbell, Hutchins, Lundy, Mason and Watson

Terms of reference for the inquiry:

To inquire into and report on Australian Public Service employment matters, including:

1. the evolving changes in the nature of the Senior Executive Service, including chief executive officers, as a result of the devolution of responsibility for staffing matters to individual agencies, such changes including, but not limited to, selection, tenure and independence, remuneration, including relativities, mobility and career development;
2. the impact of agency-based bargaining in contributing to the development of a more efficient, productive and independent Australian Public Service, accountable to the Australian Parliament; and
3. the extent to which performance pay is being incorporated into agreements negotiated by individual agencies, the disparity between agency agreements in performance pay and the impact of such agreements on agency performance, accountability and transparency.

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Committee met at 9.09 a.m.

DUNGAN, Mr Andrew, Deputy Employment Advocate, Office of the Employment Advocate

RUSHTON, Mr David Charles, Senior Legal Manager, Office of the Employment Advocate

CHAIR—I declare open this hearing of the Senate Finance and Public Administration committee's inquiry into Public Service employment matters and welcome my Senate colleagues, witnesses and observers. On 28 June 1999, the Senate referred this matter to the committee for inquiry and report and the committee sought submissions on that theme. Today the committee plans to follow up some matters raised at the last public hearing on 14 April 2000 when, in addition to canvassing the union perspective on this period of APS reform, the committee heard from five Public Service departments. These witnesses discussed devolved arrangements in the departments and their agencies' responses to those implemented by other agencies.

Today's proceedings will also examine some basic assumptions underlying remuneration policy in the public and private sectors. Before we commence I wish to advise for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to evidence provided. I welcome the officers from the Office of the Employment Advocate. Mr Dungan, would you like to make an opening statement?

Mr Dungan—I have no particular opening statement to make, thank you, Chairman.

CHAIR—Perhaps I can commence proceedings, Mr Dungan, by asking you to briefly outline the confidentiality requirements applying to AWAs. In doing that, could you perhaps expand upon the comments in respect of that matter made by the Employment Advocate to the estimates committee on, I think, Wednesday of this week.

Mr Dungan—I might hand over to David Rushton in relation to the technical aspects of the act in that regard.

Mr Rushton—Senator, just in relation to confidentiality provisions generally there are really two parts of the legislation. The first, under section 170VG, actually is a requirement in relation to AWAs that they do not contain a confidentiality provision—if I can call it that—that prevents the parties from disclosing the details of their AWA. There is a reinforcement of that provision in that it is also a requirement for the approval process of the AWAs that such a confidentiality provision is not included in those AWAs. That is a provision allowing the parties to, if you like, discuss with others, seek advice on their AWAs and disclose the details of those AWAs to whoever they choose to seek advice from.

There are then two confidentiality provisions: one is section 83BS and the other is section 170WHB. Section 83BS effectively applies to the Office of the Employment Advocate—that is, the Employment Advocate authorised officers and those persons who are working in the Office of the Employment Advocate. The second provision, section 170WHB, refers in a similar way to officers of the commission. What those provisions effectively do is preclude those officers from disclosing details of the AWA that will identify the parties to those AWAs to anyone.

Mr Dungan—In terms of the practical effect of those provisions, it means that there is no restriction on a person who is a party to an AWA discussing that AWA with any other person. In fact, in our seminar materials where we discuss the process with others and in our publicity material we actively encourage people to discuss their AWAs with other people, particularly prior to signing, obviously. It does, of course, place restrictions on us, but it does not restrict us from talking generally about the content of AWAs in such a way as to not identify the parties to those AWAs.

CHAIR—I left the hearing on Wednesday just before the comments were made, so I was not able to pursue them, but from what I briefly read in a *Financial Review* article this morning I understood that in fact this parliament could require you to provide the terms and conditions of AWAs and that you would be compelled to provide them. Is that what the Employment Advocate said on Wednesday?

Mr Rushton—I have not seen the *Financial Review* this morning, Senator. Could I say that the Employment Advocate took on notice questions regarding issues on producing information. He did not actually produce any information on Wednesday regarding the names of parties to AWAs but he was certainly asked questions in relation to that and took those on notice.

Senator HUTCHINS—Mr Rushton, I was there and I distinctly recall Mr Hamberger saying that they would be made available.

Mr Rushton—He was responding to the question that was put by the committee and that is presently where it is at.

Senator HUTCHINS—So they will be available then?

Mr Rushton—That will be a matter for Mr Hamberger, Senator.

CHAIR—Mr Dungan, in your view there is nothing in the act or in the operation of AWAs that would prevent departments or department secretaries making the contents of those AWAs publicly available?

Mr Dungan—No, not in the act.

Mr Rushton—Perhaps I could add that there may be privacy and confidentiality requirements that could impact on the departments but the provisions in the act regarding confidentiality would not—

Mr Dungan—No, they do not apply.

CHAIR—So the question of confidentiality really is a matter of choice, presumably, for the employer or the employee?

Mr Dungan—Yes, within the bounds of the privacy considerations that would normally apply.

CHAIR—The reason I am asking the question is perhaps not for the purpose that you think it is. At the last hearing, on 14 April, the Secretary to the Department of Treasury said that the AWAs in Treasury were all publicly available, that people were aware of them, and I think the

AWAs for the Senate are on their intranet and are publicly available, but in some other departments the AWAs are kept strictly confidential. One of the concerns that this committee has in respect of that matter are issues raised in evidence by Mr Barrett, the Auditor-General. He said he had concerns about the way in which records were being kept and the degree of information that was available to public scrutiny in order for a proper audit to be conducted of what was happening with pay across the whole of the Public Service. Now, that goes to two issues: firstly, the way in which information may be kept within departments, but presumably all these AWAs are required to go through your office—

Mr Dungan—They are.

CHAIR—Is your database kept in such a way that the type of access that Mr Barrett is talking about would be available to the National Audit Office to conduct that type of audit into what is happening with pay movements in the public sector?

Mr Dungan—The short answer to that is yes. It would be possible for the Audit Office to inspect our records and to look at records for particular employers. I assume that there would, within reason, be—

Mr Rushton—Senator, we would have to have a look at the provisions of the Audit Act in relation to that because obviously we would then be disclosing that information to the Audit Office which may—

Mr Dungan—So long as we are not offending 83BS.

Mr Rushton—It would raise an issue about 83BS. I perhaps should add in relation to 83BS that obviously if there is a requirement under another act that the AWAs be disclosed, and if there is such a requirement in the Audit Act, then it may well be that there is not a problem with the secrecy provisions.

Mr Dungan—But in relation to your question, we have every public sector AWA recorded in our system and able to be searched by employer name.

CHAIR—Do you keep the public sector AWA data separate from the private sector data?

Mr Dungan—No.

CHAIR—So you do not produce a report in terms of AWAs in the public sector vis-a-vis AWAs in the private sector?

Mr Dungan—No.

CHAIR—What is the nature of the information you provide to DEWRSB?

Mr Dungan—We have been providing some information to them with respect to where we are able to identify public sector AWAs, the number of AWAs that we have been approving. I think that is the only information that we are able to provide them with. It does not break up between, for example, Senior Executive Service and non-senior executive service AWAs.

CHAIR—So the information you provide to DEWRSB is general rather than specific?

Mr Dungan—Yes. We basically go through our records on a monthly basis, look at employer names and say, ‘Okay, we’ve got so many from the department of X,’ and add them up and provide that information across to DEWRSB.

Mr Rushton—That does have to be provided on a general basis, again because the provisions of 83BS would apply to us providing specific information about specific AWAs to DEWRSB.

Mr Dungan—I do not believe we actually identify to them the employer names; it is general information about the number of AWAs that have been approved for the public sector.

CHAIR—What type of scrutiny do you subject public sector AWAs to?

Mr Dungan—Exactly the same level of scrutiny as we subject all AWAs to—that is, when the AWAs are received we go through and we check first of all that all of the filing requirements under the act have been met. They then go to an assessment officer who looks at—

Senator WATSON—Can you just go through some of those requirements.

Mr Dungan—First of all that the AWAs are signed, dated, witnessed and that they have been submitted to us within 21 days of the affixing of the last signature to the document. In terms of filing requirements, that is pretty much it, isn’t it?

Mr Rushton—Yes.

Senator WATSON—What about ‘no disadvantage’—do you check that?

Mr Dungan—Oh, yes. Sorry, that is at the second stage. At that point in time, once the filing requirements have been met, a filing receipt can be issued to the employer. At the same time that a filing receipt is issued to the employer, a letter is sent to the employee’s home address. We call that letter ‘the genuine consent notice’. That letter first of all states that the person’s employer has submitted an AWA to us for filing and approval and it encourages the person to contact us on a toll-free number if they have any concerns, queries or problems with respect to their AWA. It gives them 14 days to respond to that if they do have any concerns, queries or problems and we state that if we have not heard from them within 14 days then we will proceed with the approval process.

Senator MASON—Mr Dungan, sorry to interrupt, but you send it to the employee’s home address?

Mr Dungan—Yes.

Senator MASON—Is that in some way to ensure that there is no coercion from the employer?

Mr Dungan—That is correct. It is to ensure that our contact with the employee in that regard is clean, as it were, that we are not relying on the employer passing the information through to the employee in that instance.

Senator HUTCHINS—With the home address, I have not seen one of these documents but do you elect where you want the document sent to? You said it is a home address.

Mr Dungan—We ask the employer for the employee's home address. If we get letters returned to us, as we sometimes do, then we will make every attempt to contact the employee—by phoning their home telephone number if we can find it, by phoning them at work and by speaking to them. We ensure that we do get that contact with the employee.

Senator HUTCHINS—Is it in the legislation that it has to go to the home address?

Mr Dungan—No. There is actually nothing in the legislation with respect to sending a notice to the employee to ensure genuine consent. One of the approval requirements of the legislation is that the employee genuinely consented, but it is the mechanism that we have adopted to establish that genuine consent. Obviously, there has to be some sort of mechanism whereby you can say, 'Yes, the employee has genuinely consented to the AWA.' Once we have sent the filing receipt to the employer—and the employer, of course, is required to provide a copy of that to the employee—and once we have not received a response back from the 'genuine consent letter' or a response back that says, 'Yes, I genuinely consented and please can you approve my AWA,' we then go and look at the no disadvantage test and also at the additional approval requirements—one of the additional approval requirements obviously being that the employee genuinely consented.

The other requirements are that if they were a new employee they had the AWA for at least five days before signing, or if they were an existing employee they had it at least 14 days before signing; that the effect of the AWA was explained to the employee; compliance with section 170VG, which is the confidentiality provision, that the AWA does not contain a provision that prevents the employee from revealing its contents to any other person; and that the AWA contains the mandatory dispute resolution and antidiscrimination provisions.

If it gets through all of those bits then we look at the no disadvantage test. With public sector AWAs the no disadvantage test in many cases can be fairly easily met in that most of these employees would already be covered by certified agreements and generally those certified agreements will provide conditions and rates of pay significantly in advance of the award. Those certified agreements have already met the same no disadvantage test as we apply and generally the AWA will provide a benefit over and above the certified agreement rates. Nevertheless, what we do is we go through and we have a look at, first of all, the rate of salary in the AWA and compare the rate of salary with the rate in the award. We have a look at any other benefits that the employee may be in receipt of and then make an overall assessment as to whether it passes the no disadvantage test.

Senator HUTCHINS—Do we know how many people would work for the Australian Public Service?

Mr Dungan—No, to be perfectly honest I do not.

Senator HUTCHINS—You do not know how many APS people are covered by AWAs?

Mr Dungan—Not off the top of my head. I would have to take that on notice.

Mr Rushton—It is in your documents.

CHAIR—It is 5,880.

Mr Dungan—Thank you.

Senator WATSON—What happens if somebody does not sign?

Mr Dungan—If somebody does not sign their AWA?

Senator WATSON—Yes.

Mr Dungan—They would just stay on the conditions that are currently applying to them at the time.

CHAIR—Can I just come back to this coercion issue, Mr Dungan. I understood you to say that you rely on a statement from the employee that they have entered into the agreement freely. Is there any other test you apply in terms of trying to assess whether or not there has been undue duress or coercion in respect of signing up to an AWA?

Mr Dungan—Not generally, no.

CHAIR—What about a set of circumstances, which is occurring in some departments at the moment, where departments are refusing to enter into any form of agreement other than AWAs? Do you regard that as a form of coercion?

Mr Dungan—No.

CHAIR—You don't?

Mr Dungan—No.

CHAIR—Despite the fact that employees have had meetings and signed documents saying they want collective agreements, you do not regard that as coercion?

Mr Dungan—No.

CHAIR—What would you regard it as?

Mr Dungan—The situation with respect to those employees is that they have a clear choice: either they can sign a workplace agreement, an AWA, or they can remain on their existing conditions. For the most part, those existing conditions are set by certified agreements; they are certainly not disadvantaged against the award and that is really the basic issue that we are concerned with.

CHAIR—Well, to my knowledge that is not quite true on one particular department . This is going back a while—and things might have changed so bear with me—but when ASIC was being formed the employees who were offered a transfer out of the Public Service into ASIC were given the opportunity of taking the AWA or not taking the job. You do not regard that as being a form of coercion?

Mr Dungan—I would have to take that one on notice because I do not know the exact circumstances involved there. I would have to look at the exact circumstances and—

CHAIR—Would you regard a set of circumstances where the offer is an AWA or the job as being coercion?

Mr Dungan—It depends on the circumstances. I think we have had some guidance from the Federal Court in this regard, both in interlocutory proceedings with respect to *ASU v. Electrix* and in a situation with *Schanka v. Employment National*. In *Schanka and Employment National*, Justice Moore said that, absent anything else, the offer of a job conditional upon signing an AWA would not constitute coercion.

Senator WATSON—That is a new job, is it?

Mr Dungan—That is correct.

Senator WATSON—A new job arising from somebody moving from one situation to a new situation?

Mr Dungan—No, and this is where it becomes a little more complex. If you have a look at the facts of *ASU v. Electrix*, there was a situation where people were being transferred essentially from one organisation to another organisation and they were basically offered an AWA or a redundancy situation. Under that circumstance, Justice Marshall—

Mr Rushton—In fact, I do not think they were offered redundancy.

Mr Dungan—Oh, they were not even offered redundancy. So, yes, the situation was clearly that they were facing a situation where there could be an argument for duress. The matter was never finally argued because it was settled, but certainly it was sufficient for an interlocutory injunction to be placed on the employer in relation to the offer of those AWAs.

CHAIR—What was the difference in the circumstances of that case and the EN case?

Mr Dungan—In the case of *Employment National*, with respect to the people that Justice Moore was talking about when he said, ‘absent anything else’, these were people who were coming into *Employment National* from outside; they were not people who were being transferred from a government agency into *Employment National* but they were people who were being employed fresh from the outside. He said in that circumstance, and obviously absent anything else, he could not see that there was duress or coercion applied.

Senator WATSON—What happens in a situation where you wind down an agency and it goes right out of existence and is replaced by, say, two new agencies—or at least one new one plus an existing one?

Mr Dungan—Sorry, could you repeat the question.

Senator WATSON—Where you have an agency that ceases operation and staff are offered positions to go to an entirely newly created agency, or an expanded existing one, what are the rules in both those cases?

Mr Rushton—Again, it would depend on the circumstances—whether they were offered redundancies or had another choice as opposed to taking up the offer, whether it was the offer of a new job or nothing. It is going to depend on the particular circumstances.

Senator WATSON—There are only two alternatives there; perhaps you might like to give us the four answers.

Mr Dungan—This is all highly speculative and—

Senator WATSON—No, it is not; it is a practical situation and I think it is the situation that the chairman has referred to.

Mr Dungan—If I can go back to the situation of ASU and Electrix: if in that circumstance the employees were offered a job or nothing then it is quite probable that there would be coercion. If, however, they were offered a job conditional upon signing an AWA and there was another clear choice for them, then I believe that the question would not be clearly decided one way or the other.

Mr Rushton—I believe, Senator, that is the question that is still open in Employment National. That case has not been finally decided yet.

CHAIR—That case has not been completed yet?

Mr Rushton—No.

CHAIR—So we do not know how Mr Justice Moore will rule in the final analysis on that?

Mr Rushton—That is so, yes, Senator, and that will actually be quite useful for everybody once that is decided.

CHAIR—The act itself does provide for a choice, that employees shall have choice of the award, a collective agreement or an AWA. What we have here is a set of circumstances where some employers are saying to employees, ‘You do not have a choice,’ and they do not even advise them that they potentially can have a choice. So in essence what you are saying is that Mr Justice Moore in Employment National will probably be the first one to rule on the extent to which choice has to be offered?

Mr Rushton—I guess to a certain extent that is true, yes.

CHAIR—When is that case likely to be concluded, do you know?

Mr Rushton—I am really not sure. As you would be aware, it has been going on for some time and there have been a number of interlocutory decisions, one of which Mr Dungan referred to. I would hope it would be resolved shortly but it still seems to be going on.

CHAIR—And in the Employment National case your office determined that that was not duress; is that correct?

Mr Rushton—That is so, as I understand it. I think that is correct, yes.

CHAIR—When you made that decision, did you take into account the provisions of the act?

Mr Dungan—Yes.

Mr Rushton—It was a decision by the Employment Advocate and I am sure he would have, Senator.

CHAIR—You are assuming he did?

Mr Rushton—Yes.

Mr Dungan—One assumes that the Employment Advocate at the time exercised his discretion in the proper fashion under the act, yes.

CHAIR—Did the workers at Employment National who were offered these AWAs sign up to them?

Mr Dungan—Many, many employees of Employment National signed AWAs.

CHAIR—Did they complain to you that they felt that they were under duress?

Mr Dungan—We are going back a long time now to when those AWAs were signed. Perhaps I can take that on notice because I would have to go back and check the records.

CHAIR—Could you do that. I am just trying to establish how the Employment National case got to the Federal Court.

Mr Rushton—I believe the union, on behalf of the employees, took the case.

CHAIR—So the employees must have complained to the union.

Mr Rushton—Clearly, yes.

CHAIR—I am just wondering why they complained to the union and did not complain to you.

Mr Rushton—They may have done, Senator.

CHAIR—And if they did complain to you, we need to know what action you took in respect to that complaint over duress.

Mr Dungan—I do recall there were a number of complexities in relation to the Employment National AWAs but I cannot recall at this stage whether those complexities included inquiries in relation to duress.

Mr Rushton—It would be better to take it on notice, Senator, rather than trying to speculate.

CHAIR—The information I have is that at 31 January there were 5,880 AWAs in the APS, of which more than two-thirds were for staff below the SES level. Can you tell me how many of those are collective AWAs?

Mr Dungan—I cannot, I would have to take that on notice and check.

CHAIR—All right, can you take that on notice and check?

Mr Dungan—Yes.

CHAIR—From the evidence that we have been given so far from the departments that have appeared it would appear that a substantial number of these AWAs are collective—that is, they are in identical terms, put it that way.

Mr Dungan—I would have to say that within each department there would be substantial numbers that are in identical terms. Whether those are actually what we refer to as ‘collective AWAs’, where there is a single document and multiple signatures on it, I could not tell you, but—

CHAIR—That is a bit of semantics, Mr Dungan, surely.

Mr Dungan—Well, actually no, because the act makes reference to ‘collective AWAs’ so we do keep that distinction in our mind. I would say that within a particular department the vast majority would be in substantially identical terms.

CHAIR—Just on that issue, if you have a department with 50 people in it who have an Australian workplace agreement with 50 signatures on it, you determine that to be a collective AWA?

Mr Dungan—Yes.

CHAIR—If you have 50 AWAs in identical terms with individual signatures, that is not a collective AWA? Surely that is a case of semantics?

Mr Rushton—We do not treat it as a collective—

CHAIR—I know you do not treat it as a collective, but in a practical sense it is reasonable to argue that there are collective terms of employment applying to those employees in that department.

Mr Rushton—Well, if the terms are identical.

Mr Dungan—I might just add there though, Senator, that one of the reasons for that, of course, is the provision in the act relating to ‘comparable employees’. Many departments take what I call a ‘belt and braces’ type approach to ensure that they do not offend their comparable employees. The issue is the requirement that all AWAs be offered in the same terms to comparable employees.

CHAIR—Yes, I understand the point that you are making. Filing applications for AWAs must contain a statement declaring, amongst other things, whether or not the employer has offered an AWA in the same terms to all comparable employees and in approving an AWA the Employment Advocate is required to be satisfied that, where a similar AWA was not offered, the employer did not act unfairly or unreasonably in failing to do so. What is the point of that requirement?

Mr Rushton—I guess that is a matter for the government or the parliament which put the requirements in the legislation.

CHAIR—But you are administering this section of the act. You have not come across any circumstances where this has happened?

Mr Dungan—Where what has happened? Sorry, I do not understand.

CHAIR—Where a comparable employee has not been offered a similar AWA.

Mr Dungan—Yes, we have circumstances where people who do very similar work have been offered AWAs in different terms. Normally we would look at the explanation for why they are offered AWAs in different terms and if the employer has not acted unfairly or unreasonably then we would be able to go ahead with all the other approval provisions.

CHAIR—How do you satisfy yourself that that is the case, that the employer has not been unfair or unreasonable?

Senator WATSON—Are we talking about the same agency or different agencies?

Mr Rushton—It is the one employer.

Mr Dungan—If it was a public sector one it would be within the same agency.

Senator HUTCHINS—How many have you knocked back?

CHAIR—Can we just follow this line through.

Mr Dungan—We would look at the explanation and make a judgment as to the reasonableness of the explanation. Often the explanation is in terms of the person's skills, the particular skill set that they bring to the job, their experience, sometimes in relation to market issues, particularly with specialist positions—for example, an IT manager or someone in those sorts of areas where there are particular difficulties in recruiting somebody into a particular type of position, or retaining a person in that particular type of position. In those circumstances you will get AWAs offered to people in those particular sensitive positions in slightly different terms from those that we offer to other managers at a similar level within that agency.

CHAIR—But if it is comparable employees, presumably the skills would also be comparable? How do you make those judgments? Do you just accept what the employer says to you?

Mr Dungan—Unless we have good reason not to accept it, yes.

CHAIR—What would constitute ‘good reason’? If there were arguments between two IT personnel, do you do a skills audit on the two of them and establish independently?

Mr Dungan—No.

CHAIR—Do you just take the advice of the employer? Do you talk to the employees?

Mr Dungan—No, but if the employees called us in relation to that then obviously we would look more deeply into it.

CHAIR—But they don’t need to call you. You have to satisfy yourself?

Mr Dungan—Yes. The other issue there, of course, is that the employer does sign a declaration and if they have provided us with false or misleading information that is a breach of the act.

CHAIR—Yes, I understand that but I am not so concerned about that aspect of it. As I would understand it, that requirement is essentially put in to protect the interests of the employee. Given that you are responsible for administering these processes, I am just wondering to what extent you check the issue to ensure that the interests of the employee are protected?

Mr Dungan—We accept the information provided to us by the employer under that signed declaration unless we have reason to think that the information is not accurate.

CHAIR—What remedial action is available to you if you decide that the action of the employer is unfair or unreasonable?

Mr Dungan—If the employer has acted unfairly or unreasonably then the AWA has not met the additional approval requirement and we must refuse it. We actually have no discretion in that regard—if it does not meet the additional approval requirements then we must refuse.

Senator WATSON—What is the maximum number of AWAs you can have within one agency, because it can lead, as the chairman said, to some discrimination?

Mr Dungan—The maximum number of AWAs within an agency?

Senator WATSON—Yes.

Mr Dungan—Hypothetically, the maximum number of AWAs you could have in an agency is equal to the number of people in the agency.

Senator WATSON—So, theoretically, you could have a separate AWA for each employee?

Mr Dungan—Yes, hypothetically. It may be a bit difficult to administer it, but—

Senator WATSON—So it is possible to have a different AWA for people this side of the office compared with that side of the office?

Mr Dungan—Yes.

Senator WATSON—Essentially doing similar work?

Mr Dungan—So long as it is not unfair or unreasonable in offering them AWAs in different terms.

CHAIR—But, presumably, if you have knocked it back you would have to pursue other action against the employer, wouldn't you, because he would have given you misleading information?

Mr Rushton—If he has done. We may simply accept that he has not acted fairly unreasonably.

CHAIR—Has there ever been a situation where this has occurred?

Mr Dungan—Not in the public sector.

CHAIR—But it has in the private sector?

Mr Dungan—I think we had one. I could take that on notice. It is rare.

Mr Rushton—Sorry, Senator, is this being refused for this reason?

CHAIR—Yes.

Mr Rushton—There have been instances, I believe.

CHAIR—Can you take that on notice and give us advice as to how many of them have been rejected on those grounds?

Mr Dungan—Just on the 'comparable employee' grounds?

CHAIR—Yes, in both the public and private sector, but I assume from what you are saying it has not occurred in the public sector.

Mr Dungan—I can state categorically we have not refused any in the public sector for comparable employee issues.

Senator HUTCHINS—Can you take on notice how many you have rejected all up in the private sector, not just on those grounds?

Mr Dungan—The total number refused?

Senator HUTCHINS—Yes.

Mr Dungan—Yes.

Mr Rushton—Is that for any reason, Senator?

Senator HUTCHINS—If you can outline the reasons why, whether they did not fill the documentation out correctly. I am more interested in whether it has been fair and reasonable, that angle, rather than procedurally correct.

Mr Dungan—It is difficult for us to actually disaggregate the data on refused AWAs because we lump—

Senator HUTCHINS—I assume that you refuse some documents because they have not filled it out correctly. That is not what I want. I want to know whether or not there has been an investigation undertaken and it has been refused on the grounds that it does not meet your tests of being fair and reasonable.

Mr Dungan—Senator, the issue is that there are, of course, a number of additional approval requirements and if an AWA does not pass any one of those we will refuse on the grounds of additional approval requirements. We generally do not disaggregate those because it is not a matter for discretion. Are you actually seeking further information with respect to any investigations that we have carried out as a result of additional approval requirement issues?

Senator HUTCHINS—Yes.

Mr Dungan—Yes, I think we can provide that information. Obviously there are some that we just refuse and there is no further action taken, but you are interested in those that are refused and further action taken to investigate?

Senator HUTCHINS—Yes, please.

Senator WATSON—The way AWAs are moving, particularly, say, in the department of finance, is almost to a situation of individual contracts oversighted by the Employment Advocate; is that right?

Mr Dungan—No, I would not characterise an AWA as an individual contract.

Senator WATSON—Oversighted by your office; what is the difference?

Mr Dungan—The major and substantial difference—

Senator WATSON—You said that you could almost have one AWA for each employee in an agency. What is the difference between that and a contract of employment?

Mr Dungan—The major difference between an AWA and a contract of employment, Senator, is the fact that employment is not dependent on the existence of the AWA, that if you terminate an AWA you do not terminate the person's employment. In that regard it is no different from a certified agreement, it is just a means of settling the terms and conditions of employment but it is not the employment contract itself.

CHAIR—Can you explain to us what the difference is between an individual contract and an AWA?

Mr Dungan—An individual contract at common law?

CHAIR—An individual contract that I might enter into with my employer setting out my terms and conditions of employment.

Mr Dungan—Quite clearly that is a common law contract. It is not able to override the terms and provisions of an award so you would still be bound by your award, or your certified agreement for that matter. It is a quite different sort of beast to an AWA which is set up under statutory provisions and exists alongside certified agreements and awards and can override awards and, where they provide for it, can override some of the provisions of certified agreements as well.

CHAIR—So what you are saying is that it is worse than an individual contract?

Mr Rushton—Or better, Senator, depending on your point of view.

CHAIR—Presumably an individual contract also would be better. There would not be much point in entering into it unless it was.

Senator WATSON—You could lose your job with an individual contract.

Mr Dungan—Because it is a contract of employment, the termination of an individual contract means the termination of your work.

CHAIR—It may not necessarily be a contract of employment.

Mr Dungan—It then is just an over-award type arrangement or a certified agreement, or you could be award free.

Senator WATSON—Can I go back to the earlier question where I was talking about the disadvantage test in terms of the issues that you look at. Does the disadvantage test apply to other than salary?

Mr Dungan—Yes.

Senator WATSON—If so, how do you apply weightings to issues other than salary? You must be able to allocate weightings or priorities.

Mr Dungan—We generally look first of all at the financial impact of the full arrangements under the AWA and compare that with the financial impact of the full arrangements under the award provisions. In some cases that has resulted in some fairly long and complex spreadsheets being calculated by my staff, particularly looking at things like where there are changes to hours or working patterns, for example, and ensuring that the overall remuneration received under the AWA is at least as good as the overall remuneration that they would have received working those hours and working patterns under the award.

Senator WATSON—What is the criteria that you use in making that difficult assessment?

Mr Dungan—What do you mean by ‘criteria’? Sorry, I am not quite sure.

Senator WATSON—You said that it often takes your staff many hours developing spreadsheets so you must have some sort of criteria in coming to a finality?

Mr Dungan—Yes. We will, for example, chart out a range of scenarios in terms of the working patterns—for example, if the working patterns are fairly open we will take a worst case scenario and work out how many hours at ordinary time they would work, how many hours at time and a half, how many hours at double time, if there are public holidays worked, how many public holidays, what the remuneration for those public holidays is, look at how much they would earn and they would be receiving in terms of annual leave, in terms of annual leave loading—all of those entitlements—any allowances and so forth, and look at what they would receive in aggregate for a 12-month period. We would compare that back against what they would receive for the same period under the AWA. We also have a procedures manual which sets out all of these aspects. That was made available to the Senate inquiry into the second wave but we could also make it available to this committee.

Senator WATSON—Conditions of employment, like working in the rain or not working—

CHAIR—Just on the hours of work issue, we have had discussions about particular AWAs offered by a company called Bevpak—there is nothing confidential about it. They had a provision in that AWA which said that the employee could be required to work any 12 hours, I think it was, in any period Monday to Sunday—so in any 24-hour period seven days a week they could be required by the employer to work a 12-hour period. When you make an assessment of that and compare it to the award for the no disadvantage test, do you only look at the remunerative aspect of it or do you take into account other considerations, like family responsibilities and so forth?

Mr Dungan—It depends on the circumstances of the case. We can look at those issues in terms of family responsibilities—for example, if the employee has a certain degree of flexibility in choosing which hours they are to work or which days of the week they are to work and if they are able to make alterations to their hours and days to meet particular family responsibilities then we would see that positively. But obviously the first hurdle—

CHAIR—I think in respect of this agreement it was purely at the direction of the employer.

Mr Dungan—The first hurdle that we look at is whether it gets over the line in terms of remuneration.

Senator WATSON—But my question is other than remuneration. For example, how do you assess asking construction workers to work in the rain? There are a lot of other conditions in applying weightings.

Mr Dungan—I have to say that it depends very much on the individual agreement as to how those issues can be dealt with, because obviously the no disadvantage test is a global test, it is not a line by line test. We look at the overall advantages and the overall disadvantages within the agreement and make the assessment on that basis.

Senator WATSON—But I am talking about other than salary—you have given us some examples but they are all remuneration related; I am asking about other than remuneration related. In terms of the no disadvantage test, how do you weigh up such things as a requirement

to work in the rain, because there are a lot of conditions other than those related to money matters?

Mr Dungan—Sure. With respect to some provisions we have actually gone back to the employees and talked to them about how those provisions relate to them and how they affect them. Where the employees say, ‘The AWA gives us a positive benefit,’ then we will accept that. If the remuneration is no good, though, we would still seek some undertakings with respect to the remuneration from the employer.

Senator WATSON—You mentioned that there is certain feedback in terms of quality assurance surveys. Are a couple of those available for us to have a look at and see the sort of feedback that you are getting or are they regarded as private and confidential?

Mr Dungan—Can I take that one on notice? I am not exactly certain what you are referring to. Where were those quality assurance surveys referred to?

Senator WATSON—In your annual report.

Mr Dungan—In our annual report?

Senator WATSON—They are talking about internal audits, KPMG work, and then it was a follow-up with quality assurance surveys.

Mr Dungan—I will take that on notice, if I may.

Senator MASON—Mr Dungan, the chair raised before some issues relating to coercion that perhaps go to the heart of the Workplace Relations Act. There is an assumption perhaps running through that legislation that there is choice and there is also freedom to contract. My questions relate to coercion. I wanted to ask how many complaints from employees you have received over the last, say, 12 months, relating to coercion.

Mr Rushton—I would have to take that on notice, Senator. I do not have the figures at hand but we are able to provide those figures.

Senator MASON—I am not sure if you can deal with this now or perhaps you can take it on notice: what is the process from there? How are those complaints of coercion investigated? Finally, are there any examples of employer retribution?

Mr Rushton—In relation to the process, there is a detailed procedure for dealing with matters of coercion which involve issues of possible duress, which is a breach of the legislation, and also go to the genuine consent issue, which is an issue regarding whether the AWA should be approved or not. We have a procedure for dealing with that which I can make available. Obviously, in terms of simply investigating the matter, we have compliance officers within the Office of the Employment Advocate who will take statements and gather evidence in the normal course of events in relation to those issues.

Senator MASON—My final question was about employer retribution: are there any examples of that?

Mr Rushton—I would have to take that on notice, Senator.

CHAIR—There are a few fairly public ones. Thank you, Mr Rushton and Mr Dungan.

Senator WATSON—By the way, Mr Chairman, during 1998-99 there were a total of seven complaints to the OEA. One related to delays in the processing of an AWA, the balance related to the conduct of specific compliance investigations.

[10.02 a.m.]

O'DONNELL, Dr Michael, Lecturer, School of Industrial Relations and Organisational Behaviour, University of New South Wales

CHAIR—Dr O'Donnell, do you wish to make an opening statement?

Dr O'Donnell—Just by way of follow-up, and to give you some direction as to where my comments are going, I will start off with AWAs. I have undertaken, with a colleague, John O'Brien, in the School of Industrial Relations and Organisational Behaviour, a number of studies looking at employment matters under the Workplace Relations Act in the Australian Public Service. We have done a study looking at bargaining outcomes via certified agreements and also at AWAs. I might briefly refer to the AWAs.

From an academic perspective, one of the problems with examining AWAs is a lack of access to the AWAs—they are generally confidential agreements and it is very hard, except by interviewing individual employees. We have undertaken a number of interviews with employees who have signed AWAs, particularly in the Department of Finance and Administration. There is a broader point of just working out what is in the AWAs. But one thing that is fairly clear is that the AWAs have a significant performance component to them. If we look at some of the interviews we have undertaken with staff in the Department of Finance and Administration, the certified agreement allows for performance payments on a sliding scale of between two and 15 per cent; the AWA allows for performance bonuses of up to 25 per cent.

My concern really is that in the APS there seems to now be a concerted focus on performance management issues, not just through AWAs but also through changes in the classification structure. People no longer get annual increments, everything is on the basis of performance assessment—whether employees rise one step in the classification structure or two, and so on—as well as the potential for people to be rewarded with performance bonuses, not just in AWAs but more broadly. Under the former Labor government this was restricted to SES officers and senior officers, the more senior public servants, but now the trend is to extend remuneration via performance assessment to almost all employees. My concerns really are: does this motivate public service workers and how adequate are the assumptions which suggest that performance based pay or performance assessment is an adequate way of motivating and rewarding public service workers?

For the purposes of this morning's hearing, I have reviewed some of the literature. A remuneration system is only as good as the assumptions underpinning it, and there are a range of assumptions underpinning performance based pay. The question is: are those assumptions applicable to the public sector? There is considerable awareness of the problems with performance based pay in the public sector. What are some of those major problems and are they evident under the current changes to the Workplace Relations Act? I would like to table an appendix to our earlier submission which looks at employee responses to performance based pay and which draws out a range of concerns that employees have.

Senator WATSON—Is this based on Australian experience?

Dr O'Donnell—Both the survey and qualitative interviews with specific employees in a range of departments—

CHAIR—Dr O'Donnell, can we have a look at the document that you have with you?

Dr O'Donnell—Certainly, and I am happy to talk to this document as well as to broadly review the evidence debating the issue of whether pay motivates Public Service workers, whether pay motivates, more broadly—

Senator WATSON—That is the Commonwealth Public Service?

Dr O'Donnell—That is the Commonwealth Public Service, yes.

Senator WATSON—Just exclusively?

Dr O'Donnell—This is part of work undertaken with the Community and Public Sector Union. They were very interested to know how we respond to performance management more broadly: 'This now seems to be what is happening, how do we respond?' They asked me to go and talk to employees. We did a survey and then I went around to a number of departments and talked to about 25 employees. We got 150 survey responses. It is not a very large number and I should emphasise that it is very much preliminary research that has been undertaken and it is fairly early days, but we can make some clear suggestions of some of the concerns that need to be taken into account when people like yourselves are questioning people about performance management.

The significance of performance management is that it is now central to the whole transformation in employment relations that is occurring in the APS, and it is not just senior executive officers, it is just about everybody. The major concern is procedural fairness, the accuracy and the fairness with which these performance assessments are being undertaken. Arguably, the lack of procedural fairness has considerably undermined the motivational potential of performance pay arrangements. I am happy to take any questions or I am happy to proceed and outline some of the factors which suggest that pay can motivate and then some of the concerns raised in the literature about whether that is applicable to the public sector.

CHAIR—Please continue, Dr O'Donnell.

Dr O'Donnell—To successfully motivate employees and to ensure that pay is perceived as attractive, performance based pay schemes need to communicate performance goals that are clearly understood, achievable and worthwhile. Broadly speaking, that is what needs to occur for performance based pay to motivate. The assumptions underpinning that are basically based on two theories: expectancy theory and goal setting theory. I would like to outline the key assumptions of both theories because the importance of focusing on the assumptions of the motivational aspects of pay is that if the assumptions are not met in practice then it is highly questionable whether that is the appropriate process by which employees should be remunerated or their performance assessed, particularly if the focus is on improving motivation into the future.

There are three central assumptions of expectancy theory: firstly, that employees understand the performance goals and believe that they have the skills and abilities to achieve those goals; secondly, that the performance rewards will be forthcoming if employees perform to the level of

the goals; and, thirdly, that the performance rewards are worthwhile. Very simply, goal setting theory states that performance based pay will improve employee performance when goals are clearly stated, challenging, and accepted by employees.

There is considerable debate in the literature about how effective these theories are in the public sector and more broadly. There was a very authoritative study by Milkovich and Wigdor in 1991 reviewing performance pay and appraisal in the US civil service which suggested that if the assumptions of expectancy theory and goal setting theory are met, performance based pay will reward and motivate public service workers to higher levels of performance, and so on. What is the evidence though for that in practice? There was a very detailed study done by Marsden and Richardson in 1994 examining the impact of performance based pay in the Inland Revenue in the British civil service which set out to explore the effectiveness of expectancy theory and goal setting theory, based on a survey of 2,000 employees.

We looked at the three assumptions of expectancy theory. Firstly, could employees achieve the goals set? Eighty-one per cent of staff stated, yes, they could achieve the goals set by the performance pay system, so the first criterion was met. Secondly, did employees believe that the rewards would be forthcoming? Forty-five per cent believed that the rewards would not be forthcoming if they achieved the performance goals and only 40 per cent believed they would. Thirdly, were the rewards worthwhile? Only 17 per cent of employees believed that the rewards were worthwhile and changed their behaviour and improved performance; 71 per cent believed that the rewards on offer were inadequate. Just very briefly in terms of goal setting theory: were the goals clearly specified and achievable? Forty-three per cent of employees disagreed that the work targets were clearly specified; 72 per cent disagreed that communication between staff and management had improved as a result of performance based pay; 82 per cent agreed that performance pay had no effect on the quality of their work because it was already of the appropriate standard.

One of the main reasons why there was a limited motivational impact, based on the Marsden and Richardson study in the British civil service, was that there were widespread concerns regarding the fairness of the performance appraisal and pay system. That is an issue that I would like to expand on in terms of specifically relating that concern to what is happening in the APS, and this is what the appendix to our earlier submission discusses in some detail, drawing on employee perspectives. Fairness is very much from the employee perspective: perceptions of fairness, perceptions of accuracy. In terms of the Marsden and Richardson study, they found that employees perceived there to be a quota in operation restricting the numbers who got access to the top ratings. Many employees perceived there to be favouritism influencing who was getting the highest performance ratings. There was also a perception that there was increased jealousy or divisiveness in the workplace as a result of the performance appraisal and pay scheme.

So overall there were considerable concerns over procedural fairness. The main point is then that the central assumptions underpinning the notion that employees will be motivated to perform at higher levels if their performance is linked to a pay bonus—expectancy theory and goal setting theory—have to be met for that extrinsic motivation, people being motivated solely by pay, to be met in practice. If we look at the influential 1998 book by Pfeffer, *The Human Equation*, he highlights a range of concerns regarding the implementation of performance based pay and its potential to affect employee motivation. Again, there was a very strong sense that subjectivity pervades the process. In Pfeffer's view, the perception among employees is that these schemes reward employees with political skills and ingratiating personalities rather than rewarding demonstrated improvements in work performance. There is a very strong sense in his

research that it undermines teamwork because it focuses very much on the individual rather than on the team.

This really relates to a broader concern raised by a number of studies of the dangers of using individual performance based pay schemes for employees engaged in relatively complex and interdependent tasks that require cooperation among team members. The main concern here is that if work is being carried out in an interdependent manner, this makes making accurate assessments of the contribution of the individual employee difficult, if not impossible. How do you know what the individual is doing and reward them accordingly? This is a particular concern in the public sector where the completion of tasks in areas such as policy development requires considerable coordination between employees within the one agency, and potentially across a number of agencies.

A range of studies also suggest that there is also very much a focus on short-term performance, just assessing performance for the period under appraisal—if the cycle is for a year, just for the previous year—rather than looking at longer term goals and organisational performance more broadly, or, indeed, future performance. Finally, there is a tendency for such schemes to generate fear within the workplace.

The other side of motivation, intrinsic motivation—the notion that employees are motivated by a sense of accomplishment—may well be undermined, and that is probably the other main point I would like to make. The first point is that the assumptions of extrinsic motivation, based on expectancy theory and goal setting theory, may not be met due to concerns over procedural justice and procedural fairness. The second point that comes across very clearly in the literature is that by focusing solely on extrinsic rewards—using pay to reward people—you undermine the intrinsic motivation, the fact that people will be motivated by a sense of accomplishment. There is a 1985 study by Gaertner and Gaertner of the US performance pay scheme introduced in the late seventies and early eighties where they believe that an important issue for public sector employees was that they placed less emphasis on money and focused more on status and achievement than their counterparts in the private sector. They concluded that in encouraging public sector managers—and the scheme focused on public sector managers—to achieve and reward, more focus should be on status and recognition for these employees to be more successfully motivated, rather than a focus on pay.

Just to extend that point, there is a further study by Pearce and Perry in the US which found that pay was not the most highly valued reward for public sector employees—it ranked between third and fifth on a list of nine rewards.

Senator WATSON—What survey was that?

Dr O'Donnell—A 1982 study by Pearce and Perry, and I can provide details of these studies if you are interested. The scheme was brought into the US under the Civil Service Reform Act 1978—

Senator WATSON—That was a US survey, was it?

Dr O'Donnell—Yes, there are a number of US surveys. The scheme brought in in 1978, under the Carter administration, instigated a vast amount of academic research. There are a considerable number of fairly authoritative US studies, as well as a lesser number of British studies, which highlight the impact of performance pay and appraisal in the public sector.

Senator WATSON—I think a later OECD survey showed it as No. 14.

Dr O'Donnell—Yes. The broad point is that pay is not the number one factor motivating public service workers, and there are a range of studies that highlight that. The point I am trying to make is that it can particularly undermine intrinsic motivation—that people are rewarded by having interesting and challenging work to do, a sense of accomplishment in the work that they undertake, working cooperatively with others, working for the public service more broadly—rather than solely pay. A focus on extrinsic motivation, focusing solely on pay, may well undermine that, specifically where there are concerns regarding the procedure and process under which the performance based pay and appraisal system operates.

I will briefly summarise some of the procedural fairness concerns. Central to concerns regarding procedural fairness is the degree to which employees participate in the design of the pay system, the degree of consistency in the allocation of payments, and the degree to which employees are able to appeal decisions regarding their performance—in short, that there is due process.

CHAIR—That might be an appropriate point, Dr O'Donnell, to conclude your remarks and we will move on to questions, if you are happy with that.

Dr O'Donnell—Yes, sure.

Senator WATSON—I am interested in this question, particularly in the APS: if people are effectively being overpaid, or paid in excess of what other employers in the community might be offering, it would therefore be surprising that pay ranks quite low relative to other situations, such as the employment environment. Would you like to comment?

Dr O'Donnell—Sorry, could you clarify precisely what the question is.

Senator WATSON—I do not find it surprising that pay issues rank low in terms of all the employment priorities if the people in that particular environment—say, the Public Service—are being paid perhaps in excess of what other members of the community might be paid for similar work. Would you like to comment?

Dr O'Donnell—I think when you look at people's satisfaction with pay, reward satisfaction or dissatisfaction, reward satisfaction arises when people believe that the rewards are commensurate with the contributions they are making, or indeed they believe they are not commensurate with the contributions they are making. Probably the main point is that reward satisfaction is determined more strongly by people's perceptions of their relative pay than the absolute pay that they happen to receive. People in the Public Service are not comparing themselves with the broader population; they make comparisons with people either in other agencies, other areas of the public sector, or specific occupational groups may compare themselves with specific counterparts in the private sector. It is very much relative comparisons that they are making and if they feel that they are falling behind in relative terms they are likely to have relative pay dissatisfaction.

More broadly, in terms of what motivates public service workers, it comes across very strongly in the studies that I have done, and in other studies undertaken in the US and the UK, that it is the fairness and sense of procedural justice concerns that will either motivate people, or as most of the studies suggest may demotivate people. These schemes act to undermine

motivation rather than encourage motivation because people perceive that there are a range of inequities in the implementation of these schemes.

Senator WATSON—Have you found that in the short term people get excited about such rewards, such performance pay, but over time they start comparing their position with their colleagues and others and perhaps that enthusiasm dies a little? I think we perhaps found that a little in the Senate, that some officers were concerned about that.

Dr O'Donnell—Over time bonuses get built into expectations of base pay as people perceive, 'This is just another part of my base pay,' and it loses its motivational impact. Certainly there is a range of literature to suggest that.

Senator WATSON—I think you touched on this issue of teamwork. In a public sector environment do you not expect everybody to be working as a team—to complete the budget on time or to complete it accurately—and therefore if you have one officer making unreasonable demands on people underneath him, in terms of providing supplementary information, it can lead to some difficulties, particularly if it is known that your rewards are different?

Dr O'Donnell—There is a range of literature that suggests that this creates friction in the workplace and undermines teamwork. If I can just quote one respondent to the survey:

A major flaw of [performance] pay is that much of our work is team-based yet rewards are individual based. With supervisors esp[ecially] Senior Officers, on performance[ormance] pay, their targets also mean a lot of extra work for ASOs [Administrative Service Officers] with no recognition or reward. This has a divisive effect at all levels of the supervisory hierarchy.

So, yes, it is in a range of other surveys on the public sector and in the work I have undertaken that suggests it potentially has a very negative impact on teamwork. You need to be very careful with bringing in schemes which focus on individual assessment and reward in an environment where people are working in teams.

Senator WATSON—If that is so, why has there been such an increase in AWAs?

Dr O'Donnell—The government has a policy agenda to promote AWAs. It is built into the policy parameters which state that all certified agreements have to have the potential for AWAs. Some departments in particular have a very strong agenda of linking AWAs to a cultural change process. There is certainly a very strong drive from government to bring in AWAs. How that affects employment motivation or performance is another matter, but certainly there is a very strong policy agenda. In interviews with management, they felt they were under some pressure to introduce AWAs in the first round of agency agreement-making.

Senator LUNDY—We heard evidence from a previous witness—I think from PM&C—that in fact putting in place a performance pay structure had led to different employees being recognised in different ways, depending on what work was actually allocated to them. They cited examples of a hot political issue at the time and those workers were required to do a lot of high profile work which was perceived to have political significance as well as being important professionally. The issue became one of how you measure performance payment in relative terms across a given team, if you like, when management allocates different projects to the team and some of those projects actually have a higher status or profile and, in performance and pay terms, are marked up relative to other teams doing work that is obviously essential to the

organisation but does not have quite that status. I am just interested in your views or comments about the relative status of work.

Dr O'Donnell—In previous studies I did look at performance based pay under the former Labor government, and it comes through in this study as well, and it is very clear that people in high profile areas get the highest performance ratings because they are the most visible, particularly to senior management. Again, that just fuels concerns from people in other areas who are not doing work that is as visible over the fairness of the performance appraisal and pay system. It demotivates rather than motivates employees.

Senator LUNDY—And my assumption is that the managers who are rating performance are the same managers who allocate that work in the first instance?

Dr O'Donnell—Yes, I would agree with that. Again, it just goes back to the issue of procedural fairness and justice. My main argument before you today is that that undermines the focus on pay as an extrinsic motivator of Public Service workers. In practice, the range of concerns over the fairness of the process very much undermines the motivational potential of pay.

Senator LUNDY—On the issue of relativity, I notice in your submission you have some quotes that imply that in a certain scale of rating for performance it is much the same as the way grades are allocated in school in that there is a maximum percentage of the top level that can be allocated within a given team or a given staff. Is that how this system of rating applies or do agencies do it differently? Do you see what I mean, that there is a guaranteed percentage who will get the top mark and it is actually prestructured so regardless of the level of performance some people are going to only attract the bottom percentage because there is a mandated proportion of high achievers and low achievers and a mandated proportion of everyone in between.

Dr O'Donnell—That is right. Basically, what happens is that initial ratings go upstairs to more senior management and they standardise or moderate the performance ratings of all employees. The problem there is that there is a strong perception—and again we are dealing with employee perceptions—that the initial ratings of the supervisors are downgraded because of budgetary concerns. That very much fuels notions that the process is unfair because the superiors of the supervisors are not aware of individual employee work performance. And, yes, it is to fit some sort of a bell curve distribution of ratings. There is a very strong feeling that that is what is happening and that very much undermines the motivational potential of performance appraisal where people feel that regardless of how they perform everybody is going to be fitted into a bell curve and only a few are going to rate very highly. On top of that, there are feelings of favouritism, that those who are going to be rated very highly are going to be the favourites of either senior management or their supervisor.

Senator LUNDY—It seems that the very existence of that bell curve of rating structure has the same impact in the workplace as that bell curve system does in allocating school grades—it pits students against each other in relative performance, and equally the same effect would apply in the workplace where individual employees are pitted against their workmates. I guess I am just reinterpreting the evidence you have put before us this morning, but do you have any specific comments that relate to that point and this obvious motivator to actually break down team recognition and cooperation?

Dr O'Donnell—If I can just highlight a quote from one of the employees in the Department of Finance and Administration:

Those who make the decision (Secretary, Deputy Secretary and General Manager) do not know the real performance of most staff and yet they are the ones who determine the final rating (the 'moderators'), under the guise of 'consistency'. Hence the system is highly manipulative.

The real problem is that people will then feel that they have been given a rating that is less than their perception of their performance, or even the perceptions of their supervisor, once senior management moderate the process or standardise the ratings. There have been a number of studies that have found that that demotivates employees—that is clearly linked to demotivation—and very much undermines the objectives of the process. Overall, what I am trying to suggest is that because it is perceived in many cases to be unfair and unjust, it demotivates rather than motivates, and you are creating considerable division and friction within a workplace where that did not occur to the same extent before. Therefore, the impact of these schemes is often highly counterproductive.

Senator WATSON—Are you talking about the short term or the long term?

Dr O'Donnell—I think both. Just to give you an example of the short term, as well as the long term: talking to employees in the Department of Foreign Affairs and Trade, it is a department where people work extraordinarily long hours and so on. When the last ratings came down, in about June 1999, there was enormous disquiet and contention over the ratings, that some people were being rewarded, so everybody just worked nine to five for about a month. Apparently, there was also a feeling this year that the higher ratings were going to the overseas posts and people in the central office in Canberra were just getting 'satisfactory', or getting ratings in the middle point of the scale, and there was considerable backlash in terms of productivity. Talking to employees, that lasted for at least a month or so and then people got back into their normal regimes. So it can have both short term and longer term consequences.

Senator LUNDY—You mentioned hours of work. Certainly in the private sector, working long hours is seen as a level of commitment. Do you have any anecdotal evidence that these ratings are somehow related to perceived level of commitment—for example, levels of overtime worked by employees?

Dr O'Donnell—More broadly the human resource management literature suggests that people who are visible in organisations, who do do those very long hours, are the ones who tend to get the rewards. That raises concerns over gender equity for women—

Senator LUNDY—That was actually my next question. Within these methodologies is there any mechanism to make allowances and adjustments for family responsibilities—for men or women—or indeed for some of the more pertinent gender equity questions in relation to, for example, women who are pregnant and so forth?

Dr O'Donnell—That would have to be built into the criteria under which people are being assessed. But more broadly you can say that because these schemes reduce transparency of pay—pay is not in the certified agreement, it is the outcome of a private interview at the end of the performance appraisal cycle with your supervisor—there is a potential for a range of discriminatory biases and stereotypes regarding women workers to come to the fore that are not open or transparent. That is because most women are being supervised by male managers—women are concentrated, in a broad sense, at the lower levels of classification structures and

management is very much dominated by male employees—and there is the potential for discriminatory biases to emerge.

Senator LUNDY—There is certainly plenty of evidence around showing that individual contracts allow for greater inequities either to persist—or, like you say, to re-emerge—with respect to the remuneration of women, so I am interested. Do any of the studies that you have referred to have a specific gender analysis about the impact of performance pay for women and men, a gender breakdown?

Dr O'Donnell—Yes, there is a specific study by Rubery in 1995. I can either make it available or the reference is in the references section of the appendix that I provided.

Senator LUNDY—If you could make that study available to the committee that would be useful. That is probably the best way to proceed, rather than asking you more questions on this topic. Thank you.

CHAIR—Dr O'Donnell, I would like to come back to another issue related to performance pay which is of concern to this reference, and that is the question of accountability. What are the implications for accountability and independence of the Public Service, as a service, with the introduction of performance pay—not so much the introduction, because it has been there for a while, but the focus that is on performance pay now in the Public Service—in terms of its accountability to the parliament vis-a-vis the executive? Do you see performance pay as driving the focus of senior public servants, in particular—who are the beneficiaries in the main of the performance pay system—to being more focused in terms of their accountability to their immediate bosses or to their minister, rather than to the community generally through the parliament?

Dr O'Donnell—There is real potential for that to occur but I have not got any specific evidence regarding that matter. The broader issue is that these arrangements are not openly transparent and visible for people like yourselves to scrutinise, or for academic research to assess whether that is occurring, and that is a real problem, that you are creating a grey area within which perceptions may arise that that is what is happening. Those perceptions are really what counts; it is employee perceptions about the operation of these schemes that undermine motivation or that may make people perceive that they are being put into practice in an unfair manner. I think it is that broader point—that is, the lack of transparency, openness and accountability—that may well lead to those sorts of perceptions. I do not have, though, any specific evidence that suggests that is the case.

Senator WATSON—Is there a perception that women are discriminated against in terms of performance pay?

Dr O'Donnell—Certainly, there is British research that suggests that that is a very strong possibility. Research I have done has not focused specifically on that. That did not come across as something that people responding were greatly concerned about in the survey of 150 that we did, but certainly there were some British studies that suggest that is a very strong possibility.

Senator WATSON—No, I am talking about Australia, of course.

Dr O'Donnell—The work that I have done has not found that that has been a significant issue, although it did not focus specifically on the gender implications of performance based pay.

CHAIR—One of the other issues that seems to be of some importance here in terms of the Australian Public Service is the fact that departments or agencies have to meet the cost of performance payment out of their existing budgets. In evidence given to the committee at the last hearing by Ted Evans, the Secretary to the Treasury, he confirmed a statement that ‘one person’s performance pay is another person’s job’, that that is in fact the way it is operating. One could argue that it is not so much performance in the broad sense that we are talking about here, it is more linked to productivity, because if they do not drag productivity through this process then in the longer term there is going to be a fall-off in the types of services provided by the agencies if there are insufficient workers there to complete the process. If they have to do that from within the existing budget, then there is no other way in which it can be paid for, other than reduced employment in the department. What do you say to that? Did any responses come out in your survey in that—

Dr O’Donnell—There is a broader comment I could make about whether performance pay improves organisational performance. In previous submissions you have heard, and I think it is a point worth reiterating, that it is very hard to single out whether performance pay actually improves performance of the organisation more broadly: how do you single out pay from a whole range of other factors that impact upon performance? There was a study of performance pay in the US in social security offices by Pearce, Stevenson and Perry in 1985 which found that the introduction of the scheme had generated no statistically significant permanent improvement in organisational performance. So it is hard to single out, but studies that have tried to do so have found that it did not have a significant impact on improving performance.

In terms of productivity, again, I would reiterate the points I made earlier—that you may well undermine productivity because of perceptions of unfairness and that then translates into demotivation rather than further motivating employees under these schemes.

CHAIR—Dr O’Donnell, you quote Dr Shergold in your paper as saying that the assumption that the APS is a single labour market is false. What are your views on this?

Dr O’Donnell—Could you remind me of where it has been stated?

CHAIR—It is in your second paper at page 6.

Dr O’Donnell—I do not have that to hand.

CHAIR—It says:

...a need to remove central control that is premised on the false assumption that the APS is a single labour market in which every employment decision is driven by the relentless pursuit of uniformity. We need to free ourselves from the red tape that binds our management decisions in layers of prescription. We need to wind back the cumbersome mechanisms of bureaucratic control’

That was Dr Shergold, 1997.

Dr O’Donnell—I think what is being addressed there is this notion—and I may be incorrect so stop me if I am on the wrong track—that they have devolved responsibility considerably to agency level management. The point that John O’Brien and I emphasise is that not just in studies of the Australian Public Service but in studies of the public sector more broadly, and pay bargaining, you never really remove the role of oversight from the centre. The reason for that is that the government is the employer and while its policy may say that employees and employers

should bargain more directly or have more direct relations under the regulatory system, the government needs to retain ultimate control of its employees and it is the ultimate financial controller. You never really remove that oversight from the centre. In earlier submissions to the committee, Dr Shergold highlighted how they have moved from policing and regulating certified agreements to facilitating. Really, we will wait to see how far they move from the policing role. Certainly, that is very much the experience of many departments under the first round of agency agreements.

CHAIR—The Public Service Commissioner, Helen Williams, also raised this question with the committee at one of our hearings. She expressed the view that the issue was not so much about the devolution of powers to the respective agencies, but it was a question of the accountability of the use of those powers that was of major concern.

Dr O'Donnell—And that is why you would always have a considerable oversight from the centre, whether it is from Employment, Workplace Relations and Small Business or from Public Service and Merit Protection. They are never going to just allow agencies to go off and do things without some oversight because of those concerns of equity from Public Service and Merit Protection and concerns over issues of pay and arrangements that are being negotiated.

CHAIR—One of the concerns that has been expressed is about the development of the Public Service itself—that, if you have a system of performance pay that is linked within particular agencies, one of the motivations that has been expressed for this is to hold on to good people within those agencies. But in fact that may in the longer term work against the development in broad terms of a better, more efficient Public Service because you will not get the mobility, particularly of people at the senior level, between the agencies. You will not get more rounded public servants coming out at the end of the process, and they, essentially, are the people who make up your departmental secretaries, your CEOs or whatever, at the end of the scale—that is, if they are very narrowly focused in one department for the whole of the period of their service—and there is going to be, I would assume, a reluctance to move from one department to another department if they have to start again the process of going through their assessments in order to re-establish a performance pay within another department, given that the circumstances may be different from department to department in the way in which performance pay or performance is measured. What are your views on that?

Dr O'Donnell—One of the motivations of performance pay is that it is there to recruit and retain employees, and that is a real problem. We have yet to see as it evolves the extent to which it does undermine mobility. More broadly, you have the issue that there are now considerable differences in pay scales between different departments and that may also have a considerable impact on mobility. The other issue is that in looking at pay to reward high performers, your 'stars', you are basically dividing your workers into some as 'stars' and the rest as 'also-rans'. Your 'stars' may well move around, because they perceive themselves as 'stars' and can move around from agency to agency. The effect then is on the bulk of those who remain, that they are perceived as either solely satisfactory, or indeed they may consistently be given ratings that are below the level that they perceive themselves to be performing at. There are a number of studies to suggest that that clearly does demotivate staff. So the problem with focusing on either attracting high performers or emphasising the rewards for high performers, however defined, is that you divide your work force up into those very few who are perceived as high performers and then everybody else who is basically seen as less than a high performer, and that has clear demotivational implications.

CHAIR—I suppose the other danger in this process too is the potential—if it is not already happening, if negotiations are occurring in individual agencies for employees of like classification—of some employees in one agency being paid considerably more in terms of performance pay or whatever, remuneration, than a person carrying out like work in another agency, because of the way in which performance is measured, or indeed, given the nature of the hierarchical structure within the Public Service, being paid more than perhaps individuals who are occupying higher classifications in another department, and the potential of that to have a fairly significant impact upon morale.

Dr O'Donnell—Yes, some employees may believe, whether it is in the one agency or between agencies, that there is leniency in one area or that it is much more difficult for them to get the performance ratings that equate to the pay bonus on offer. Again, this is all fairly widespread in the literature, this nature of a halo effect. If employees are rated under one criterion then they may well be rated either very highly or very poorly and then that is spread right across all the areas under which they are assessed. It may well lead to the sort of notion of reward dissatisfaction I referred to earlier, but it also undermines notions of procedural fairness, that for factors outside their control some employees are being rewarded more and others are being rewarded less for doing the same work.

CHAIR—Dr O'Donnell, Paddy Renfrew's survey in 1985 found that one-third of all APS SES officers believed performance pay lowered morale within the SES. In recent studies you have done has that situation changed or is there still a similar—

Dr O'Donnell—I have not looked specifically at the SES; my focus is on everybody else, because the SES is a fairly small percentage. But, yes, I would completely concur with that. Often the focus, even with those more senior people, is that pay would motivate them—or be perceived to be a considerable factor motivating them to higher levels of performance—but even there that is often not the case.

CHAIR—The other thing, Dr O'Donnell, is you have had a look at what is happening in terms of performance pay within the Public Service and you have done some studies. Have you given any thought to ways in which you can make performance pay fair and equitable within the public sector?

Dr O'Donnell—Yes, and if you get a chance to read the submission I have presented today—

CHAIR—This is the document you have circulated?

Dr O'Donnell—Yes, it is in the conclusion. It goes through a range of requirements for accuracy and fairness in performance appraisal and pay systems. I take the liberty just to highlight some of them. The criteria need to be unambiguous, clearly explained, and relevant to the work tasks undertaken by employees, as well as being achievable. The criteria under which people are assessed should also not include factors beyond their control. So the first issue is what criteria or indicators are being used to assess people. In examining these schemes you need to focus very clearly on ensuring that the criteria are specific, clearly explained and do not include factors beyond the control of employees.

The second factor really is what sort of feedback employees are getting during the appraisal cycle, which normally lasts for one year. At the end of that year they may have a formal interview where they are informed about the performance over the year and they get, if they are

lucky, a chance to respond. But, arguably, supervisors need to be trained to provide more regular and meaningful—and, indeed, constructive—feedback, particularly if this process is to address developmental needs of employees and to encourage people to higher levels of future performance.

In terms of the rating when you get to that interview at the end of your appraisal cycle, there should be a focus on multisource ratings to provide a more complete picture of employee performance. The reason for that is if you just have one individual supervisor assessing your performance that is a highly subjective process. You do not entirely overcome that with multisource ratings, you may well just have multiple sources of subjectivity, but at least there is a range of inputs, a range of people commenting on performance, whether it is peers, subordinates, as well as your supervisor. It may even be customers that you deal with, whether internal or external to the organisation. Probably an important point to emphasise is the ability of employees to contest evidence presented in appraisal interviews that they believe to be inaccurate or biased.

It is very commonly stated in the literature that people do not react well to negative feedback on their performance, people are very defensive about that, but it is the opportunity to be able to respond to that, and also the opportunity for there to be no surprises in the appraisal interview. This is the broader point that to maximise employee trust in the process they should be involved in all stages of the design, implementation and administration of the performance appraisal and pay system. The work I have done suggests that is often not the case, that they may well have some involvement in the criteria under which they are assessed and they may have some say in the interview, but ultimately the determination of their performance rating is made by the supervisor and appeal opportunities are minimal at best.

Just to go back to responses from the survey on appeals, there was a very strong sense that people were not aware of what the appeal mechanisms were or considered that the appeal was just to a more senior level of the management hierarchy and they were unlikely to alter the ratings of the supervisor:

In appealing to your Manager you are appealing to Caesar! (Perhaps it should be a manager from an unconnected work area for some semblance of impartiality).

That is a quote from a senior officer in the Department of Finance and Administration. That really leads to the final point on the requirements for fairness and accuracy in performance appraisal and pay, and that is the notion that employees who believe that ratings that they perceive to be unfair can appeal those ratings to an independent review procedure, not just to their supervisor's superior.

CHAIR—Dr O'Donnell, we might conclude as we are already running behind time. Thank you very much for your evidence. Some committee members may want to forward questions to you on notice. I know Senator Mason does. We will process those through the secretariat and try to get them to you as quickly as possible and ask you to respond to them if you can. Thank you, Dr O'Donnell.

[10.55 a.m.]

RIGGS, Mr Paul Alexander (Private capacity)

CHAIR—Welcome, Mr Riggs. Could you please state the capacity in which you appear before the committee.

Mr Riggs—I indicated to the secretariat that I thought I should appear as a private individual with considerable relevant experience, having worked in the public sector, in the Public Service Board here in Canberra for eight years, having worked for National Australia Bank, a large private sector employer, and having also worked for a significant part of my career in management consulting and, specifically, in human resources and incentives consulting. I think the background is relevant. I happen to be currently employed in that same consulting sector and our organisation also has views that it could present but that is not the capacity that I am suggesting I should appear in.

CHAIR—Mr Riggs, you sent some material to the secretariat yesterday. Do you want this to be received as a submission?

Mr Riggs—I am entirely happy if you would like to do that.

CHAIR—Feel free to make some opening comments.

Mr Riggs—Thank you. This question of incentive pay is a vexed one in the private sector, the public sector, and every other sector we could seek to name, but I think particularly in the public sector. There is probably a question of: is it a monolithic public sector or are there in fact several different types of organisations? Quite a few of my comments, I think, suggest that you need to at least get to the micro level and look at different types of organisations. In fact, for these programs to be successful you need to consider the micro level of whether performance management between an individual and a supervisor is working effectively. So you have the individual level, then you certainly have what in the private sector we would call the business unit level, then the organisation or agency level, and then, perhaps, there is a broader public sector. I do not think that you could reasonably expect to come up with a single approach to incentive plans for the public sector against that broad definition. That is one framework I would like to offer.

The other suggestion to make is that there is market data, but in my experience the organisations I work with do not regard this as an issue that they can address primarily through understanding what is already happening in the marketplace. This issue is about leading and creating change and effectiveness in their organisation and by the time you have had time to study market data and understand survey results and so on, it is probably too late if you are really seeking to gain effectiveness. I am basing those comments primarily in the private sector where they are seeking to gain something that can be defined as competitive advantage—that is not as directly relevant to you, but it leads me on to my suggestion that I am speaking in a very pragmatic manner. I am dealing with organisations which are looking for solutions to improve their performance and are going to be guided by the feeling of a number of senior managers and various inputs rather than relying on research results that for a start at least must be sometime

delayed, let alone whether they illuminate the actual issue. So I have what I would call unashamedly a very pragmatic approach to these things, as do my private sector clients.

One more comment is to point out that the sectors that are privatising, if I can use that phrase fairly generally, often were utility based public sector organisations and are now in some sort of a private sector or pseudo-private sector. This is one of the leading edges of activity in terms of trying to understand and work with the incentives issue. If the committee had time, I think it would be possibly instructive for you to seek comments from some of the people in, perhaps, the energy sector and the privatised utility sector because they are right on the cusp of this change issue. We used to have public sector employment practices but we are now trying to adopt different ones, if they make sense, and they are right on the cusp of having to understand this issue.

CHAIR—Thank you for that.

Senator WATSON—What are the conclusions that you have come to? You have made these statements but what are the conclusions that you have come to?

Mr Riggs—If I jump to a final conclusion, it would be that the public sector could, through some legislative framework—and I am not quite sure what mechanisms you would use—set an overall framework for incentive plans in the public sector. But very much part of that framework would have to be that incentive plans were implemented only if specific agencies did the hard work of developing plans that they were prepared to assure some authority would work and which were able to be vetted and reviewed before they were even put into place. So I think you have a multilevel structure that you need to adopt which is to develop some sort of framework or guidelines which would apply broadly across the public sector, but then there is very much an approval layer which would have to happen—I have set it out more clearly in more steps in the notes—before any particular incentive plan would go ahead. It is not a simple two-step process; incentive plans should be approved and therefore they start springing up all over the place. There are quite a few steps of development and tailoring of these plans to the individual organisation.

To pick up a concern that I heard expressed a few minutes ago, it would be within part of that approval process that you would address very key issues like: how are we going to fund this incentive plan? Is one person's incentive payment another person's job, or is there some other way of assessing improvements in productivity or cost saving or demonstrating greater value to the community and attracting greater resources to this organisation? There are a whole range of issues and ways of looking at the funding, and such a plan should not be approved unless there was a case made and accepted that the incentive plan could be funded. That is just to pick up a particular issue which was raised previously.

CHAIR—Would you see a body like the Public Service Commission being appropriate for that sort of vetting that you are talking about?

Mr Riggs—I think that is the most logical place. Of course, you start to get into this position of overlapping interests where the Public Service Commission, as I understand it, has some responsibility for setting in place employment rules. If they are then to overview employment rules which may have some overlap or conflict or difference, you actually have a question of where are the overlapping or independent interests. It may be that you need some separate review mechanism. That is just a possibility that I will offer.

CHAIR—There were two comments, which came from the very first hearing we had of this committee, which are, I think, pertinent to what you said. One was from the Public Service Commissioner, Ms Williams, who said that the issue of devolution of responsibility to agencies was not so much an issue as was the accountability of the use of the powers—and presumably the way in which they were processed—which is essentially, I think, the point that you are making. So how do you manage that? How do you ensure it is within an appropriate framework? The other issue which I think was of some importance was from Mr Pat Barrett, the Auditor-General, who was concerned about the confidentiality aspects of a lot of these agreements in performance pay and the inability to properly audit what was happening right across the whole of the public sector and the consequences of that for accountability to the parliament and to the community generally. There seemed to be two key issues which have not been addressed in any of the arguments which we have heard before this committee so far, certainly by any of the proponents who are favouring supporting this devolution and performance pay approach.

Mr Riggs—I could only suggest the slightly uncomfortable situation that levels of formal or uniform accountability will diminish, potentially, but levels of accountability for performance should increase. I do not think you can simultaneously have a high performing organisation developing its own tailored, relevant employment mechanisms, and many other management mechanisms, and also expect nice neat uniform accountability using approaches that might have previously applied.

CHAIR—I do not think the argument from the Auditor-General was so much about having it nice and neat in the sense that you are describing; I think the argument was more about the confidentiality of a lot of the information that related to performance pay and AWAs and that the way in which records were being kept made it very difficult, if not impossible, for the Auditor-General's office to make an appropriate assessment of what was occurring or to get a handle on what was happening broadly across the public sector. It went to the issue about the way in which these records were being documented, the degree of documentation, et cetera.

Mr Riggs—I do not feel I have specific expertise in that particular area but I can offer a view from the private sector. With what I would call short term incentives—which are typically cash payments made approximately annually and so on—typically there would be an inability within a large private sector organisation to audit those in fine detail. The equity within which they are delivered in different business units or in different geographic areas cannot be reviewed in full.

CHAIR—You have an understanding of the Public Service; what about this question of performance pay—for example in agencies that are policy focussed as opposed to agencies that are service focused in a sense? Are there similar examples in the private sector and how are those issues dealt with within the private sector?

Mr Riggs—If I can just backtrack for one minute and say that I think it has been assumed that I come as a proponent of incentive pay for the public sector and I do not actually believe that is my position.

Senator WATSON—Opponent or proponent?

Mr Riggs—Proponent. I have not come, and I do not see myself, as a proponent specifically.

CHAIR—I did not assume that from your comments or from your documentation.

Mr Riggs—Okay. The framework that I think is relevant then, getting directly to your question, is to look at the total rewards offering of the organisation. I think in the purer policy departments the total rewards offering needs to match the type of employment and may have no incentive component at all, but in service organisations where it was more easily possible to define outputs and to establish performance measures, then logically you could choose to tie performance pay to that. So I would see a difference, and part of my opening comments about differences within the public sector was including this sort of difference.

The piece that you might have left for performance pay in the purest of the policy departments would be very individually focused; it would not attempt to use broad performance measures—certainly not a profit, probably not even a budget type figure. It is really quite hard to define clear externally validated performance measures so it would have to be focused on individuals and assessments of their performance. Then you get into areas of how good are the assessment and appraisal schemes, and I think you have had evidence on that. There are difficulties in those all around the world in all types of organisations, but organisations still choose to use them. I think the backdrop should be that feedback and appraisal in performance assessment schemes are necessary, despite their difficulties, and then I would say that you may choose to have some relatively small element of performance pay tied to them in those purer policy departments.

Just to go back to this total rewards framework that is included in here, you would be looking at making sure those people had career satisfaction, job satisfaction, a satisfactory environment and very little focus on the variable performance rewards piece, just to refer to the four factors that I put into that.

CHAIR—What about the issue that I raised earlier about flexibility within the Public Service, the ability of people to move from department to department to pick up a broad range of skills and knowledge and the capacity for performance pay structures to actually work against that occurring by keeping people focussed within departments for very long periods of time?

Mr Riggs—I have not seen that to be an issue in practice in the organisations I have worked with. People move for a number of reasons—these days usually for job challenge rather than for small incremental pay increases. Even if organisations have different base pay scales, people may choose to try to leapfrog up that ladder, but I will remind you they could try to leapfrog up the ladder even with uniform pay scales by seeking to go to a higher classified job in another department. I do not think the whole framework of attractiveness of pay has really altered much, either with differential base pay scales or with differential bonus schemes.

CHAIR—Except that it is one of the arguments that was used by the proponents of the systems to retain it: to retain key employees within individual departments. But in terms of the efficiency of the Public Service, I wonder whether in fact that is a good objective or a bad objective, because at the end of the day presumably the best departmental secretaries or the best chief executive officers are the ones who have probably the broadest range of experience across the service.

Mr Riggs—I think in terms of retention or attraction—the other side of the coin—it is the total offering, the total rewards offering, including at least the four pieces I have identified here, that people will be thinking about, consciously or subconsciously. I do not think the increases or the changes in the variable financial rewards piece will be decisive in getting people to stay or not stay.

Senator WATSON—An earlier witness suggested that over time the various rewards get built into the base pay. If you agree with that it would lead to the conclusion that it is merely a mechanism for ratcheting up Public Service remuneration.

Mr Riggs—I think you need to have bodies like yourself, or other audit and review type processes, to keep trying to cut away at that. A particular incentive plan design in the private sector will be reviewed every three, four or five years, and partly that will be to try to cut away at any in-built entitlement sort of mentality.

Senator WATSON—How do we do that in the public sector environment, because once you have given something it is very hard to take it away.

Mr Riggs—I would assume that any plan you design would have the possibility of giving zero amounts to people, including have a zero total budget for it. It is not obvious to me that it would get built right into base pay; I am not sure what the mechanism for that would be.

Senator WATSON—We were told that a lot of the incentives ultimately over time get built into the base pay. If that is the case, you have a ratcheting up effect.

Mr Riggs—Yes, it could be, but I do not see the mechanism. One thing that you may need to do is have external reviews of your total remuneration against the market periodically which attempt to reset the whole thing. If in part that needs to remove some of that effect, then that is simply a mechanism you will have to consciously adopt.

Senator WATSON—That is going to be a very hard exercise, particularly if you reach the conclusion that compared with the total market the sector that is under review is over-remunerated.

Mr Riggs—I believe that the other thing that is happening in the relatively faster changing economy is that job structures, job content, job values themselves, are changing, and so you should be pushing higher work value down the scale—what was previously a certain grade and may be suffering from the sort of creeping phenomenon you are referring to on the pay side should be pushed down to another grade, to a cheaper grade, over time. You need to continually rebuild the value of your jobs and that will help to counter that pay effect.

Senator WATSON—Whose responsibility is that?

Mr Riggs—I think it is happening every day around us. People are achieving more through use of computers and communication mechanisms. More work is being done at lower grade levels, in my view, than used to be the case.

Senator WATSON—And who has this job of reassessing it to reclassify down, because we are moving more and more to individual AWAs?

Mr Riggs—Yes, that is the AWA, but the question of what is in the job—

CHAIR—But you are not talking about reclassifying the individual down, are you; you are talking about reclassifying the work downwards?

Mr Riggs—Yes.

Senator WATSON—But that feeds through to the individuals.

CHAIR—No, that is not what he is saying, as I understand it. He is not saying that you would classify the work down, and therefore you would reduce the remuneration to the individuals doing it, but you may change the level of work performance at various levels and you may bring in new individuals on lower levels of pay.

Mr Riggs—That is the mechanism I am suggesting. Over time your work force will be changing and you are refreshing it, people will be moving in different levels, but the value in each job—leaving aside the individual—should be increased.

Senator WATSON—Yes, but if you are bringing other individuals in to accept those lower classified jobs, you are going to have some redundancy in terms of the people who previously occupied those levels, otherwise you are promoting them into a situation where there is not an opportunity.

Mr Riggs—There are multiple flows into, outside and within the organisation and the various agencies. I am talking about reasonably long term so that—

Senator WATSON—In the public sector environment you have a lot who do not flow; they stay there.

Mr Riggs—Then the public sector may have a significant problem with people being paid too much. You just have to find mechanisms to deal with those things.

Senator WATSON—Do you think that is the case?

Mr Riggs—I have not worked in that area; I could not make that assessment.

Senator HUTCHINS—I have not had a chance to read your paper, Mr Riggs, but in terms of performance based pay versus incentive, or vice versa, maybe you have concentrated on white collar workers. Can you give us an assessment of how manual workers may fit into your view?

Mr Riggs—The experience I have had is that incentive schemes have not been very successful in the manual worker area, the production worker area, and I think the sorts of reasons are those that we are fairly familiar with. It is hard to prove the value of output of each particular individual in some sort of a mass or team environment, and even if it is possible to identify that work output so much of it is dependent on other factors—the rate of flow of available work, the technology, the capital that is provided to do the work and so on. There is generally a discomfort by both management and the worker with trying to have very individualised performance pay schemes. I think the approach that is proving more successful is are fairly simple team based structures with relatively small amounts at risk.

CHAIR—Mr Riggs, I do not know if you heard all of Dr O'Donnell's evidence, but he outlined some issues related to performance and appraisal measures within the Public Service. Perhaps you could outline for us what occurs within the private sector in terms of performance and appraisal measures and this question of confidentiality and so forth. Is there as great a focus on that in the private sector as there seems to be currently within the Public Service?

Mr Riggs—No, I have not seen that same focus. The assumption is that the individual interaction—that is, between the individual and their supervisor and that particular rating—will be achieved between them, or documented between them, and referred to one, or at most two, more senior levels of supervisor and the actual rating results would not be more widely published. Even the front end of the cycle of setting the targets that are going to be assessed is generally considered to be part of that very micro environment. The issue of should these things be more widely published has not really been much of an issue to me, although I can imagine it might be in this context.

CHAIR—How widely known to employees within private sector organisations would the rating scale processes be

Mr Riggs—The plan designs would be very widely and strongly communicated; it is the individual actions within them that are entirely private.

CHAIR—If there are no further questions, thank you very much, Mr Riggs, for your appearance before the committee.

Proceedings suspended from 11.19 a.m. to 11.30 a.m.

GOURLEY, Mr Patrick Dennis, First Assistant Secretary, Personnel Executive, Department of Defence

HAWKE, Dr Allan Douglas, Secretary, Department of Defence

CHAIR—Dr Hawke, we are interested in hearing your views in respect of the Department of Defence, but we are also keen to hear your more general views about the Public Service generally, given that you have had a long experience within the Public Service, so please feel free to roam and range as wide as you like.

Dr Hawke—Thank you, Mr Chairman.

CHAIR—Do you wish to make an opening statement?

Dr Hawke—Perhaps it would be helpful if I give a little bit of background to the committee's work. I will try to be as short as I can. I start from the principle that the organisation is there to serve the government of the day, through the minister, so it is imperative to have a very keen sense of what the government's policy and other commitments, including election commitments, are and to translate those, through a form of overarching corporate plan for the organisation, into a business plan for each of the functional units. The next step, that I think is particularly relevant to what your committee is on about, is what I call a 'plan on a page'. So, starting with me and my deputy secretary colleagues, each one of those has a plan on a page with me which does essentially two things. The first thing it does is to record the key result areas and their expected performance over a 12-month period, which we relate to a financial year. That is the nature of the key results area that they should be seeking in conjunction with me over that period. The second part of the plan on a page simply records what sort of development activities they need to undertake to work towards their aspirations and potential. We meet every three months to have a discussion about how they are going in terms of achieving results. We call this a 'performance exchange' because it is genuine two-way feedback on how people are going and what they need to do and we assess how they are going towards their aspirations and potential—what sort of further development is required.

I do not believe in linking this sort of performance framework to performance pay or to any sort of model that involves notions like that—pay at risk, bonuses and the like. What we do is: at the end of the 12-month period it is simply a tick in the box if people have performed well, and if they have performed well then they go up to the next increment in the pay scale. Then, of course, when they reach the top of the pay scale some might say, 'What's in it for them then?' Well, the top of the pay scale, of course, gets revised as we progress through certified agreements. The AWAs exist for a period of time and then when we renew them we adjust the top of the pay scale. Perhaps I could stop there and see whether you wish to pursue any of that.

CHAIR—You would be aware of what is happening across the service in terms of performance pay and so forth. What do you see as being the potential impacts of this direction in which we are now heading for accountability, and I am talking about accountability of the service as a service and the issue of independence, accountability to the parliament, as opposed to accountability to the executive? Can you see that being broken down by the introduction of performance pay, particularly performance pay at the higher levels of the Public Service where there is a direct interrelationship between the executive and those public servants?

Dr Hawke—Needless to say, I am a great fan of a little booklet that was put out some years ago by the Management Advisory Board and MIAC—what was then the Management Improvement Advisory Committee—on accountability. I was actually the chairman of MIAC at that time so you probably would expect me to say that. My notion of how this works is that the government of the day is elected by the people, by convention the party that has the most number of seats in the House of Representatives forms the government and they decide who the ministers are. Ministers are then actually assigned their portfolios. If you look at a particular section of the Public Service Act you will find that secretaries do their work under the direction of the minister. So there is a direct authority relationship between the minister and the secretary, and in my mind that cascades down through the organisation. As you devolve accountability and responsibility there is a clear link up through the chain of command to the minister at the top.

In terms of the pay function, the way we operate ours is a transparent system. Everybody in the organisation knows what the pay levels are throughout the SES, everybody who has an Australian workplace agreement will know what is the band for each of the three levels that we have: assistant secretary, first assistant secretary and deputy secretary. There is a page included in the AWAs which basically puts out the whole thing, so they will know what assistant secretaries get, what the range is, and they know the same for their colleagues. A certified agreement, of course, is also a quite open document and that has salary levels in that form, too. So those issues are completely open.

If I turn to the pay issue itself and the effect of certified agreements, AWAs and the like, I think there is probably a bit of a double-edged sword here: agencies, I think, do appreciate the increased freedom they have to set their own pay, conditions and working environments, through both the AWAs and the certified agreement, but because of the way this works the effect is that each time you have a pay rise it is effectively a trade-off between the amount of the pay rise and the number of people you can employ. In my previous department, Transport and Regional Development, we in fact went through a series of discussions with the staff there about what sort of pay rise they thought was reasonable in terms of how many less staff would we have in the organisation. My recollection is that we gave them a range of, ‘For this sort of pay rise it is this many less staff in the organisation.’ We took some soundings as a result of meetings of people throughout the department and we got a sense of where they thought they wanted to go, and that is what we actually included in the first certified agreement over there which staff voted in favour of.

The bigger organisations, of course, have more ability to pay than the smaller organisations so there will be pay differentials arising throughout the Public Service. One of the questions I think in my mind, and perhaps even in the committee’s minds, is how long can that system go on until it has some adverse impact on mobility across the organisation, and even retention in some of the smaller agencies? I guess my answer to that question would be that the Department of Employment, Workplace Relations and Small Business and the Public Service Commissioner should be keeping an eye on those trends and perhaps drawing any adverse effects to the attention of the government. The Public Service Commissioner, of course, has the ability to do that directly to the parliament in her ‘State of the Service’ report that she provides each year.

CHAIR—The other issue, Dr Hawke, is whether or not the basis that ‘one person’s performance pay is another person’s job’ is a sound principle to base the structure of the service on, or the remuneration of the service on. That has real implications in terms not only of the capacity of the service, but of the morale and commitment within the service to serve—if I can

use that term—if public servants generally become aware that that is the fundamental issue that underpins remuneration across the service.

Dr Hawke—I think most public servants do understand that. The issue, of course, is how much scope there is to get efficiency gains and productivity. One of the other things that I have pursued in departments I have been in is to try and identify areas where we can stop doing work, or stop doing it in a particular way, so this sort of search for efficiency, effectiveness and economy is an ongoing one. I do not think we will ever get away from that process. There is some form of supplementation provided each year, I think, called the safety net adjustment which is included through the budget processes. So you could, if you like, just apply that safety net adjustment to your pay rates. The way in which I have traditionally gone about it is to look at the notion of people in the organisations I have been in getting a fair day's pay for a fair day's work, that they should get roughly equivalent remuneration to what they would get in a like job elsewhere in the Public Service.

What we have done in pursuing that is to do surveys and comparisons with other organisations just to see where we fit in the market. My view is that pay is only one aspect of this issue. We argue that people are actually looking for other things in the workplace, and we ascribe those under a series of five headings. The first is challenge: do people feel that they are getting adequate opportunity to be stretched, to learn and grow in the workplace? The second one relies on feedback: are they getting genuine, constructive advice about how they can improve in the workplace? The third one I call elbow room, which means that people have an opportunity to do the job the way they want to do it, that supervisors do not nickel and dime them, sit there looking over their shoulder dotting the i's and crossing the t's. The fourth one is about self-esteem: happy people do good work, people who feel good about themselves do good work, so we are looking for a situation where supervisors praise the workers for good work instead of simply catching them doing things wrong. The fifth one is about pride: we believe that people want to be proud of the organisation they work for and the job that they do. So we are trying to inculcate those sorts of factors in our working environment.

CHAIR—They are all good points, but I still come back to this issue about the job cuts vis-a-vis performance pay, just to sort of relate what is happening in the Public Service with the private sector. In another life I was pretty active out there, as you would no doubt be aware. And what has been happening—it might have been a series of rounds or productivity bargaining, enterprise bargaining, collective bargaining, in the private sector—is that there has been this huge build-up of frustration amongst workers across a range of enterprises who are in opposition to productivity bargaining because they have reached a point where there is nothing left to give, in their view, and yet they are being asked to give more and more to offset any wage increases. And that has been reflected in a lot of disputes that have been occurring and so forth, and it has been reflected in the attitude that my old union is now taking to the next round of negotiations. This is only your second round in the Public Service. I wonder to what extent some of that frustration is actually starting to build up now within the public service in terms of opposition to this underpinning approach of trade-offs in that area. I understand what you are saying about the involvement of the workforce in making those decisions, those judgments, and to some degree they will be compelled to make them, but the other issue also here is: to what degree is your customer base also consulted in terms of that approach? At the end of the day you are servicing someone, and I presume that Air Force or Navy or someone will start complaining that the service is not coming through at the levels that they have been used to or the levels that they require. So to what extent do they get involved in the process also?

Dr Hawke—I am simply talking about the civilian side here today, of course; the uniformed side have a particular pay tribunal that sets their pay and conditions.

CHAIR—I was talking about them more in terms of being your customer base rather than—

Dr Hawke—I was just going to come to that. I actually think the point you are making about the scope for genuine productivity savings has diminished and may not even be able to fully fund pay rises, certainly in some of the smaller agencies, I would accept that. I would also say that the fundamental difference between the public sector and the private sector is that the private sector are able to adjust their pricing mechanism and the cost of their goods to offset increased wages—something that is not available, of course, to most of the public sector. In terms of what we do in Defence, we do try and seek some parity in terms of wage rises on the civilian side in conjunction with what happens on the uniformed side of the house.

An interesting observation that you may not be aware of is that the certified agreement that we put to staff in the late part of last year was actually voted down, but my impression is it was not voted down because of the job reductions involved in that, nor the quantum of the pay increase. People had a whole series of other issues that they wished to be addressed and we have been through a quite lengthy process now of addressing those sorts of conditions matters and organisational environment matters. They did not particularly like the performance management system that was in place previously which did have ratings involved in it and they did not like some of the trade-offs that we had made—in other words, reducing some conditions in order to fund the pay rise there. But I did not get any sense that people were rejecting it either because of the quantum or because of the job cuts.

Senator WATSON—Dr Hawke, I have a couple of questions. This concept of one person's pay increase is another person's job, is that not another way of looking at the old concept of an efficiency dividend? What is the difference? You are taking a certain quantum of money away. I believe it is just a more sophisticated method of trying to—

Dr Hawke—It is, because this is over and above the efficiency dividend.

Senator WATSON—This is over and above the efficiency dividend?

Dr Hawke—That is right. Most pay rises come as a result of further reductions—

Senator WATSON—So you still have the efficiency dividend concept operating?

Dr Hawke—In Defence it is a bit different from others.

Mr Gourley—Mr Chairman, at the moment we have a global budget, of course, and we are not subject to the efficiency dividend in the same way as other organisations are.

Dr Hawke—But my recollection is that organisations still do pay an efficiency dividend to the government in each budget and then over and above that, whatever the pay rise is, there will be a safety net adjustment included in their pay. If you assume the safety net adjustment is something like 1½ per cent but the organisation actually gives a four per cent increase in pay, then they have to find that differential internally, and they find it through either increased productivity or efficiency gains, but most usually it is found now through a reduction in the number of staff.

Senator WATSON—So in terms of assessing productivity improvements, in appraising one person do you consciously take into account, or discount, a technological improvement—such as giving a person access to a laptop—which enables him to have a greater output? Do you consciously take out those what I term ‘technological productivity improvements’ in assessing an individual’s own productivity increase?

Dr Hawke—No; again—

Senator WATSON—You don’t?

Dr Hawke—We don’t, no. It is done a bit differently from that. What happens is that when we know the amount of money that we have for the whole of the pay issue we delegate that to the particular functional units and we say, ‘That’s your payroll for the course of this year,’ and they then can employ a number of people within that payroll for that 12 months. If there is a pay rise within that funding cap then it effectively means they have to manage the number of staff they have on board to meet that pay envelope.

Senator WATSON—I would suggest fundamentally you are over-remunerating your staff if you do not discount productivity improvements by capital induced technological improvements.

Dr Hawke—Senator, you might suggest that. The way in which we determine whether or not we are doing that is to compare what people are paid in like organisations for like jobs to show us that we are not over-remunerating them, that we are meeting what the market is for people who are paid at particular levels.

Senator WATSON—Put it this way: there is the possibility or there is the danger of it. This is my final question because I have to catch a plane. The 1993 report of the committee on performance pay was damning of it on a number of counts: poor implementation, it rested on assumptions about motivation and the nature of public sector work which were not valid, it was divisive and destructive of teamwork, it destroyed the value of the appraisal per se. I ask: what has changed in the interim to make performance pay more accountable now, or acceptable now?

Dr Hawke—I cannot answer that question because I agree. This is why I do not approve of performance pay and do not have it in the organisations that I am in. I quote to you from a 1996 human resources management article which summed this up as well as I could:

From several perspectives merit pay schemes do seem desirable, yet in spite of this merit pay often brings about results precisely the opposite from those desired: dissatisfaction, discouragement and decreased performance.

So I think you and I are probably in furious agreement on this issue.

Senator WATSON—Thank you. That is probably a good point on which to finish. Thanks, Mr Chairman.

CHAIR—Dr Hawke, I just want to finish on this point, because we are about to lose a quorum. Dr O’Donnell from the University of New South Wales put forward some views this morning about how the question of performance pay assessment should be dealt with in the Public Service on a much more transparent basis than has been the case, and Mr Riggs also put forward some views about how it ought to be structured. Given your long experience within the service, I would like to get copies of these documents to you and ask, if you have the

opportunity, would you look at the proposals that are being put forward and could you give a view on them to the committee.

Dr Hawke—I would be happy to do so, Mr Chairman.

CHAIR—Given that you have to operate it from a practical point of view as a practitioner. I think that brings this morning's proceedings to a close. I thank the witnesses for their valuable contribution to the public discussion of these matters and for assisting the committee today. The committee's invitation for submissions remains open and any parties who have already provided a submission who would like to provide supplementary submissions should do so through the secretariat. The next public hearing of the committee has been scheduled for Friday, 23 June 2000. Those interested in following the inquiry should refer to the committee's Internet page which will provide progress updates on an ongoing basis.

Committee adjourned at 11.48 a.m.
