



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

**Reference: Review of Auditor-General's reports, second quarter 2003-04**

MONDAY, 31 MAY 2004

CANBERRA

BY AUTHORITY OF THE PARLIAMENT



## **INTERNET**

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:  
**<http://parlinfoweb.aph.gov.au>**

**JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT**

**Monday, 31 May 2004**

**Members:** Mr Charles (*Chair*), Senators Hogg, Humphries, Moore, Murray, Scullion and Watson and Mr Ciobo, Mr Cobb, Mr Georgiou, Ms Grierson, Mr Griffin, Ms Catherine King, Mr Peter King, Ms Plibersek and Mr Somlyay

**Senators and members in attendance:** Senators Murray and Watson, Mr Charles and Ms King

**Terms of reference for the inquiry:**

Review of Auditor-General's reports, second quarter 2003-04.

**WITNESSES**

<b>ARMITAGE, Mrs Joan, Assistant Secretary, Transport Programmes North and West, Department of Transport and Regional Services.....</b>	<b>1</b>
<b>CARR, Mr Henry, Principal Government Lawyer, Corporate Legal Team, Department of Employment and Workplace Relations.....</b>	<b>1</b>
<b>CLARKE, Ms Louise Elizabeth, Acting Senior Tax Counsel, Australian Taxation Office.....</b>	<b>1</b>
<b>COLLAREDA, Ms Rebecca Anne, Performance Analyst, Performance Audit Services Group, Australian National Audit Office.....</b>	<b>1</b>
<b>CONNELL, Ms Jenet, Group Manager, Workplace Relations Services Group, Department of Employment and Workplace Relations.....</b>	<b>1</b>
<b>COX, Mr Edward Brett, Tax Adviser, SEES Pty Ltd .....</b>	<b>1</b>
<b>ELLIS, Mrs Maureen Therese, Director, Department of Transport and Regional Services.....</b>	<b>1</b>
<b>ELLISON, Mr Geoffrey McNeil, Director, SEES Pty Ltd .....</b>	<b>1</b>
<b>HEDDITCH, Mr Tony, National Program Manager, Participation Payments, Centrelink .....</b>	<b>1</b>
<b>HOGG, Ms Carolyn, General Manager, Service Integration Shop, Centrelink .....</b>	<b>1</b>
<b>LACK, Mr Steven, Acting Group Executive Director, Performance Audit Services Group, Australian National Audit Office.....</b>	<b>1</b>
<b>MAYNARD, Mr Michael, Assistant Secretary, Workplace Relations Implementation Group, Department of Employment and Workplace Relations.....</b>	<b>1</b>
<b>ROWLANDS, Mr David Melville, Senior Director, Performance Audit Services Group, Australian National Audit Office.....</b>	<b>1</b>
<b>RYN, Mr Robert, Director, SEES Pty Ltd.....</b>	<b>1</b>
<b>WINDER, Mr Oliver, Deputy Auditor-General, Australian National Audit Office.....</b>	<b>1</b>



**Committee met at 10.54 a.m.**

**COLLAREDA, Ms Rebecca Anne, Performance Analyst, Performance Audit Services Group, Australian National Audit Office**

**LACK, Mr Steven, Acting Group Executive Director, Performance Audit Services Group, Australian National Audit Office**

**ROWLANDS, Mr David Melville, Senior Director, Performance Audit Services Group, Australian National Audit Office**

**WINDER, Mr Oliver, Deputy Auditor-General, Australian National Audit Office**

**CLARKE, Ms Louise Elizabeth, Acting Senior Tax Counsel, Australian Taxation Office**

**HEDDITCH, Mr Tony, National Program Manager, Participation Payments, Centrelink**

**HOGG, Ms Carolyn, General Manager, Service Integration Shop, Centrelink**

**CARR, Mr Henry, Principal Government Lawyer, Corporate Legal Team, Department of Employment and Workplace Relations**

**CONNELL, Ms Jenet, Group Manager, Workplace Relations Services Group, Department of Employment and Workplace Relations**

**MAYNARD, Mr Michael, Assistant Secretary, Workplace Relations Implementation Group, Department of Employment and Workplace Relations**

**ARMITAGE, Mrs Joan, Assistant Secretary, Transport Programmes North and West, Department of Transport and Regional Services**

**ELLIS, Mrs Maureen Therese, Director, Department of Transport and Regional Services**

**COX, Mr Edward Brett, Tax Adviser, SEES Pty Ltd**

**ELLISON, Mr Geoffrey McNeil, Director, SEES Pty Ltd**

**RYN, Mr Robert, Director, SEES Pty Ltd**

**CHAIRMAN**—Today's public hearing is the fifth in a series of hearings to examine reports tabled by the Auditor-General in the financial year 2003-04. This morning we will be taking evidence on Audit report No. 21: *Special Employee Entitlements Scheme for Ansett Group Employees*. We will run today's session using a roundtable format. I ask participants to observe strictly a number of procedural rules. Firstly, only members of the committee may put questions to witnesses if this hearing is to constitute formal proceedings of the parliament and attract parliamentary privilege. If other participants wish to raise issues for discussion, I would ask them to direct their comments to me and the committee will decide if it wishes to pursue the matter. It will not be possible for participants directly to respond to each other.

Secondly, given the length of the program, statements and comments by witnesses should be relevant and succinct—and I emphasise the latter word. Thirdly, I remind witnesses that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the house itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Evidence given today will be recorded by Hansard and will attract parliamentary privilege.

Finally, I refer any members of the press who are present to the committee statement about the broadcasting of proceedings. In particular I draw the media's attention to the need to report fairly and accurately the proceedings of the committee. Copies of the committee statement are available for secretariat staff.

I welcome representatives from the Australian National Audit Office, the Australian Taxation Office, Department of Transport and Regional Services, Centrelink, Department of Employment and Workplace Relations and SEES Pty Ltd to today's hearing. Do any of the representatives here wish to make an extremely brief opening statement?

**Ms Connell**—The Department of Employment and Workplace Relations welcomes the ANAO's recognition of the effective implementation of SEESA in line with government policy and within very tight time frames. In its report the ANAO made just one recommendation as a lesson for the future, that taxation implications and risk should be assessed prior to embarking on major initiatives such as SEESA. The department supports the basic principle of the recommendation but considers that it is too broad in its application to SEESA. The recommendation fails to acknowledge the situational factors present during the implementation of SEESA, a new scheme that was established in rapid response to one of the most significant corporate insolvencies in Australian history. SEESA has delivered in excess of \$340 million in payments to almost 13,000 former Ansett employees and did so far earlier than would have occurred if the employees had had to wait for the distribution of funds from the Ansett group through the normal course of administration. The process is still under way today some 32 months from the date Ansett was placed in administration. The department considers it managed the protection of significant funds advanced to Ansett administrators prudently and responsibly. This was against a backdrop of a complex set of legal and financial arrangements and uncertainties surrounding how and when the money would be recovered from the Ansett administrators. In summary, the department is proud of its achievements in implementing SEESA but remains disappointed that the ANAO report has given undue weight to some administrative matters which failed to have any significant effect on the scheme's overall success or its cost to the public.

**CHAIRMAN**—My understanding from the ANAO report is that the Audit Office believes that the department could have been more efficient in its administration despite the tight time frame of the program. I ask you on the public record, as I have asked privately: is ANAO just being a bit nitpicky considering that this was a very quick demand of an established Public Service office?

**Mr Lack**—The thrust of our argument goes to the heart of our recommendations and that is there are lessons to be learned from this audit that go into the future. Certainly the ANAO recognises that there were tight time constraints and many risks that DEWR had to juggle. One of those was providing timely provision of SEESA assistance. That risk was well managed.



However, other risks did arise during the implementation including the incidence of the tax, repayment of the loan and the interaction between SEESA and other Commonwealth payment programs. Our view is that, even though the time line was tight, there are certainly lessons learned for future similar programs.

**CHAIRMAN**—I am interested in this tax issue. The Government Solicitor evidently assessed the risks of taxation being implemented as low but advised the department that the matter be resolved with the ATO rather than risk a contrary outcome. The department did not take the action before finalising arrangements and proceeding to make the initial SEESA advances in December 2001. Could you tell us why the department waited so long when you had been told that there was a risk and it should be settled before you started doling out money? Why did you not do that?

**Mr Maynard**—You are quite correct. The department did seek the advice from AGS and did hold a meeting with the ATO to consider whether or not this posed a significant risk. It was the department's assessment, based on the advice of the AGS and from the discussions with the ATO, that there was not a significant risk that there would be a negative taxation implication. Consequently, and bearing in mind the need to provide funds to the potentially 15,000 people that could be terminated from Ansett, the department went ahead. However, it placed in the contract appropriate risk management controls so that, should a negative tax issue arise, it would be dealt with appropriately. In the same time we sought, with the assistance of the ATO and the AGS, to get a private binding ruling as to whether or not there was a negative tax implication.

**CHAIRMAN**—You say that at the same time you sought a private binding ruling. My understanding is that that is not so. My understanding is that you received this advice in September-October 2001 and you did not go to the ATO until late January. Is that right?

**Mr Lack**—Early January, I believe.

**CHAIRMAN**—Early January 2002, and in the meantime you were proceeding. The two things sound a bit in conflict to me.

**Mr Maynard**—You appreciate that a significant amount happened in the November-December period. Based on the relative risks, we took action on the highest risk matters. We worked with AGS and with SEES Pty Ltd to put together the request for a private binding ruling which, if I remember correctly, was submitted on the first business day of January. The contract itself was signed on 17 December, some four business days beforehand. Yes, there was a delay in submitting it but that was based on the department's assessment of the risk, which was informed by the AGS and the ATO.

**CHAIRMAN**—I still do not understand. Surely it did not take very much employee time or effort for the department and the Attorney-General between them to come up with a request for a private binding ruling?

**Mr Maynard**—The request for the private binding ruling sought advice on every conceivable form of tax that could have applied.

**CHAIRMAN**—Good grief.

**Mr Maynard**—It was a significant document. It took a significant period of time to put it together in a form that was in line with the advice from the AGS and acceptable to SEES Pty Ltd who, after all, were the private entity who would be held to this private binding ruling.

**Ms KING**—In your experience, how does this program compare with the department's administration of GEERS?

**Mr Maynard**—The two schemes are obviously dramatically different, in that SEESA is an outsourced arrangement with a contracted entity and GEERS is delivered internally. The other significant difference is that the Ansett case, with potentially 15,000 claimants, was dramatically larger than the experience that the department had of EES or GEERS at the time when Ansett collapsed.

**Ms KING**—I understand the difference between the two schemes. I actually asked you about your experience of these two schemes. Can you compare them, particularly in relation to the administration and also in relation to the way in which assessments were done and how that process worked.

**Mr Maynard**—In the administration of EES or GEERS, the department use contracted accountants to assist us to verify employee entitlement data. In SEESA that was extended. The role of the accountants and advisers was also extended to provide a significantly broader range of information in relation to consultancy, and advice and, obviously, the financing of the funds to be advanced.

**Senator WATSON**—How long did the tax office binding ruling take?

**Ms Clarke**—The ruling was lodged with a security guard at the Australian Taxation Office on 3 January and the security guard never actually handed over the ruling request to the tax office. DEWR contacted the Australian Taxation Office about the ruling on 28 February, and it was then that we realised that the ruling application had gone missing. It took two weeks for the GST questions to be answered and four weeks in total for the income tax questions to be answered.

**Senator WATSON**—What did the security guard do with the document?

**Ms Clarke**—We are not sure. It was never located.

**Senator WATSON**—What sort of receipt or acknowledgment did you get when you lodged that document? How do we know it actually was lodged with the tax office when you said it was?

**Mr Maynard**—To my knowledge, there was no receipt provided but it was a means of communication that had previously been successfully used between the department and the tax office on this matter.

**Senator WATSON**—So it did not go by way of letter; it went by way of a courier, did it?

**Mr Maynard**—There was a letter hand delivered to the front desk of the national office of the ATO.

**Senator WATSON**—By your officers or by an independent person?

**Mr Maynard**—By my officers.

**Senator WATSON**—Ms Clarke, would the income tax payment, not the GST implication, have been alleviated if an alternative structure had been used—for instance, one involving only government departments plus a financier such as the Commonwealth Bank?

**Ms Clarke**—Could you rephrase that?

**Senator WATSON**—If, instead of SEES, you had put it in an agency such as Centrelink, would that have changed the income tax?

**Ms Clarke**—Yes.

**Senator WATSON**—So the fact that there was an outside profit-making entity involved changed the nature of the income tax payment? Secondly, what was the amount of that income tax payment?

**Ms Clarke**—To answer the first question, the company was a private company and it received those payments from the Commonwealth in its own right. That was critical for the income tax consequences. Had it received those payments as an agent for the Commonwealth and had passed those payments on—

**Senator WATSON**—Such as Centrelink.

**Ms Clarke**—Such as Centrelink—there would not have been income tax consequences. The ATO ruled that the payments of approximately \$8 million per month were fully taxable.

**Senator WATSON**—What was the income tax payment to date on that arrangement?

**Ms Clarke**—I am not aware of what the income tax payment has been to date.

**Senator WATSON**—Could you find out?

**Mr Maynard**—I can assist you with that information. To date the income tax payable by SEES because of this arrangement has been \$7.8 million.

**Senator WATSON**—Wouldn't it be of the order of \$80 million to \$100 million, or was there some sort of offset?

**Mr Maynard**—As I understand it, the—

**Senator WATSON**—It would pay tax at the rate of 30 per cent?

**Mr Maynard**—Yes.

**Ms Clarke**—Yes, that's right.

**Senator WATSON**—Something is wrong with the arithmetic.

**Mr Maynard**—No; it is because of the lag in terms of the financial years. The entity is obliged to provide a tax return within 12 months.

**Senator MURRAY**—But let us establish the liability. That is what Senator Watson is after.

**Senator WATSON**—Yes—the liability for tax.

**Senator MURRAY**—If you are talking about 30 per cent on, say, \$300 million—a round sum which is close enough—\$90 million must be your top tax liability. Is that correct?

**Ms Clarke**—Yes.

**Senator MURRAY**—You then have to ask whether there would be any offsets. The maximum risk is \$90 million on the assessable income. Would there be any offsets?

**Ms Clarke**—There would be some small offsets—some of the costs that would be incurred by SEES for managing and operating the arrangement. But the substantial payments made to the insolvency company would not be deductible. The payments that ultimately go to the former employees would not be deductible to SEES. So there would not be a major offset, as far as I understand.

**Senator MURRAY**—So what Mr Maynard is referring to is tax paid to date, not tax liability.

**Ms Clarke**—That is correct, as I understand it.

**Senator MURRAY**—That is right. So we are talking around about \$90 million. The next question is: was SEES indemnified with respect to any income tax liability?

**Mr Maynard**—Yes they were.

**Senator MURRAY**—By the Commonwealth?

**Mr Maynard**—By the Commonwealth.

**Senator MURRAY**—So the Commonwealth would have to raise more money to meet that tax liability than they otherwise would if there was an arrangement such as that outlined Ms Clarke whereby an income tax liability would not have been assumed?

**Mr Maynard**—No, it would not need to. In effect what we have is a circular arrangement whereby the Commonwealth will pay SEES so that SEES may pay the Commonwealth the tax on this particular matter. This was the subject of—

**Senator MURRAY**—Where do you get that money from? Let us say it was \$300 million and you now need \$390 million. Where do you get that money from?

**Mr Maynard**—The reimbursement of tax liabilities over and above the normal tax liabilities that would arise from moneys earned by SEES Pty Ltd was covered off in the contract. The treatment of that was the subject of parliamentary question on notice No. 999 to the Senate, to which Minister Abbott responded on the financial arrangements. In essence, the budget neutral nature of the payment from consolidated revenue to SEES Pty Ltd to the consolidated revenue has no direct impact. It is, however, taken into account and must be taken into account when considering the legislated cap of \$500 million to be spent on SEESA. That appropriation is provided for under the Air Passenger Ticket Levy (Collection) Act.

**Senator WATSON**—Would Centrelink have had the resources to handle this in place of SEES, if need be?

**Mr Maynard**—The potential use of Centrelink to deliver SEESA payments was considered as one of the options and was not the one selected by the government.

**Senator WATSON**—My question was directed to Carolyn Hogg.

**Ms KING**—Was Centrelink one of the 10 that went through the select tender process for this?

**Mr Maynard**—No. A range of options were considered on how to deliver SEESA. It included delivering it in the same way as the government's existing scheme at that time, EES, was delivered. The options included using Centrelink to deliver the payments and using an outsource provider. The government chose to use an outsource provider.

**Ms KING**—So that was a government decision?

**Mr Maynard**—Correct.

**Ms KING**—Who was doing that assessment to choose between Centrelink, the existing schemes that you had operating and select tenders?

**Mr Maynard**—The select tender came after the government decision to use the outsource provider. The decision was informed by an interdepartmental task force that reported to cabinet.

**Senator WATSON**—Centrelink, would you have had the resources and skills to handle this sort of arrangement?

**Ms Hogg**—We certainly would have had the skills. In terms of resources, it would have been over and above the government's ask of Centrelink at the time, so obviously there would have been some additional cost incurred. The piece of work that we—

**Senator WATSON**—We are not suggesting that you would have done it for nothing. There was a payment to this body. So, given the nature of the arrangement, you would have had the skills and resources to handle it? Obviously you would have had to take on additional personnel—but you could have handled it?

**Ms Hogg**—Yes. Based on an assessment of entitlement, given a set of rules, it is core work that Centrelink does.

**Senator WATSON**—Mr Cox, did you take into account the consequences of tax being paid?

**Mr Cox**—From the time that the contracts were started we considered whether the arrangement would suffer tax consequences or not. There are competing views on whether—

**Senator WATSON**—What was your advice, as the tax adviser to SEES?

**Mr Cox**—Our advice was to go ahead with the private binding ruling to determine whether the tax office believed that there were tax consequences or not.

**Senator WATSON**—Were you concerned that they did proceed prior to getting that ruling?

**Mr Cox**—The private ruling process was handled by the AGS. We consented to the ruling and we had some input into some of the questions but we were not—

**Senator WATSON**—But it made a big difference to your financial income whether it was going to be assessable or whether it was not going to be assessable.

**Mr Cox**—Indeed it would, yes.

**Senator WATSON**—That is why I asked what your tax advice was. You must have been concerned towards the end of February that that ruling had not yet come to hand. What did you do about it?

**Mr Cox**—We were concerned and we communicated with DEWR regarding that.

**Senator WATSON**—How often, and what were the dates?

**Mr Cox**—I do not have them to hand.

**Senator WATSON**—Can you get them for us?

**Mr Cox**—I cannot get them today; they are in my office in Sydney.

**Senator WATSON**—When it becomes available?

**Mr Cox**—Sure.

**Senator WATSON**—When did you receive the actual tax advice ruling?

**Mr Cox**—It was in April. Initially we received the GST ruling, which was favourable. The tax ruling came through and took a markedly different approach to the GST ruling. We still cannot reconcile the differences.

**Senator WATSON**—I am not asking you to reconcile the differences. You would agree that the payment, as such, would have been assessable, wouldn't you?

**Mr Cox**—I would not, no.

**Senator WATSON**—You would not have thought it was assessable?

**Mr Cox**—No.

**Senator WATSON**—A payment flowing as a result of a—

**Mr Cox**—That is the question. The tax office have the view that the payments flowing to SEES are for the services of SEES, and we have taken external advice at QC level which disagrees with that view.

**Senator WATSON**—Which disagreed with your view?

**Mr Cox**—No; with the tax office view. So on the question of the tax implications, the tax office have laid out their view.

**Senator WATSON**—What was the reason behind the QC's decision?

**Mr Cox**—Based on the arrangements in place, he did not think it was a taxable situation.

**Senator WATSON**—Saying 'because of the arrangements that were in place' does not add much to the scholastic understanding of the problem. What were the features that led them to that conclusion?

**Mr Cox**—The fact that the moneys were held separately and were always repayable to the Commonwealth and the fact that the ability of SEES to derive any income from this arrangement was limited to the fees and services clauses in the contract, to which the tax office paid no regard. The tax office view was that the gross payments under the contract were in fact for fees and services. That is a different interpretation to—

**Senator WATSON**—So you paid the tax and then you got a reimbursement from the Commonwealth, did you?

**Mr Cox**—Indeed, we were reimbursed by the Commonwealth for tax under the indemnity clause.

**Senator WATSON**—Does that reimbursement have any implications? That also was not income?

**Mr Cox**—On the tax office view, perhaps, yes. Again, it is a rather circular argument.

**Senator WATSON**—So you have got caught with a double tax whammy, have you?

**Mr Cox**—The question as to whether there is tax on the tax reimbursement itself was not the subject of the private ruling. It is an unresolved question.

**Senator WATSON**—But I am suggesting that there could be a further tax implication.

**Mr Cox**—There could be.

**Senator WATSON**—What is the likelihood of that? Rather than being just in and out, you could suddenly find that you are taxed on tax.

**Mr Cox**—Taxed on tax on tax on tax.

**Senator WATSON**—That is what I am trying to establish, because the tax office indicates that there is the possibility of tax on this reimbursement.

**Ms Hogg**—I think a point to that effect was made in the letter that Second Commissioner of Taxation D'Ascenzo sent to the Secretary of the Department of Workplace Relations and the Secretary of the Treasury.

**Senator WATSON**—Could I have a copy of that letter?

**Ms Clarke**—I have a copy.

**Mr Rowlands**—We did actually cite a paragraph from that letter on page 61 of the report which I think goes to the point that you were raising.

**Senator WATSON**—How will SEES stand if you get this double tax whammy? You will lose a heck of a lot of money out of the transaction if there is further tax.

**Mr Maynard**—The Commonwealth has contracted SEES and part of that contract includes reimbursement for any unintended tax consequences such as that.

**Mr Cox**—So it would be neutral on SEES.

**Senator WATSON**—It would be neutral on SEES eventually, but it is going to cost some departments some money.

**Mr Maynard**—There will be an administrative cost for the circular payment from consolidated revenue through DEWR to SEES to tax to consolidated revenue.

**Senator WATSON**—That payment will involve reimbursement of tax.

**Senator MURRAY**—Let us get this straight as to what should happen if this is not going to cost the employees any money in terms of their entitlements. The ANAO have said to us that \$336.1 million has been paid to the employees for their entitlements. Is that correct?



**Mr Maynard**—At this stage that has now increased to \$341 million, but if we keep using the numbers in the report—

**Senator MURRAY**—Let us use those numbers. Thirty per cent income tax on that at maximum liability with no offsets would be \$100.8 million. For the scheme to work, as you outlined in the round robin exercise, additional to the \$336.1 million which you paid across, you would pay \$100.8 million to SEES who would pay it to ATO who would pay it back to the government. Is that correct?

**Mr Maynard**—Sort of. The distinction here is that the \$336.1 million referred to in the report comes from a private loan that SEES Pty Ltd took out. That is where those funds are coming from. The Commonwealth has made repayments to that loan to the tune of \$8 million a month over a period of months. In addition, it has incurred costs associated with \$7.8 million to date in compensating for unintended tax consequences and has met the costs of DOTARS administering the levy and DEWR administering SEESA. Therefore, if your point is that \$361 million, plus \$108 million, plus something else is going to breach the \$500 million, the \$361 million is from a private loan.

**Senator MURRAY**—The actual figure is \$336.1.

**Mr Maynard**—I am sorry; the \$336.1 came from a private loan and therefore is not factored into that calculation.

**Senator MURRAY**—Let us backtrack. SEESA is never going to be left with a shortfall.

**Mr Maynard**—No, Senator. SEESA will be left with a shortfall. We will not get back everything that has been advanced. SEES Pty Ltd—

**Senator MURRAY**—SEESA makes up the gap with moneys realised from the realisation of assets. Is that correct?

**Mr Ellison**—Yes.

**Senator MURRAY**—Let us stay with that figure of \$336.1. If the department did not pay that fully, the difference would be met for SEESA by the realisation of Ansett assets?

**Mr Maynard**—That is correct.

**Senator MURRAY**—SEESA cannot be in a loss position unless the realisation of assets did not occur, which is not very likely.

**Mr Maynard**—The loan that they took out would be either fully repaid through monthly payments by the Commonwealth and/or the return that would come through the administration.

**CHAIRMAN**—You say they could not be out of pocket. They could be, could they not, if they had spent more in administrative expenses dispensing the moneys than they had allowed for when they got this \$8 million.

**Mr Maynard**—SEES Pty Ltd could be out of pocket if the cost of the administration exceeded the amount that was available under the contract to them.

**CHAIRMAN**—That is what I am saying. Did I not just say that in another way? I am not a bureaucrat.

**Senator MURRAY**—The realisation of assets will meet that shortfall as well.

**Mr Maynard**—There are two issues here. One is the loan that SEES Pty Ltd has taken out. That will be, and has been, repaid by the monthly payments made by the Commonwealth and by returns from the Ansett administration. The second point to which I thought you were alluding—my apologies—is whether or not SEES Pty Ltd would be out of pocket for their own efforts. The amount that is available to them to meet their fees is capped under the contract. In the event that they were required to deliver more services under the contract than was provided for by that amount, they would still be obliged to deliver them.

**Senator MURRAY**—Yes, but they can recover money from the realisation of the assets.

**Mr Maynard**—The recovery of money from the realisation can only be used to repay the loan and any amount that is over and above to repay the loan must be returned to the Commonwealth.

**Senator MURRAY**—So there is some risk to the private provider?

**Mr Maynard**—Yes.

**Senator MURRAY**—So now we have determined that a potential tax liability does not affect the gross amount of entitlements that will be paid because the tax liability is met separately through this round robin exercise.

**Mr Maynard**—The tax ruling has absolutely no implication on the funds that are available to the former Ansett employees.

**Senator MURRAY**—Or to the remuneration of the private provider?

**Mr Maynard**—Correct.

**Senator MURRAY**—Why was it not simpler just to use the GEERS process where GEERS effectively stands instead of the multitude of creditors?

**Mr Maynard**—The decision to use the current model was one that was taken by the government. I am not in a position to be able to say why they chose one over the other. GEERS was implemented at the same time as SEESA was implemented.

**Ms KING**—Were you a member of the interdepartmental committee advising government?

**Mr Maynard**—I had a role in that particular committee. I was not formally a member of it.

**Ms KING**—Was someone from your department a member?

**Mr Maynard**—Yes.

**Ms KING**—Did you assess that DEWR, having had the experience of GEERS, had the skills to administer this scheme?

**Mr Maynard**—GEERS was implemented at the same time as SEESA was implemented. Consequently we would have been comparing EES and SEESA. The question as to whether or not EES, with experience at that point in time in delivering to about 10,000 to 11,000 recipients, was in a position to deliver to a company of 15,000 employees was one of the issues taken into account.

**Ms KING**—In terms of your role in the interdepartmental committee—not you personally but the department—you were saying that you did not have the skills to administer this scheme.

**Mr Maynard**—No, that was not the department's position.

**Senator MURRAY**—You mentioned you had a tax discussion with the ATO, which is always a dangerous exercise, I think. What date was that?

**Mr Maynard**—My records indicate that 29 November was the date that we met with the ATO.

**Senator MURRAY**—At that discussion did the tax office say to you that you had a potential income tax liability of 30 per cent on the amount you were liable to pay over?

**Mr Maynard**—The answer to that is categorically no. But to be fair to the ATO, the ATO stressed that any advice at that meeting was not to be relied upon because it was necessary to go through a private binding ruling.

**Senator MURRAY**—They did not say to you that there was the potential for income tax liability to be raised against these sums?

**Mr Maynard**—No.

**Ms Clarke**—There were three ATO officers at that meeting on that day and there was not—

**Senator MURRAY**—Just to clarify: were you one of them?

**Ms Clarke**—I was not one of them. The three officers were from our GST area. There was nobody there that could have spoken about income tax issues.

**Senator MURRAY**—Batting the ball between the two of you: was the decision as to who attended made by the ATO, or did you simply say from the department, Mr Maynard, that you only wanted to discuss GST issues?

**Mr Maynard**—We sought a meeting. Our initial request went to one of the deputy commissioners, asking to make the relevant people available to meet with us to discuss this matter. We provided an outline of the nature of the arrangement in place so that it could be considered prior to the meeting.

**Senator MURRAY**—This was after the Australian Government Solicitor's advice?

**Mr Maynard**—Yes, it would have been.

**Senator MURRAY**—The Australian Government Solicitor's advice specifically said there was an income tax liability problem?

**Mr Maynard**—No. To put the matter beyond doubt, we should see that private binding ruling.

**Senator MURRAY**—On what? On what aspect of tax?

**Mr Maynard**—On tax.

**Senator MURRAY**—Just on tax?

**Mr Maynard**—That is my recollection. I am happy to be told that there is something more specific, but that is my recollection, given that we were dealing with the AGS on all possible tax implications, be it fringe benefits, GST, capital gains, income—a whole gamut of things.

**Senator MURRAY**—So in respect of the specific issue of an income tax liability, the Australian Government Solicitor's advice was worthless because it did not mention that. The department was not aware of it and the ATO office was not aware of it, and thought it was about GST.

**Mr Rowlands**—Senator Murray, I think you suggested the AGS advice did not mention income tax. It did mention income tax.

**Senator MURRAY**—I asked the specific question.

**Mr Rowlands**—On page 56 of the report we stated:

The AGS opinion was that it was at least possible that the ATO would take the view that some tax liabilities would arise. However, it also thought it unlikely that the payments to SEES (representing levy collected) would be assessable for tax as income in the hands of the contractor. At the same time, the AGS also advised DEWR to consult the ATO's Deputy Chief Tax Counsel to settle the tax implications of the draft agreement 'now' rather than risk the ATO taking a view inconsistent with that formed by the AGS ...

**Senator MURRAY**—Thank you; that is very helpful. Mr Maynard, it appears that the Australian Government Solicitor did advise you that there was an income tax liability possibility. Why did the department not advise the ATO that they wanted officers available who could give that advice—at least in the discussions?

**Mr Maynard**—We have approached the ATO seeking advice on a range of tax matters. We did not say at any point in time we did not wish to discuss income tax.

**Senator MURRAY**—Ms Clarke, why would the ATO turn up just with GST officers?

**Ms Clarke**—As I understand it, DEWR provided the materials for the meeting on 27 November. The materials disclosed that there were income tax issues, and I presume that came from the AGS advice. It was at that time that the ATO looked for someone from income tax who could have attended the meeting. Because it was such a short period between the time of looking and the meeting, there was not time to arrange for someone to attend.

**Senator MURRAY**—How many employees has the tax office got? Is it 14,000?

**Ms Clarke**—That is right.

**Senator MURRAY**—So you could not find one income tax person to attend at short notice?

**Ms Clarke**—Somebody with the relevant skills.

**Senator MURRAY**—Somebody capable of saying that 30 per cent on \$336.1 is \$100.8 million—nobody of that ability?

**Ms Clarke**—I was only allocated the job on 30 November, so I was not privy to what happened before that time.

**Senator MURRAY**—But you can understand why I would be sceptical, can't you? It is not exactly rocket science.

**Ms Clarke**—Yes. My notes here say that attempts were made unsuccessfully to arrange for an income tax officer to attend the meeting set for Thursday. That was on Tuesday, 27 Wednesday, 28—two days before.

**Ms KING**—Has the loan for SEES Pty Ltd been fully paid out or is that still ongoing?

**Mr Ellison**—It was paid out on 15 April.

**Ms KING**—How much to date has been paid out to the Ansett employees?

**Mr Maynard**—\$341 million.

**Ms KING**—Does that represent 100 per cent of the assessed entitlements?

**Mr Maynard**—That is correct. It is 100 per cent of all wages, annual leave, long service leave, pay in lieu of notice, and up to eight weeks of redundancy pay.

**Ms KING**—So it is eight weeks redundancy pay?

**Mr Maynard**—Yes, for every one of the 12,998 recipients.

**Ms KING**—How much has the Ansett ticket levy raised to date? I know it has finished, but how much did it raise?

**Ms Armitage**—I understand it was estimated at \$288 million as of 31 January.

**Ms KING**—What do we know in terms of realised assets from the administrator?

**Mr Ellison**—In terms of recovery by SEES?

**Ms KING**—Yes.

**Mr Ellison**—SEES has recovered \$163 million with another \$43.53 million to come. It is the balance of the preferred dividend.

**Ms KING**—Did the department take the decision to go with the Commonwealth Bank as the preferred provider for the loan?

**Mr Maynard**—Under the terms of the contract that the Commonwealth signed with SEES Pty Ltd, they were obliged to organise private finance. The requirement was that SEES Pty Ltd would approach a minimum of four financial institutions to obtain a private loan, do an analysis and present their findings to the Commonwealth. They did that. They provided us with their findings. Through discussions, a recommendation was made and accepted that the CBA be the successful tenderer to that process.

**Ms KING**—How do you respond to the ANAO's claims that you did not keep adequate documentation about the selection of that financier?

**Mr Maynard**—The department accepts that the minutes of one of the meetings in a string of meetings is missing. That is a filing error on behalf of the department and we accept that we had a filing error in that regard.

**Ms KING**—Are those minutes the ones in which it states which the preferred one was? What is the context? Are they just the minutes at the start?

**Mr Maynard**—The minutes were of the meeting that agreed on the recommendation that CBA be selected. Having said that, all of the necessary paperwork showing the relative merits of the tenderers is available, as is a range of other contemporaneous material, including emails between officers in the department, emails to the interdepartmental committee, and board meetings from SEES Pty Ltd with the outcomes of that selection process.

**Ms KING**—Was that all provided to the Audit Office?

**Mr Maynard**—It was all available to the Audit Office, yes.

**Ms KING**—Can I just go back to the selection process for the private provider for the scheme. I understand it was a select tender process; is that correct?

**Mr Maynard**—Yes. For the private provider for the scheme it was a select tender process.

**Ms KING**—Was the decision taken by the department to go for a select tender process?

**Mr Maynard**—The decision was taken by the interdepartmental committee. One of the matters we had to take account of was that the Ansett group of companies comprised 44 companies and the conflicts of interest were significant.

**Ms KING**—I understand the select tender went out to 10 people?

**Mr Maynard**—That sounds familiar, yes.

**Ms KING**—The 10 were provided by?

**Mr Maynard**—They were provided by the department of finance who provided advice on appropriate accounting firms to approach. Of those 10, a number had conflicts and therefore withdrew. Then the tender process was held and SEES Pty Ltd was contracted.

**Ms KING**—So how many were put out of that 10?

**Mr Maynard**—My recollection is seven.

**Ms KING**—So only three were ruled out because of conflicts?

**Mr Maynard**—Yes, that is my recollection.

**Senator WATSON**—I would like a copy of the QC's opinion in relation to the advice given about the taxability of this payment. Also, could we have the minutes of that expert task force that gave advice on the best arrangement for the payment of this arrangement?

**Mr Maynard**—I would have to seek the minister's views as to whether or not that could be provided.

**Senator MURRAY**—Mr Maynard, Treasury has tax specialists, people of very high quality. Did your department consult with or ask Treasury to give you any input on tax issues?

**Mr Maynard**—Treasury was a member of the interdepartmental committee. As I have previously noted, I was not formally a member of the interdepartmental committee and, therefore, I am unaware as to whether or not that question was specifically asked of Treasury.

**CHAIRMAN**—We will now say that the round robin payments did appeal to some members of the committee as an excellent topic for the next *Yes, Minister* show. Is it the wish of the committee that the document entitled 'Australian Taxation Office, Minute Paper 3, April 2004, Re: SEESA', presented by the Australian Taxation Office, be accepted as evidence? There being no objection, it is so ordered. Is it the wish of the committee that the document entitled 'Application for Private Ruling Authorisation No. 13442', presented by the Australian Taxation Office, be accepted as evidence? There being no objection, it is so ordered.

Resolved (on motion by **Ms King**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing today.

**CHAIRMAN**—I thank all of you for appearing before us today. These hearings are important. I think most of the departments consider them so, as do we. I declare this public meeting closed.

**Committee adjourned at 11.47 a.m.**