COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

of

PUBLIC ACCOUNTS

Reference: Review of Public Service Bill 1997

CANBERRA

Tuesday, 9 September 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT COMMITTEE OF PUBLIC ACCOUNTS

Members

Mr Somlyay (Chairman)

Mr Griffin (Deputy Chairman)

Senator Coonan	Mr Beddall
Senator Faulkner	Mr Broadbent
Senator Gibson	Mr Fitzgibbon
Senator Hogg	Mr Georgiou

The terms of reference for this inquiry are:

(a) the Public Service Bill 1997 and the Public Employment (Consequential and Transitional) Amendment Bill 1997 be referred to the Joint Committee of Public Accounts for consideration and an advisory report by 4 September 1997;

(b) the terms of this resolution, so far as they are inconsistent with the standing and sessional orders, have effect notwithstanding anything contained in the standing and sessional orders; and

(c) that a message be sent to the Senate acquainting it of this reference to the Committee.

WITNESSES

JOINT COMMITTEE OF PUBLIC ACCOUNTS

Review of Public Service Bill 1997

CANBERRA

Tuesday, 9 September 1997

Present

Mr Somlyay (Chair)

Senator Faulkner	Mr Beddall
Senator Gibson	Mr Broadbent
	Mr Georgiou

Observer

Department of Finance : Ms M. Messner

The committee met at 10.05 a.m.

Mr Somlyay took the chair.

CHAIR—I declare open today's public hearing of the Joint Committee of Public Accounts review of the Public Service Bill 1997 and the Public Employment (Consequential and Transitional) Amendment Bill 1997. The bills were referred to the Joint Committee of Public Accounts on 26 June for consideration. The committee has been granted an extension of time for this review, with the tabling of the report now scheduled for 23 September.

The purpose of this hearing today is to canvass the perceptions of current secretaries to departments and agency heads on the kind of Public Service which is likely to emerge under the new Public Service Bill. A second purpose is to examine the commissioner's directions and the Public Service regulations.

As you are all aware, the new bill differs quite significantly from the 1922 act in its intent and in its content. Much of the detail which was previously embedded in the legislation itself is now relegated to subordinate legislation. A proper review of the new bill must therefore necessarily take details of the subordinate legislation into account.

[10.07 a.m.]

BARRATT, Mr Paul Hunter, Secretary, Department of Primary Industries and Energy, PO Box 858, Canberra, Australian Capital Territory 2601

BOXALL, Dr Peter John, Secretary, Department of Finance, Newlands Street, Parkes, Australian Capital Territory 2600

CARMODY, Mr Michael, Commissioner of Taxation, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory

HAWKE, Dr Allan Douglas, Secretary, Department of Transport and Regional Development, 17 Mort Street, Canberra, Australian Capital Territory 2601

KENNEDY, Mr Peter, Deputy Public Service Commissioner, Public Service and Merit Protection Commission, Edmund Barton Building, Barton, Australian Capital Territory 2600

SEDGWICK, Mr Stephen Thomas, Secretary, Department of Employment, Education, Training and Youth Affairs, GPO Box 9880, Canberra, Australian Capital Territory 2601

SHERGOLD, Dr Peter Roger, Public Service Commissioner, Public Service and Merit Protection Commission, Edmund Barton Building, Canberra, Australian Capital Territory

WOODWARD, Mr Lionel Barrie, Chief Executive Officer, Australian Customs Service, 5 Constitution Avenue, Canberra City, Australian Capital Territory

CHAIR—I remind you that today's hearings 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 the parliament. The evidence given today will be recorded by *Hansard* and will attract parliamentary privilege.

I refer any members of the press who are present to a 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's statement are available from the secretariat staff present at this hearing. An observer here today is Maria Messner from the Department of Finance. Welcome to everybody who has given us their time to appear today. Dr Shergold, would you like to commence?

Dr Shergold—Thank you, Mr Chairman. I am pleased to appear before your committee once again and particularly pleased to be joined by a small group of my senior colleagues from departments of state and large agencies who have already been introduced: Paul Barratt from Primary Industries and Energy; Peter Boxall from Finance; Michael Carmody, the Commissioner of Taxation; Alan Hawke, the Secretary of Transport and Regional Development who is also the president of the ACT division of IPA; Steve Sedgwick from Employment, Education, Training and Youth Affairs; and Lionel Woodward, the CEO of the Australian Customs Service, who is a past president of the ACT division of what was then RIPA.

Tony Blunn, the Secretary of Social Security, would have liked to attend today but is overseas and Sue Vardon, who is the Chief Executive of the Commonwealth Service Delivery Agency, would have attended but for arrangements already set in place to be in the Torres Strait. Both have asked me to convey to your committee their strong support for the direction of public service reform represented by the new legislation. Your committee has, of course, already spoken to Max Moore-Wilton, Secretary of Prime Minister and Cabinet.

The opportunity for you to hear from and question senior public servants is very important. Senator Faulkner has stated, quite rightly, that I am a very strong public advocate of the new Public Service Bill. I believe deeply that it is a matter of utmost urgency to reform an inflexible, prescriptive, rule-bound legislative framework. That legislation largely explains, I believe, what the *Canberra Times* editorial of today calls 'the inefficient work practices in the public sector'. I also strongly agree with that editorial, which argues how vital it is to improve public sector efficiency if more public service is not to be contracted out.

My own position as Public Service Commissioner is, of course, an independent statutory officer with particular responsibility for Public Service matters. That affords me the right, indeed I think places on me the responsibility, to be an advocate for what I believe to be in the best interests of the Public Service, not, I hope, for this government or the next, but I would like to think, with this legislation, for the next generation of Commonwealth public servants. It is the bill's balance that persuades me: increased devolution and more flexibility in the employment framework certainly, but set within legislation which protects the public interest as never before.

I will say only three things by way of introduction this morning. First: I was an equally forceful voice for public service reform in October-November 1995 when I accompanied the then minister assisting the Prime Minister for the Public Service, Gary Johns, to seminars in all Australian capital cities on proposed changes to the Public Service Act. I strongly supported then the position that the minister put, namely that the APS should 'be placed on a similar footing to the private sector' with 'a more contemporary employment framework' and with 'secretaries and agency heads having employment powers in their own right'.

Second: the legislation, vital as it is, is only one element of a continuing process of public service reform. Much of the discussion, indeed, before this committee has been about reforms that have already taken place under the amended 1922 act, for example, the fixed term arrangements for secretaries. Legislative reform is part, but only part, of the change process. Other key elements include financial and people management reform, the move to accrual budgeting and the introduction of government service charters.

And third: I am concerned, reading the evidence given before this committee, that I might appear to be an isolated voice. While my statutory role allows me to be more forceful than my secretarial colleagues in my support for public service reform, there is widespread recognition of the need for fundamental change. Indeed, there are those who believe that the legislation, although a step in the right direction, is still too cautious in the level of prescription remaining. It is for that reason in particular that I am now delighted to hand over to my colleagues.

Mr Sedgwick—There are a lot of speakers so I will not attempt to cover the world here. I think it is important to remember, as Dr Shergold said, that this is one part of a framework. It is the people management part of the framework; it is not the whole box and dice. The guiding principle is that we really do need the flexibility within the public service to manage people well and to do it on pretty much the same kinds of rules that a lot of our private sector competitors have. We all know that we live in a very transparent world where both the efficiency and the effectiveness of what we do is subject to considerable public scrutiny and, as an organisation, we need the capacity to manage well within a framework which allows our costs to be compared on a reasonable basis with other people's around the world and certainly around Australia.

The problem for us is that our people management framework thus far has encouraged an excessively rule based legalistic approach to the management of people within an organisation. At times that can reach quite absurd heights where we find that, because our culture is legalistic and rule based, we can take things to great extremes. The reason that a lot of those things were put in place was to guard against the possibility that people would not be managed well, but it is a very paternalistic view of how we need to ensure that people in a position like mine would do the right thing, frankly.

One of the consequences of all that is the excessive prescription and regulation that we have around the place. I will give you a couple of examples. DEETYA ran a VR process a little over a year ago. We are still dealing with grievances against a decision not to give people VR over a year later. We have people who, having had the opportunity of lodging an internal grievance, did so under regulation 83. They then have the capacity under the law to lodge an external grievance to MPRA, so they do that under regulation 84. We act on that, then they appeal to me on the basis of what we did in response to each one of those things. You have this process which is going on. If people do not want to work for us, they can resign, for God's sake. But if we have got a job that needs to be done, then surely we can have a process that says that we assess whether or not someone

should be offered VR and then get on with it.

I can take you through some others, but I think that the point is that our culture leads us into this way of handling problems of this kind rather than simply having some kind of trust based open kind of dialogue with our people so that we can deal with issues, get on with it and move onto the next thing.

All of us know that we have to manage performance against two time frames. We have got to get a job done now but we also have to have an organisation which is capable of innovating, adapting, changing over time and doing the job tomorrow. You can manage people badly now in order to get a result now; you cannot manage people badly now and expect them to be with you and capable of being able to produce the results that are needed in a year's time, two years time, three years time or five years time. It is, frankly, in our best interests to have an approach to managing people which is regarded within the organisation as being fair, objective and reasonable, otherwise the organisation cannot perform well.

At the end of the day, that is the greatest discipline that we have. It is a fact that it does not matter what the rules say; if we do not manage our people well, our organisations will not perform. I think I will stop there. There are some other things I could say, but I will stop.

Dr Hawke—I will put on my ACT division institute president's hat to open. I want to leave with the committee today two papers which we commissioned and which relate to secretaries. The first of those is called *Departmental secretaries: appointment, termination and their impact*. This was prepared by Professors Patrick Weller and John Wanna of Griffith University. It was based on some research into legislative change, literature review and interviews with secretaries themselves. The second is about departmental secretaries in Canada and the United Kingdom. That was written for us by Dr John Halligan of the University of Canberra. We will not be publishing these until the end of the year, so I thought you might like to have them now to assist with your deliberations.

I want to go to one of Weller's and Wanna's findings. It relates to the fact that secretaries denied that loss of tenure had undermined their capacity to give frank and fearless advice. Some felt it had achieved the very opposite impact. In preparing a foreword to the Weller-Wanna article, I observed that frank and fearless advice is not the sole preserve of an individual—the secretary of a department; it also, and mostly, comes from the people in the organisation which that secretary leads.

We no longer have a situation where secretaries sign everything that gets to the minister or control, including by always being present, who has access to and says what to the minister. The frank and fearless advice that matters is that which comes from talented people of character who are dedicated to the public purpose of their organisation. I put it

to you it is quite unrealistic to imagine that such advice would be bottled and corked by any secretary in the supposed interests of self-preservation.

Dr Boxall—I appeared briefly once before, but I will add a few more words. I think that the Public Service Bill needs to be viewed as part of a suite of reforms which are under way at the moment in the public sector. We have had the Worplace Relations Act passed by parliament, and the government has given out policy guidelines for its application in the public sector. We have the Financial Management and Accountability Bill and the Commonwealth Authorities and Companies Bill currently before the Senate. We also have the Public Service Bill, upon which you are taking the hearings today.

Basically I, like Dr Shergold, am a public supporter of this Public Service Bill. I think it is very important for the accountability of secretaries and CEOs. I think it will strengthen the Public Service and, at the same time, protect the public interest. I note that the Financial Management and Accountability Bill and the Commonwealth Authorities and Companies Bill devolve much responsibility to CEOs for financial management. I regard the Public Service Bill as doing the same for human resources and people management.

For example, under the financial bills chief executives will be better able to tailor instructions and procedures to meet their own agencies' needs. Chief executives will be responsible and auditable for the efficient, effective and ethical management of resources. I see a parallel with the Public Service Bill there; that we will be accountable for how we run our organisations. The more restrictions that are placed upon secretaries the less accountable they will be. I think this is a very important point which comes through in the bill.

Clearly, there is quite a lot of structural change going on in the public sector in the Commonwealth at the moment. There has been a lot of structural change in the private sector and in some other jurisdictions at state and local government, not all but some earlier on. In a sense, we are following the many organisations in the private sector and elsewhere in the public sector. Like everything else in Australia, we are being subjected to the forces of globalisation. We need to be able to adapt. I do not think Australia can have a situation where we have a private sector, some state governments and some local governments that have adapted and not the Commonwealth. Again, I regard the Public Service Bill as being part of this suite of reforms to achieve that.

I also view it as being based on trust. It is about trusting CEOs to get on and do the job. Because they are held accountable if they do not, they can be removed. It is a necessary and vital part of reform. It will remove a number of obvious irritants, some of which have been alluded to by previous speakers. For example, part IV mobility makes it very difficult for a secretary to run a department when people can just literally arrive back on the doorstep. I was in my job less than a week and a senior officer who had been out of the department for possibly five years arrived back on the doorstep. How can one manage resources under those situations? No notice; the person just turned up.

The issue of external review, which I know you have discussed, is also very important. Again, there is a balance here. The more restrictions that are placed on secretaries the less they can be held accountable at the end of the day. Clearly, another important point is that this bill, as I read it, will allow secretaries and CEOs to have the classification that is appropriate to their organisation, just as the financial bills will allow secretaries and CEOs to tailor instructions and procedures that are appropriate to their organisations.

CHAIR—As you know, we have reviewed that financial package of bills. Perhaps you might like to give some fearless and frank advice to your minister to speed their passage through the Senate.

Mr Barratt—I am also a strong supporter of the legislation. Taken together with the Workplace Relations Act it places the onus squarely on me as chief executive officer of the organisation to organise work in the workplaces for which I am responsible and, secondly, to do so in accordance with clearly defined expectations about behaviour and conduct.It is a legislative framework which gives me both the responsibility and the authority to contour working arrangements around the circumstances of individual workplaces.

We have very disparate workplaces in the Department of Primary Industries and Energy. I have, like my colleagues, a significant component of officers developing policy advice for ministers in Canberra. But about one-quarter of my staff are meat inspectors. There is another component delivering quarantine services at the border. There are others doing scientific work in support of those processes and there are people like the field staff of the Geological Survey Organisation. So almost 24 hours of the day there is somebody in the department working their normal hours and they do a great variety of tasks.

This framework also enables me to recognise the various circumstances under which my employees work and to tailor their remuneration and conditions of employment to those varied normal circumstances of work, without the intervention of third parties establishing process rules on the process, provided I manage the organisation within the framework laid down by the parliament. This enables a strong focus on outcomes and not on process and procedure—firstly, outcomes for the taxpayer; secondly, outcomes for direct clients of the department. For example, the beef industry in very difficult circumstances are selling directly into international markets at a market clearing price. They cannot pass on the charges that we levy on them for our services to their customers. They must absorb them off their bottom line. The quality and cost of the services we provide are very important to them. Thirdly, and by no means least important, are outcomes for employees of DPIE workplaces. I am directly accountable under this framework for outcomes in each of those areas.

The framework also establishes, in my view, an environment conducive to innovation and continuous improvement and to the involvement of staff in these vital

processes because good ideas generated in the workplace can be adopted simply and expeditiously without having to become accepted as service wide or indeed DPIE wide practice. That enables us to be responsive to our customers and responsive to the needs of our staff.

In my view, this capacity to be responsive and deliver high quality service enhances the job security and the job satisfaction of the employees for whom I am responsible. It enables them to have a real opportunity to show what they can do without the restrictions of very cumbersome processes that are laid upon them and to develop high performance workplaces in the organisation. That over the longer haul will enhance the standing of the service and I believe that to be in the public interest.

The last point I would like to make is that I understand there is considerable focus on issues like fairness to employees and how that is to be delivered. I would simply like to place on the record that I believe that high performance can only come from people who want to deliver it. The bill enables that to be accomplished.

Mr Carmody—Like others, I view the Public Service Act as part of a suite of changes that include the Workplace Relations Act, issues of contestability, financial management, accrual accounting and service charters. I see them as providing a broadly consistent direction of enabling us in the Public Service to do our job to provide a better service to the community.

I find it interesting and an interesting signal that the Public Service Bill, for the first time, focuses primarily on what that means for the community and what the community can expect rather than on rules and regulations and prescriptions to do with staff of the public sector. I said that this suite of changes enables us to provide a better service to the community. It does that in a number of ways. By example, it does, as has already been mentioned by some of my colleagues, recognise that there are differences as well as commonalities in agencies within the public sector.

With all due respect, I cannot see how it can be said that my organisation—which has jobs varying from public contact, to processing, to technical advice on major issues, to audits examination, to systems design in a technological and operational sense—is exactly the same as those of my colleagues, be they from the Department of Finance or whatever.

This suite of changes enables us in the Tax Office to better tailor our recruitment and staffing practices to the tasks that we have in providing a public service. That includes, in this day and age when we face increasing globalisation, continuing tax planning, cash economy issues and so on, the ability to bring in, as needed, for particular terms, expertise to assist us in developing our responses to those issues.

The suite of changes also means getting rid of much of what has already been said of the overprescription and complexity in terms and conditions for staff. Those sorts of

things have meant the development of an increasing number of HR advisers, because no manager can possibly understand or know where to go when dealing with a range of these terms and conditions.

I also find that the incredible amount of focus on process really is a frustration to many. But, ultimately, it does not seem to achieve its purpose because too often it means in selections and others that the focus is on the process and getting the process right rather than the focus on the outcome. I say it really does not achieve that because we have constantly talked to our staff and surveyed our staff about issues in the organisation. Notwithstanding all the prescription and all the terms that deal with selections—and they have expressed over many years their belief that they do not get the right answer—we have then put in more processes in the belief that that was the answer, and we continue to get the same result from staff.

Within that context, I see the Public Service Bill as proposed as particularly important. As I said, it focuses on what the core is for the Public Service—the code of conduct, the values and so on—and then allows organisations to tailor their staffing practices to achieve their particular objectives.

The only other point I would make is that each of the initiatives I have talked about need to be in sync with each other, no more so than the Public Service Bill. Let me give a brief example. We are quite rightly in a lot of our operations being exposed to private sector practice and benchmarking ourselves against that practice. The Public Service Bill complements our ability to achieve in that area by removing some of the overprescription that would otherwise increase the costs associated with our operations.

Finally, and related to that, I do not think we should diminish the overall signals as to cultural change that come from this suite of changes. Let me give you a simple example. We talked to our staff and our corporate services area about 18 months ago and said, 'Look, the reality is, either by dint of government approaches or by dint of us achieving the best possible use of the taxpayers' money, we need our corporate service areas, be they personnel, office administration or so on, to be efficient. We need them to be the best.' As a result of the realities of the suite of changes I have talked about, staff have taken that up. Over the last six months or so, staffing numbers have been reduced by 35 per cent in those areas while a greater focus has been achieved on delivering for their clients.

I say that the Public Service Bill needs to be in sync because if they are to be competitive, and therefore keep their jobs, they do not need in that environment to have their costs increased by the sorts of prescriptive and very detailed approaches that go to their own staffing practices within that operation.

Mr Woodward—I guess I am here as a representative of the old timers in the Public Service. I feel terribly old when I see one of my colleagues here who came in as an

administrative trainee when I was already in the SES. But it does mean that I have seen a lot of changes over the last 36 years. Indeed, as I sat back before coming to this meeting and thought about life in the 1960s and 1970s and the form that public administration took then, I thought, 'Was it appropriate?' I guess my assessment is, yes, it was appropriate for the 1960s and 1970s. But could I honestly say that the form of public administration in that period was appropriate for the 1990s? Indeed, was it appropriate for the 1980s? I would have to say no.

There have been many changes that have taken place in that period. I can clearly recall the dramatic changes that took place in the Whitlam era, the power that developed in the offices of ministers, the major changes and thrusts that occurred in policy and, obviously, in public administration.

I was on the Public Service Board during most of the period of the Fraser government. Therefore, I have seen public administration from the centre. I have seen it as a member and, over the last eight or nine years, as head of an agency actually delivering services. In that period I was responsible for the machinery of government and staff ceilings. I have seen in a very personal sense the dispensation of pretty rough justice from the centre. It probably was appropriate for that time. But if I were to be asked now whether the system of government that applied, which I was responsible for administering in that period, is appropriate now or was appropriate in the last 10 years, I would have to say no. Things have changed.

For me, the most dramatic changes in the last 36 years occurred starting around 1983-84 and continued for the remainder of the Labor government. I was intimately involved in many of those changes. I was in Defence when we started a process of reducing very significantly the size and nature of Defence factories and corporatisation commenced. We closed factories; we sold factories. The staffing was reduced. It is now something like one-fifth or a one-sixth of what it was at that stage. I was in Veterans' Affairs when the process continued of selling hospitals, closing institutions and passing some to the states.

I think all of that was part of an approach on the part of the government and on the part of leaders in the Public Service, who said, 'We really have to look more closely at our efficiency, certainly our effectiveness. We have to look at the way in which we do business. We ought to be looking more at the people whom we are intended to serve.' At the end of the day, someone has to pay the price for inefficiency, and the price is being paid by taxpayers.

There was also a move away from centralisation into putting authority where it really should rest. Here I contrast what was beginning to take place in the 1980s with my experience on the Public Service Board at an earlier time.

I personally do not see the changes that are included in this bill as being as

dramatic as some would suggest, and perhaps some of my colleagues would suggest. I see them as a natural evolution of what started, I think, during the 1980s and continued in the early 1990s. The changes are a recognition of the inevitability of the evolution of public administration; that is, putting responsibility where it should lie—close to the point of action, close to the people we serve, our customers. That gives us the authority to cut out many of the excesses, the waste and the inefficiencies which are disturbing to me not only as a long-time public administrator but, frankly, as a taxpayer.

CHAIR—We will proceed to questions.

Senator FAULKNER—I would be interested in asking whether any of the secretaries at the table are of the view that they are not adequately recompensed for the job that they do.

Dr Hawke—The answer is yes. If you look at that—

CHAIR—You are not allowed to ask us the same thing.

Dr Hawke—If you look at a secretary's pay against equivalents in other public services, then I think the only answer to that is yes.

Mr Sedgwick—I think that is right. I think there is an obvious question that then follows from that, which is: why the hell are we here? I think that we would need to give a personal view on all of that. I am here because I like the work. I would prefer more money. I can cope with being underpaid; I cannot cope with being undervalued. I think one of the things that really is important for an organisation like the parliament, for example, is to not only set down its expectations of the Public Service but also support the Public Service when it meets them.

Senator FAULKNER—In relation to the adequacy of salary packages, is there anyone at the table who does not share the views that have been so eloquently expressed by Dr Hawke and Mr Sedgwick? If not, could I ask you then whether you could let me know what is wrong with the current system of determining secretaries' salaries?

Mr Sedgwick—When do I stop beating my wife?

Senator FAULKNER—I think it is a fair question. By the way, I accept what you said, Mr Sedgwick. I think many people do the jobs that the secretaries at the table do for reasons obviously above and beyond that of the salary package they receive. We have heard evidence in this committee that that is the case, that there is a genuine commitment on the part of many to be part of a system that provides a capacity for other contributions, apart from just receiving a salary at the end of the month.

Accepting that—I do accept it and I think we have had some strong evidence

before this committee that suggests that that is the case—I want to go on and ask you this question. I do not think it is a 'whenever you stop beating your wife' type question, but it is an important change in the current bill, the change to the current mechanism of determining salaries. I would like to know what is wrong with the current mechanism.

Mr Sedgwick—I see; it is a different question.

Senator FAULKNER—No, it is the same question.

Mr Sedgwick—I think it is a different question. As you know, the Remuneration Tribunal has been providing views to the government over a long time now about appropriate salaries for a range of office holders, including ourselves. I cannot say that I have been a party to the deliberations of the Remuneration Tribunal, although I think I would be fairly confident that at least some members of the tribunal would, nonetheless, regard the secretaries group as having been underpaid.

When it comes to setting salaries for people like us—and, indeed, for people like you—there is a whole body of forces which come into play, including public acceptability about rates of increase, as well as a view about the adequacy of any particular level. We do know that in the history of the Remuneration Tribunal, going back 20 years or so, there have been cases where a government felt that it could not accept a recommendation of the Remuneration Tribunal because for one reason or another it believed that, in order to remedy what was perceived at the time to be an inadequacy, it would result in pay increases which were out of step with the community at large. We know that that has happened.

I think that the answer to the question that you are asking is that our pay and your pay and a lot of other people's pay is set in a very public context and meets certain community expectations about both level and rates of change.

Senator FAULKNER—Is there anyone at the table who would be at all uncomfortable with all the details of their salary package being made publicly available, which is the case through Remuneration Tribunal determinations? One of the issues goes to the capacity for parliamentary or public scrutiny. Is there anyone at the table who would be uncomfortable with those details not being fully disclosed in forums like this?

Dr Boxall—I have already had the privilege of answering this question before, but to take it a step further for Senator Faulkner, I repeat that I am quite comfortable with clause 45 of the Public Service Bill which, as I understand it, has the Remuneration Tribunal being one source of advice to the Prime Minister, not the sole source, in determining salaries, so that the Prime Minister of the day can get the people that he or she wants in place.

With respect to publication, I would anticipate—it will certainly be the case in my department—that in the annual report we will be setting out the number of executives who are in certain salary bands. This is quite common. It is a requirement for the private sector and I see no reason why that would not be a requirement for the public sector. That will not just be secretaries because, as you know, under the application of the Workplace Relations Bill to the public sector and Australian workplace agreements and other arrangements, SES officers are no longer all paid the same, so we would be expected—I will be doing this in my department—to report the packages of SES officers as well. I do not have any problem at all with having the size of my package made public, just as is the case in private sector organisations, where it is reported in annual reports.

Mr Barratt—I would like to offer an observation about both of Senator Faulkner's questions. Regarding the way secretaries' salaries are set, if I had to reflect upon why a process which I have never been closely involved with does not seem to produce the right sort of outcome, I think it is because the frame of reference has been more to do with movements in the community generally and the inflation rate rather than with what you might call a market rate for chief executive officers.

If you re-establish the frame of reference to be what is an appropriate rate for people accepting that kind of responsibility in running a large organisation, I assume you would get a different outcome. That is the question that state governments have addressed. In the labour market of Sydney and Melbourne they have paid something which I think is much closer to the going rate.

Senator FAULKNER—Perhaps when you have finished, I might follow that issue through.

Mr Barratt—As to disclosure of salary packages, I think it ought to be expected that the value of a secretary's remuneration package would be disclosed. I would prefer that not to be a private matter. I think you could make a better argument that personal choices that people make about elements within that total remuneration package would be more private matters. I do not think it is very interesting to know whether someone chooses to take more car and less money or vice versa. I have no problem with the cost to the employer of employing that person being disclosed.

CHAIR—Does anybody else want to comment on that?

Mr Sedgwick—I am happy to have my package disclosed in the same terms as those in the private sector in the annual report or anywhere else.

Mr Carmody—I wish to make one observation because I am sitting here. It is rather uncomfortable talking about your own incomes in committees like this. The only observation I would make is that I would endorse completely what Steve Sedgwick said about the motivations of people to take on jobs, not only secretary's jobs and others.

Given the position that we occupy, I would not see any problem with whatever my remuneration is being disclosed. It already is.

I would like to put on the record in the context of this, because we are focussing so heavily on us, that I also believe that a lot of people in my organisation are significantly underpaid when compared with market rates. Some of my people who sit across the table from extremely highly paid advisers get paid less than a manager in a large firm. I would just like to make that observation.

Secondly, in relation to disclosure of their incomes, I do not believe, getting past my position, that it is necessary that an individual's income should be publicly disclosed—that is, what people earn in my organisation. However, ranges of people's salaries would be quite appropriate.

Senator FAULKNER—I do not mean to make you uncomfortable, Mr Carmody, but I think it is a significant change when we move away from a Remuneration Tribunal determination—I do not know whether you accept this; I would be interested to hear your view—to a situation where the parliament is being asked to accept that salary and conditions for agency heads will become a matter of agreement between the Prime Minister and the relevant agency head.

There is a role, as we have talked about, for a requirement for consultation, and only consultation, with the Remuneration Tribunal. I see that as a significant change. It is obviously one of the areas in this bill that has resulted in quite some interest, even more broadly than the parliament.

Mr Carmody—My only observation there is that the reality of setting of pays of secretaries has been in the context of remuneration tribunals. But at the end of the day, I think government have the right to set those aside. As I understand, that has occurred over the years. The sort of environment that has been talked about, in terms of public sector salaries, has been a strong factor in taking those into account. So at the end of the day, I am not sure that anything dramatic would occur as a result of the changes.

Senator FAULKNER—It may occur. Obviously it is a matter of negotiation between the political master or masters of the senior public servant and the senior public servant, him or herself. That is a very significant change from the situation we have, surely, I would have thought, where these matters are determined by the Remuneration Tribunal.

To go back to Mr Barratt's point—and I hear what he says about the experience in the range of state jurisdictions—my understanding is that, say, in New South Wales you have a situation effectively where an independent tribunal is establishing a range from which the respective responsible person in government makes a decision from within that range, if you like—that perhaps is the best way I can describe it—which is a very

significant difference to the situation that we have, or propose to have, here.

Mr Carmody—I suppose the only point I was making is that I think the realities of the present system is that you have a Remuneration Tribunal, and then you have a position by government that can disallow or otherwise for the variety of reasons we have talked about. I guess that all I am saying is that, if this change were to occur, I would not expect to be able to go to the bank manager to increase my loan limit as a result of it.

Mr Sedgwick—Senator, can I come at your question in a slightly different way? I think it would be easier for all of us, because there would be a step you would not have to go through, if pay was set at arms-length. There is no doubt about that; it is simpler and it is easier. But, in terms of the relationship which we have with the government at the moment, there are elements of our existence which are in many ways a lot more fundamental than whether you have an extra $10,000 in your pay packet every year which are already, and have for a long time been, subject to a process which has engaged the Prime Minister. That has to do with your tenure, the position that you hold, and a whole raft of other things that fundamentally go to the quality of your life, frankly.

I think that all of these things need to be set within as reasonably common a set of expectations and conventions as we make them, so that all of the parties involved understand the rules and understand that they will be dealt with fairly against the set of conventions or guidelines that are about. It is not about black-letter law. It is about the understandings and the expectations of all parties. I think the fact that the Prime Minister is involved in the particular issue of pay does not matter a whole lot, when you consider that the Prime Minister is involved with tenure and with the job that you have—and what is different about any of that?

I think there is great value in trying to have as clear a set of understandings as we can about the nature of the relationship between secretaries and the government and how the black-letter law will be applied. But I do not think we should be fearful about the fact that there is an individual, the Prime Minister in this case, who is a party to it all.

Mr Barratt—I would just comment on that question. The fact that the legislation says that the Prime Minister will be the person responsible for setting salaries does not preclude the Prime Minister from obtaining advice on appropriate levels and establishing ranges. And I note that in the explanatory memorandum it does say the Prime Minister would normally consult the Remuneration Tribunal. It would certainly be very common practice in the private sector for a board seeking a new chief executive officer to get advice from an executive remuneration consultancy about what would be the sort of salary we would have to offer to attract an appropriate person.

Senator FAULKNER—I do not want to put words in anyone's mouth, but I think, judging by the silence which was the only response I got to a previous question I asked—I

want to be clear on this—no-one at the table thinks they are currently being adequately recompensed for the level of responsibilities they have. I do not want to put words into your mouth, but let me put it another way: is there anyone who believes in fact that their level salary package is adequate for the work and responsibilities they are carrying out?

Mr GEORGIOU—And is there a difference between 'adequate' and 'appropriate'?

CHAIR—Can I add to that question? In the past have there been any instances in filling the jobs of secretaries that the right person could not be recruited because of salary constraints? Has that been a problem?

Dr Hawke—The Attorney-General's Department's advertisement at the moment might be a test case for that.

Mr BROADBENT—Because there has not been a mistake previously.

Mr Barratt—I share the Commissioner of Taxation's discomfit in talking about my remuneration, but it is a matter of ascertainable fact that I am being paid very significantly less than I was in my previous job. I consider my responsibilities to be considerably higher.

Mr Sedgwick—So the answer to your question is that it is adequate because we are here, but as to whether it is appropriate or fair, we probably do not feel that it is.

Mr GEORGIOU—Could I ask Mr Woodward a question. You have survived many changes in regime. If you were somebody who was brought into the service in the early 1970s—or whatever the period of time was—into a career service that allowed you to work your way through the ranks or the positions and, when this act is implemented, you ceased being an officer and you became an employee—and it is intended that all positions be open—would you think that the commitments held out by successive governments to you as an individual had been met?

Mr Woodward—I think there are a couple of aspects to that. The first part is what I would have thought in 1961 if—

Mr GEORGIOU—No, I am talking about within living memory!

Mr BEDDALL—Some people were not born in those times!

Mr Woodward—Even going back 10 or 20 years, obviously some people would have been horrified at being faced with the Public Service Act that we now have, but the fact is that there have been numerous changes. I guess I am an example of the surviving classes that have been through those many changes and are prepared to say that what we

need to look at now in the late 1990s is what is needed for the late 1990s and into the next decade, not what was appropriate in the 1980s, 1970s or 1960s.

On the second part of your question: sure, I did join as a career public servant. I expected to last until I was 65, but this new act does not change my expectations. My expectations of how long my career would last probably started to change in the early 1980s when I began to realise that the whole fabric and framework of public service was changing. The expectations that we would last until 65 were probably finished and it was just a question of time.

What I am saying is that those who had their eyes open would have realised 10 or 15 years ago that this was going to happen. Certainly, those people who are coming into the Public Service now would not be surprised that what occurs in the private sector and in the state arena, in my view, is quite appropriate for the Public Service that I can see in the next 10 or 15 years.

Mr Carmody—I will just make three brief observations. I will answer by putting the question around the other way: what would the community think if they did not think that the best people had the ability to join the Public Service to provide the best possible service to the community?

Secondly, I have always viewed that, however long my career in the Public Service is, it is based on how well I do my job and not on any anointed statement because I happen to work for a particular employer. Thirdly, in the days when the Public Service is increasingly being expected to be contestable, to benchmark, if we do not have the ability to get the best people we can to do the job, then we run the risk of even more people losing their jobs.

Senator FAULKNER—Can I just ask about termination. I am going to put this question in the negative, because that is the most likely to elicit an answer. Is anyone uncomfortable with the government's proposal that the position of executive agency heads can be terminated by notice in writing from the agency minister at any time? Is anyone uncomfortable with that proposal?

Mr Carmody—I would only make the observation that it is not a question that applies to a person in a statutory appointment, that is all.

Senator FAULKNER—I gather that there is no-one who is uncomfortable.

Mr Sedgwick—I would have to say that I would be a lot more comfortable if there were another person—the Prime Minister or someone else—involved, but that is a personal preference.

Senator FAULKNER—What I was interested in hearing views on was whether

anyone had the view that there should be some sort of constraint on the agency minister—in other words, perhaps an independent report or something of that sort. Is there any view supporting that sort of proposition?

Mr Sedgwick—I certainly think that in those circumstances a minister would consult the portfolio secretary, and they may consult other ministers. Again, that may well be circumstances that can be covered by code and convention rather than by black letter law because consultative arrangements are not things that you typically embed in legislation. As I say, that is a personal preference.

Mr Woodward—I would have thought that there would be a range of informal consultations, probably that none of us would know about, that would take place in any case. I would not have thought it would be at the whim of someone in the way in which it has been suggested—there would be informal processes.

Secondly, for me at least, if a minister were to tap me on the shoulder and say, 'It's time to go'—even though I am a statutory office holder, and it is a bit more difficult to do that—I would assume that the government had lost confidence in me and that, certainly with the minister who wanted me to go, life would be difficult if not impossible for me. More important to me would be access to an appropriate payment to go early. In other words, if ministers do not want me, ministers ought to pay for me to go—and at an appropriate level.

Senator FAULKNER—The distinction I am trying to draw out—if there is one—is this: if a departmental secretary is to be sacked, that requires a report from the Secretary to the Department of the Prime Minister and Cabinet—or, in the case of the Secretary to the Department of the Prime Minister and Cabinet, from the Public Service Commissioner—but no such report is required in the case of an agency head. I am interested in exploring whether there is a view among any of you that that is an inconsistency or that perhaps some other constraint such as that ought to apply?

Dr Hawke—From my involvement on the fringes of these matters in the past, I recall that there has always been discussion with the Prime Minister and the head of the Department of the Prime Minister and Cabinet about these issues. I assume that would continue to be the case under the new regime.

CHAIR—Could Dr Shergold quickly run through what the procedure is? Because clause 52—without looking at the subordinate legislation—clearly says that the Prime Minister terminates—

Dr Shergold—The distinction is being drawn between the procedure relating to the termination of a departmental secretary, which is set out in some detail in clause 52, where the Prime Minister, having made the appointment, can then terminate it in writing at any time—subclauses (2) and (3) of clause 52 set out the process to be gone through,

which is as Senator Faulkner has set out—and the procedure with respect to the head of an executive agency. In the latter case the person is appointed under clause 60 in the same way—that is, for a period of up to five years, with the same fixed term arrangements, but under subclause (2) the bill says:

The Agency Minister may, by notice in writing, terminate the appointment at any time.

I think a distinction about two things is being drawn. First of all in the case of a head of an executive agency, it is the agency minister rather than the Prime Minister who does the terminating and there is no need to go through the further requirement of getting reports from either the head of the Department of the Prime Minister and Cabinet or the Public Service Commissioner. My own view is that that level of prescription does not need to be written into section 60. For what it is worth, I am quite comfortable with what is in there.

Senator FAULKNER—Dr Shergold rightly encapsulates the concerns I have asked secretaries to comment on. I would like to ask another question in relation to secretaries themselves: is it sufficient safeguard for secretaries against improper dismissal that a report on the proposed termination is required from the Secretary of the Department of the Prime Minister and Cabinet or should that perhaps be a little broader? Should there perhaps be the Secretary of Department of the Prime Minister and Cabinet plus one or two others. I would be interested to hear—let me put it in the negative; I am learning from bitter experience—if there is anyone who is uncomfortable with that proposition in relation to the report from the Secretary to the Department of the Prime Minister and Cabinet or anyone who believes that the bill might be strengthened by broadening the basis of that report to more than one individual?

Dr Shergold—These are the existing arrangements. They are the arrangements that my colleagues at the table are presently working under and have worked under for a number of years now.

Mr GEORGIOU—Dr Shergold, you have expressed a lot of relaxation about this. Why are your proposed conditions of employment different from the ones you feel happy about everybody else having?

Dr Shergold—That is a very fair question.

Mr GEORGIOU—Always.

Dr Shergold—In the bill a great deal of thought went into whether this was appropriate. The conditions are as they are in order to preserve the statutory independence of the Public Service Commissioner, because a great deal of this bill, which removes so much of the prescription, relies upon the independence of the Public Service Commissioner in order to protect the public interest. That is why the conditions are different from those which apply to secretaries or chief executives or heads of executive agencies. However, they are similar to the sorts of arrangements in place for the Commonwealth Ombudsman and the Auditor-General.

Mr Sedgwick—I would like his tenure to be different from mine.

Mr GEORGIOU—Yes, but we have had quite an elaborate argument about how advice is about character and not tenure. Apparently independence is about tenure and not character.

Mr Sedgwick—No, in this circumstance you are saying that you want someone whose job is to worry about the Public Service and the management of the Public Service. As part of the checks and balances within the system, it is, I think, a quite useful protection to have someone who has the time to plan ahead and to provide leadership and guidance to the rest of us in circumstances where there is no concern about tenure and no perception that the exercise of their independent powers can be subject to outside influence. That does not say that all of us need the same sets of tenure arrangements or checks and balances in order to do our jobs. Our jobs are fundamentally different.

Mr GEORGIOU—I do not quite know how to respond to that, because you spoke about perceptions, leadership, capacity to take the long-term view and a number of things which I would expect any head of department or secretary to manifest. In one case you say X is important, and I share that view, because I think the Auditor-General should be appointed for life, but I am a bit archaic in my views on this one.

Mr Sedgwick—But we are, in that sense, in the same situation as the head of any large corporation. It is our job and it is our responsibility to conduct ourselves in the manner that I have just laid out to you. In the private advising world that we are in, you cannot legislate for courage. Frankly, if we are not prepared without tenure to give the kinds of forthright advice and to provide the kinds of long term leadership and management that we need to, we should not have the job.

Mr GEORGIOU—I have got no problem with the proposition that, ultimately, advice in adverse circumstances is a matter of character rather than tenure. But my point really is that, from my limited experience, I have always found it easier giving strong advice when the next step is not ‘see you later’, and I am puzzled that anybody really takes strong exception to that perspective. Maybe you are talking about different balances, but I am certainly not buying the absolute that advice is a matter of character rather than tenure.

Mr Sedgwick—But I think you can also make the negative case for that: that tenure does not necessarily lead to somebody who has either got the capacity or the willingness to give the advice that needs to be given and, frankly, in those circumstances the person needs to go because they are not doing anyone any good, including themselves. If we do not have people of character who are prepared to put aside the fact that they do not have tenure, then, frankly, we do not want those people running the Public Service. If they are not prepared to put their job where their mouth is, we do not want them.

Mr GEORGIOU—Yes, that is true, but we are also talking about the structural conditions that underpin the giving of advice. Anyway, I do not think we are not going to resolve that one.

CHAIR—Do you wish to comment, Mr Barratt?

Mr Barratt—I was going to respond to an earlier question about expectations being fulfilled. May I now respond to both questions put by Mr Georgiou?

CHAIR—Yes.

Mr Barratt—If I may go to your earlier one, Mr Georgiou, it may or may not horrify you to know that I, too, joined the Public Service in the 1960s.

Mr GEORGIOU—You both look very young!

Mr Barratt—It was at the age of 22 in 1966, and by lunchtime on the first day I had been asked to make a decision, which I supported with a signature, as to whether I was going to retire at 60 or 65. I think it is a wrong workplace culture to have a focus on retirement on the first day of your working life. I am making the point—and it is not as facetious as I am sounding—that the expectation was that you were there for a career for life and that it would be an unusual person who left. In fact, the superannuation arrangements of the day made you a pretty unusual person if you left after having worked for a few years because it became increasingly financially disadvantageous to do that.

Personally, I never had any problem with the idea that the Australian Public Service should be open to any citizen of Australia who wished to apply for a position. So the notion that jobs should be closed, except in the case where you could prove to the Public Service Commissioner that it was unlikely that there was someone in the service who could do the job, was an offensive one and I think the opening-up is a good thing.

On the question of whether the expectations of people who join in those circumstances were fulfilled, I frankly think that pass was sold in the mid-eighties when there were wide-scale redundancies of people who had joined under those circumstances. They suddenly discovered that they were being asked, or put under very heavy pressure, to leave in their mid-fifties so I do not think that is a threshold that this bill is leading us to. That is the comment that I wanted to make about that question. I have forgotten what the second question was.

Mr GEORGIOU—It was a question about the issue of frank and forthright advice.

Mr Barratt—I wish to make a very brief comment on that. We are not talking about department secretaries who are employed at the minister's, the government's or the Prime Minister's pleasure. We are talking about people who are given a term appointment

of five years so there is a requirement for a fairly conscious act of termination. So in doing the things that we are asked to do in the bill of taking the long term view, et cetera, we at least start that five year period with the reasonable expectation that we can take a five year view and that we will not be capriciously removed.

Mr GEORGIOU—I have got no problems with that. I put people on contract in a statutory authority in 1980 for three years non-renewable—one would have to apply for the job again. So I have got no problems in principle with that, but I do have a problem when people make it an absolute issue of character. I do have genuine problems with that, but I will let that issue go.

CHAIR—This committee has heard evidence that there are fears that this bill will politicise the Public Service because of fears of termination and of patronage to be afforded to appointments. Does anyone have any comment on that?

Mr Sedgwick—Afforded to whom?

CHAIR—Appointments.

Mr Sedgwick—I would come about that issue in a different way. If we really wanted to exercise patronage in the present system, I reckon we could find a way to do it. We would have to work fairly hard at it, but it could be done if you really wanted to. I think the fact that we do not says that we know that, at the end of the day if we do not get the right people into the job and if we do not motivate, manage, lead and give people the opportunity to develop, the organisation will not succeed. Is it easier under this set of arrangements to act capriciously? Yes. Would it be sensible for somebody to act capriciously? No, because if they do they will rapidly lose the trust of their staff and therefore their capacity to deliver.

Dr Boxall—This bill puts accountability on the CEO or the secretary. That is a protection because any secretary that were to fill staff positions with political hacks or other appointments who could not do the job simply could not deliver the output required of their agency. They themselves would be held accountable for that and could be in deep trouble. In this bill it is written for the first time that secretaries are not to make appointments under political direction. So that is in there for a start. It is not in the current act. The other thing is that, to repeat, this bill makes secretaries accountable. As Mr Sedgwick said, if they were not to staff their agencies with the appropriate staff they would be unable to deliver the results.

Mr Barratt—The selection of staff for appointment is, under any system, going to be an imperfect process because it involves judgments of one group of people about a group of candidates who are better or less well known to individuals on the committee. An exhaustive process of examination of the merits of the candidates can throw more light on that but at the end of the day it comes down to a matter of judgment. Because it is a

matter of judgment it is possible under any process laden process to contrive the process to show that a particular candidate who has the necessary credentials but who is not necessarily the best is, in fact, as a matter of judgment, the best. You cannot set up a process that is really secure from patronage.

This bill makes the process much more secure against patronage for the reasons that Dr Boxall has given. Under this bill there is nowhere for a chief executive to hide in a case of underperformance of the agency—you are responsible for appointing, managing and training the staff and for the management of the finances. There is a very powerful incentive under this bill for chief executive officers to make sure that there are processes to make the best judgments you can about the merits of candidates.

Mr GEORGIOU—The only quality of advice that is specified in the 'APS Values' is 'timeliness'. I do not know how to phrase the question so as to evoke a response from individuals, but is it appropriate that there should be some other adjectives like 'strong and effective' advice? I refer you to page 7 section 10 part (f).

Mr Woodward—I think that you can get a series of reactions from us. My personal view is that a phrase like that could be put in but whether it would actually add anything to what we already have, I have some doubts. The points have been made earlier about the history and the current circumstances of this so-called 'frank and fearless' advice. I cannot see that the mere addition of a couple of words is going to add significantly to the strength—

Mr GEORGIOU—Let me ask it another way. Since we are going so far as to codify APS values, don't you think that the quality of advice that is expected from that Public Service should be specified?

Mr Woodward—The code of conduct that I see written into the act covers all the things that I would expect—and, I would have thought, the community could expect—of a professional, objective, well informed public service. The code of conduct as it is supplemented by the commissioner's direction gives all the strength that, in my judgment, is necessary.

Mr Carmody—The total suite of values and issues like 'apolitical, impartial and professional manner' together make it inescapable that you operate in a professional manner.

Mr BROADBENT—I want to go back to something that was raised before. Some 15 years ago Victorian shire secretaries across the state were arguing that everybody except the shire secretaries should have their tenure removed from them. Is that what is happening here? I would remind you that that is 15 years ago. I am surprised that we are having this debate now when so much has happened, and it started with local people deciding that they needed to make a change at a very lowly level. That was in the early

1980s. The arguments that I have heard today about tenure seem to confront one another.

Dr Shergold—There are sound reasons, which have been portrayed by many people who have presented evidence to your committee, why the Public Service Commissioner and perhaps other statutory office holders such as employee ombudsmen or merit protection commissioners should have a different form of tenure from secretaries. The difference is not that great. The Public Service Commissioner is appointed for a five-year period on contract. The difference is, of course, that the commissioner can only be removed by a vote of houses of parliament and that is what gives the additional security. There is a reason for that and much of the evidence given before your committee has suggested that the commissioner should continue to have that independence, which is represented by those tenure conditions, in the same way that it is vital for the Commonwealth Ombudsman or the Auditor-General or, perhaps in the Parliamentary Services Bill, the clerks to have that independence. It is a matter for your consideration.

I would only say to you that, from reading the evidence that has already been given before you, most of it seems to be about trying to strengthen the role that the commissioner would play and trying to make the commissioner's role with respect to secretaries and chief executives more prescriptive. I personally believe that that is quite wrong. I think that managers must manage and that secretaries must be accountable. Nevertheless, within the framework of this legislation—which does set out the public interest as never before, which makes it quite clear for the first time that we are to be an apolitical, impartial service—there is a continued value in the tenure of the Public Service Commissioner being significantly different from that of secretaries.

Mr BROADBENT—But you do not mean that for the first time you will be an apolitical, impartial service?

Dr Shergold—No, I do not believe it will be for the first time an apolitical, impartial service. But the concerns that have been raised have been whether, with the move to make our employment conditions more flexible and to make us more competitive with the private sector, we will lose the values and traditions of public service. I think that is why this present bill is so important. It sets a framework of values and conduct which makes it quite clear that that is not to be the case.

Mr BEDDALL—Dr Shergold, if that is the case in relation to the special conditions for the Public Service Commissioner, could you take that one step further—you mentioned the Auditor-General; we took evidence on that—and say that perhaps the Public Service Commissioner should not be eligible for reappointment, that a fixed term should apply, full stop?

Dr Shergold—I think that is possible. If you were considering that, you would also want to consider the length of tenure. If you are going to make comparisons, for example, with the Auditor-General, the length of tenure in that case is in excess of five

years. I think that is a possible approach.

Senator FAULKNER—This is a very slow full toss; it is about a foot outside the off side. I would like to know whether any of the witnesses at the table have any concern about the two bills or the subordinate legislation that is before the committee that they might care to share with us?

Mr Woodward—I will make one quick observation. For my own part, I have a copy of the subordinate legislation. I could not, in all honesty, say that I have studied it, so I certainly would not want to give the sort of undertaking that you are suggesting so far as subordinate legislation is concerned. So far as the principal legislation is concerned, so far as the essence of the bill is concerned—clearly, there can be debates around the fringes, as there have been—I for one am supportive of it.

Mr Sedgwick—I find myself in the same position in respect of the subordinate legislation, so I am going to enter my qualifier as well. I do not have great difficulty with what is here as a matter of law. I would, though, encourage this committee and the parliament to try to forge as bipartisan a view as possible about the conventions, the expectations, that should surround the application of the bill when it becomes law. At the end of the day, what is important to us is that we have a clear understanding of what is expected and of how the rules will be applied. From where I see it, the service will be far more effective if that understanding is bipartisan.

Dr Boxall—As I said before, I support the bill. If anything, it is too prescriptive. There are examples of where it could be less prescriptive, but I accept that there are balances in these matters.

Mr BROADBENT—Dr Shergold, obviously this whole process has been driven by governments coming down towards you at one stage and contracting out, coming to you like a rush from the bottom. Do you think the crush in the middle has now gone far enough and will deliver the outcomes that are desired by both ends of the spectrum?

Dr Shergold—I am not sure what is obvious. If it is being put forward that it is obvious that this process of public service reform generally is being driven from the top down, I would be hesitant about that. If I look at the changes that took place through the 1980s and that are taking place now, I believe these are changes which, to a considerable extent, have been driven by public servants themselves with the support of governments. Indeed, I would see the present legislation that is before you in the same way. It certainly was supported in general terms by the previous government, as it is by this government.

If this meeting this morning has conveyed anything to you, I hope it is a strong view, not only mine but also of many of my colleagues and many administrative service officers, that there is a need to change the way we do our business. It is self-recognition that we need those reforms, we need that employment flexibility, if in fact we are going to

be able to have an efficient and effective and ethical public service. So I do not think it is obvious that it is being simply driven by government. Over the last 10 years I have seen a remarkable success in a partnership between governments and public service in terms of the reforms that are necessary.

Mr Carmody—To make one observation, I think what is driving it is community expectations of the service they get from the public sector. All these things are directed at that, and at providing as good a level playing field for us to deliver as possible.

CHAIR—To make a final comment in winding up, at the electorate level and here in Canberra, we are told that there is a morale problem in the Public Service at the moment. I cannot compare it with a morale problem 10 years ago. How do you, as secretaries to departments and as the Commissioner for Taxation, see this bill providing a framework where the morale within the APS can be improved?

Mr Barratt—I think I addressed that in part in my opening statement; that is, an important part of the morale of the Public Service over many years is what I perceive to be the fairly low public esteem in which federal public servants are held. Part of delivering on higher public esteem is higher performance in the Public Service. People come to work wanting to do a job which is valued, wanting to do it well, wanting to know they have the skills to do it well, wanting it to be a measurably good performance and to have customers say, 'You deliver to us a good service.' I think that is the way to address morale and it is also the way to address job security. People will have the security of knowing that they do a job that is required to be done and performed to high standards.

Dr Boxall—As I said in my opening statement, I think this bill will strengthen the Public Service and, in that, will also help to raise morale. It will allow managers in the Public Service—not just secretaries—to create and sustain high-performing organisations; organisations which are held in high esteem by the public, by their colleagues and by other opinion makers. These flexibilities allow that to happen. If we continue with a system where we are rule-bound, as some of my colleagues have said, we will be unable to make that leap.

Mr Woodward—I have one quick observation. I do not believe that morale can be treated in the way in which your question implied. I think the morale situation differs between agencies and within agencies. In my own organisation—and this is my personal assessment; I might be wrong—the morale in Customs was far worse immediately following the Conroy report, which slated Customs, than I can see flowing from the passage of this bill in its present form.

Mr Sedgwick—I agree with everything that has been said, and I think there is one further point. Morale is a very complex issue; a many-layered onion. To have the capacity to address questions of performance and underperformance with the most flexible, least legalistic approach that is possible under this bill—compared with what we have got

now—in some cases can assist in managing circumstances in which people do not at the moment believe they have their best shot to do their job well. That is not the only issue but I would just add that to what we have said.

Mr Carmody—It is clear that over a number of years there have been changes, and security in the general community is an issue. There is no doubt that many people in the public sector felt they had that right.

It seems to me that what these bills do is position us for a different Public Service; one where morale, but also people's commitment, comes from the ability to demonstrate that they are as good or better than others, which, as a result, raises the level of public service and the esteem for those who perform that role, and gives a new sense of security which comes from how well you do your job rather than who you happen to work for.

I think this suite of changes, including the Public Service Bill before you, provides the framework for all of us to do that. The challenge is to get on and make use of them.

CHAIR—That concludes our hearing this morning. I would like to thank each one of you sincerely, on behalf of the committee and the parliament, for giving us your time and your perceptions of the Public Service Bill.

Short adjournment

[11.55 a.m.]

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CHAIR—Sir Lenox, Mr Ives, Mr Volker, Ms Weeks and Mr Whitton, could I please ask in what capacity you appear before the committee.

Sir Lenox Hewitt—In a private capacity.

Mr Ives—In a private capacity.

Mr Volker—In a private capacity.

Ms Weeks—In a private capacity.

Mr Whitton—In a private capacity.

CHAIR—Thank you. The committee circulated copies of the commissioner's directions and the Public Service regulations for comment. Several supplementary submissions have been forwarded to the committee as a result. Today we wish to build on that information by canvassing your concerns with the subordinate legislation. Could I start by asking anybody who has previously given evidence before the subordinate legislation was available whether they wish to amend their view or any comments having now viewed the subordinate legislation?

Mr Moylan—From the point of view of the ACTU, the subordinate legislation does nothing to relieve the concerns which we expressed in our substantive discussions with you. There are a number of matters where we have not seen regulations. We have only received regulations in respect of the review process. We have seen some drafting instructions in respect of other matters. Some of those matters relate to matters which we

did raise with the committee before.

CHAIR—Does anybody else wish to comment? Are there any other matters that you wish to raise, having viewed the commissioner's directions? There being no comments, Dr Shergold, would you like to respond to Mr Moylan on that issue before we start our questions?

Dr Shergold—I am sorry. Is there a particular question or comment from Mr Moylan?

CHAIR—Could you repeat your concerns about regs?

Mr Moylan—Basically, we did raise a number of concerns with the committee. It was said in respect of some matters that we should prudentially await the production of the regulations or the drafting instructions. In response to your question, having seen those documents which have been available has not removed the concerns we have raised previously with the committee. In fact, in respect of some matters, such as the merit approach to the review process, our concerns have been heightened.

Mr GEORGIOU—Could you elaborate on that?

Mr Moylan—We did provide the secretariat with a written submission which does focus on a number of matters. There are a number of problems in respect of the question of merit and employment. You will recall that we, and I think everyone else who was at the table last time, except the Public Service and Merit Protection Commission, sought to have merit provisions in the legislation. The scheme which is now put up does propose the avoidance of merit selection for vacancies of up to 12 months.

There has been inserted a loophole of the undermining of merit by something called the effective and efficient operation of the agency, which I understand Peter Shergold, in his evidence to you a couple of weeks ago, took to include the cost of transferring officers of merit from one location to another. It is also a loophole by saying that merit is something to be taken into account. We are also concerned that the definition of merit includes relevant, personal qualities which can be quite subjective. I have noted that that has been picked up in other submissions.

In respect of the review processes, we have supported clear legislative rights for appeal. We have supported continuance of an independent process of review. In our written submission, we expressed concerns about the narrowness of scope for the lodgment of reviews. We expressed concern about the provision that, if an employee has previously applied for a review of the action, they are unable to have the matter reviewed.

The process which is contained in the legislation is a very complex process and an uncertain one involving the agency in which the person works, the public sector Merit

Protection Commissioner and independent reviewers. It is a very convoluted arrangement which does not sit well for those who are advocates of certainty. Also, the processes for the review have not been adequately articulated. They are some of the concerns which we have outlaid in our written submission to the committee.

CHAIR—Thank you. I am proposing to cover the topics today in some ordered fashion. We will start with the question of diversity in employment, then go to merit, termination of SES employees, whistleblowing and then the transitional provisions in relation to mobility. In relation to the question of diversity, do the witnesses here currently believe that the direction on diversity in employment provides a framework to ensure employment equity and diversity in the APS? That is a general question.

Ms Forward—Before people answer that question, is external review one of the matters on your list? If you read it out, I missed it.

CHAIR—Yes. I will read it again. We have diversity in employment, merit in employment, public sector whistleblowing, senior executive employment and the Public Service regs. That is where the review mechanism is covered.

Ms Forward—Yes, it is. Right.

CHAIR—Ms Macintyre, you stated previously that there was a need for the bill to specifically state that it is subject to Commonwealth anti-discrimination legislation. The commissioner's directions on workplace diversity specifically state in an annotation that employment decisions must comply with the Racial Discrimination Act, the Sex Discrimination Act and the Disability Discrimination Act. In light of this, do you still think it is necessary to mention these acts in the bill? If so, why?

Ms Macintyre—No, I do not think it is.

CHAIR—So you are happy for it to be in the subordinate legislation.

Ms Macintyre—Yes.

Mr Baxter—I have had only a short opportunity to read the bill. Having had experience, particularly at the state level, with this issue and having seen the conflicts that can arise in particular agencies that suit particular interest groups—let me, for example, use Aborigines—you may have to look carefully as to whether clause 2(3) under chapter 2 may work contrary to the interests of a particular group that you are aiming to, in fact, meet the requirements for.

My view would be that a lot of the commissioner's directions are actually still too prescriptive and may get you into a situation where somebody wanting to play mischief—for example, in the area of Aborigines—may well find that by exploiting the provisions of the directions they can actually hold up sensible appointments of people who may be the

most appropriate and would get it totally on merit.

It also seems to me that the prescription that is under 2(3) generally appears to run into problems in that, if merit is the overriding principle, it raises the issue as to whether or not you can prescribe a number of other of these things. I would have thought that—and it is a general observation on both the proposed bill and some of these directions—you are getting very prescriptive.

Mr GEORGIOU—Mr Baxter, I want to ask a question on your point about how, if these directions were used mischievously, it could result in perverse effects. Does that mean we would run a risk of not hiring as many Aboriginals as we would in the absence of that? Has that ever happened?

Mr Baxter—Yes, I have seen it done. It certainly happened in Victoria. I have seen it happen in other public services that I have been providing advice to. It only needs one or two individuals who know how to manipulate either the regulations or the appeal provisions, and it can effectively be quite perverse.

Mr GEORGIOU—So there is a situation where, but for the existence of similar regulations, we would actually have more indigenous Australians in the Public Service?

Mr Baxter—No. In fact, in areas such as the Department of Aboriginal and Torres Strait Islander Affairs, you may well find that you are placed in a position where you would have less than you would wish to see.

Mr GEORGIOU—Not less than you would have got in the absence of the regulations—is that what you are saying or not?

Mr Baxter—Yes.

Mr GEORGIOU—So you would have more without the regulations than you would have with the regulations?

Mr Baxter—Yes. In other words, you should be putting the emphasis on the appointment by merit. In the case of a department like that, part of the merit criteria may well be the capacity of the applicant to meet the conditions of whomever they are serving, particularly if it is a service delivery department.

Mr GEORGIOU—Mr Baxter, for Dr Shergold's benefit, could you tell us how this perverse utilisation of the regulations has worked just so we can be alert to it? I would like to hear it too.

Mr Baxter—My view would be that the whole of 2(3) should be far more general rather than being as prescriptive as it is. In other words, it should say that there should be

application of the merit principles.

Mr GEORGIOU—But how have these similar provisions been manipulated to defeat their substantive intention?

Mr Baxter—What has happened is that somebody has said, for example, if I take the first dot point, that there should be provision that the program is available to all agency employees. Someone turns around for a position that may be—let us say a counsellor—in the area of a Torres Strait Islander individual. That person has undeclared but strong views about that class of people and ends up saying that he/she should be considered and, in fact, then takes the appeal system through and effectively frustrates the capacity to appoint the person who would be the most appropriate person in that job.

Ms Forward—There is no proposal for an appeal system which would seem to remove that concern.

Ms Caird—I would also like to add our concern that there is no requirement that in taking in new employees the diversity of the background of the community is, in fact, accommodated. So the commissioner's direction is written in a way that deals with existing staff. When it comes to the point of encouraging diversity in the work force coming in, that is an optional position, and it is not a requirement, that the APS work force does reflect the community it serves—a significant defect in our view. Our second point would be the lack of enforceability about any of these things. There seems to be no sanction or power other than some report that is provided in an annual report, but nothing seems to happen beyond that.

Senator FAULKNER—In relation to 2.4(1), how appropriate is it for an agency head to have the responsibility of evaluating his/her own workplace diversity programs? Is there anyone who can express a view on that? It is a concern that I have, but I would be interested if that view is shared by anyone.

Dr Shergold—I am happy to answer that and, if I may do so, also respond to what Wendy Caird has said. First, in terms of the chapter 2 'Diversity in employment' not applying to present employees, that is actually not right. As you look at 2.3(2), it makes it clear there that it relates not only to employees at the moment but to those entering the service.

Mr GEORGIOU—It is 'must' in the first instance and 'may' in the second.

Dr Shergold—Yes, that is correct. In terms of 2.4(1), I think probably to ask an agency head to evaluate the effectiveness of the agency's workplace diversity program is a useful exercise in indicating how that program has been tailored to the particular needs of that work force. I think it is important that that evaluation by the agency not be sufficient. That is why 2.4(2) makes it clear that information also has to be given to the Public

Service Commissioner for the annual report on the state of the APS. I think it is those two reporting requirements that will give effect to reporting in the workplace.

Senator FAULKNER—But one assumes that the agency head determines the performance indicators or the outcomes upon which they base their evaluation. Is that right?

Dr Shergold—There are two ways that it is important to evaluate. The first is in terms of the particular interests of the agency. This morning we have already heard that there is great diversity between agencies and, of course, within agencies, which is why these programs must be tailored to the people who work there or who may work there in the future.

However, some of the evidence that we have already heard and submissions that have been received by your committee from, for example, the Women's Electoral Lobby, have made the point very strongly that there needs to be a way of comparing outcomes between different agencies, and that would be the purpose of the State of the Service Report.

Senator FAULKNER—With respect, that is not an answer to the question I raised about the agency heads themselves determining performance indicators and outcomes for their own evaluations. I appreciate the information you have provided, but it is a completely different issue to the one I raised.

Mr Volker—There are a couple of points I would like to make about that. Firstly, it is not at all clear what the criteria would be for evaluation. You are likely to get a very wide diversity of evaluations undertaken, which may not be helpful from the point of view of the Public Service Commissioner. It might be helpful to have some guidance on what the criteria are without going into a great deal of detail.

My second point is that I am not altogether clear in my own mind whether it is a good or bad thing for agency heads to evaluate the effectiveness of the agency heads' own workplace diversity program. I think in most instances it probably is reasonable that the agency head have an evaluation undertaken in accordance with certain criteria.

The third thing is that as it reads at the present time, it does look as if the agency head, or presumably a delegate, must evaluate. In some instances, agency heads might find it more helpful to have an outsider evaluate. Perhaps the wording should be broadened to include that.

I will confine my comments to this particular point at the moment. This could be an arduous exercise. Unless you know what you are doing and unless there were criteria, there could be an awful lot of wasted effort go into this for no very good purpose. I just wonder whether the commissioner could give an indication of whether he might be

prepared to issue some very broad guidance on what the criteria would be.

Dr Shergold—I think there is a real problem with that. At the moment we have a 1922 Public Service Act where secretaries are already required to report on EEO and report, for example, on access and equity. That is part of what they do now. Even in the 1922 act and its subordinate legislation, we do not set out all the detail of criteria. I would be very loath to start to move down this path again of being so prescriptive within the legislation. What I think is being requested here is a higher level of prescription than presently exists.

Senator FAULKNER—What I am grappling with, Dr Shergold, is to understand what your vision is for this part of the annual report. What would you expect to see in the annual report and what will you be requiring from agency heads as input for your report which you referred to, properly, in 2.42?

Dr Shergold—The first thing that I would be wanting to see is that a workplace diversity program is not considered to be a piece of paper which can be placed within the annual report. A workplace diversity program is a continuous program of addressing workplace diversity issues. What I would expect to see in the annual reports of various agencies is a description of the program that has been set up within those agencies and why it has been developed and framed in the way that it has.

In terms of a report on the state of the service, I would hope to be able to report on outcomes rather than process. In a document that I have already tabled on proposals for the State of the Service Report, I have indicated that I think there is considerable merit in the view put forward by the Women's Electoral Lobby and others that there should be the development of an equity index which allows comparisons on outcomes between different agencies.

I am loath to go beyond that because at the moment there are at least three existing indices, all of which have their strengths and weaknesses. Certainly over the next six months I would like to explore which would be the most appropriate index to be used within the context of the APS.

Senator FAULKNER—Currently, there is no requirement—and I think this was raised earlier by one of the witnesses—for agency heads to consult with staff about the development of the workplace diversity program. Do you think that proposal has some merit?

Dr Shergold—I cannot believe that would be the case because, if you look at clause—

Senator FAULKNER—It is the case, isn't it?

Dr Shergold—No, I do not think so. I think clause 10, APS values, makes it quite

clear that the APS will operate on cooperative workplace relations based on consultation and communication. I frankly cannot envisage a situation where a workplace diversity program would be delivered without taking cognisance of that value which is in the legislation.

Senator FAULKNER—But it seems to me that you could get away with anything here. An agency head could put in a couple of bland sentences and fulfil the commissioner's directions. They could bung a couple of sentences in the annual report, and you have got away with it.

Dr Shergold—That very much understates, I hope, the role of parliament and of parliamentary committees. I would have thought any secretary appearing before, for example, a Senate estimates committee would be asked why there was only a two-line statement against workplace diversity in the annual report.

Senator FAULKNER—So we have to get in the hammer, as opposed to your directions being clearer.

Dr Shergold—I think the role of parliament is important and is made important within this bill. But that alone is not sufficient, which is why commissioner's direction 2.4(2) makes it quite clear that, in addition to that scrutiny, there is to be an evaluation of the workplace diversity programs comparing agency performance in the report on the state of the APS. I would have thought that those two ingredients together give considerable force.

Mr GEORGIOU—Could I just ask whether or not this represents a diminution of present reporting requirements? I am having difficulty understanding where we are moving from.

Dr Shergold—I do not think this would be a diminution of present reporting requirements which require agencies to report on their own programs and, at the same time, the Public Service and Merit Protection Commission to put out a report on EEO. It is similar, except that the framework for workplace diversity is rather broad.

Mr GEORGIOU—So, at the least, this is not going off in a different direction from what we have at the moment. Is that reasonably accurate?

Dr Shergold—It builds upon what we presently have and, I believe, is an important new initiative.

Mr GEORGIOU—Could you develop that important new initiative? I think that may help me to come to grips with Senator Faulkner's thrust.

Dr Shergold—This initiative challenges departments and agencies to draw the link between the performance they are trying to achieve and managing workplace diversity

effectively. Indeed, it goes beyond that because it emphasises that workplace diversity is a source of innovation and creativity, if properly managed. That is why the notion of a workplace diversity program is set within the legislation. It does, of course, stand out within the Public Service Bill. It is one of the few key pieces of prescription which are actually placed within the legislation, and that reflects the high importance which is given to it.

Mr GEORGIOU—If the parliament or Senate estimates is remiss in picking up departments which have two lines on their diversity program, what will the Public Service Commissioner, given his particular obligations under the statute, do to them?

Dr Shergold—It is clear that the *State of the service report* on the APS will make comparisons between agencies and will identify poor practice—but, hopefully more effectively, will identify good practice on workplace diversity in various agencies.

Senator FAULKNER—How will you deal with deficiencies when you find them?

Dr Shergold—There are a number of ways of dealing with deficiencies. The first way is through the direct relationship between the commissioner and the head of agency; if that fails, in the *State of the service report*; and, of course, as we went through the last time we met, the legislation provides the commissioner with the ability to make reports to the government through the minister—and, indeed, if necessary beyond that, report to parliament directly.

Mr Baxter—Knowing of the problem that Senator Faulkner sees in this issue, I would have also thought that, if you are looking for the performance by the chief executive and setting a set of key performance indicators, under the provisions of the proposed bill the Public Service Commissioner would have the power to recommend to the Prime Minister, presumably with the assent of the Remuneration Tribunal, for a variation in remuneration in the event of there being a gross failure to not only meet this KPI but a number of other KPIs. One of the advantages that this bill—and, impliedly, the subordinate legislation—seems to provide is that capacity to have that as an effective sanction.

Senator FAULKNER—But that just flies in the face of the whole thrust of the new bill. To start off with, the whole point is that the performance indicators themselves are in the lap of the gods. It seems to me that the agency head is determining his or her own performance indicators and outcomes. Secondly, what on earth it has to do with the Remuneration Tribunal is beyond me. But if you can explain it to me, I would appreciate understanding it.

Mr Baxter—First of all, I would understand that, under the proposed bill, the chief executive would discuss with the minister—and, presumably, that would be discussed ultimately at cabinet—what the key performance indicators would be. Secondly, in relation to remuneration—

Senator FAULKNER—I do not think that is right. That is not right, is it, Dr Shergold?

Dr Shergold—I am sorry, I would have to take the question again.

Mr GEORGIOU—Can you dock secretaries' pays—and that is putting it crudely—if they do not perform?

Senator FAULKNER—That is a separate issue though, Mr Georgiou, as you know; that is the second leg of the daily double.

Mr GEORGIOU—But you cannot do it, so it is okay. I was just starting to believe that you would need protection from a Governor-General's appointment—the first five-year contract being changeable only by the two houses of the parliament.

Mr Moylan—I would add that I am of the view, as indicated in our submission, that the provisions in the commissioner's directions represent a considerable diminution from the legislative requirements under what Dr Shergold calls the 1922 act. The provisions which were inserted in the act in 1984 should commend themselves to any managerialists at this table. They set out what a program is and stipulate that the program needs to include:

(a) the particular objectives to be achieved by the program;

(b) the policies to be adopted, and the procedures to be followed, to achieve those objectives;

(c) the quantitative or other indicators against which the effectiveness of the program is to be assessed; and

(d) the allocation of staff and other resources to the task of giving effect to the program.

Then it goes on to say that the program will include examination of practices in relation to discriminatory matters, elimination of those practices, et cetera. It does provide a mechanism for consultation with unions. It does provide an obligation for the secretary to forward the proposed program to the Public Service and Merit Protection Commission. It does provide powers for the commissioner to seek changes in the program which comes. It does provide for the commission of powers to seek a review of the programs put forward by agencies.

There are very considerable provisions in this legislation which receive no recognition at all, either in the current bill or in the guidelines. On the issue of the capacity for agencies alone to promote equal employment opportunity or diversity, I would expect that there will be objectives which governments have.

The coalition went to that election supporting an EEO strategy, which I think Mr

Ives would be familiar with. It was supported by the previous government, which set targets across the service. For example, there were various programs. In the newspapers at the weekend, traineeships for Aboriginal and Torres Strait Islanders were advertised, and one expects that governments will have those sorts of programs which they will want to see implemented across the Public Service, and that that not just be a matter for the discretion of agencies.

We have advocated that the legislation look at the provisions in the Equal Employment Opportunity (Commonwealth Authorities) Act which are similar to those which are in the existing act, but I think it would be very prudent for the committee to be quite well informed as to what the existing provisions are because what is being proposed is walking quite dramatically away from those requirements.

Dr Shergold—This is simply about cultural change. It is absolutely true that there are pages in the amendments to the Public Service Act 1922 which deal with every facet of EEO reporting. We even have a clause in here which notes:

Where the Minister for Defence, by instrument in writing, declares that, by reason of defence or civil emergency, it is necessary for staff employed under the *Naval Defence Act* . . .

And so it goes. The whole purpose of this new legislation is to move away from that type of prescription.

I beg to differ. I think 2.3.1 sets out very clearly what the criteria are for a workplace diversity program that is to be available to all employees—EEO is to be available and within that program there have to be mechanisms to allow all employees to develop their skills, to balance work and family, and so on.

I would have thought that in what is presently included in the 1½ pages of chapter 2 of the directions there is sufficient direction to secretaries. I feel confident that if the group of six secretaries were here and we asked them, 'Is there sufficient direction in here for you to develop a workplace diversity program and to report upon it?', the answer would be in the affirmative.

CHAIR—We might do that in writing.

Mr Ives—My name was mentioned, partly in vain, so I will just correct a couple of points. The definition of the old EEO program was in the act, but it did cause us problems because it was input oriented not outcomes oriented. We modified that approach and we set out, with the government's support, an EEO strategy which focused on broad performance criteria. We asked departments to report against these criteria.

I think an evolutionary approach is desired here. What is in the instructions would, it seems to me, be reasonable if the word 'outcomes' was added somewhere to 2.4.1—that

the agency head should not only evaluate the effectiveness but should be reporting on the outcomes, and the performance criteria should be generally available through the commissioner or otherwise; they should be a matter of general consensus. However, I think we would want to move on from what was in the old legislation. We did have problems with that.

CHAIR—As there are no further questions on the question of diversity, we will move on to the question of merit.

Senator FAULKNER—In the first instance, I would be interested in hearing some reactions from around the table. I thought that might be a useful place to start.

Ms Macintyre—The Women's Electoral Lobby has considerable difficulty with the definition that has finally been arrived at, particularly as it now no longer aligns with the three points that were included in the original as core aspects of merit. If the current draft were to be adopted, WEL would not choose to be associated with that definition.

One of the reasons is that we see those qualifiers as tending towards prescription and, if the aim of merit is to open up the labour market, then these are in fact restricting it. We also think that they can limit the changes in cultures in departments through the recruitment of people who fit only particular models, and that is not what the merit principle was designed to do.

Sir Lenox Hewitt—Before commenting, I have an opening question derived from my supplementary submission. I discovered in this draft direction the requirement that appointments, engagements and promotions for the future be open to all Australians, whether or not they are members of the Australian Public Service. I have searched the documents that I have had access to and I do not know the reason for this direction, so I would like to hear the reasoning behind and the reason for those two clauses before addressing them.

CHAIR—You might be able to help, Dr Shergold.

Dr Shergold—The reason for those clauses is that there is a view that whatever we have done on merit until now has been extremely restricted. When we say that positions are available on merit, in at least three-quarters of instances we then quickly go on to define that merit by saying that it only applies to those presently within the APS. The intention of the clauses to which Sir Lenox has referred you is to ensure that those positions which are made available in the *Gazette*—and I think there are still about 8,000 such positions a year—will from now on not be able to be restricted to members of the APS. In order to widen merit and to open up the APS to the community, those positions are to be made broadly available.

Sir Lenox Hewitt—That confirms my suspicions and the comment that I made in

my original submission about the bills themselves which were referred to you. In my original submission I said that the bill, by its terms, will destroy the Australian Public Service as a career, with inevitable consequences. Listening to the reason for these two clauses—that they should ensure merit—is very enlightening now that the draft subordinate legislation is available. These two clauses are the nails in the coffin of the Australian Public Service as a career. Let us not make any mistake about that. Every engagement will be affected by them.

Up until now engagement has been provided at distinct levels: school leaving level, university level and at the level of particular posts and particular qualifications. Now it is proposed that there will be no Public Service as a career. Every person who is currently a public servant entered the service upon certain expectations of conditions of service. Those are all to be destroyed, partly by a draft direction of the Public Service Commissioner. These are people who chose a life-time career. I notice that the minister is still saying in his interviews that this will give a career. That is an abuse of the English language. This is not a career. Every promotion is to be available to every Australian. I do not think I am exaggerating, Mr Chairman. What you are confronting and what we should be talking about is not the minutiae of trivia. We are talking about the destruction of the Australian Public Service as a career.

Mr GEORGIOU—Dr Shergold, how much does this develop what has already been in train for some protracted period of time?

Dr Shergold—It clearly builds upon it. Since 1984 we have had a senior executive service in which all the positions are open to the Australian community and not just to public servants. That is the basis on which people compete for those positions. Even within that framework the very large majority who win positions in the SES are already members of the APS. I do not think that opening the SES to the Australian community has undermined a career service.

Mr GEORGIOU—I would like to develop that, because Sir Lenox is making the point that the career service is being fundamentally undermined by this. My view would be—and I ask for comment on this—that, if there is a notion of a career service, it is a service which rests on being able to move progressively through a series of positions without contest except from people within the APS. In so far as that is true, that involves closed competition for the SES. In so far as closed competition for the SES amounts to a career service and in so far as that was ended in 1984 then, in so far as there is a point, that process was implemented through the 1980s. It is not being implemented through this bill.

Dr Shergold—That is absolutely correct.

Mr Gourlay—I would like to make a couple of brief comments on this issue. To establish my bona fides, I might say that I have been involved in recruitment work for the

last 10 or 15 years and I have had the opportunity to see literally hundreds of the results of outside advertising. It is certainly true, as Dr Shergold is suggesting, that outside advertising does in certain circumstances add to the strength of the merit competition but in most circumstances it does not. In many circumstances—probably most—all it adds is additional cost and additional complication to the procedures at a time when we are trying to pare those back.

For example, I would be very interested to know whether the best practice private sector organisation that the Public Service is being compared with, through the management advisory board exercise, for instance, used this sort of policy approach. It seems to me from my experience that the question of outside advertising is probably best left to the discretion of secretaries who are able in individual circumstances to make a judgment on the basis of internal supply and the outside labour market. That would be the most sensible way through in this case.

CHAIR—Mr Volker?

Mr Volker—I would just like to support what Mr Gourley has said. I just wonder if Dr Shergold has any indication of the workload involved in putting this proposed provision into effect and the extent to which, as Mr Gourley has hinted, it might in fact prejudice attempts to bring the cost of personnel activities in the Public Service up from the present level where, I think it is said, they are 2.5 times best practice in the private sector, whatever that may be. Like Mr Gourley, I have had a fair bit of experience in recruiting people into the service and I really do not see the point, leaving aside the issues that Sir Lenox has raised, of having a blanket provision of this kind, which is going to lead to enormous numbers of people—at least in the initial stages—applying for positions for no good purpose, even from their point of view in many instances.

Dr Shergold—The direction clearly seeks a balance—a balance between cost and trying to widen the concept of merit as never before. If we believe merit is trying to find the best person, based on the person's work-related qualities and those required for the job, it seems to me inappropriate that we should so often confine that to those within the APS. It is also, I believe, in the public interest and, indeed, I think the Australian community would expect jobs within the APS to be open.

However, 3.4(2) makes it clear that the cost considerations have been taken into account because it says as a minimum:

the opportunity must have been advertised in the *Gazette* during the previous 12 months.

It is my expectation that, where there are significant numbers of positions coming up in the next year at a particular level, they will probably be advertised once or twice a year and a register kept of those who apply. So account is certainly being taken of the costs involved with this opening-up of the APS.

Senator FAULKNER—If I may ask a technical question, Dr Shergold, so I can come to grips with this issue, do you have an understanding of approximately, or a ball park figure of, how many applications you would get for a vacancy that would be advertised nation-wide as proposed? Can you help the committee with a bit of an understanding at that level?

Dr Shergold—I could not do it. It would be impossible. It would be a deal like trying to compare how many people would apply for the Secretary for the Attorney-General's Department as to how many people might apply to work in the CSDA telecentre in Parkes—it would depend on the position that is available. What we do know at the moment is that we are advertising in the *Gazette* about 8,500 jobs a year and, of those 8,500 jobs that are advertised, only about 2,400 are presently made open to the public. On the basis of my experience and nothing more, when positions are made available to the public it would be very rare indeed for people from outside the APS not to apply.

Mr BROADBENT—Would it not be the case, though, that, where there are 8,000 positions applied for, those within the Public Service—knowing the system and probably knowing the position advertised better than those outside—would have a greater opportunity to gain employment in that area? I put that to both Dr Shergold and Mr Baxter.

Dr Shergold—I undoubtedly think that would be the case. That, together with the relative levels of remuneration, will have an impact. It is for that reason that, although the SES jobs are open to the public, only a minority are won by members of the public—most are with people within the APS. But I anticipate, with the devolution of employment powers to agencies, that there are likely to be more opportunities for certain jobs where having worked for 10 years within the APS may not be the only or, indeed, most important ingredient in winning that position.

Mr Baxter—I say 'yes' to that, and I will make two observations. One is that Sir Lenox's comments reflect a by-gone age and in fact are probably an argument that would give the perception that it is a reflection of the old boys club being preserved. One of the great merits of 3.4(1), and the moves that took place in 1984 and the public advertising combined, was it opened a number of positions up to state civil servants who worked in similar positions and who were then able to apply and transfer effectively from the state civil service to the Australian Public Service. In fact, if you look at what has happened since 1984 and at the greater flexibility in the superannuation arrangements between the Commonwealth and the states, there has also been a movement from the Commonwealth service into a number of the state services.

My assessment would be that, firstly, those moves have mostly been seen as career development moves and, secondly, in many cases they have improved both the policy formulation and the delivery of services because quite often it is a move between similar agencies. My argument would be that the proposal in 3.4(1) is a positive move and

reflects the changing culture. If I can come to the point about the private sector, you only need to see the number of positions in the private sector that are canvassed through agencies—and there is a multiplicity of them, not only those that you see in the *Australian Financial Review* or the *Sydney Morning Herald* but also anybody in the private sector will receive a pile of advertisements about positions that are effectively available in large bureaucracies and middle-sized companies. As for turning around and saying that the private sector is not attempting to do the same thing, it may not be the same but it is certainly moving in that direction.

Mr Ives—Senior positions have been advertised widely for some time but junior positions are much rarer in advertising. It is in the area of junior positions that this proposal is novel and that does open up the opportunity for very large numbers of applications. As I have seen in the past, you can get boxes of applications that are very hard to assess, and you have a lot of disappointed people at the end of the process.

The large numbers may be offset by the broadbanding of job ranges, which is another matter that has not been discussed yet. But I think that the practical approach is to look for something which is optional rather than mandatory. I would also point out that the 12-month provision that is in the instruction raises a lot of complications as to how it would work in practice. That has not been explained either.

Senator FAULKNER—I would like to get a feel for what it actually does mean in terms of savings or costs to the government. In developing this proposal, Dr Shergold, have you been asked to provide information to government about the possible cost of this initiative?

Dr Shergold—No, I have been asked to consult with secretaries about what they believe to be a workable solution. This has certainly been workshopped with the secretaries. There has been no indication of the costs because the costs will vary greatly from job to job and will depend on whether positions are advertised in the *Gazette*, the national newspapers or, on occasions, just in the local newspaper.

Mr GEORGIOU—Can you spell out what the current position is with the advertising of positions below SES? Are they advertised and are they open to anyone? I do not have a point of deviation.

Mr Downie—The current requirement is that those positions be advertised in the Commonwealth of Australia *Gazette*. They must be advertised in the *Gazette* before a promotion can be made. At the first level of advertising in the *Gazette* they are open only to people who are already permanent staff of the Public Service, although there are some minor exceptions for temporary staff. The next tier is that they can be advertised in the *Gazette* with an asterisk which says that they are open to members of the public as well. The third tier is that they can be advertised in the *Gazette* as open to the public and also advertised in whatever press the agency might consider appropriate.

Mr GEORGIOU—Who determines whether they are asterisked or not?

Mr Downie—The agency.

Mr GEORGIOU—There are no restraints on them?

Mr Downie—Some agencies have restraints about what their practices will be. These are negotiated internally. From the perception of the Public Service Act there are no constraints on the agency head making their decision.

Ms Caird—Can I make the point that we are skirting around? At the moment it is optional; in the future it will be mandatory. That is a very significant difference. I want to make some comments generally, but particularly about this matter: we have a general acceptance amongst everybody in the room that what we are trying to do in the Public Service is improve the service to clients through people who are happier in their work and have higher morale. If you could just picture the circumstance of an employee who joins the Public Service in this world. From day one the definition of 'merit' becomes unclear to them because there are loopholes in the commissioner's direction about other matters that may be taken into account—for example, the effect of the efficient operation of the agency.

There is no definition of merit. What is in the commissioner's direction is some examples of things that may be considered in merit. There is no definition. There is no description of the process that will apply in assessing that merit—for example, how a committee will be convened or what kinds of guidelines they will follow in making that decision. This new worker knows that anybody can be engaged and that the rather wobbly process can be bypassed simply by engaging someone for less than 12 months and setting them up so that they inevitably gain the benefit and the experience so that they will easily be able to pass even a decent test of merit.

They know that the next job that comes up on the ladder above them must be advertised outside whether it is practical to do so or not. If they happen to have been working in a personnel section they will be having an absolute horror attack about the level of work involved in processing those sorts of applications. The next point is that they have no knowledge about whether any of this process is subject to appeal because the review process is unclear about what is appealable, to whom, within what time frame and by whom.

This is a person in whom you are trying to build morale, commitment to service and dedication to public duty. That is the environment you create for them to work in. That is vastly inferior to the private sector model that we keep looking at as our fine example. No private sector company would take the position that it is absolutely required that every position be advertised outside if they believe that they have an internal labour market of 130,000 people from whom they may well draw a suitable pool of people. Any

comments about morale and commitment to service and to the community have to be judged against that working environment.

Senator FAULKNER—Dr Shergold, I would like to come back to the costs of this. You have referred to the cost of the APS selection process as being $28 million a year.

Dr Shergold—That is right. That is when we compare the APS personnel practices with best practice in the private sector it works out about—

Senator FAULKNER—That is the cost of administering the APS selection process?

Dr Shergold—Correct.

Senator FAULKNER—The minister cited 200 Public Service vacancies a week in one of his recent forays into the media. With my limited maths that is $10,400 a year. You used a figure of 8,500 being advertised in the *Gazette* so I assume that you are right and he is wrong, or would they be different figures.

Dr Shergold—It depends upon what the base is. I have just taken the last 12 months and that comes to 8,400. It is running at about 200 to 220 a week at the moment.

Senator FAULKNER—We have heard that with some vacancies you get a box full of applications. With some you would not. If you got 100 applications for a vacancy, that would be a million in round figures. This is why I am asking you the question. You do not have to be a mathematical genius to work out, even at the cost of one stamp, that it would not take you very long to get to the cited costs of $28 million a year to administer the selection processes.

What I am interested in knowing is the basis on which government is confident about savings in this area, because we have had some people, who know a great deal more about this than I do, giving evidence to the committee about some of these sorts of concerns. I have no doubt that you have taken them seriously and government would want to take them seriously. I am not in the business of spending my whole life working out how to find savings for Dr Kemp and his cohorts in the government, but I assume this would be a matter of some significance and interest to government. I find it unbelievable, frankly, that this would have been done outside the context of some very hard work on the costings of this new proposal.

Dr Shergold—There is a balance here of public interest and costs. At the present, all base level recruitment within the APS is open to the Australian community. It is a remarkably expensive process in some ways. On this last occasion, I think 40,000 people took the test and had to be assessed on the basis of 10 criteria. Out of that, my expectation

is perhaps 1,400 may end up with jobs in the next 12 months in the APS. There are expenses involved in the present process and there are expenses that are met because of the need to keep the Public Service open.

Under these new arrangements, departments and agencies will be able to decide, for the first time, whether they wish to make use of that Public Service wide recruitment process, or indeed whether they will be able to run their own processes. I think the costs there may well offset opening other positions within the Public Service to application by members of the community.

Senator FAULKNER—I appreciate the point you make and I bear in mind that the new act would devolve responsibility to each agency fundamentally for their own recruitment processes. Accepting that, what I would like to know is whether you, or anyone in your organisation, has had a crack at making an estimation of how many public servants would be involved in acknowledging, processing and assessing those sorts of applications, and whether anyone has had a crack at working up some costings.

Mr Baxter—Perhaps I could be helpful. Both Victoria and New South Wales went to a system which is not dissimilar to what is now being proposed for the APS. Both states have larger services than does the Commonwealth. Victoria has approximately 170,000 and New South Wales about 220,000 to 230,000.

The previous arrangement in both states was very tight Public Service Board control, right down from secretaries to the person who may be employed as a grade 1 clerk. The costs, in both states, of the Public Service Board arrangement, if you bring it up—and the latest figures I saw were done to about 1995-96—ran at about $75 million to $80 million per year to administer the recruitment and promotion and other procedures. In fact, for those of you who remember, both New South Wales and Victoria, under the old Public Service Board arrangements, had a very substantial bureaucratic structure running to about 300 or 400 people in both states to administer it.

Those states, and under different political parties, went to what is now being proposed by the Commonwealth and the cost dropped quite substantially. The efficiency, in terms of moving people through the system, became far more rapid. There is a set of procedures put into place to do that, but I think the problem is that many positions in the service are advertised only locally. If you are looking for somebody who works for, say, a department at Parramatta, you may only advertise in the local newspaper in Parramatta. Similarly, if it is somebody who might be in a department in Brunswick in Victoria, you may advertise only in that local paper.

I think to try and apply a set of average costs to the positions is misleading because the higher up the scale you get into the senior clerical grades, and then into your SES grades, clearly you are going to advertise it a lot more widely. I have noticed the position of Secretary to the Attorney-General's Department. Presumably, that is going to

be advertised nationally and internationally, so the cost of that will probably be in the vicinity of $40,000 to $50,000, whereas the cost for the advertisement for somebody who is going in as a grade 1 clerk may be, as part of a deal that one of the newspapers does, $50 or $60.

The other point that has been made about the processing of the applications is that, equally, the cost of the Public Service Board inspector process, which was involved with making a lot of the appointments based on the old seniority and similar systems, where they were not advertised and the state systems were closed, were costly and cumbersome and led to a large number of matters which either went before appeal tribunals or ultimately went to the state industrial courts. You are never going to get a perfect system, but the cost of the old system was certainly very significant and led to a great deal of employee unhappiness.

Senator FAULKNER—Can I just follow with one other question on that. That is helpful, but in the discussion paper 'Towards a best practice Australian Public Service' there is a statement that it costs almost $28 million a year to administer APS selection processes. Whilst that experience is helpful, I was interested in understanding from Dr Shergold whether anyone in his organisation has had a go at trying to estimate how many people would be involved in all the processing, assessing and acknowledgments and how much this might cost. That was, I suppose, the point of my question. The experience is useful to understand what has happened in other jurisdictions, but I was interested in understanding what had happened in Dr Shergold's own operation.

Dr Shergold—No, such an estimate has not been made precisely because of the reasons put forward by Mr Baxter that it would depend so enormously from agency to agency and from position to position and whether they are going to be advertised in a local labour market or nationally. However, there is a program already in place with us and agencies across the APS on continuing to simplify and reduce the cost of personnel processing. This process will clearly be wrapped up in that exercise, but no such estimate has been made.

Mr Whitton—I would like to come to a point raised in relation to the operation of definitions. Perhaps before I do that I should state my bona fides also. While I made a submission in relation to ethics, corruption and whistleblowing matters, under my other hat I constitute a single-person tribunal for the purpose of hearing and determining merit based appeals under the Public Service Act of Queensland. I have done that for the last six years.

Historically, definitions of this kind have been intended to be and have been a measure for minimising patronage, favouritism or other forms of official corruption at least since Northcote and Trevelyan suggested the idea in the late 19th century. It seems to me that the definition set out in 3.1(3) first dot point really collapses to the definition in 3.1(3) second dot point where we talk about the relationship between a person's work-

related qualities and work-related qualities identified as genuinely required—it suggests that there is some suspicion on the part of the drafters that there might be some opportunity for flexible interpretation going on in the background—for the duties concerned.

As a form of definition, this works fine whilst you have the duties concerned defined fairly precisely. But when we move—and most jurisdictions are—to generically stated or team-based positions or no positions at all, this becomes a blank cheque potentially for the corrupt.

Mr Baxter—I have now worked in three jurisdictions where, if somebody puts their mind to it, whether or not there are very tight definitions, to secure appointment without merit, particularly at the highest level, they will achieve means of so doing. The ultimate sanction is the one which the electorate brings down on the government of the day.

Mr Whitton—I do not dispute that; I agree with that. But it is perhaps significant that the ICAC reported two months ago that 70 per cent of New South Wales citizens regard the New South Wales Public Service as corrupt to the extent that they expect not to be able to get a position within it unless they know someone on the inside. Taken in combination with a reduction of specificity in duties and a reduction in external review, I think you finish up with a climate that is conducive to the corrupt if they wish to take the opportunity.

Mr Baxter—And that is in spite of a clear definition about merit appointment.

Mr Whitton—That is not a good argument for giving away all your protections.

Mr Volker—Mr Chairman, I am a bit puzzled now about what is actually being provided in the direction. The sort of system that Mr Baxter and Dr Shergold are talking about, as I read what is in the draft direction, is not what is intended. The draft direction actually relates to the opportunity to apply for the relevant employment or similar employment in the agency being open to all Australians. I find it hard to see how by advertising in the Brunswick *Gazette* or whatever the local paper is you would meet that requirement of the direction.

CHAIR—Don't you get the Brunswick *Gazette*?

Mr Volker—I have read it on occasions. In fact, the local Brunswick newspaper used to have a lot of very interesting things about social security in particular.

But it is an important point about exactly what is intended because most public servants are fairly simple people who work on the basis of what the actual wording says. In this case I would have thought that what is being proposed or what is being talked

about is in fact not what the direction requires. What has concerned some of us is that what is being proposed is something that would be potentially enormously expensive.

I do not disagree with what Dr Shergold is saying about the entry test. In fact, some of us have been trying to have that changed for a good while. I think it is desirable that that is now being done. But what is being done here will undo that benefit and go way beyond that to a very costly and potentially very complex and very time-consuming process.

I personally have been in situations where something that has been advertised generally—and I must say in the circumstances very desirably so—attracted something like 4,500 applications. It had cross-references from place to place across Australia. It was much more complicated than the situation with protective appeals that Dr Shergold quite rightly said should be avoided.

I really do not see in the circumstances where what is being attempted by the commissioner and, for that matter, by the government and, ultimately, the parliament is going to make the Public Service a much more flexible organisation and individual agencies much more flexible so that you would want to tie it down to something that is very costly and could well involve a huge workload for no very good purpose.

Mr BROADBENT—Could I clear something up. When you said that most public servants are simple people, I think you meant that most public servants take a simpler approach to the meaning of the words and the clarity of the advertising.

Mr Volker—I am not sure what the situation is now, but certainly in my day—

Mr GEORGIOU—Too simple to understand, Derek.

CHAIR—On that note, I think we might break for lunch.

Luncheon adjournment

CHAIR—Before we get back to the substance of the bill, I wish to deal with another issue. When Sir Lenox Hewitt gave evidence some weeks ago there was some reaction in the media. Sir Lenox has asked us for the opportunity to make his position clear and to clarify a number of statements, which relate to his evidence, that have been made in media. Sir Lenox, I invite you to do that before we return to the bill.

Sir Lenox Hewitt—Thank you, Mr Chairman. I did write to you about this and I thank you for the opportunity of correcting a misrepresentation of the evidence which I gave to this committee on 7 August. That misrepresentation occurred in print in the *Canberra Times* on 20 August and in the *Sydney Morning Herald* on 9 August. I had answered an observation of yours in relation to secretaries to departments. I said in

response on 7 August:

> I can remember one very distinguished public servant, a former secretary to the war cabinet . . . He was consigned to the dungeons of Victoria barracks to write a history that has never been published.

I prefaced that by saying:

> I was present when he cut his throat in evidence before this committee.

This was in the context of secretaries—permanent heads in those days—losing favour with the government of the day. At no stage did I say explicitly or implicitly any words that could possibly be construed to imply poor performance on the part of that most distinguished public servant.

This matter was referred to in hearings before your committee on 25 August when I do not believe the whole of the facts were brought to the committee's notice. I sought, immediately on reading the press on 20 August, the basis for the story and I asked the Public Service Commission for a copy of the press statement they had released. I want to tender a copy of the reply that I received, which I would ask the secretariat to distribute. The reply said that there was no formal press release and at the hearing on 25 August the Public Service Commissioner tabled speaking notes.

I also want to table and have distributed to the committee a copy of the fax that was sent to members of the press gallery and to which was attached excerpts from a speech given by the Public Service Commissioner to a conference in Melbourne on 19 August. These excerpts were confined to what was published subsequently in the *Canberra Times*. They used the words, 'I can understand nostalgia for days in which, by Sir Lenox's own account, poor performance was managed by sending people to Coventry or giving them make work tasks.' I made no such reference. Nobody can point to my words to that effect nor was it implied nor could it be inferred.

My phrase has even been picked up in the *Sydney Morning Herald* again, in an article by the Public Service Commissioner on Monday of last week saying, 'Inadequate senior public servants were too often dealt with by sending them to Coventry.' It was not a question of poor performance or inadequate work. People were dealt with in the manner I outlined in response to your observation. It was because they fell out of favour. But the situation was properly managed and people came back in favour. The legislation that is proposed now provides for their dismissal.

Mr Chairman, apart from that attempt to correct the record and remove the misrepresentation in public of what I said before this committee, you said that I might make one other observation. Since I gave evidence here on 7 August, I have been overwhelmed by letters, by telephone calls and by people who have spoken to me about what I have said in front of the committee. I have said to many of them, 'Come and say it

for yourself.' You may wonder why there are not others.

I said in my own article in the *Sydney Morning Herald*: the anecdotal evidence is there to be gathered, and it is all around you in the demoralisation that has occurred in the state of the service. With your permission, I am going to read an extract from a letter which you cannot identify that came to me from a very senior person now in the Australian Public Service. I have stripped it down to remove his references to what I said. He wrote to me as follows:

I have become deeply concerned by many of the trends in the service which are now being institutionalised in the new Public Service Act. I simply want to let you know privately that I was enormously heartened that someone of your experience and stature was prepared to speak out, as you did last week, against what is being done to the service. I believe fervently in the importance to Australia of maintaining the basic integrity of the Public Service and I fear that an APS based on rejection of the essential distinction between the role of the public and private sectors will leave future governments and the community very poorly served.

I find it most distressing that many senior public servants no longer feel able to provide frank advice or express strongly held views on these matters, because they are aware that such views will not be welcome and the personal costs of standing up for unfashionable values will be too high. While it reflects poorly on the current senior ranks of the APS that those of us who have not become ideologically captured by managerialism are too intimidated or too worn down to do more than concentrate on damage minimisation. I am aware that many of my colleagues who feel deeply troubled by it all have been inspired by your willingness to say what needed to be said.

Maybe people can say from that *Sydney Morning Herald* excerpt that I have been asleep for the last 10 years; maybe this morning's witness can say that I belong to the old boys club or I am out of my time. I am in very good company, I assure you, Mr Chairman, with a great, great, silent, terrorised majority.

CHAIR—Thank you, Sir Lenox. Before I get back to the agenda, one thing I do read out before every meeting is a reference to the press and the broadcasting of proceedings. The press has a responsibility to report accurately the proceedings of this committee. We will examine the transcript, we will examine the press reports and we will take it from there. If we find misrepresentation, we will look into it. Now, back to the agenda. I think we have pretty well covered the subject of merit. Does anyone else wish to raise anything?

Ms Weeks—Just before we move from merit to other equally important things, I would just like it to be put on the record at the hearing, as opposed to the written record of submissions, that there are serious concerns about other aspects of the definition of merit, not least being the third dot point in 3.1(3) where merit is satisfied so long as the assessment of the person based on work related qualities is taken into account. That dot point, together with the reference to 'effective and efficient operation of the Agency' in 3.1(2), raises serious doubts about the value of this definition of merit as a general

definition of merit to be applied in Public Service employment.

Mr Ives—I wanted to make the comment that I find it rather amazing that there is not more about the application of the merit concept in the main body of the legislation. I think the legislation should carry within it the fundamental principles—not necessarily all the details—that the Public Service should aspire to and put in practice. It is quite surprising that the principles of merit are being left to a subordinate instrument which does not have a lot of durability.

The commissioner's directions may be changed in the future by the current commissioner when things settle down. Although the directions are a disallowable instrument, they could be changed. They could also be changed in the future by a new commissioner who might be appointed in due course.

But, in any event, in talking about the directions, we skipped very quickly over the very first page which says, 'This direction ceases to have effect on 31 December 2002.' There is a very strong sunset clause here. Nothing has been said about what the purpose is, what the intention is and what the expectation is after 2002. A simple expectation would be that it would be replaced. But replaced by what—the same direction, a different direction or it might lapse altogether and not be replaced by anything? All of these matters that we are discussing in this direction would fall back to the discretion of agency heads.

Now, is this what the parties involved in the parliament appreciate and anticipate might happen? I would go on from there and say my suggestion would be that at least some elements of the application of the merit concept should be embodied in the act, because that is a more durable legislative instrument. It can be changed only by amendment through the parliament, which ensures a greater degree of examination and debate.

Beyond that I have submitted to the committee a letter dated 5 September in which I have made some comments about 'merit' which is included on page 8 of the commissioner's direction. As has already been observed, there are three dot points in 3.1(3). The second dot point is the key to how merit would be applied, but I am not sure that that statement goes as far as it should. I would certainly like to see an interrelated reference to capacity to produce outcomes.

I would also draw attention to the third dot point which says, 'the assessment is taken into account in making the decision.' That is a fairly weak representation of the merit concept, in my view. It implies an unspecified dilution of the merit concept. It raises the question of what other matters might be taken into account and what the relative weighting might be.

I would hope that there is a possibility of some stronger wording to ensure that the decision is based on the assessment or that the assessment is the primary consideration in

making the decision. There are some other factors to be taken into account, including costs and the way in which people might be seen to fit into teams or into the agency's programs. But I really would hope that we could all do better than the statement that is there on page 8. Thank you.

Ms Forward—I would like to endorse what Mr Ives has just said. Some of you will recognise that does not happen very often, but it does on this occasion. In addition to those points Mr Ives has made, I am a bit concerned that the seven items are given here as examples of work related qualities but there is no suggestion that any or all of those should be relevant to the decision about merit. The first five are contained in current assessments of merit. The sixth example—demonstrated potential for further development—is often included and under the current act may be included in the criteria.

The last one, which is ability to contribute to team performance, is a new one which takes account of developing trends in public administration. I hope, however, that those who are keen to keep this item in here as one of the components—dare I say it—of merit will take account of the report in this morning's *Canberra Times* of what has happened at ACTEW, the ACT electricity and water provider, where a staff member fell out with the team and there were horrific consequences. Those seven examples ought to be, in some way, made components together because it seems to me that if you only pick out one of those items then you do not have an adequate comprehension of what is commonly understood by merit in employment. So rather than being examples of work related qualities, I think that needs to have a bit more force in it.

Ms Macintyre—The Women's Electoral Lobby has proposed another definition of 'merit' to take the place of the one that was provided earlier. It is in the current submission but I will read it now:

An employment decision about a person is based on merit if:
a competitive process has taken place to establish the best person for the position;
the competitive process assesses the relationship between the candidates' work-related qualities and the work-related qualities required for performance in the position; and
the assessment focuses on the capacity of applicants to achieve job outcomes.

I think that definition addresses some of Mr Ives and Ms Weeks's concerns. We would consider that that wording could replace the existing wording, but without the examples of work related practice being spelt out in the way that they are.

Ms Caird—I also want to place on record our support for Denis's comments about the need to have this definition in the legislation, and Ann's additional comments. I will not go over the things that we agree on.

However, I will add that another concern we have is that merit is only applied for a position over 12 months. That would mean that all temporary performance of any period less than that would be based on some other unspecified criteria, but certainly not on

merit. That starts to distort the whole process of selection and outcomes over a period of time. We also had picked up the concern about a sunset clause on these provisions, and we wonder what the logic is, or what the risk is, involved in that also.

CHAIR—Are there any other matters on merit that anyone wishes to raise, before I ask Dr Shergold to respond?

Ms Weeks—I would add one further specific just prompted by the reference to the employment decisions that are to be subject to merit decisions. Promotion is the other one, apart from engagement. My reading of the directions suggests that, if the current trends towards broadbanding continue, there will be a quite significant contraction of the number of promotion decisions which are required to be covered by the merit principle.

CHAIR—Dr Shergold, do you wish to respond to any of those matters?

Dr Shergold—Yes, I can respond very briefly. In terms of the definition employed at 3.1(3), it has already been raised whether that or an alternative definition could be placed in the legislation. That is for your committee to think about. I believe that what is in section 10 of the bill, the APS values—in which employment decisions are based on merit—is sufficient. But I understand that you may want to strengthen that by placing it in the primary legislation itself.

In terms of the definition, I think it is worth looking at the proposal that has been put forward by the Women's Electoral Lobby. As you will probably realise, the definition put forward by WEL has changed, because the definition in here is based upon the definition that was proposed in the first submission you received. That definition has now somewhat altered.

In terms of the examples, when we workshopped this with secretaries, it was clear that they believed they would find it useful to have examples of work related qualities. Also, it is true that point 6, 'demonstrated potential', and point 7, 'ability to contribute to team performance', are new. Nevertheless, I think they are seen by many of us as being important steps forward. Many Aboriginal people, for example, end up not being able to gain positions, whereas, if we were able to take into account demonstrated potential, it would certainly help the process—a merit process.

In terms of 3.1(3), the third dot point—that is, where it says, 'the assessment is taken into account in making the decision'—I understand that may appear weak, but the reason is quite clear. As I indicated before, although there will be a merit process, it may well be increasing in the future that the person who is ranked No. 1 on that merit selection process is unwilling to take the position on the remuneration that is offered. Therefore, you would look at No. 2 or No. 3. That is why that clause is in there. It is possible that there may be a more felicitous form of wording to cover that. In terms of the sunset clause, I will ask Mr Kennedy to answer.

Mr Kennedy—You will recall that at an early hearing we were asked questions about the impact of the Legislative Instruments Bill on this legislation. I understand that Mr Stewart-Crompton has written to the committee outlining the current position, as we understand it.

Provision 1.3, at the beginning of the commissioner's directions, which has been drawn attention to, ceases to have effect on 31 December 2002. That was a provision which was inserted to indicate what would be the effect of a commissioner's direction if it were to be an instrument to which the Legislative Instruments Bill applies—namely, that there would be a sunset requirement in five years. We do not have a particular view on this, and we thought we should put it in to indicate that we were awaiting the Senate's consideration of the Legislative Instruments Bill and the exemptions that might come out of that process. If they clearly indicate that a commissioner's direction is not something to which the sunsetting requirements apply, then that could be removed.

Mr GEORGIOU—Peter, from what you said, you do not mind deleting 'assessment is taken into account in making the decision', because every time you explain it, it gets a bit softer.

Dr Shergold—I believe certainly there could be a more appropriate form of words which would not lend it to the interpretations that have been given around the table.

Mr GEORGIOU—The other one is at 3.1(2)—and this puzzles me—'while contributing to the effective and efficient operation of the Agency'. What is that doing in the middle of that? It may be WEL's fault.

Dr Shergold—It is to try to give some effect to the needs of the agency. I think it is possible it could be excluded.

Mr Baxter—I would just comment on the sunset clause which I think has considerable merit. One of the problems of continuing evolution of both the principal legislation and subordinate legislation and regulations in relation to the Public Service is that they tend to be subject to very sporadic review, and—I think I am right, but Mr Ives could correct me—until the Macdonald report and, prior to that, the Coombs exercise—there tends to be not a continuing overall assessment of the Public Service and the changes in it.

I think one of the merits of the sunset clause is that it would at least force this committee or perhaps a Senate committee on a regular basis to make an assessment of just where the service is and what it is doing. And I think that has the very strong possibility of ensuring that there is consistent evolution rather than travelling for a number of years with ad hoc amendments to the act to deal with individual bits and pieces and then to have to focus on something of this kind. I think at least it then forces the parliament to look at it with a known date ahead of it.

CHAIR—I think that pretty well winds up the question of merit.

Mr Moylan—I would just comment on one matter. Mr Kennedy indicated that there has been some advice from DIR on the application of the Legislative Instruments Bill and potential impact upon this package. Would that document be available generally in the material put before the committee?

Mr Stewart-Crompton—The department wrote to you—and I signed the letter—on 18 August about the effect of the legislative instruments bills; it is marked as submission No. 27 in volume 4 of the submissions.

CHAIR—It has been published.

Mr Stewart-Crompton—Yes.

CHAIR—We have a good cross-section of evidence on merit which we can now examine. If we need clarification or further views on it, that can be done in writing if necessary. We will now go to the subject of external review; that is, a Public Service regulation. Did you have something to say about that, Ms Forward?

Ms Forward—Yes. Since we last met here for round table discussions, the subordinate legislation has been made available and the MPRA has, in fact, put in two supplementary submissions in respect of that, which you have received. Mr Hunt may like to add some comments about that.

Mr Hunt—I will not go into the detail about the supplementary submission or, indeed, our earlier comments on the bill, but there are two overview points I would like to make about the external review regulations such as we have seen them. The first is, of course, the issue of principle, which we in the agency feel very strongly about, in that there is a fundamental problem in giving the pivotal statutory external review role to the Public Service Commissioner. That was, of course, foreshadowed in the bill, and we outlined our reasons for our concerns about that at the previous round table discussions. I will not repeat those reasons, but I did want to make one passing observation that, in the material I have seen since, it has been suggested that our concerns about the Public Service Commissioner's capacity to perform the independent role, given his or her other functions, is based on a historical reading of the Public Service Commissioner's role as opposed to the role that is envisaged under the new legislation.

I have had another look at our evidence and, it seems to me, we have focused solely on the Public Service Commissioner's role as envisaged by this legislation as opposed to the role as it exists now. In particular, in so far as the Public Service Commissioner might technically be an employer under the legislation as it now exists, I must say that that has never really been a factor which has entered my mind as being relevant to this debate of principle, because the practical situation is that, for at least 10

years, I believe, the Public Service Commissioner has not, in reality, been the employer in that all those powers have been devolved to agencies.

The second general overview point that I would like to make about the regulations we have seen is that, putting aside the issue of principle, having seen clause 33 of the bill—which, I thought, had a workable and sensible definition of what review was to be all about, and that was that an employee was entitled to review of any APS action that relates to his or her APS employment—I was a little disappointed at the way that it has been read down in a very complex number of ways by the regulations that we have now seen.

There are no fewer than 17 scheduled exemptions from the general right of review. There are some very complex steps that you have to go through in the regulations to establish whether you have a right of review. It seems to me that, possibly, the regulations have been drafted on an assumption that there is a need to tie down, in a very absolute and careful sense, any right of review because, otherwise, the review system might be misused.

That approach to the regulations may have had some merit if we were talking about a system where there was to be an external capacity to actually overturn agency decisions, such as that which the Administrative Appeals Tribunal has. But, in fact, all we are talking about is a model in which, at the end of the day—even on the preferred model of the MPRA—there will be only a recommendatory capacity to go back to agencies. I think far too much attention has been paid to trying to tie down in very minute and complex detail the way the system would work. That is totally unnecessary if, at the end of the day, all that can happen is that the reviewer will make a recommendation back to the agency in question. There is very considerable scope for simplifying the regulations. In our written comments, we have addressed a number of ways in which we think that could be done. I will not go through those unless you wish me to.

Mr GEORGIOU—Are there any other comments?

Ms Forward—You are not suggesting that that is the end of external review, are you? I should draw attention to—and perhaps the committee is aware of—the provisions in respect of internal review which these regulations propose to replace, which say, 'An agency shall conduct an internal review in any manner it sees fit.' And that is it. So an agency has maximum flexibility to respond to the circumstances one of its staff may be complaining about. That is under regulation 83. Regulation 84 allows for a public servant not satisfied by that process to refer the matter, through the agency, to the MPRA. There are about four or five lines in the regulations which dictate how the MPRA will deal with the matter.

There are more parameters in the Merit Protection Act on how the MPRA will deal with the matter, but there is sufficient flexibility for us to also respond to the nature of the grievance which is being lodged with us. A lot of that flexibility is removed, and a lot of

complexity is added, by these regulations. We had considerable difficulty—and I think Wendy Caird made the point this morning that if you set out to explain to a public servant what they should do if they are being bullied at work, you would have the devil's own job telling them what the process was, who they should go to, who was going to review the matter, and what would happen at the end of the process.

Certainly it seems that, where recommendations can be made, they can only be recommendations to confirm, vary or set aside a decision which was being complained about. One wonders how such a set of sanctions might be available if the complaint is of bullying. There are significant complaints of bullying and related issues and I do think there needs to be a more sensitive mechanism than is provided for in these regulations.

One overwhelming absence from the regulations is the capacity to deal with the problem by mediation, which is currently available to us. We had our own legislation amended to allow us to provide mediation where a grievance is referred to us or, where a public servant or a department wishes to come to us requesting that, we can engage in mediation using our own staff. Mediation has reduced a lot of the antagonism which develops around the continuing investigation of grievances, when people get in their trenches and defend positions which they have earlier taken, and it does not make for resolving disharmony in workplaces. So I think it is significant that mediation is not provided for as an alternative to what is in here.

One other matter which I want to raise is that it seems to me there are a lot of misunderstandings about how the current system works. Reference is made to the fact that the MPRA uses panel review officers as external reviewers. I do think it is important for the joint committee to understand what the current arrangement is, and it is this. We have a very small staff of our own and case work is done only be senior officers. To supplement that, according to demand—and it is a totally demand driven exercise—we have a panel of review officers who also work only at senior officer levels and who sometimes belong to other Commonwealth agencies and come to us on short-term temporary transfer arrangements or they are outside the Public Service altogether, in which case we have a special contract which allows us to employ them under circumstances which do not fit the normal requirements of the Public Service Act because that is not the nature of our work. We have a special contract which applies to those people and that special contract puts those people, those panel review officers, on our staff.

At the time those people work for us, they are working on the staff, they are working for the purposes of the Merit Protection Act and they are covered by a whole lot of the secrecy provisions and the protections which exist in the Merit Protection Act. These 200-odd people are selected by a version of a merit selection test which we apply and we advertise this in newspapers as well as in the *Gazette*. People are tested, but not competitively against each other because what we are looking for is a list of people who are suitable for our sort of work. They are all interviewed and selected against the same selection criteria that we use for our own staff who do this work. Those people are then

vetted by or endorsed by—authorised by—the statutory authority, the MPRA, which consists of five members: I am a full-timer, Chris Hunt is a part-timer and there are three other part-timers.

Those people then authorise the people who have been selected to do the work on delegation from the agency. Before they are allowed to do any case work, those people have to go through our own training so that they know what it is they are doing and how we want it done. That is important because these people are doing the work on delegation from a statutorially independent body—the MPRA. The MPRA is fully accountable for what they do. They are on the staff of the MPRA and are subject not only to the protections and the secrecy provisions, but also to the other obligations which staff have when they are working on delegation.

Those panel review officers, generally speaking, are not doing grievances. We use them mostly for appeals which are not proposed to exist in the new arrangements but, as I explained to the committee before, appeals are done by separately independent, tripartite committees, for which the MPRA provides a convenor. We use those panel people, in the main, for tripartite committee work as the MPRA's nominee. But because the dealing with grievances is not easy, generally speaking our own staff who do that are at senior officer grade B level, which is pretty senior because it is very difficult work. Those people write reports on the cases they are dealing with and every single case has a summary made of it.

That summary is sent to the agency which, at a meeting, can consider and question people about the work they have been doing. They do not sign off the work; they write a report and, for practical purposes, those reports are signed off by suitably delegated senior executive service officers who come to agency meetings to answer questions about the performance of the people doing the review work. So the importance of all of that is to say that it is a very tightly controlled system whereby the people who are doing the reviews are selected on merit. They are trained, they are authorised, they are delegated, they are answerable to an independent body—namely, the MPRA—and it is most important that they are accountable to us for the work they do in the name of this statutory body. It is important that you know that because it is not just a list of names we have drawn up of people we know or people who used to work in the Public Service, or whatever. It is a very serious exercise and we take our responsibilities very seriously.

Ms Weeks—I may not have mastered the technicalities that Chris Hunt referred to, so I hope my observations about the complexity of the provisions on review are not unfounded. It seems to me that the object of the exercise is clearly to reduce the scope of reviewable decisions and it has done so to an extraordinary extent. I will signal a couple of specific mechanisms by which that has been done. One is that the grounds for review allowed in reg 5 are narrower than the notion of reviewable action. Even if one picks a clear example of a reviewable decision which is reviewable on the grounds of breach of code of conduct, say, a promotion decision, a conclusion that the decision is reviewable

requires reference to six or seven sections of the bill to make the connection between breach of code of conduct and a reviewable decision.

When I look to other areas like discipline and decisions less than termination for breach of the code of conduct on the part of an employee—reprimand, demotion and whatever—I cannot clearly see a connection between a grievance which a person may feel as a result of the discipline process and the opportunity for review. I think that on matters where the link would have to be made through at best the APS values, that is, each agency head is bound by the values and so could be said to be in breach of the code of conduct for failure to comply with the values, apart from those that have been picked out for elaboration in the directions—see how complex it is sounding—it is very hard to say that, for example, a harsh disciplinary decision is appealable. I cannot find anything necessarily in the APS values that requires the agency head not to be harsh in determining a sanction for breach of the code of conduct. I am left very much in the dark as to how many areas of decision making as to employment, which I think is a close enough paraphrase of clause 33 of the bill which describes reviewable action, are in fact reviewable.

Mr Baxter—The provisions, as they stand, are very much more generous in either of the two major states in relation to appeals, very considerably much more generous.

Mr Waterford—I want to support something that Phillipa Weeks has just said but also to note that the code of conduct and the statement of Public Service values operate best, if they operate at all, as a shield rather than any sort of sword. It is not clear on what occasions, if any, they could operate as a defence or as some way in which a public servant could work to protect Public Service values or the code of conduct.

I say this also bearing in mind that I have been assured right through this process, particularly by Dr Shergold and so forth, that all of the concerns that have been expressed are completely wrong because there are very good people of integrity who will be there protecting Public Service values. I wonder whether I could advance a mischievous suggestion—that the APS code of conduct be altered in one slight little way; that is, at the bottom of each statement of the APS code of conduct one puts 'penalty three years gaol or $500,000' and creates a criminal offence for the violation of it. I have a feeling that might focus people's minds on the values themselves and also focus the minds of superiors, either Public Service or political, on the fact that violating the integrity of the Public Service is a very serious matter.

CHAIR—There is an old saying that the hearts and minds will follow.

Mr Waterford—Indeed, just so.

Mr Kennedy—I wonder whether I can make some comments by way of response to these comments that have been very helpful. By way of introduction, the starting point

in trying to get appropriate review procedures—and I agree with Ann Forward that these are sensitive and serious matters—are reports like that of the McLeod committee, which said in paragraph 6.1:

> The review group received a number of comments from managers and personnel practitioners that APS personnel management is burdened with too many layers of review and that there is overlap between the various jurisdictions such that some public servants have pursued their complaints through several avenues which essentially examine the same matter at issue.

I think we have been interested in the comments we have heard this afternoon and also in the reference to some later written submissions which we would want to examine to see whether there are other ways of simplifying and making clearer what we are attempting. As you would appreciate, that is only a second draft and there will be a number of iterations.

I want to make a couple of specific comments. Firstly, on the issue of bullying, I think it would be fairly clear that that is a breach of the code of conduct because paragraph (3) of clause 13 says that an APS employee must treat everyone with respect and courtesy and without coercion or harassment. For me, bullying would be caught by coercion and harassment. Secondly, on alternative dispute procedures, we strongly support their use. In the current draft of the regulations, it states in regulation 6.3 that the process is intended to be consistent with the use of alternative dispute resolution methods to reach satisfactory outcomes where appropriate. We have also made it clear that secretaries' other personnel powers are not in any way limited by these review regulations.

The schedule of exemptions that Mr Hunt referred to was presaged in subclause (2) of clause 33 of the bill where it indicated that the regulations might provide exemptions. We have heard the comment from Mr Baxter that we allow more review than in two state jurisdictions. By and large, the exemptions are based on current exemptions. We will certainly also be having a look at them in light of what we have heard today.

The government probably still thinks that, where the commissioner is not the employing authority, the commissioner is the appropriate body external from the agency for review of decisions. I think we have mentioned that on a number of occasions. We welcome these comments. We are going to see if we can make the regulations more simple in the light of the comments we have received.

Mr GEORGIOU—If I was a public servant being bullied, where would I go? That was part of the point of the issue.

Dr Shergold—This is a good instance. The person who is bullied may initially take it up with their manager. If that is unsuccessful, it would clearly be a reviewable action as set down in the legislation and in the regulations. It could then be dealt with either through alternative dispute resolution, because that is allowed for, or, if not, there could be an application in writing by the person who is being bullied to the agency head.

Then there would be a formal review, a first-tier review.

If the person who was bullied is dissatisfied with the outcome of that internal review—in other words, feels that the matter has not been addressed adequately—they could then come to the Public Service Commissioner and seek external review. The Public Service Commissioner could consider the matter and could then make recommendations to the secretary of that agency as to how it would be addressed. If still dissatisfied with the response of the secretary, the commissioner could then make a report to the minister or to the parliament.

Mr GEORGIOU—Can I ask the MPRA for comment. Are you happy with that?

Ms Forward—Firstly, I have gone through and through my copy of the regulations and I cannot find reference to mediation and—

Mr Kennedy—Chair, it is the copy of the regulations submitted on 5 September.

Ms Forward—Somebody is talking about a new draft having been distributed this morning. I am not in a position to comment on a draft that was submitted this morning. This is just not on. If we have been asked to come here and talk about regulations, we should all have the same document, if I might say.

Secondly, my concern was not that there would not be a review but that it would be difficult for a public servant to follow the procedures in these regulations. Thirdly, whomever is doing the independent review, I refer to the one where it says that the decision can be endorsed, varied or set aside, which, I suggest, is an inappropriate response to a complaint of bullying.

Those provisions are taken from the current disciplinary appeal provisions. They will not be relevant any longer because there will not be disciplinary appeals. Those three possible responses are applicable only to a decision of a department which is what is appealed against in a disciplinary case. It does not apply to a set of circumstances which are utterly impossible to predict or in any way describe in advance in dealing with grievances.

Senator FAULKNER—What draft are we now talking about? I have a draft dated 20 August.

Ms Forward—So have I.

Senator FAULKNER—But you have a draft dated today.

Ms Forward—No, I have not. We have been told there is one.

Senator FAULKNER—Sorry. I thought you had a different draft.

Ms Forward—No.

Mr Kennedy—Mr Ives has got it. I think it is on the table over there.

CHAIR—We did receive a submission from the Public Service Commissioner dated 5 September. We did not have time to distribute those copies, and I apologise for that.

Ms Forward—Chair, might I then assume that we can have a little more time to go through those and respond?

CHAIR—Yes. We have them here printed for distribution. It is obvious we cannot continue with this until you get a chance to look at it. Perhaps Dr Shergold can tell us the differences between this draft and the previous draft.

Mr Kennedy—The changes are marked and sidelined and identified. I would not want to waste the time of the committee now.

CHAIR—I think we will distribute that and you can walk us through it. That might be the best shot.

Senator FAULKNER—Mr Chairman, have we reached an interregnum here?

CHAIR—We are distributing the document. We will go through and see what the changes are in the latest draft as compared to the previous draft.

Senator FAULKNER—Okay.

Mr Kennedy—If it would save you time, because I understand you are tied for time, we provided behind the letter a two-page summary of the major changes as well as marking up the document. I am happy to take you through it, but I am not sure how you are going for time this afternoon.

CHAIR—I think this is an important issue and it needs to be looked at. Who has not got the latest draft?

Ms Forward—I have now.

CHAIR—We had a stack of them over in the corner there and they appear to have been picked up. Mr Kennedy, could you walk us through this now.

Mr Kennedy—Yes, certainly. Firstly, having had further discussions with the

Office of Legislative Drafting, the format in which you now see the regulations is the format that the office, subject to any comments the committee might make, will be intending to use with the other regulations. Chapter 1 will contain a number of preliminary matters. Chapter 2 will contain the matters relating to the review of actions. Then the other matters about which regulations will be made will be inserted as successive chapters as they are drafted. We will provide those to the committee as they become available.

Senator FAULKNER—Mr Kennedy, before you move off that, thank you for that information. I do not want to lock you in, but can you give the committee a time line for what regs are to come so we have an appreciation of what we have in front of us?

Mr Kennedy—Yes, certainly, Senator Faulkner. We have given instructions for all of the substantive regulations. The Office of Legislative Drafting are hoping that they can have those drafted within the next week to 10 days. So they are in the process now of actually drafting the rest, but they gave the review of action ones priority.

They have proposed that they will defer drafting the consequential and transitional regulations until the shape of the bill is better known as it passes through, but we have given a copy of the drafting instructions for those which are probably sufficient, because in a sense there are a lot of specific items. So we would hope in the next week to 10 days we will be able to give the committee a full set of the draft substantive regulations.

CHAIR—We have a reporting requirement of 23 September.

Mr Kennedy—I will talk to the Office of Legislative Drafting and see if they can expedite that process, because I know they are working on the matter.

CHAIR—Ms Forward, have you had a chance to have a look at the amended draft?

Ms Forward—I have read the dates. They are later ones than the ones I have examined, but with the time available I could not be confident about the totality of my comprehension.

CHAIR—The committee is going to want comments from the members around the table. Maybe we will have to do it by correspondence.

Mr Waterford—Could I make one observation about that point right now. On a scan of these, it now seems to me to be quite clear that the review of action that is provided under clause 33 of the proposed bill and the grounds that are provided in the revised draft circulated on 4 September provide for a public servant to complain only about breaches of the code of conduct that affect them adversely in their capacity to do their work. It does not provide a right of action for a public servant to complain about some action, audit undertaken or not done or whatever which the public servant believes

to be corrupt, wrong or in breach of his duty to the public or a public trust. I accept and acknowledge that we have provisions for whistleblower legislation under the act, although I think they are also woefully inadequate, but I will leave that out of it.

CHAIR—That is the next topic we are due to cover.

Mr Waterford—But this—it should be very clear to you—provides no rights of action whatever for a public servant to complain about what he thinks is wrong conduct. It only provides a right of action for public servants to complain against some action which they think is discriminatory in relation to themselves.

Mr Kennedy—That is correct, Mr Chairman. The draft regulations are dealing with reviews of actions that affect public servants in the way Mr Waterford has described. We have tried to draw a clear distinction between those procedures and the procedures that are in chapter 5 of the commissioner's direction on what a public servant does when they believe that there has been conduct of the sort that Mr Waterford described, which you said is the next item on today's hearing.

Ms Forward—That has reminded me to say that I cannot identify the difference between a whistleblower and a person who wishes some action to be reviewed. Both of these people are defined in terms of complaining about a breach of the code of conduct. It seems to me that that is inadequate. I cannot, on the basis of the regulations as I have seen them, differentiate between the two. I think that is a significant shortcoming. I just wanted to pick that up while the topic was current.

Ms Caird—Unless there has been some significant change in this current document, I want to go on record that we believe there is still no clear available answer to the question: what can I ask for a review of? Firstly, you would have to go through a whole assessment of whether it fell under the category of 'a breach of code of conduct or materially'—who knows what 'materially' means—'affects the employee's interest'. Then you would have to go to the schedule of things, for which there is no review, which is so broad as to be easily interpreted as covering everything about your employment arrangement. So the first question you would have is: is this reviewable? There is no answer apparent to me in assessing that. It would be case by case arguing your way through all of these escape clauses.

Secondly, as the average public sector worker finding out who was going to conduct the review and what say I had about that, I am left completely baffled by that too. Thirdly, there is the question of what time frame this unspecified person has within which they will conduct their review. There is no time frame. Fourthly, even if I were proven to be right all along and the decision was a wrong one, would anybody assure me that there would be some change in the outcome? Those are the fundamental problems with this system of review in addition to which they are internally conducted, not by an independent body. In our view, that is very flawed.

Mr Hunt—I wonder if I might elaborate on some of those issues before you ask the Public Service Commissioner to respond. I have had a quick flip through the current version of the regulations. Regulation 9 is pivotal to whether you have a right of review. It says that various things are not reviewable action. The way it is structured, the decision on a lot of very subjective issues is left not for the reviewer but determines whether you have a right in the first place.

For example, if an application is frivolous or vexatious, there is no right of review. The usual way you would right that—and this is what I was alluding to in my earlier general comments—is to give an ombudsman-like body a sensible discretion to not take something any further when it is obviously frivolous or vexatious. The way these regulations are written, there is some preliminary jurisdictional test that establishes whether you get through the first gate at all on whether it is frivolous or vexatious. Similarly, in the same regulation 9 there are exclusions if you have a right of review to somewhere else. Once again, I would suggest they ought to be part of the sensible discretion of the reviewer rather than an absolute barrier to get in at all.

Finally, and perhaps most importantly, in the current draft you are excluded entirely if review is not justified in all the circumstances. Who decides that and on what basis? I have no difficulty at all with the reviewer at the end of the day having that as part of his or her range of tests to bring to bear on the merits of the complaint, but the way it is written now, as a matter of law, you do not even have a right of review and you are legally obliged to go away if an unnamed person says that your review is not justified in all the circumstances.

Similarly, if I could add to what Ms Caird has been saying about the schedule: I have a lot of difficulty with the way a number of the exemptions are expressed. For example, in the first one, the action is about the policy, strategy, nature, scope, resources or direction of the APS or an agency. I think I understand why something like that is being said, but the reality is that it should never be a complete defence to a legitimate grievance that what we did was in accordance with policy. If the grievance throws up a need to review the policy, the policy should be reviewed as part of the grievance. Using that as an extreme example, I think you could argue that almost anything could be excluded from review on some interpretations of this first exemption.

We should bear in mind that this is an exemption, not some discretion for the ombudsman-like person later in the day. This is something which says, ‘If your complaint is about policy, then you have no right of review.’ It would be far better to have this sort of thing set out as one of the many areas of discretion available to the ombudsman-like person, the Public Service Commissioner or the independent reviewer. If, at the end of the day, that independent reviewer makes a silly and impractical recommendation back to the agency head, the agency head will have a perfectly legitimate basis for doing nothing about it. If it is a broad policy issue which patently cannot be dealt with on the basis of a single grievance, that is a legitimate basis for the agency head to reject the

recommendation.

Finally, I quickly comment on regulation 30 of the present draft, which provides for the Public Service Commissioner to report recommendations to parliament. I am puzzled. Possibly one of the Public Service and Merit Protection Commission people could explain to me why there has been a departure from well-settled models in the Ombudsman Act and the MPRA Act as to providing a very robust power of reporting to parliament where a recommendation is not accepted. This is considerably watered down from the more usual model. It requires the commissioner to tell the agency head that he does not agree with you. I am not quite sure what is meant to flow from that. It says that details of the recommendation can be included in an annual report or a separate report.

The much more robust version of that, which is more important, not for its usage but for its persuasive power to make people accept recommendations, is that there is a very clear and explicit power to go straight to parliament if you need to where there has been a failure to accept a recommendation. I just wonder why it has not been written in that standard format.

CHAIR—Before you respond, I call Mr Whitton.

Mr Whitton—With my independent reviewer's hat almost on, I would like to endorse those remarks of Chris Hunt and Ann Forward and head off in a slightly different direction. It seems to me that the model of independent review that they are proposing is actually more in tune with the spirit of what we are told is the purpose of the act—namely, efficiency and lack of process, or reduction in unnecessary process. If you look at the regulation as drafted—and all the chips fall as they might—there are up to six levels of review. At every one of them, or at least at the relevant decision-making level, there is no requirement on the decision maker to have regard to any of them. The decision maker can make a decision. It may be sensible to make a decision having regard to the findings of the review, but it is not required.

So you have the independent reviewer making a review, the agency head, the commissioner and, ultimately, the minister, if it all falls out that way, plus two quasi reviews, as Chris has pointed out, about whether the matter complained of is actually frivolous or vexatious—that actually might be four quasi reviews. No-one is quite sure what those tests are either. It strikes me as needing work.

Mr Waterford—There is also an additional one—the threshold test of whether the action 'relates to his or her APS employment', which is set in the act and not in the regulations.

Mr Baxter—I remember back in 1975 having dealt with a character who is well known around this table—now in prison—called Mr David Eastman. Mr Eastman would have complained about most decisions by most departments and most ministers on a very

regular basis. The amount of time that was spent in dealing with his complaints until the latter days, and the amount of time that was occupied, was enormous yet I think it fair to say that, after two or three years, we had a reasonable idea that his action was in most cases frivolous and certainly dealt with issues of policy. There were ministers on both sides of the fence who received long dissertations from Mr Eastman about the incorrectness of Treasury policy and what have you.

I am intrigued—admittedly, some people clearly have not read this document—that, at page 14, clause 30 ultimately gives the right of the commissioner to report where satisfactory action has not been taken in the next annual report prepared for section 44 of the act or a separate report to the parliament. So it would seem that the ultimate capacity is still there if somebody is not happy about what has been complained about.

Mr GEORGIOU—Did you find any cases where they did have a point in appealing? You draw one case out of a hat and say—

Mr Baxter—I draw him because he is a notable one.

Mr GEORGIOU—Presumably then you could not have terminated him by writing out something?

Mr Baxter—Of course an attempt was made to terminate him by at least one department, and several people around this table would know what happened consequently.

Mr Waterford—There would be some people who would say that if it had been dealt with a little more appropriately in the first instance, there would be no occasion for him to be in gaol at the moment.

Senator FAULKNER—I wanted to ask a question of Dr Shergold so that I could get a better appreciation of process. I think you indicated to us, Dr Shergold, to use your words—again, I do not want to put words in your mouth—that you had workshopped the draft regulations as you were going through the development phase with a number of departmental secretaries. Is that correct?

Dr Shergold—I have workshopped all the commissioner directions that you have in front of you. This draft and the regulations have still not been workshopped with the secretaries.

Senator FAULKNER—Was an earlier draft workshopped with the secretaries at all?

Dr Shergold—Not a draft with this document, although the matters have certainly been discussed with portfolio secretaries.

Senator FAULKNER—I see. What about with the Merit Protection Commissioner and the Merit Protection Commission?

Dr Shergold—There have certainly been discussions. I have certainly seen the submissions that they have made to this committee and at least some of the proposals that they have put to the minister. To some extent the version that you have in front of you now I think addresses some of the earlier concerns raised by the MPRA.

Senator FAULKNER—I am just trying to understand the process a little more broadly. Surely you would not be depending on what the Merit Protection Commissioner might put forward in a submission to this committee. Wouldn't you be engaging with these people in terms of the development of these regulations?

Dr Shergold—In terms of the issue of appeals and grievances, this has been an area on which public servants have been reporting since at least 1994. There is a chapter of the McLeod review which addresses these issues and the problems that we face. The essence of the proposal before you is quite clear: there would still be a system of external review and at the same time, for the first time, an opportunity for public interest whistleblowers to raise issues that are not directly affecting their own employment. So those two things are separated.

Senator FAULKNER—With respect, that has absolutely nothing to do with the question I raised. What I am interested in understanding is the process that you had engaged in with the Merit Protection Commissioner on the development. I hear that in an earlier draft you had workshopped it with departmental secretaries. I was wondering who else had been involved. All I have heard around the table is basically a litany of criticism of these draft regulations. I am glad that Mr Baxter was able to put his shoulder to the wheel to give you a little bit of support. It was good to see.

Dr Shergold—With respect, I do not think that is surprising. If I may say so, most people who have spoken out have actually identified themselves as part of what are existing review arrangements, and there is no doubt that the proposal in front of you is a significant shift because, although it provides for external review through the Public Service Commissioner and makes it quite clear about the grounds for review and what action is and is not reviewable action, it does not allow the external review authority to overturn the primary decision.

We have to be honest here. We can talk about how to improve the wording of the regulations you have in front of you, but I must say that I think that is hiding a much more fundamental issue. What is being put forward here is a view that the existing arrangements, or something very similar to them, should be preferred; that there should be a merit protection and review agency or an employees ombudsman or some similar agency undertaking external review on similar grounds to what we have now, with an ability to overturn the primary decision. We can talk as much as we like about the wording, but that

is not going to deal with the fundamental difference in position.

Senator FAULKNER—I heard your justification at a previous hearing and I listened to it very closely because, as you would recall, I questioned you further about it in relation to the claims you have made about a grievance mentality in the Australian Public Service and also the potential savings of some quarter of a billion dollars, that you will recall you referred to, through the streamlining of personnel processing.

I refer to page 5 of the MPRA submission. I do not know whether you have had an opportunity to read it.

Dr Shergold—No, I have not. Which volume is it in?

Senator FAULKNER—I do not know. I have only got it in loose-leaf form. At least I have got it! I am reliably informed that it is in volume 4, at page 453. I just take you to that. I am glad that Dr Shergold has raised some of the fundamentals. Given the statements that were made about the potential savings of $250 million a year, have you had an opportunity to refresh your memory about the management advisory report that is referred to here as achieving cost-effective personnel services? Was it the case, as claimed by the MPRA, that that report was a survey of APS organisations and was not intended as a detailed costing exercise?

Mr Downie—It is part of a benchmarking survey. That is correct. The report itself says that that is not an activity based costing study, it is a diagnostic survey. But by simply looking at the costings that are identified and published in the report it is possible to extrapolate the value of the cost differential between the APS performance and a good practice example across the whole of the Public Service. The report diagnostically identifies the cost of providing HR services within the APS and within other organisations.

Senator FAULKNER—Thank you for that. Dr Shergold, I refer to halfway down page 454. How do you respond to the statement there that says:

Contrary to the Public Service Commissioner's claim that a promotions appeal culture is one of the key reasons for the cost of APS personnel management exceeding best practice by 2.5 times, the fact is that of the four activities studied, APS recruitment and selection activity came closest to 'best practice'.

Dr Shergold—I would find it absolutely extraordinary if any group of public servants that you could care to bring before you did not believe that the appeals culture was one contributing factor to the higher personnel costs, which are conservatively estimated in this MAB report at 2.5 times best practice, because that appeals culture spreads through the whole of the Public Service. Essentially, every management decision takes into account that there could be an appeal or grievance about it and therefore we build in very legalistic processes so that, for example, if you look at the high cost of

selection processes and the lengthy time taken with selection processes, which is set out in detail in the MAB report, to a considerable extent that reflects the fact that the people undertaking the processes become highly legalistic in the way they undertake recruitment.

Senator FAULKNER—But is it a true statement to say that, of the four activities that were studied, the APS recruitment and selection activity came closest to best practice? I am getting to the justification that we heard at length from the Public Service Commissioner. I just want to get behind it and underneath it.

Mr Downie—If you look at page 14 of attachment C of the report, it sets out the gaps between the level of expenditure on HR—between the average of the public sector and the good practice example—and there is a variety of differences. It compares 'Pay & Conditions', 'Occupational Health & Safety', 'HR Administration', and 'Recruitment and Selection'. It is true that there is a range of differences, but on recruitment and selection we are still looking at public sector costs more than three times the costs in the good practice example.

Senator FAULKNER—Let us go down a bit. Was it true that one of the key findings was that an initial view, that grievances take up a large percentage of line management time, was not supported by the findings of the study?

Mr Downie—I am sorry; I do not have that in front of me.

Senator FAULKNER—Is it also true that there is nothing in the report at all to suggest that a 'grievance mentality', as described, exists in the Australian Public Service?

Mr GEORGIOU—While the witnesses are looking through the material, I would like to come back to my concern. We now have a system where there are binding appeals—

Ms Forward—If I may comment here, Dr Shergold is in error on this matter. The last time we met you, I explained to you the difference between appeals and grievances. Appeals are conducted now by statutorily independent tripartite committees that are not in the MPRA. They are separate statutory committees, established mainly under the Public Service Act, but the details about who is on them and all of that sort of stuff is in the Merit Protection Act.

Mr GEORGIOU—That is not my point. My question is: when whatever review comes to a conclusion that the agency head's decision was wrong, is that conclusion binding on the agency head?

Ms Forward—That is the point I am coming to: that in the case of appeals they are a merits review in a traditional sense of the merits review—for instance, able to make a binding decision and to so change the decision of the original decision maker. That is

what an independent merits review committee does. The MPRA does not, has not, never can and never will make a decision that overturns a decision by a department. It has only ever had the power to recommend to a Secretary, with the added coercive power of reporting to parliament if sensible advice is not taken.

Mr Hunt—I wonder if I might quickly add to that and pick up an earlier comment of Peter Shergold. Obviously, each submitter around this table can speak for themselves, but in the MPRA's case we have not in any sense advocated the retention of the system that you are talking about. Indeed, before this legislation even commenced, nearly 12 months ago we put our own submission to Minister Reith proposing, amongst other things,

the complete abolition of merits review and its replacement by an ombudsman-like process.

Mr GEORGIOU—In the case of the Ombudsman, that advice would be recommendatory only?

Mr Hunt—Yes, with the very important sanction of a clear and robust power to report to parliament in the event that a recommendation is not accepted. That has been a well-accepted balance in ombudsman-like structures for many years: that the sanction of that creates the pressure to accept anything other than a totally ridiculous recommendation.

Mr GEORGIOU—Dr Shergold, do you think that your regulations are robust enough to be able to carry a situation where your power is purely recommendatory, and are they binding enough on you?

Dr Shergold—I have no doubt whatever that the powers that are set out in the regulation, as well as the inquiry powers and the commissioner's functions set out in the Public Service Bill, are very strong indeed and that the ability to report to the minister or, indeed, to report directly to parliament are very strong powers.

Senator FAULKNER—You see, Dr Shergold, the Merit Protection Commissioner said to us that the overwhelming number of promotion appeals 'comprises very few parties' and went on to say that 'the sort of appeal matrices that Dr Shergold referred to in his evidence on 25 August is extremely uncommon'. I raise all of these issues with you because what is the committee to make of these very stark differences of interpretation between you and the Merit Protection Commissioner? That is really the fundamental point, given the statements you made in relation to potential savings of a quarter of a billion dollars—which, I agree with you, is an awful lot of money—as a key justification for these changes. I think they are pretty valid questions.

Dr Shergold—I think they are. I do not think—and I am willing to be corrected—I have ever suggested that the additional cost of $250 million a year is purely a result of the grievance and appeal culture. Having said that I must tell you that, when I talk about a

grievance and appeal culture, I am not just counting the fact that there were 1,457 promotions appealed in the APS in 1996-97, that 25 per cent of those were more than five parties and that a number of them were significantly more than those parties.

That outcome drives the way that people behave in management. It drives the way that they behave in terms of selection and recruitment. When we talked to focus groups when the MAB undertook that project on achieving cost-effective personnel services, it was reported by focus group comments: 'There are too many avenues of appeal,' 'There is a need to satisfy a variety of external sources as to the legality of both decisions and processes,' 'People can and do pursue appeals through a number of channels, which include reg. 83, the MPRA, the Ombudsman, the HREOC and the AAT,' 'People are often skilled at clouding the processes and some are always looking for ways to beat the system.'

Participants acknowledge that the issue has already been picked up as part of the McLeod review of the Public Service Act. Chapter 6 of McLeod's review goes into detail on grievances and appeals. It was identified by the National Commission of Audit as a key cost to management within the APS. So I do not think that there is any doubt whatsoever that the basis of appeals and grievances that we have at the moment imposes very real costs upon the service. Indeed, if it were possible to directly attribute those costs, it would show that the present estimate of a $250 million a year differential between us and best practice is very much a conservative underestimate.

Senator FAULKNER—Could I ask you why you chose to develop these draft regulations without any input from the MPRA?

Mr Kennedy—I was responsible for that decision. We only had time to take account of the discussions last time, talk to the Office of Legislative Drafting and submit them to the committee. It may have been my uncertainty about the rules of committees, but I thought that, until it was actually made a public document by the committee, we could not discuss it with anyone else. So I took that decision.

Senator FAULKNER—How does that fit with the round table with the secretaries for the original draft?

Mr Kennedy—They were the directions before the JCPA had started.

CHAIR—You have the power to publish whatever document you like, but we do not. It is only after we receive it.

Dr Shergold—I think this is entirely appropriate. It is absolutely vital for the functioning of the Public Service and the Merit Protection Commission that the different independent statutory roles of the Public Service Commissioner and the Merit Protection Commissioner be identified. It is appropriate that we have developed this set of

regulations without further consultation with the MPRA, as it is that it has presented two supplementary submissions to this committee without consulting with me about it. It is entirely appropriate.

CHAIR—It is obvious that we are going to run over time. I have booked myself on a later flight.

Senator FAULKNER—You will be pleased to know that I am not.

CHAIR—There are quite a few areas we need to get through. We will not get much further on this issue we are looking at at the moment so perhaps we should move on.

Ms Caird—There is one point I wanted to make. I am very conscious that the Public Service Commissioner keeps telling us the cost of the way things are done now, but on two occasions now has not had any comment about the cost of the way things will be done in the future. I find that a bit unusual.

I have one specific question I would like to ask. One of the most significant reforms that has eliminated disputation, grievance and appeals has been the use of joint selection committees. It has been a major reform in the Public Service. No documents as yet presented on the new bill envisage a continuation of that process. If this is about cost and efficiency, why not?

Dr Shergold—The answer to that is very simple. Those are responsibilities that are now devolved to the agency head. It will be up to the agency head what mechanisms they set in place for selection. They may well set in place similar arrangements, but it will be tailored to the needs of the individual agency.

Mr Moylan—I was going to suggest that it would be useful for the committee to get a factual explanation as to the basis of this calculation if it is something that arises as important in the minds of the committee or of the commission. It has, maybe belatedly, dawned on me that that cost includes matters such as occupational health and safety and staff development. I am not going to fall over myself and say, 'Shock horror! The APS is spending money on staff development,' having spent some time with some people here trying to get that expenditure increased.

The author is here with us. Presumably, it would be helpful if we were to have a factual statement as to the basis of this calculation which has been referred to in the MPRA position. Plus I am also tantalised by Dr Shergold's earlier line of argument that part of the cost of the selection arises because of the threat of the appeal process. I wonder whether, if the appeal process were weakened, the consequence of that would be that so would be the selection process.

Mr Downie—In terms of the overall costing, as I outlined last time I gave evidence, it is a cost of providing all HR services. The basis of that costing, the model within which activities are costed, is contained in attachment C. It goes to a wide range of all human resource management functions—indeed, recruitment selection is one of those activities.

In terms of the comment contained at page 6 of the MPRA's submission that 'the initial view that grievances take up a large percentage of line management time was not supported by the findings of this study', can I please put that into some context. This overall report contains several elements. There is a benchmarking study, which I have

referred to, and there are focus groups which I and other people conducted. We also conducted a small study of how line managers use their time. The study referred to here is that study. It is one of a series of studies that made up the report.

One of the issues that the report also points to is that one of the major weaknesses of our people management practices at the time this was undertaken was that power to make decisions about issues affecting staff was largely not devolved to line managers. In some ways, it is not surprising that grievances are not seen by line managers to take up their time, but they certainly take up a very large portion of the time of HR practitioners.

This report is not just about cost. It is about cost effectiveness. One of the key findings is that we, unlike other industries, put 60 per cent of our effort in human resources into process activities—that is, into going through processes and procedures that are not value added activities, not about getting the job done better, but are about maintaining a large set of rules and prescriptions. That is one of the major findings of this report. I put that in context. This is not in the report, but is my recollection: if we had not governed those focus groups carefully we would have spent every meeting talking either about inefficient staff or recruitment. The fact is that line managers are preoccupied with these issues.

CHAIR—I thank you for that statement. If anyone has a further comment on this issue we will have to take it in writing before the end of this week. The report consideration is next week. We have two issues left to deal with—whistleblowing and SES termination of employment. I invite Mr Whitton to make an opening statement on the issue of whistleblowing.

Mr Whitton—Perhaps I should start by saying that I do not carry a torch for whistleblowing or for whistleblowers as such. Nor do I carry a torch for the Queensland legislation which, as one of the contributors, might give cause for a conflict of interest argument in relation to my position. I will talk generally about the whistleblower protections that have been put in place in four jurisdictions in Australia based on the Queensland model. I take up the point Jack Waterford made when he said the review process is a shield, not a sword. That is a phrase we use in Queensland in relation

whistleblower protection. It is a shield, not a sword. If you prefer, it is a fire extinguisher on the wall just in case. Nobody is expecting the building to burn down tomorrow but nevertheless we make sure the fire extinguishers are in good shape just in case we are wrong.

I made a technical submission in relation to the Commonwealth bill proposals and nothing I see in the directions offsets those concerns, I have to say. Indeed, I have an additional concern now having seen the direction—namely, that there is nothing in the procedure which proscribes, prohibits and in any way discourages abuse of the process by non-bona fide disclosers. Not all whistleblowers, so-called, are bona fide public interest disclosers. Often they do whatever they do for strategic personal reasons—not all of them well motivated. It seems to me that as a minimum any process needs to recognise that fact of human nature and to counter it.

The Queensland legislation is set out in my submission in general terms. It needs to be recognised that it was put in place at the end of 1989 after the change of government and the Fitzgerald commission of inquiry. In the meantime, there are parallel processes in the Criminal Justice Act and there were, at the time, parallel processes in the Electoral and Administrative Review Commission Act—that commission now having lapsed.

The South Australian government adopted a close version of the Queensland proposals in 1994 and extended them significantly by extending them to the private sector. In the New South Wales model, the Public Interest Disclosures Act made at the end of 1994 is based closely on the tests and the mechanisms set out in the Queensland legislation. The ACT model also follows the Queensland model.

The Queensland act was based on a public consultation process undertaken by the Electoral and Administrative Review Commission under Tom Sherman. It was done in the full glare of the often unwelcomed attention of the Whistleblowers Action Group. It was done in conjunction with the Criminal Justice Commission because the provisions in its act were complementary. It was endorsed by a parliamentary committee and it went through the parliament in November 1994.

I have been implementing that legislation since then. It seems to me that any public sector that is committed to accountability and transparency can have no real reason for not endorsing a whistleblower protection mechanism of some workable kind. In my view, as I have said in the submission, the model proposed here is so minimal as to be unworkable.

You need to bear in mind that we did have the benefit of 10 years of experience in the United States and personal consultation with Judith Trueson, the US expert, and John McMillan, the Australian expert, when the draft legislation was prepared in Queensland in 1991. The two arguments, it seems to me, that are often put forward against a

whistleblower protection mechanism come down to this. If we enact whistleblower protection legislation it will be the end of civilisation as we know it, the floodgates will burst and we will lose control. I have to say that there is no evidence that that happens. You are welcome to consult the annual reports of the Public Sector Management Commission and the CJC for the last five years.

Perhaps it would be quicker to recount a conversation which occurred with five of my colleagues at a recent meeting of the Australian Public Sector Ethics Network in Adelaide. It was agreed that one of the curious features of whistleblower protection legislation is that there has been a rapid diminution of disclosures made in all of those jurisdictions which enacted protections in 1994—the ACT, South Australia, New South Wales and Queensland. It was agreed amongst us that the number of genuine whistleblowers, contrary to popular opinion which has it that you could not count them on the fingers of the Mormon Tabernacle Choir, could in fact be counted on the fingers of one side of the table—it is vanishingly small and a surprise.

It is also to be said that the statistics coming from a survey which Professor Callan of the graduate school of management from the University of Queensland and I did last year showed to our surprise that after three years of the act being in place—and in response to the question, 'How do you feel about making a public interest disclosure now?', in short—33 per cent of respondents, of which there were roughly 600, said that they felt less confident than before; 35 per cent said that they felt more confident than before; about 30 per cent said they felt about the same; and a couple of per cent said they did not know.

Our experience has been similar to that reported in New South Wales by the ICAC: 70 per cent of respondents, public servants, would expect some form of personal damage if they were to make a public interest disclosure but it would not dissuade them from doing so. In the Callan survey, most reported instances of wrongdoing disclosed by whistleblowers protected under Queensland legislation were not fraud or corruption or any of the other things that you will read about in the newspapers, but, in fact, people not doing their jobs properly. Seventy per cent of disclosures were made internally, not to an external agency, and a vanishingly small number were made to the CJC.

In 1975-76 we reported 76 approaches, 26 actual cases of disclosure, six cases referred to the CJC for disciplinary action or for consideration for prosecution, two referred to agencies for the same, and one case of possible reprisal. Last year, 1996-97, we reported no disclosures and about 25 requests for advice.

Dr Shergold—You do not have before you a whistleblowers protection act. This is not meant to be it. It is a matter that the government is considering. This is purely to deal with public servants in the APS who wish to blow whistles.

Mr Baxter—Having had a little experience with whistleblowers, I am a strong

supporter of the provisions that are in the act but there also needs to be a sanction against ministers. In dealing with whistleblowers my experience has been that the greatest problem is that once a person has blown the whistle, regardless of which side of the political fence the minister comes from, that minister wishes to have nothing to do with the individual. The hardest part has been to sensitively deal with individuals who have been so marked.

Ms Forward—The MPRA proposed that protection of such people should be with the Commonwealth Employment Ombudsman.

Mr Baxter—Yes, but can I respectfully suggest that once the person has been so identified it is very difficult to give effective protection to that person if he or she remains in public employment. It is a quandary. I do not know what the answer to it is, but that is where the dilemma usually arises.

CHAIR—Again, this ought to be considered in the context of whistleblower legislation rather than the Public Service Bill.

Dr Shergold—I am bit concerned about the MPRA submission, which Senator Faulkner talked about, and which suggests that there is nothing in the MAB report to suggest a grievance mentality. I read out one quote, but let me give you a few quotes from page 38:

> Managers are still reluctant to bite the bullet with under-performers, largely because they believe the system doesn't support them.
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> . . . . . .
>
> There are too many avenues of appeal. People can (and do) pursue appeals through a number of channels, and there is a perception that everything can be hidden under the umbrella of stress.
>
> . . . . . .
>
> There is widespread agreement that the existing processes are weighted heavily in favour of the individual.

I read that to suggest that the presentation that I gave was in fact based on some of the findings in the MAB report.

Ms Forward—Dr Shergold has just made two references to this report, which talks about too many avenues of appeal. Could I suggest to you that this is a continuing misuse of the English language. I have drawn the attention of the committee to what an appeal really is. There are not too many avenues of appeal. The fact of the matter is that, in relation to grievances, which are not appeals, people can come to MPRA. We have provisions in our legislation—that is after internally—which prohibit the MPRA dealing with matters which have gone or should go to another body such as the Ombudsman or the Human Rights and Equal Opportunity Commission or the industrial relations system. Whilst the perception may be that there are too many avenues, I put it to you that the people who have those perceptions have not looked at what the provisions really are,

because there are not too many avenues of appeal. At most you could say that there would be two where some people have taken part of a concern to the human rights commission and a related part of the concern to the MPRA. Those, by the way, are not appeals.

Mr Whitton—I would like to respond to Mr Baxter. There are effective protections available for whistleblowers. The most effective protection is an organisational culture which values positive contributions by way of criticism or dissent or whatever—'frank and fearless advice' if you will. I would have thought that an organisational culture which valued the notification of wrongdoing amongst employees of the organisation would be a positive contribution.

The other thing we can do—and we have done this in four states of Australia—is to separate the discloser from the disclosure, for example; to treat it as an accountability matter rather than as a matter for speculation about the loyalties of the employee. You can guarantee confidentiality up to a level and you can make—as we have done in four states—quite serious sanctions available. There are protections of other kinds in terms of private legal action for defamation, say, against those who would take reprisal against a disclosure. So there is a range of things that you can consider. It is certainly not the case that there is nothing available, or that nothing works.

CHAIR—As a committee we have found that there is a problem in Queensland in that the Auditor-General cannot do performance audits with regard to accountability. Things that happen in Queensland would normally be picked up by an Auditor-General at the Commonwealth level through the performance audit process.

Mr Whitton—That is true. There was a government decision of some two or three years back which excluded the Auditor-General from performance audits, but the Auditor-General is one of the specified bodies, of which there are about eight, which can receive a disclosure under the whistleblowers protection act and if he or she considers that it is inappropriate to deal with it they can refer it to whomever. There is no limitation, as there is in this measure, on recipients of disclosures.

CHAIR—The next issue is termination of SE employees.

Mr GEORGIOU—The hoary 'timely advice' pops up once again. I am puzzled about the constant 'timeliness'. This was drafted after our first discussion, I think. It says that the agency must seek to ensure that the SES is able to lead and manage the delivery of timely advice.

Dr Shergold—If the primary legislation changed, so will these commissioner's directions.

Mr GEORGIOU—This is not an elaboration of the primary legislation in the same sort of way that you thought the discussion of merit was an elaboration of the

primary legislation?

Dr Shergold—I think it is an elaboration, but in respect of the reference to timely advice it does not go beyond the values in the bill.

Mr GEORGIOU—Okay. While we are on relationships, what is the relationship of the functions of the constitutional role of the SES, as outlined in section 35 of the act? Part 2, 4.1(2) and 4.1(1), do not seem to nest inside one another? In section 35 of the act, 4.1 and 4.2, we have a specification of high levels of management and personal example. Are they meant to be intrinsically related to one another?

Dr Shergold—They are meant to be related to one another. Section 35 of the Public Service Bill 1997sets out the role of the SES, whereas chapter 4 is essentially advice to agency heads on their employment relationship with the SES.

Mr GEORGIOU—They do not seem to be one on one. Moving along, the agency head, in 4.2(2), in terms of termination:

The Agency Head must ensure that the decision:
.meets the minimum requirements; or
.is made using processes agreed to by the Commissioner.

Can you elaborate on the relationship between those two?

Dr Shergold—Essentially, it is saying to an agency head that if you want to use processes of retirement, involuntary assignment or termination of employment that are outside what is set in those clauses, you will have to gain the agreement of the commissioner.

Mr GEORGIOU—Is it implicit that those processes shall at least meet the minimum requirements?

Dr Shergold—Yes, it is. Sorry, I just realised that I have got a clause 4.7 which is missing; that is why.

Mr GEORGIOU—If it is intended that the decision meets the minimum requirements, at least, why do you need the second point 'or is made using processes agreed to', because those processes must be at least what is in the minimum requirements?

Dr Shergold—It would be possible, for example, under 4.3(1) that an agency may suggest that the selection process to be used was, for example, head hunting—an executive search company—and, if the commissioner was convinced that that was appropriate for the position and was able to contribute, he or she may well agree to that particular process.

Mr GEORGIOU—Sorry. Does that mean that he would be agreeing with something that did not meet the minimum requirement?

Dr Shergold—It may not be the minimum requirement as set out in 4.3(1) under those dot points, for example.

Mr GEORGIOU—You can see my problem. It says either you have got to meet the minimum requirements or whatever I agree to.

Dr Shergold—Yes. The intention was to provide agency heads with a flexibility in terms of the processes they used, but without undermining, for example, the merit selection process. That is the intention of the clause and the note under 4.2(2).

Mr GEORGIOU—You are not having any second thoughts, or are thinking again about the relationship?

Dr Shergold—Throughout today I have been having second thoughts, largely on the basis of whether it can be better worded to remove the ambiguity to which you are pointing, and I think it probably can be.

Mr GEORGIOU—Can you outline for the committee the relationship between these minimum requirements for termination and the requirements for officers or employees who are not senior executive service employees, in substantive terms?

Mr Stewart-Crompton—To pick up that point, I take the extensive provisions about SES employment to reflect the fact that there are special arrangements made for the SES in the proposed bill. The most obvious example is the fact that the termination of employment provisions of the Workplace Relations Act do not apply to SES officials. The intention is that for other aspects of the employment relationship, we would normally expect those to be dealt with through awards or agreements made under the Workplace Relations Act.

There will, of course, be some circumstances in which there are matters pertaining to SES officers where those are provided for also through awards and agreements. But, generally speaking, the distinction here is that a particular regime is intended for the SES and that is reflected in the bill that is before the parliament, and a more general, perhaps if I could put it, conventional approach towards the regulation of terms and conditions of employment is provided for through the Workplace Relations Act and the instruments made under the Workplace Relations Act. There may be other matters, of course, which are picked up by the directions in relation to all APS employees; we have seen some of those, and they are of a generic nature.

Mr GEORGIOU—Are more protections afforded SES employees under this direction than are available to non-SES employees under the Workplace Relations Act and its associated measures?

Mr Stewart-Crompton—In those circumstances, one would need to have a look at

the particular instruments that govern non-SES employees. That is a very broad statement. In some circumstances we are looking—

Mr GEORGIOU—No; particularised to one.

CHAIR—If I can intervene, having read this and having read the act, the answer to your question is no. In fact, there are fewer protections for the SES than for those underneath them which is, I think, the brief answer.

Mr Moylan—I remind the committee that in our July submission, which we discussed with you previously, the ACTU put the view that SES employees currently have access to the unfair dismissal provisions in the Workplace Relations Act, as they are covered by an award. We were, and are, of the view that the removal of this access would contribute further to politicisation of the APS, and we are opposed to the removal of this class of employee from the coverage of the Workplace Relations Act. I am strengthened in that view by Mr Baxter's considered advice that that would weaken their position. We have also, in our submission today—

Mr GEORGIOU—He did not actually say that. What he said was that there are fewer protections in one than in the other. Could you possibly say whether you agree with Mr Baxter about whether or not non-SES officers have more protections than SES officers, because it is a point of some importance?

Mr Moylan—It is my view that the removal of SES officers from coverage under the Workplace Relations Act weakens the protections available to them.

Mr GEORGIOU—And makes non-SES officers more protected than SES officers?

Mr Moylan—Yes, it does. We also raise the questions of the processes agreed to by the commissioner, which you were just discussing, and also the ambiguity of the minimum requirement of 4.3(1):

.a representative of the Commissioner contributes to the selection process;

That could mean a number of things. Under current arrangements, a representative of the commissioner participates directly in the selection process. The general language 'contributes to the selection process' could be taken as a vague involvement. We think that there is a role for the commissioner's representative to be directly involved in the selection process.

Mr GEORGIOU—I would like to clarify one point. What does 'the commission has certified that the termination is in the best interest of the APS' mean? Does it say, 'Dear Sir, yours sincerely'?

Mr Shergold—No. It is similar to the provisions at the moment. It means that, before an agency head could proceed with the termination, the matter would have to be discussed with the commissioner, and the commissioner would have to certify that it was in the best interest of the service. That may also involve identifying with the agency head if there are any alternative positions available in the service or providing them with the opportunity to be placed elsewhere for some period. There is a range of possibilities.

Mr GEORGIOU—Is there a 'because' in there?

Mr Shergold—But they could not proceed with the termination without the certification. The reason that has been added is to provide the political protection.

Mr GEORGIOU—But do you have to explain why it is in the best interest of the service, or do you just have to assert that it is in the best interest of the service?

Mr Waterford—Or in accordance with natural justice.

Mr Shergold—Yes. It would be on the same basis as now: I would have to assert that it is in the best interest of the service. I would need to be persuaded.

CHAIR—Could that be clarified in the regulations?

Mr GEORGIOU—So the commissioner must assert that the termination is in the best interest of the service and no reasons will be given? I am just trying to understand. Occasionally one gets the wrong end of these things oneself.

Mr Shergold—You could do that. On the other two issues—that is, 4.2(2), at the second dot point—I would like to place on the record that I think Mr Georgiou is quite correct and that clause could be removed. I think it is unnecessary in terms of 4.3 that follows.

In terms of the point made by Peter Moylan, the representative of the commissioner contributing to the selection process is the situation we have now and this suggests that, as a minimum, that will continue.

Mr Ives—Just picking up the point that was being discussed with the commissioner then, I think we used to discuss this very informally as being akin to the no-fault divorce: sometimes a bit of time is needed, but the relationship might have broken down.

Mr GEORGIOU—Yes; but we keep talking about transparency and things like that.

Mr Ives—Yes. I would like to come back to that. If other people are interested in them, I put my views on these points in a letter to the committee dated 5 September. The particular points I wanted to draw attention to are the interrelationship between retirement and termination, and the minimum requirements in 4.4 and 4.6. They do need to be read together very carefully, because they do bear on this balance between tenure and flexibility in employment and the risk of politicisation of the APS or the SES.

Section 4.4 relates to an agreed departure under clause 37 of the main bill and that, in turn, relates to an incentive or a payout—an agreed arrangement whereby somebody leaves with a financial incentive. I have noted in passing that the level of the payout is apparently to be left to the agency head and no longer to be coordinated by the Public Service Commissioner, which I think leaves a risk for unexpectedly high payouts to be offered in certain circumstances. Up to the present, the payout system for the SES has been coordinated through the Public Service Commissioner to ensure consistency and reasonability.

I also refer to clause 4.6, which is the most important provision, about termination of employment. I assume that termination in this context relates back to section 29 of the bill, not to section 37. Section 29 relates to termination of employment and says nothing about any incentive or compensation. There are sub-points in 4.6 which relate to performance, mental incapacity and breach of code of conduct. There may be questions there whether any compensation should be payable, but the list also includes whether the employee is excess to the requirements of the agency. This left me with the question that such employees at the moment get the benefit of a redundancy or retrenchment payout but there is a possibility, under this proposal, that they would not.

The direction gives no guidance on this at all, unless there is some interrelationship with the point about termination in the best interests of the APS, but I think this aspect needs to be looked at again and clarified. Is it really being suggested that excess SES officers are to be terminated? Are they going to get access to an incentive to retire, or is that quietly being pushed off the table?

I would also like to raise the point that in the past it has been the practice to allow an employee about to leave a period of time to try to find an alternative job elsewhere in the APS. The documentation here only refers to the possibility of whether there is other employment in the agency concerned, so there is a substantial narrowing.

Finally, I think there does need to be some clarification of the wording and some rewording, but at the very least a rewrite of clause 4.6 would be better placed in the main body of the bill and not left to a direction which, after all, is subject to the provisions of the sunset clause.

Mr GEORGIOU—Is it possible that the commissioner could come to the conclusion that he would not agree with the decision-maker's conclusion about the

indented points—standard and unable to carry—and yet still come to the conclusion that, things having ended up where they were, it was still in the best interests of the APS that termination proceeded?

Dr Shergold—I believe it would be very difficult to come to that conclusion.

Mr GEORGIOU—But not impossible?

Dr Shergold—Yes.

CHAIR—I want to ask the commissioner a question that I think we have not touched on: the consequence of proposing a 12-month transitional period. During this period, these persons would retain existing rights but will be taken to have resigned from the APS at the conclusion of this period unless they have returned to the APS. Does anyone have a view on the adequacy of this provision, on the 12-month transition period?

Mr Moylan—From our position, it is inappropriate for the parliament or the government to retrospectively remove mobility rights which have been given to people, whether that be done one year or a longer period after that agreed basis had been established. I was tantalised when I read the evidence to this committee of Mr Moore-Wilton, particularly in some discussion late in the questioning of him where he seemed to be of the view that this legislation would assist mobility of employment between the Australian Public Service and other areas of employment. You will recall from our earlier submission that we pointed to the severe inhibitions on mobility which would follow from the removal of the mobility rights.

I also notice that Dr Shergold, in his evidence to you, referred to the statement in the Department of Industrial Relations-Public Service and Merit Protection Commission document that officers who seek employment with a member of parliament would be given leave without pay despite the statement in his commission's document that such person would be required to seek leave or be forced to retire. That still does not provide those people with the same mobility which is currently available to them; for example, to move from the APS to work for a member of parliament. Under the mobility provisions, they would be able to bring accrued sick leave, for example, with them, and ditto when they go back. That is, in our mind, a severe deficiency in the arrangements proposed.

Mr Baxter—Can I comment on that, because one of the most frustrating parts, as a state civil servant and head of the Public Service Board in Victoria, was at a time under the previous government when, in fact, there were redundancies being given to federal civil servants, when we had particular requirements, especially in joint programs where there were people in the Commonwealth who had particular expertise. The legislation in the Commonwealth at that stage was such that it made it virtually impossible—the requirement literally was for the Commonwealth to sack the person or pay them out redundancy—for either the state of Victoria or any other state to be able to take them up.

But, as I read this legislation, it would have some restraints, but at least would be far easier to reach a situation where if, for example, a person was likely to be redundant in the Commonwealth, that person could be transferred to a state employment. I do not think it goes far enough in relation to that, but there are those opportunities which I think would be of mutual assistance.

Mr Gourley—I have a brief comment to make on the provisions in relation to termination of SES officers, noting that the SES officers are not covered by the unfair dismissal provisions of the Workplace Relations Act and also can be exempted from the review of actions regulations. It might be useful to think about including in the minimum requirements, in relation to involuntary assignment to a lower level and also in relation to termination of employment, a provision that might require individuals who are affected under either of those heads to be given a statement of reasons for doing so. I know in both instances the current draft talks about due regard to procedural fairness but it might be worth while thinking about making that a little more explicit by giving affected officers a right to receive a statement of reasons.

Mr Volker—I would like to support the points that have been put by Mr Ives. I think there is validity in those points. Also in terms of the question that was asked by Mr Georgiou, I think there is no doubt that the position of SES officers is very much inferior to that of other officers in relation to their rights in respect of termination. I believe, as I said in my submission originally to the committee, that, in the interests of fairness and I think also in the interest of morale of the service as a whole, there really ought to be some review of decisions relating to termination of SES officers.

But, if it is decided not to go in that direction, apart from the point that Mr Gourley has just made, one other possibility would be that in respect of the third dot point under 4.6—and perhaps the whole thing may have to be reworded, but taking up the points made by Mr Georgiou—perhaps the commissioner ought to be required to certify that the minimum requirements as set down here have been met. That at least would give some protection in regard to process and that, for example, there has been a proper look at the whole question of whether an employee's work performance is unsatisfactory and so forth. I think that would be at least a partial means of overcoming what seems to me to be a very serious deficiency in the arrangements that are proposed.

Sir Lenox Hewitt—There seems to me to be a very oddity of drafting that in the termination provisions of a secretary the Prime Minister's authority in the act is qualified at least by the need to secure a report. In the case of the termination of APS employees, it said that the agency head may do this by notice in writing at any time—no qualification at all in the act as there is in the case of the Prime Minister's powers. Then the very important qualification is written here in the commissioner's direction. The agency head in fact cannot terminate an SES employee unless the commissioner has certified that he should or that it is in the interests of the service. At the very least I would have thought that ought to go into the body of the act itself consistently with the qualification on the

power of the Prime Minister.

CHAIR—Does anyone have a comment on that?

Mr Lamond—It seems to make sense.

Mr Moylan—To go back to where we started this morning, Dr Shergold referred to the editorial in this morning's *Canberra Times*. I think the editor of that journal has left us. For the edification of everyone else, I would like to indicate that the editorial is concerned about the problems of contracting out and privatisation by the ACT administration. I think it is unfortunate that it was used as a platform to attack the competency of the Australian Public Service.

CHAIR—I would like to thank everybody for participating in this process. It is often difficult to keep debate on track, but I think everyone has had a fair go in being able to express their views. There may be some areas that need clarification and I assume you would be all willing to participate in writing.

Resolved (on motion by Mr Georgiou):

That the following submissions be accepted as evidence:
supplementary submissions 16.1, 25.2, 25.3.

Resolved (on motion by Mr Georgiou):

That exhibit No. 12 from Dr Shergold, Management Advisory Board, Third Report, amended Public Service recommendations, be accepted as evidence.

Resolved (on motion by Mr Georgiou):

That two unpublished articles, one by Professor Weller and Professor Wanna and one by Dr John Halligan, submitted by Dr Allan Hawke be accepted as evidence.

Dr Shergold—Senator Faulkner asked if we could table the proposed certified agreement for the PSMPC. I am happy to table that this afternoon.

CHAIR—We include that in our documents for publication.

Resolved (on motion by Mr Georgiou):

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

Committee adjourned at 4.21 p.m.