COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

of

PUBLIC ACCOUNTS

Reference: Review of Public Service Bill 1997

CANBERRA

Wednesday, 6 August 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.

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WITNESSES

JOINT COMMITTEE OF PUBLIC ACCOUNTS

Review of Public Service Bill 1997

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Wednesday, 6 August 1997

Present

Mr Somlyay (Chair)

Senator Faulkner	Mr Beddall
Senator Gibson	Mr Georgiou
Senator Hogg	Mr Griffin

Observers

Australian National Audit Office	:	Ms Dahlenberg
Department of Finance	:	Ms Messner
Senator Allison		

The committee met at 9.43 a.m.

Mr Somlyay took the chair.

BOSSER, Ms Catherine Eleanor, Acting Principal Adviser, Australian Government Employment Group, Department of Workplace Relations and Small Business, GPO Box 9879 Canberra City 2601

CAMERON, Mr Geoffrey Allan, Senior Policy Adviser, Public Service Employment Framework Team, Public Service and Merit Protection Commission, Edmund Barton Building, Barton, Australian Capital Territory 2600

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

LAMOND, Mr Jeffrey George, Team Leader, Public Service Employment Framework Team, Public Service and Merit Protection Commission, Edmund Barton Building, Barton, Australian Capital Territory 2600

SHERGOLD, Dr Peter Roger, Public Service Commissioner, Public Service and Merit Protection Commission, Edmund Barton Building, Barton, Australian Capital Territory 2600

CHAIR—I now open today's public hearing which is an important element of the JCPA's 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 is required to present an advisory report to the parliament by 4 September. Given this time frame, the committee will be holding public hearings only today and tomorrow.

This morning we will take evidence from the Public Service and Merit Protection Commission and the Department of Workplace Relations and Small Business, and we will be hearing the views of the Australian Council of Trade Unions. Many of the issues raised this morning will be discussed at a round table hearing this afternoon.

I have to remind you that the hearings today are the legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false and 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 secretariat staff present at this hearing. Observers here today are Maria Messner from the Department of Finance and Katherine Dahlenberg from the Australian National Audit Office.

This morning the Public Service Commissioner will make a presentation to the committee on the Public Service Bill before we proceed to questions. It is over to you, Dr Shergold.

Dr Shergold—Mr Chairman and committee members, I very much welcome the opportunity to begin the proceedings this morning with an overview of the Public Service Bill that was introduced to the House of Representatives by Minister Peter Reith two days before the House rose, and I should add in parentheses that the responsible minister for the Public Service Bill is now the Hon. David Kemp.

Mr Chairman, 75 years ago a new Public Service Act was enacted. It was at the time seen as quite bold. Indeed, the House of Representatives had concerns that this new legislation devolved too much power to individual departments and did not retain enough central controls, but that was 75 years ago. When that piece of legislation was introduced, the Public Service was still holding merit selection tests for Public Service sail makers.

A great deal has changed over three generations in Australian society, Australian government and the Australian Public Service; yet we still have 130,000 Australian public servants working under this piece of legislation which speaks to a bygone era. Of course that legislation has been amended, and that is one of the problems. It has been amended and amended 100 times since 1922. What has then resulted is more layers of confusion. There is a plethora of prescription not just in the act itself and its amendments but also in the regulations, in awards and in agreements.

I would put to you that you would not expect any employer in this country to be able to compete with equipment, machinery and a workplace that was 75 years old. This legislation is our machinery. We have patched it and we have oiled it and we have lubricated it but, quite frankly, it is not appropriate to take the Public Service into the next century. That is why the legislation that has been introduced is so important to the future of the Australian Public Service.

The first thing you will note about the new legislation is that it is short, it is succinct and it is concise. Here in 37 pages of legislation it is proposed to replace both the Public Service Act of 1922 and the Merit Protection Act of 1984. It is short legislation five or six per cent the length of what we presently operate under.

It is also readable legislation. This is a piece of legislation that is written in a contemporary style and in the language of the workplace. The piece of legislation that has been introduced has two clear virtues: first, that every public servant can be expected to read the legislation and, second, that every public servant can be expected to understand it. Set yourself a challenge if you will: at any hearings that you hold, pick up the Public Service Act 1922, turn to a page at random, hand it across to a witness and say, ‘You have 15 minutes to study this and tell us what it means.’ There will be very few witnesses that will be able to meet that challenge.

But it is not just that this legislation is written in a contemporary style, not just that it is short and succinct. It is not a matter of style. What is so important with this legislation is its content. It is its content, I think, which is bold, because it sets out clearly what needs to be protected in the way Australia has a public service, and it is bold too in the pregnancy of its silences—what is no longer necessary to manage the Public Service of 1997.

The legislation was initially conceived by the previous government. A review took place, the McLeod review, and the government of the day responded to that review. The incoming government picked up the progress that had already been made, but then undertook a substantial consultation process with public servants, including a significant number of focus groups around the country—eight or nine of which Minister Peter Reith chaired himself, on occasions being joined by Democrats' senators Lyn Allison and Cheryl Kernot.

What came out of those focus groups was a clear challenge. There was a general acceptance that we needed to enable the Public Service to cope with market competitions. We needed to be able to benchmark ourselves against best practice—whether that was in the public or the private sector. We needed to bring our own employment arrangements into line with community standards. We needed, certainly, to promote a much stronger performance culture.

I think that at every single focus group that was held, public servants were saying two things: good performance is not sufficiently recognised or rewarded, and poor performance is not adequately dealt with. There was also agreement that there was far too much central control and prescription. To be frank with you, the only debate at most focus groups was on the extent to which that central control and prescription needed to be removed.

But there was also another key message put forward at the focus groups, and indeed it was put forward by every group of public servants with whom I have spoken. It was that, while we undertake these reforms, we also need to recognise that it is accountability rather than market responsiveness which defines our relationship to the public and that it is vital that we maintain the values of public service. This is important. It seems to me that it is the only reason that we need a public service act. We do not require the legislation. There is no constitutional necessity for it. We could operate as an employer with no public service act. The purpose of a public service act is to define public expectations of what a public service should perform.

In other words, the new Public Service Bill that has been introduced seeks a balance. The devolution of employment powers—a devolution that has been occurring for at least 10 years, but which is now underpinned by legislation—is to be balanced against setting out far more clearly in legislation the accountability framework that is required of public service, the values of public service, the conduct required of public servants, and

the scrutiny to which our work is subject. The new bill sets out that accountability framework in a number of ways. It sets out the purpose of public service in its objects clause; the ethos of public service in the values clause; the conduct expected of public servants in a code within the legislation; and, the respective roles and responsibilities of ministers, agency heads and the Public Service Commissioner.

The new bill, of course, does not exist in isolation. When Minister Reith introduced the Public Service Bill, he introduced at the same time the public sector transitional and consequential amendment bill. There will also be two key pieces of subordinate legislation—regulations and, a new device, commissioner's directions, which are mandatory on the agency heads. Both the regulations and the commissioner's directions will be disallowable instruments. There are also classification rules and other relevant legislation, such as the Workplace Relations Act and the Commonwealth discrimination legislation.

If the new bill represents a balance between devolution and accountability, I also believe that it is based upon a clear distinction for the first time between the public interest of citizens, which should be paramount in the drafting of a public service act, and the private interest of employees, which should be governed under the umbrella of the Workplace Relations Act. This is not to say that the private interests of employees are not important; they clearly are. But there is no need to define that within the Public Service legislation. There are aspects of employment which are clearly in the public interest, and those aspects need to be incorporated in the Public Service Act. For example, those aspects include that we are a non-discriminatory work force, that employment decisions are made on merit. These are issues which are not just about the private interests of employees, they are about the expectations that the public should have of the way that the Public Service operates.

So, what is in the 1922 act? In a nutshell, it is central control, prescription, regulation, detailed processes. There are over 300 pages of legislation supported by many, many more pages of regulations. As Public Service Commissioner, I am proud of the reforms that have taken place in public service over the last 10 or 15 years. I think there are some aspects of our management that are second to none in the country, including, for example, the manner in which we manage diversity at the workplace. But there are some aspects of our management which I believe are now indefensible. I find it difficult to go and talk on public service to groups of private employers and explain to them that, if a Public Service manager wants to deal with inefficiency, there are 40 pages of legislation telling that manager how it has to be dealt with. In my view, we cannot continue to operate with those sorts of constraints.

I believe that most public servants understand very well what is in the present act. Less well understood, however, I think, is what is not in the present act—and that is equally crucial. There is nothing in those 300 pages of legislation that will tell you what the purpose of public service is. There is nothing that indicates the need to preserve the

Public Service's non-partisan nature. There is absolutely no protection in any of the sub sub-clauses of the legislation from political interference in individual staffing decisions.

There are references to merit. You will find references to merit with respect to selection, references to merit with respect to promotion, references to merit with respect to the Senior Executive Service. That is the good news. The bad news is that each reference is different.

There is nothing within the legislation itself about the conduct expected of public servants. There is no recognition of public interest whistleblowing, where public servants believe they have identified fraud, waste or misconduct. I do not believe that in the 1922 act there is a mechanism for the effective parliamentary scrutiny of the APS.

I say this to you because it is important to understand, when we say that the new bill is only five or six per cent of the existing legislation, that it has not been a process of starting from the legislation and slashing and burning a way through it in order to preserve five or six per cent. The key is that these aspects, these omissions from the present act are absolutely vital in defining the public interest in the Public Service. These aspects comprise something like two-thirds of the legislation before you. In other words, it is new legislation. It has begun with a blank sheet of paper.

The new bill sets out the public interest focus very clearly and, as Minister Reith said in his second reading speech, the new bill 'sets out the public interest, and reinforces the values of the Public Service, in a way that has never been done before'. It ensures that the 'traditional ethos, conduct and values of public service are preserved'. It may be the case that in 1922 this was not necessary. In 1997—and looking ahead one generation, if not three generations—it is, I believe, important to set out clearly in legislation what are the values of Public Service which the country intends to preserve.

The objects clause of the new bill is very different from the objects clause in the 1922 act. Pick up the 1922 act and you will find an objects clause that is bland and value free. It actually tells you nothing whatever about public service. Contrast that with the new bill, which says up-front, no mistake, that the aim of this act is to preserve an apolitical public service that is efficient and effective in serving the government, the parliament and the Australian public. It is then followed by a series of values, the values which we wish to preserve: that the APS is to be apolitical, impartial and professional in the way it provides frank and fearless advice to the government of the day, that employment decisions will be based on merit, that the APS is free from discrimination and recognises diversity. You will see in a moment that it recognises diversity in a way that has never been done before.

The new bill requires high ethical standards. It ensures that public servants understand that they need to be accountable for the very considerable delegated powers

that they wield on behalf of the executive, that they are responsive to the government of the day. The APS is committed to delivering services fairly, effectively, impartially and courteously and, to this end, requires leadership of the highest quality.

In drafting the legislation brought to the House of Representatives, there were three long meetings held between Minister Reith and the public sector unions. As a result of those meetings, there were some 30 changes introduced to the legislation. Two of the key changes were that the values would recognise the need for cooperative workplace relations and a fair, flexible, safe and rewarding workplace. It is my view that the changes that have been made through the participation of the public sector unions have improved the quality of the legislation brought before parliament.

Finally, there is a value which says that we are to focus on results and performance rather than on process, inputs and prescription. What do these values mean? They mean two things—first of all, that all agency heads are bound by law to uphold and promote the values, and that all APS employees must at all times behave in a way that upholds the values. That is supported by a code of conduct which, for the first time, is incorporated within the legislation: that an APS employee must behave honestly, with care and diligence and treat everyone with respect and courtesy; that an APS employee must comply with laws and comply with lawful and reasonable directions; and that an APS employee must maintain appropriate confidentiality and avoid conflict of interest.

An APS employee must also, under this legislation, use resources in a proper manner, not provide false or misleading information and not make improper use of information or status. Finally, an APS employee must uphold the integrity of the APS, uphold the good reputation of Australia when overseas, and comply with any other conduct requirements. Not to uphold this code of conduct is misconduct.

That is the part of the legislation, which I have gone through very quickly, that identifies the accountability framework. It is also a devolutionary act because, as Minister Reith indicated in his second reading speech, agency heads will now be given the power to engage persons as employees. It is they who will determine many of the conditions that attach to employment, determine the remuneration and other terms of employment, assign duties or terminate employment.

This is a radical difference from what we have at the moment. Certainly it builds upon the changes that have been taking place. This is an evolutionary development, but under this framework it is agencies which will decide on the appropriate remuneration terms and conditions for their own particular workplace. Each agency will decide upon the conditions of engagement: whether registrations are required, and what period of probation is necessary. It is agencies too which will make the decision on what basis public servants are employed. The legislation no longer makes a distinction.

Under this bill, we are all public servants. We are all APS employees whether we

are employed on a continuing basis, fixed term, full-time, part-time or casual, and it is agencies which will decide, within the classification rules, how they will use and develop their classification structures. For example, within the Public Service and Merit Protection Commission, we are looking to broadband the classification structure in a way that is appropriate to our self-managed teams.

In other words, the pages and pages of legislation that deal with the private interests of employees are now devolved to agencies. The head of power is devolved under this legislation. Matters to do with appointments or advancement, transfer or suspension, dealing with misconduct or managing performance, dealing with terminations and delegations are ones to be worked out at the agency level. The bill recognises the obvious, and the obvious is that the APS is not a single labour market. There are very significant differences between the work force in the Public Service and Merit Protection Commission, in Australian Customs, in the new Commonwealth Service Delivery Agency or in the Department of the Prime Minister and Cabinet. Agencies, for the first time, will be able with their employees to decide about how they will manage their own workplaces.

There is a view that in this environment secretaries and agency heads will be almost like 19th century industrial capitalists—the robber barons of Canberra. Indeed, in the presentation that has been put forward by the ACTU, there is a view that this drive for public service reform is being led by secretaries who in their frenzied imaginations are able to treat their workers like serfs and fatten their own wallets. I think that is a fair precis of the submission.

That, of course, is not the case. Agency heads will be considerably constrained in the powers that have been devolved to them. They will have to administer within the Public Service Act, not only upholding the values and reporting annually but being required to set in place in every agency a workplace diversity program. They will have to take account not only of the legislation but the subordinate legislation—the regulations and the Commissioner directions. Of course, just like employers in the community, they will be subject to the constraints within the Workplace Relations Act. They will also, as now, be subject to policy constraints.

An Australian Public Service is serving the government of the day and the government of the day, on occasion, needs to take policy decisions which impact on the structure of the Public Service. So the legislation allows a government to make machinery of government changes and to set citizenship requirements. There are also additional policy constraints which reflect the increasingly devolved environment: the classification rules, for example, and policy parameters, including remuneration and terms and conditions. But, crucially, there are the constraints of scrutiny. This is a different approach to preserving what is best and what is essential in public service, an approach not driven by central regulation but by enhanced scrutiny by the Auditor-General, by the Commonwealth Ombudsman and by the Public Service Commissioner.

There will also, under this legislation, be an enhanced role of parliament. Indeed, parliament is crucial to this new approach which relies on improved scrutiny of the way the Australian Public Service undertakes its work. For the first time the independence of parliament is recognised. There will be the creation of a separate parliamentary service under its own legislation. The intention is that a parliamentary services act will be enacted at the same time as the new Public Service act. The staff of the parliamentary departments will be answerable to parliament rather than to the government of the day.

At the same time, the legislation is founded upon more effective parliamentary scrutiny of the Australian Public Service. Not only, as now, will there be an annual report to parliament from each agency but—I think far more significant—for the first time there will be an annual report on the state of the Australian Public Service. So parliament will have an overall picture of how the Public Service is operating.

As appropriate, parliament will also receive reports from the Public Service Commissioner on specific employment matters, including the review of employment actions. That suggests, of course, that it is not just parliament but the Public Service Commissioner who has, under this legislation, an enhanced role. That is correct: the Public Service Commissioner, by this legislation, will be able to review and evaluate public employment practices across the APS; will be able to report and make recommendations on Public Service matters and employment actions; will be able to inquire into whistleblowing allegations made by public servants; and will be able to conduct special inquiries with the same powers as are proposed for the Auditor-General.

In conclusion, I think I can do no better than go back to the second reading speech of Minister Reith where he indicated that the government's approach to Public Service reform is not driven by ideology; it is a pragmatic response to getting better value from public funds. It is driven by the practical demands of modernising the service. Mr Chairman and committee members, parliament cannot legislate a more effective, a more efficient, a more ethical Public Service. Parliament cannot legislate a more flexible, a more rewarding, a more innovative workplace. To bring about those changes will require cultural shifts. It will impose enormous obligations on public servants themselves to lead that change.

What parliament can do, however, is to enable that change to take place. This piece of legislation, in my view, can remove the shackles that bind us at every turn. This legislation, I believe, can allow public servants to walk the same green fields and to gaze at the same blue skies as private sector managers. I think it is that, and only that, that will allow us to benchmark and market test, and contest and compete, for the delivery of services to government and on behalf of government. Thank you.

CHAIR—Thank you, Dr Shergold. We will now proceed to questions unless there is other comment from anybody else who has been sworn. I will start. Today, 6 August 1997, many of us have been told that the morale in the Australian Public Service is as low

as it has ever been. How will this legislation raise that morale?

Dr Shergold—There are some who believe that morale reflects change fatigue. In my honest opinion, that is a nonsense. Every group of public servants that I speak to makes suggestions about how things should be changed and improved. It is the type of change that is the key issue, rather than change itself.

I think it is fair to say that we have reformed the Public Service considerably over the past decade. We now focus much more on results and outcomes. We have considerably improved our financial management and our performance budgeting. We have not, through that period, been as effective in improving the management of our people, and I believe that the key reason is that the legislation constrains us in effective management.

It is my view, therefore, that this new legislation will allow us to work with our own people at our own workplaces to improve the flexibility of the work force and to allow much greater creativity, imagination and innovation. In my view, that will significantly enhance morale over the next five years.

CHAIR—On the question of a career service, many submissions that we have received have indicated concerns that the concepts of tenure and career service are likely to disappear and that this could have significant consequences for the nature of the Public Service, particularly with respect to stability, politicisation and protection of the public interest. How can you be sure that the Public Service will remain a public service and not a government service?

Dr Shergold—I do not think I can be sure. What I can be sure of, however, is that if we do not make these changes then it is likely that the Public Service will increasingly lose its significance within our democratic system of government. I am not persuaded that the devolution of employment powers which is set out in this legislation will compartmentalise or fragment the Public Service. If the only glue that holds the Public Service together is the same conditions, the same remuneration and the same classifications across all Public Service agencies, we have a problem. What should bind us together as a public service is commitment to the same standards of conduct and shared values, and I believe that is what this legislation provides.

There is a great deal of mythology about the extent to which we presently run a single APS. I would put to you that the great majority of appointments and promotions within the APS today occur within agencies. This is not an APS that is marked, under the existing legislation, by a high mobility between agencies, and I see nothing in this legislation that will restrict that mobility. Indeed, if different agencies are negotiating different terms and conditions, it provides a real incentive for public servants to look around and to assess for themselves whether there are better career prospects within other agencies, and that may mean that mobility is actually increased.

Mr GRIFFIN—Will there be capacity for that to occur under the operation of the system, given some of the changes that the government has already announced in the private sector, where you are looking at a situation where you are not supposed to know what other people who are doing similar work actually get?

Dr Shergold—What I believe will happen is that jobs will be advertised with a broad salary structure and you will decide whether you wish to apply for that job. If you then get the job, you may well wish to negotiate what you think is the appropriate payment you will receive. So I do not believe that the confidentiality which is attached to Australian workplace agreements—but not, of course, to certified agreements—will restrict mobility across the service.

Mr GEORGIOU—If I am a public servant who is into giving frank, fearless and timely advice and I have got a dill for a secretary who does not like my frank, fearless and timely advice, in what way are my protections diminished under the changes that are proposed, or are they undiminished?

Dr Shergold—I believe that the changes are undiminished and, in fact, I would suggest to you that the legislation, by setting out clearly the values and conduct of public servants which clearly underpin the provision of frank and fearless advice, would make it somewhat harder for a secretary to punish in some way a senior executive who is providing that frank and fearless advice.

Mr GEORGIOU—But it is provided here that—I do not see 'frank and fearless' here, by the way—employment can be terminated at any time and, I should imagine, subject to the provisions of the employment relations act. I would be surprised if that was the same level of protection given to the Public Service at present. I am willing to believe you but I am just surprised.

Dr Shergold—The first thing I should say is that the legislation continues to recognise the need for a senior executive service, on the basis that it provides—

Mr GEORGIOU—We are talking about the ability of somebody who does not like the advice coming forward to say, 'I don't like your advice'—for whatever reason—'you are gone.' I am not interested in the need for a senior executive service, just for the moment.

Dr Shergold—On that matter, I believe that we are moving to a senior executive service which has terms and conditions more like their colleagues in the private sector and subject to the same protections. I do not believe that moving in that direction is likely to diminish their willingness to provide frank and fearless advice.

Mr GEORGIOU—You just shifted ground. I asked you whether the protection had been diminished, not whether it was more or less likely for them to give frank and fearless advice. Some of us have worked in positions which were instantly terminable

and due to our ugly personalities managed to trot forward the same advice. What I am asking is: does this act diminish the protection given to someone who gives important but unpalatable advice to his or her secretary?

Mr Kennedy—It is envisaged that the commissioner's directions dealing with the senior executive service, which are binding on all agency heads, will contain provisions which are similar in substance to the current protections that senior executive service officers have from automatic termination—that is, they will provide that they can only be on grounds of lack of fitness and a whole range of things. The commissioner's directions, which will be binding, will set a framework within which SES officers can be terminated.

Mr GRIFFIN—When will the detail of those directions be available as commissioner's directions?

Dr Shergold—Subject to discussions with Minister Kemp, I would anticipate that prior to the drafting stage draft commissioner's directions and regulations would be available for your perusal.

Mr GRIFFIN—So prior to the drafting of our report, do you mean?

Dr Shergold—Correct, before the drafting of your report.

Mr GRIFFIN—So in the next couple of weeks?

Dr Shergold—Correct. They are being developed at this moment.

Mr GEORGIOU—But the commitment is that there will be no substantive change to the present protections afforded by the present Public Service Act?

Dr Shergold—Yes, and the point I should make is that those directions will be disallowable by parliament.

Mr GEORGIOU—Was that a yes to the first bit?

Dr Shergold—It was a yes to the first bit.

Senator FAULKNER—Could I ask the commissioner a number of questions. I have basically three or four areas I would like to touch on, Dr Shergold. The first relates to the matter that is being discussed at the moment. In your presentation to the committee you gave, properly I think, emphasis to the issue of simplification of the current act. I obviously do not challenge the need for simplification and I do not think anyone does. The issue that the committee has to investigate is how well that is achieved by this act.

The current act you reinforce with us has some 278 pages. I think it is perhaps a

little cute to say that it is being replaced with an act of 36 pages. In fact, it is being replaced with three acts. Could I get clarification of the timetable for the parliamentary services act, which you touched on towards the end of your presentation. Clearly, the Public Service Bill and the transitional act will be dealt with by the parliament as a package. The impression I got from your evidence was that the parliamentary services bill would be part of that package too?

Dr Shergold—I will answer that as best I can, but it will probably be necessary for you to ask the question directly to the parliamentary departments. As I understand it, however, the development of a draft parliamentary services act is well in train and it is hoped that it may be not only introduced in the next parliamentary sitting but also come into force at the same time as the Public Service Act. That is what is anticipated.

In terms of the consequential and transitional amendment bill, it is true that there are a significant number of pages in that bill, but that is because virtually every piece of legislation since 1922 has referred in one way or another to the Public Service Act and therefore there are pages and pages of relatively minor consequential changes that have to be made. The transitional provisions will also be important.

Senator FAULKNER—I make the point that the current act has 278 pages and there are two bills of 185 pages and another bill that we have not yet seen. The issue really goes to the content of the main bill. Really it is taking the form of a multiplicity of subsidiary instruments, which committee members were just questioning you about, such as regulations, directions and determinations. It is also true, as I understand it, that some of those are going to vary quite significantly from agency to agency. Is that correct?

Dr Shergold—Only the determinations. The two key subsidiary instruments are the regulations—the key regulation there will be with respect to review of employment actions—and the commissioner's directions. I anticipate that there will be a total of four directions to do with fairness in employment, merit, the senior executive service and whistleblowing. I would not want there to be any suggestion that the extent of prescription removed from the Public Service Act 1922 is going to re-emerge in a new form in that subordinate legislation. That is certainly not the intention.

Senator FAULKNER—I think there is a substantive issue here of whether we just end up with some sort of confusing mishmash of regulations, of directions, of subordinate legislation. The question then is: is that really simplification?

Dr Shergold—Yes, I believe it is simplification. When the total package of legislation, regulations and directions is seen it will still be perceived to be significantly simplified and will support the devolution of employment powers.

Senator FAULKNER—If you go to the page 68 of the explanatory memorandum of the Public Service Bill there are 11 separate matters including dot point eight which is

the framework for review of actions. That is in addition to the general regulation making power under the act. There are the three other instruments that you have spoken of also that are on page 13 of the explanatory memorandum. They cover commissioner's directions, determinations by ministers and agency heads and notices in the *Gazette*. That amounts to another 18 matters.

So there are 29 matters in the bill which are being relegated to subsidiary instruments. I think we have basically 29 holes in the legislation. I hear your commitment that most of them, I think that is fair to say given your evidence to the committee, will be available in draft form before we complete your report. Would you agree that it would be an absolute necessity for the committee to have the advantage of those draft regulations before it could properly report on the bill?

Dr Shergold—I believe that it would be advantageous to the committee to be apprised of the nature of the directions and regulations in drafting its report. I believe it will be clearly vital for parliament to consider the legislation when the subordinate legislation is also available. I suppose I need to point out in terms of the regulations that I would anticipate that the regulations we will introduce will be significantly less than the 100 pages of regulations which are in addition to the 300 pages of the primary legislation that we presently operate under.

Senator FAULKNER—We wait and see. I accept what you have said. I think it is fair to describe the bill really as a bare skeleton. A lot of the flesh we will see at a later stage when the draft regulations are made available. You made the point to the committee about some of the regulations being disallowable instruments. The problem is that that gives a house of parliament the capacity to either accept them or reject them and not to amendment them, does it not?

Dr Shergold—Correct.

Senator FAULKNER—So that can be a pretty invidious choice, as you are aware, at times. I make the point to you that they are an integral part of the reform package, as you have indicated in your submission to the committee today, and there is a lack of flexibility in the way a house of parliament can deal with such an instrument, as you know. Fundamentally, I make the point to you that the full detail of the reform package is plainly incomplete in terms of the investigations of this committee without having a copy of those regulations before us. Would you accept that?

Dr Shergold—Yes. I would be happy, subject to discussions with the minister, to make a commitment to come back before this committee prior to your own drafting stage to give a presentation on the regulations and the commissioner's directions.

CHAIR—That may well be necessary. Senator Faulkner has a very valid point.

Senator FAULKNER—Would those subsidiary instruments under the Public Service Bill be regarded as legislative instruments in the terms of the government's Legislative Instruments Bill, which I think on my last look had passed through the House of Representatives and is on the legislation program of the Senate. That includes a provision to sunset all legislative instruments five years after they commence. Can you assist the committee in that regard?

Mr Kennedy—You are probably aware that there have been some discussions with committees of the parliament and the Attorney-General as to whether instruments that relate to the terms and conditions of employment of public servants should be within the ambit of the Legislative Instruments Bill or not. So the final working out of that question will depend on whether the commissioner's directions are covered or not, although current thinking is that we should put a sunset provision in the commissioner's directions anyhow because that is the way modern practice is going. The regulations will definitely be caught by the Legislative Instruments Bill.

Senator FAULKNER—If that were the case, then most of the conditions of service of APS employees which would be regulated by determinations will lapse after five years.

Mr Kennedy—I did not mention determinations. They are neither commissioner's direction nor regulations. As I say, there is this discussion at the moment as to whether an exemption should be given to those because terms and conditions are not normally dealt with in the sorts of things that are encompassed in a legislative instruments bill.

Senator FAULKNER—Is this a matter of contemplation within government at the moment?

Mr Kennedy—Yes and I think there has been correspondence between parliamentary committees and the Attorney-General on the matter.

Senator FAULKNER—I see. Which parliamentary committee would that have been? Scrutiny of Bills Committee in the Senate, is it?

Mr Kennedy—Yes, it is the Scrutiny of Bills Committee.

Senator FAULKNER—It does raise the issue of the security of APS employees. That is something I would also be keen to follow through.

Mr Kennedy—More and more conditions will be in certified agreements, AWAs and then the safety net of the award.

Senator FAULKNER—Could you take on notice that the committee has an interest in this issue and we would appreciate some sort of urgent communication from you if there is any clarification? Would that be acceptable, Mr Chairman?

CHAIR—Certainly. Take that on board.

Dr Shergold—Yes.

Senator FAULKNER—Another issue of concern to me is the issue of the salary of agency heads and the Public Service Commissioner. The bill basically says that the salary of secretaries is set by the Prime Minister; the Public Service Commissioner by, I assume, the minister responsible, which in this case would be the Minister Assisting the Prime Minister for the Public Service—

Dr Shergold—The minister identified in the bill is the Public Service minister.

Senator FAULKNER—And executive agency heads by the agency minister. What I am interested in hearing from you, Dr Shergold, is what actually is the justification for seeking to change the current arrangements whereby these salaries are set by the Remuneration Tribunal?

Dr Shergold—I would point out that the explanatory memorandum notes that as a matter of practice the Prime Minister, in setting the salaries of secretaries, would do so after consultation with the Remuneration Tribunal.

Senator FAULKNER—Yes, I noticed that. So that means that there is no obligation on the decision maker to consult the Remuneration Tribunal.

Dr Shergold—There is no obligation but it is identified in the explanatory memorandum as a matter of practice.

Senator FAULKNER—But I noted in the transitional arrangements bill that it includes amendments to the Remuneration Tribunal Act to specifically remove from the tribunal the function of providing advice on remuneration for secretaries and the Public Service Commissioner.

Mr Kennedy—Those matters are within the policy responsibility of the Department of the Prime Minister and Cabinet. It would probably be more appropriate for questions to be directed to them, Mr Chairman.

CHAIR—They are not here.

Senator FAULKNER—I understand they are not here. That is a fair enough comment, I suppose, Mr Kennedy, but I am responding to Dr Shergold's answer to my question when he quotes the explanatory memorandum to the Public Service Bill. What I am interested in understanding, given that evidence, is how that fits with what the transitional arrangements bill is about in relation to the amendments to the Remuneration Tribunal Act. With respect, Mr Chairman, I think that is a fair question given the nature of Dr Shergold's presentation and the evidence he has given to the committee. I

understand that it might be a curly one but I think someone has to front up on it.

Mr Kennedy—My understanding is that the amendments in the consequential bill will remove the statutory tie-in of secretary salaries with determinations by the Remuneration Tribunal. As Dr Shergold pointed out, the government has indicated in the explanatory memorandum that as a matter of practice the Prime Minister will continue to consult the Remuneration Tribunal.

Senator FAULKNER—We will have to check with someone from the Department of the Prime Minister and Cabinet as to how this all works. Apart from what the explanatory memorandum says about consultation, Dr Shergold, what are the benefits of this sort of change that is proposed in the legislation to the current arrangements? Why is this better than what we have in existence now?

Dr Shergold—It may not be an unfair question but it is a rather unfair one to answer because I would be nervous about responding in terms of the policy advice that I had provided to the minister, let alone the policy advice that another department had provided. But in general terms I have little doubt that the aim is to provide some greater flexibility in terms of the recruitment and remuneration of secretaries.

Senator FAULKNER—I think this is an important issue for the committee to give consideration to. What you are suggesting to me is that you would prefer the committee to be asking others questions for these sorts of justifications and explanations.

Dr Shergold—Senator, I am simply saying that in this matter the provision of policy advice was by another department, and I am loathe to indicate what was its basis. But I do have no doubt that the key is to provide greater flexibility in the recruitment and remuneration of secretaries to head departments.

Senator FAULKNER—What precisely is being proposed to put in the place of the review rights and processes that are set out in the Merit Protection (Australian Government Employees) Act?

Dr Shergold—Senator, I can answer that in broad terms now and, as I have indicated, would be happy to come before you again once the regulation has been further developed. It is proposed that the Public Service Commissioner, who in effect has responsibility for the standards across the Australian Public Service, will be the recourse for external review of employment actions rather than there being a separate statutory authority. There will still be an external review of employment actions, although it is hoped and anticipated that the majority of those reviews will be successfully conducted at the agency level and that the extent of the external review will therefore be limited.

Mr GEORGIOU—And the Public Service Commissioner is an external body in the sense that you mean? I thought you, or whoever is in your job, was actually involved in the process of administering and reviewing the service. I thought, as part of the overall

system, you are actually hands-on in a lot of respects, and you are also the external reviewer of decisions.

Dr Shergold—You are quite correct. Under the present legislation, I am hands-on and in some ways I am, in effect, the employer. Under this new legislation, that will no longer be the case. So the perceived conflict of interest will no longer prevail.

Mr GEORGIOU—You have an enhanced role.

Dr Shergold—Yes, but not as an employer of public servants. I will have an enhanced role in terms of the scrutiny of the Australian Public Service and reviewing actions taken within the Public Service, both systemic actions and individual ones in terms of external review.

CHAIR—You said in your presentation that you will assume similar powers to the Auditor-General. Do you want to elaborate on that, specifically in terms of the parliamentary departments where the Auditor-General does have a function? You emphasise a need to have that as an autonomous Public Service. Could you comment on that?

Mr Kennedy—The inquiry powers that have been given to the Public Service Commissioner are to assist in the monitoring and investigation role in relation to the Public Service as constituted by this new bill. So the Public Service Bill itself would give the Public Service Commissioner no powers in relation to the parliamentary service.

The intention is that, while in most cases the Public Service Commissioner will be able to work without resort to the exercise of statutory powers, there could be cases—say, a review of particular decisions, where agencies are not forthcoming, or complaints by whistleblowers have not been adequately investigated in an agency—where the commissioner might feel the need to conduct an inquiry of the sort that was conducted recently in relation to allegations of paedophilia in the Department of Foreign Affairs and Trade.

What we have done is make sure that those inquiry powers—the protection for witnesses and those sorts of things—are aligned with the provisions that have been given to the Auditor-General in the new Auditor-General Bill. But there is no relationship with the parliamentary departments, because that will now be a separate parliamentary service under the proposal.

Dr Shergold—I should perhaps add, in terms of Senator Faulkner's question about external review, that it is anticipated that the Public Service Commissioner will have similar powers to the Commonwealth Ombudsman; that is, the commissioner will be able to make recommendations to departments and, if necessary, have those tabled in parliament.

Mr GEORGIOU—What would happen if you conducted a special inquiry and found out that somebody had behaved in a way that was inconsistent with the APS values, then his/her departmental head took action and the person was disciplined? If that person thinks they have been unfairly treated, who do they appeal to? Do they end up with the Public Service Commissioner?

Mr Kennedy—Yes, but not necessarily with the Public Service Commissioner in person, because there could be independent—

Mr GEORGIOU—Do they end up with the Public Service Commissioner in that case—the initial review that got the bloke or lady into trouble in the first instance?

Mr Kennedy—Yes, but I would expect that in a case like that the Public Service Commissioner would refer it to an independent reviewer. We envisage that the arrangements will provide for independent review officers who would be of such stature that their independence would not be in doubt and that the Public Service Commissioner would accept their recommendations in cases like that.

Mr GEORGIOU—But it is possible?

Mr Kennedy—Yes, there is that problem. That is a problem at the moment if someone who works in the Ombudsman's office or in the MPRA complains about an action of the Ombudsman or the MPRA. It is a matter of making sure you deal with them sensibly.

Senator FAULKNER—I had a number of questions I was going to ask about the appeal and review processes, but I might leave that to subsequent witnesses, because I realise we are running a bit over time. There is one other general issue I wanted to touch on, and perhaps we could revisit some of those other issues with our next witnesses. I did want to ask you, Dr Shergold, about the mobility issue, which you also raised in your presentation. The transitional arrangements bill provides for APS employees to retain their current mobility rights for a transitional period. That is to be determined by regulations. At this stage, can you anticipate what that transitional period might be?

Dr Shergold—Senator, I cannot at this stage. There are consultations still taking place on that matter.

Senator FAULKNER—Obviously this is another matter that we will have to go into in greater detail, but what I am particularly interested in is this: don't the proposals on mobility really amount to a retrospective removal of an employment condition? Mobility rights would have been a very important consideration for many APS employees in deciding whether they would, in this case, accept offers of alternative employment. I recall from the time when I was Minister for Veterans' Affairs that it was an issue for former employees of the Department of Veterans' Affairs when a number of repatriation

hospitals were transferred to the state and so forth. It seems to me that this is a pretty crucial issue. It really is a retrospective removal of a pretty important employment condition. I would be interested to hear your views on that.

Mr Kennedy—That is why the government has provided a right of return during a transitional period. If people consider that they do not want to work in one of those agencies on the basis that they cannot eventually come back to their Public Service agency, they can come back during the transitional period or seek from the secretary of that department, who will have the power to give it, leave without pay for the period of work in the other Commonwealth organisation.

Senator FAULKNER—Does the Public Service Commissioner have a view on whether it is fair to remove this right retrospectively from people who find themselves in this situation?

Dr Shergold—Senator, in terms of those who are already outside the service—and I understand there are about 50,000 people in that situation at the moment—who have return rights of one form or another, I think it is appropriate to negotiate an appropriate transitional arrangement. In terms of those who are in the service, I believe it is appropriate to change the arrangements.

One of the questions that we are still considering is how is merit to be defined in terms of the commissioner's directions. For example, if it was to be decided that to have merit operating in the APS and an open service in that all positions that were gazetted should be open to members of the Australian public to apply for, then of course the distinction between the return rights of those who had left the service and the general public would diminish. That is a key question that we have to resolve in terms of how we will define merit and whether for the first time we will seriously open up the jobs in the APS to open competition for the Australian public as a whole.

Senator FAULKNER—Let me use the example of how it works here at Parliament House. You have certain people working under the MOPS Act such as staff of opposition office holders and many more working for the government in the ministerial wing. I personally believe that government and the Public Service have both benefited from the frequent movement of people between Parliament House and government departments. That is my personal view.

It helps parliament to have knowledge of the bureaucracy and visa versa. People in the bureaucracy understand how parliamentary legislative processes and even political processes work. I think, personally, that is an advantage. They take skills and knowledge that they otherwise would not have had back with them. It works both ways. Is that good? Is that good for our system of government?

Dr Shergold—I think it is very good indeed that agency heads take into account

what advantages there may be to the service in allowing people to work in a variety of environments on a leave without pay arrangement. That is what will be possible under this bill. In terms of your particular case, namely, mobility between the Public Service departments and the parliamentary departments, I anticipate that that is likely to be resolved by the conjunction of the two pieces of legislation.

Senator FAULKNER—The preservation of mobility rights during the term of their MOPS employment has been the mechanism by which people in this situation have had that interplay or that movement encouraged. I think it ought to be encouraged, not discouraged. The truth is that the removal of these rights will discourage that movement, won't they?

Mr Kennedy—We are changing one mechanism. The mechanism of leave without pay has not been necessary because, as you have pointed out, they have been able to use the part IV arrangements. In the future they will still be able to use the leave without pay arrangements to work under the MOPS Act just as they could now but for the existence of the part IV rights which provide the only statutory solution. There will still be a mechanism.

Mr GEORGIOU—I learnt English as a second language. On APS values it says that 'the APS values are as follows'. Is that an assertion of fact or an aspiration or a value statement? I get confused, in other words.

Dr Shergold—It is more than an aspiration. For example, under clause 12 it makes it clear that these are values which an agency head must promote and uphold, not just aspire to. Similarly, under clause 13 there is reference to the fact that all public servants are expected to uphold those values. They are not simply a rhetorical flourish representing aspiration; these are values which public servants and agency heads are committed by the legislation to upholding.

Mr GEORGIOU—So it is the APS values that members of the APS are obliged to uphold?

Dr Shergold—Correct.

Mr GEORGIOU—The only quality of advice that these values refer to is timeliness. Is there any reason why the quality of advice is not more extended to something like good or strong? It is a real issue. It has been raised elsewhere in the documentation that 'fearless' was a word that could be used. I do not like fearless because I am a politician. Why is there a restriction to timeliness? Are you happy with it?

Dr Shergold—You could have put a number of other descriptive terms in the values. I personally have no problems with frank, fearless, good, honest and a number of other terms. I do not believe it is necessary because they are set out in the guidelines on

official conduct.

Mr GEORGIOU—If you are making a statement about values, unless you are trying to save words and keep it down to 33 pages or whatever, would it be appropriate to find a different adjective other than 'timely', which I do not actually understand? Is there a reason?

Dr Shergold—It would be appropriate for you to consider that matter.

Mr GEORGIOU—Is there a reason why there are not other words there that would seem to be more directly relevant to the tasks of a public servant in terms of advice?

Mr Kennedy—I think we also thought that the first value which required the APS to perform its functions in an impartial and professional manner would summarise those expectations which we set out in some detail in the guidelines on official conduct in the first chapter dealing with relationships with ministers.

Mr GEORGIOU—Yes, but I refer you to point (f). You found it significantly important to mention 'timely'. Presumably that would be picked up under your 'professional' and 'impartial'. If you want a descriptor there, is 'timely' the appropriate one? I would have thought that we wanted good advice from the Public Service, not just timely advice. I also think that, if you are waving the flag for what you expect of public servants, 'timely' is not what you would emblazon on it.

Dr Shergold—I note your remarks. It is certainly the case that you could have put in those other descriptors if they are believed to be more appropriate.

Mr GEORGIOU—What does 'recognises the diverse backgrounds of APS employees' mean?

Dr Shergold—That value I think has to be taken together with the reference to clause 18 on the promotion of employment equity, where an agency head must establish a workplace diversity program to assist in giving effect to the APS values. As I have indicated to you, I anticipate that there will be a commissioner direction which will address in broad terms what will be required of such a program.

Mr GEORGIOU—Can you explain what 'anticipate' means? Will there be one or not?

Dr Shergold—Subject to discussions with the minister and discussions that the minister may have with the public sector unions, I believe it is likely that one of the commissioner directions will deal with the workplace diversity program and how it is to be implemented.

Mr GEORGIOU—You wish to have one. You are uncertain whether or not you will get one up?

Dr Shergold—I believe it would be appropriate to address that matter through a commissioner's direction. I believe I would be able to report to you on that within two weeks.

Mr GEORGIOU—What are the current conditions relating to diversity in the act or in the various other bits and pieces?

Dr Shergold—At the moment we have commitments to equal employment opportunity within the legislation, including the recognition of four particular EEO groups. I imagine that would continue. The problem that we have with the existing approach is that it is very much based on process and inputs at the expense of outcomes. Every agency has to have an EEO plan which has to be approved by the Public Service and Merit Protection Commission. The aim of this program is to try to clearly place responsibility with the agency head and then have that agency head subject to scrutiny for the effectiveness of the program they put in place.

Mr GEORGIOU—So how do you assess it? How do you assess the outcomes? I used to think the process had something to do with outcomes, which was why you put the process in place. How are you going to assess whether the outcomes are acceptable, desirable—

Dr Shergold—I would certainly see that there would be statistical reporting by agencies which would probably be captured in the *State of the Service Report* on the APS which would show what progress was made on the appointment of different groups at different levels within the service and perhaps some comparisons. But how departments are to be scrutinised in a sense depends on parliament and the parliamentary committees—the questions they wish to ask, the information they wish to receive.

Mr GEORGIOU—If you currently have a process whereby there are processes put in place to have particular outcomes, and you do away with those processes and have a reporting mechanism which says whatever the outcomes were, on what basis do you assess those? My recollection is that people on the Public Service Board in the past used to say, 'This is an inadequate, unacceptable outcome and we have to do more.' How would you make those sorts of assessments without the processes in place?

Dr Shergold—I think the fact that for the first time we are building in a report on the state of the APS across the APS as a whole, allowing comparisons to be made between agencies, would certainly provide a mechanism for more effective parliamentary scrutiny of outcomes. I do not believe it is of any value to parliamentary scrutiny that there is a drawn-out process, which continues at the moment, where agencies send to me EEO plans

which we go through, we send them back with some suggested changes and those agencies send them back again. That ties up considerable resources in process. We should simply say, 'You should develop a program that is appropriate to your own agency.' I would not see a workplace diversity program for the commission being exactly the same as one for Customs or the tax office.

Mr GEORGIOU—They are not exactly the same at present, so why should you anticipate them being exactly the same in the future?

Dr Shergold—The difficulty we have at the moment is that in judging the development of EEO plans we tend to act as if the APS is a single labour market and has a single approach to addressing diversity issues. I think the place where management responsibility should be is with the agency head, but make it clear that they are under an obligation to set in place a workplace diversity program and, I believe, under the commissioner's direction, would be obliged to report upon it. The form of that reporting is the responsibility not just of a Public Service commissioner but also of parliament itself.

Mr GEORGIOU—Undoubtedly, but we are not examining parliament; we are actually examining the Public Service Commissioner. It seems to me—and I will be argumentative here—that you are straining the bit that there is total uniformity in the service at the moment, which is simply not so. There is no uniformity in terms of diversity plans; it is not so. So what you are saving us from does not exist.

Dr Shergold—But I think there are other appropriate mechanisms that we are considering. For example, there are a number of different equity indexes that could be applied to different departments, which would allow the Public Service Commissioner in the annual report to parliament to get a clear picture of which agencies in an outcome basis are making progress and which are not and then to ask the questions why those distinctions should exist.

Mr GEORGIOU—My last question is that it strikes me as being problematic if you move from process to outcome in straight terms, because part of the process was an attempt to get departments to put targets and performance measurements on themselves. So that you say, 'Even though I know very little about what goes on in your department, this is not a goal that I imposed upon you. This is a goal that you imposed on yourself and you have manifestly succeeded in achieving or failed in achieving this goal; now explain why.' If those processes are not in place, then how can you actually generate leverage on departments to improve practices? Can I just say that I do not regard it as being adequate that you as the Public Service Commissioner are saying there can be parliamentary scrutiny. We do not scrutinise all things with the attention that we should a lot of the time.

Dr Shergold—No, but I suppose I am suggesting that there is a much more effective mechanism for parliamentary scrutiny which is built into this legislation that does

not exist at the moment and which will allow scrutiny of different agencies and what outcomes they are achieving. The difficulty we have at the moment is there is confusion—not so much within the service as outside it—between the notion of performance indicators, targets and quotas. What are established as performance indicators are often seen outside as quotas.

Mr GEORGIOU—Can't we explain that to the outside world rather than saying, 'You misunderstand it so we will change what goes on internally which you do not understand properly'? Sorry by 'you', I mean the outside world does not understand properly.

Dr Shergold—What I am saying is rather than saying to all agencies, 'we need to set these targets'—which incidentally I perceive—

Mr GEORGIOU—They were indicators—I now understand the confusion.

Dr Shergold—They were indicators which acted as targets, which were probably set too low and most of which have been met. One of the difficulties is, if you do not set your performance indicator/target correctly, then it can actually act as a disincentive for further progress. I think it is much more appropriate that agencies at their own level decide what is appropriate in terms of the performance indicators they set themselves, as long as we have clear reporting from each agency on what the areas of achievements are.

I am certainly not anticipating here that the Public Service Commissioner is going to withdraw from this task. Indeed, I think there are considerably enhanced powers given to the commissioner, which will allow a much more effective scrutiny of the progress that is being made by departments in terms of the workplace diversity programs that they are setting in place.

Mr GEORGIOU—One last question about these reports: you used the word 'appropriate' which always starts alarm bells ringing—'tabled as appropriate'. Does that mean that the commissioner will table them whenever he or she deems appropriate? Will it be like the Auditor-General?

Dr Shergold—The *State of the Service Report* is a requirement, and each year, through the minister, that report must be tabled in parliament. In terms of review of employment actions, as I have indicated, I think it would be similar to the Ombudsman. If recommendations are made to a department and they are taken up, there would probably not be a need to report to parliament as a separate case—

Mr GEORGIOU—So it is not like the Auditor-General; you cannot table reports. Is there a mandate for the Public Service Commissioner to say, 'I want to table a report. Here it is; table it, please minister'?

Mr Kennedy—It will be open to the Public Service Commissioner to do that, as was done recently with the paedophile inquiry report where that report was tabled. But we envisage that those very formal reports will probably be fairly few.

CHAIR—But is it also open to the commissioner to withhold those reports from tabling?

Dr Shergold—Not in terms of the *State of the Service Report*, certainly not.

Mr Kennedy—Not in terms of the *State of the Service Report*.

CHAIR—What about the other ones?

Dr Shergold—It will be a matter of the commissioner to decide rather in the same way as the Commonwealth Ombudsman decides.

CHAIR—How does parliament get to know about the existence of these other reports?

Dr Shergold—Within the *State of the Service Report* there will be a section dealing with review of employment actions. That does not mean that you would have a case study of every single case of external review that the commissioner was required to be involved in.

CHAIR—Okay. Senator Faulkner has a couple more questions.

Senator FAULKNER—That is the issue of mobility which I was asking Dr Shergold about before. You said there was a mechanism where the secretary of a department or an agency head could grant leave without pay. But the whole point is that it could only occur at the discretion of such a person; isn't that right? At the end of the day, an individual in this circumstance is absolutely dependent on the discretion of an agency head or departmental secretary.

Dr Shergold—Yes, that is true. It will depend on the discretion of the agency head to consider whether they believe that there is a value to the individual or to the service in awarding leave without pay for those presently within the service. I am sure that there will be a transition arrangements set in place for those who presently have rights of return—

Senator FAULKNER—You are sure?

Dr Shergold—Yes, there will be transition rights. It is a matter of what those transition arrangements will be for those outside the service at the moment. I think there is a considerable problem with managing in the Public Service—as we do at the moment—with, in effect, a contingent liability of 50,000 people who have with return rights of one

form or another on a public service that is in total size between 125,000 and 130,000. These are not just 50,000 people who might return at some stage. Every agency head on an ongoing basis has concerns in managing their staff and managing their budget on what return rights are likely to be accessed during the course of the next year.

Mr Kennedy—It might help explain some of the government's thinking if I made the comment that, when the part IV mobility arrangements were first put in place, the bulk of Commonwealth public sector employment was governed by the Public Service Act. So, in a sense, those part IV arrangements were put in place before the PMG was split up into Australia Post and Telecom.

What you have witnessed over a period of time is that the coverage of the Public Service Act, in terms of total Commonwealth employment, has been steadily decreasing. So the part IV mobility arrangements, which looked very easy to administer when you had a few small agencies that people were going out to and then coming back to a large service, have changed quite dramatically because in some cases the number of people with return rights to a particular agency are now bigger than the agency itself.

As far as I am aware, most of the non-APS agencies do not have anything equivalent to part IV mobility rights when their staff so wish to go under the MOPS Act or things like that. In the explanatory memorandum as well, I should add, the government said, 'As a matter of practice, it will be expected that agency heads will grant leave without pay to APS employees who wish to take up statutory appointments,' and 'statutory appointments' captures the nature of the appointments under the MOPS Act as well. So there is a fairly clear statement of government policy that they would expect agency heads to give effect to.

Senator FAULKNER—There is an issue, it seems to me, of natural justice in this. I have used the example of people under the MOPS Act—MOPS employees. They would take a decision to accept current employment, for the most part in ministerial offices in this place, on the basis that they would retain rights of return to their department after their service here had concluded. That is, in my view, an issue of natural justice.

I would be interested to know if anyone has actually informed the MOPS employees, the ministerial staffers and so forth, of the change and what impact it might have on them. You might have a revolution in the ranks over there in the ministerial wing.

Dr Shergold—In terms of the section that Mr Kennedy has read out, I would think that that would set the minds to rest of most of those who are employed under the MOPS Act.

Senator FAULKNER—I doubt it very much, Dr Shergold. I think the removal of these rights retrospectively from employees is likely to have a huge impact. I would have thought that, if a government was determined to remove mobility rights, it would be fairer

to allow those who currently have them to retain them and only remove them from APS employees from the date of entry and under the new legislation. That would at least be a little fairer than what is proposed currently. Anyway, we will see how they react around

the building to it.

CHAIR—Thank you very much, Dr Shergold.

[11.37 a.m.]

LILLY, Mr Douglas Stephen, Assistant National Secretary, Community and Public Sector Union, Level 5, 191 Thomas Street, Haymarket, Sydney 2000

MOYLAN, Mr Peter Augustine, Industrial Officer, Australian Council of Trade Unions, 393 Swanston Street, Melbourne 3000

CHAIR—Would you like to commence with an opening statement?

Mr Moylan—We have not brought the full presentation, although I was reminded earlier this morning that when we met with John Dawkins in 1983, when the then government had its white paper on the Public Service, we did bring copies of Sir Humphrey Appleby's exploits from *Yes, Minister* which we thought might be useful for the Minister. One of those excerpts involved the minister saying, 'Wouldn't it be a good idea to have EEO plans?' Sir Humphrey said that he did not think so and was racketing around in his mind for reasons as to why this would not be appropriate that he could give to the minister, and came up with, 'Oh well, the unions may like it.' To which the minister said, 'I've met them; they seem to me to be reasonable sort of chaps.' So I should be clear that we do not come to be negative about those sorts of matters.

We welcome the opportunity to discuss our concerns with the committee. We welcome debate and analysis about the bill. The ACTU has a major interest in the quality of the Public Service. Unions affiliated with the ACTU represent over two million Australians who, with their dependants, are a significant portion of the Australian public served by the Australian Public Service.

Unions affiliated with the ACTU which represent APS employees have maintained a major interest in APS legislation. The ACTU and affiliates have been involved in major changes in the APS. I am familiar with a number of changes in the act and associated instruments over the past 14 years. Extensive reviews and consultations have taken place. The Coombs Royal Commission on Australian Government Administration reported in 1976. The paper, 'Reforming the Public Service', was issued in 1983. This committee, in 1992, issued its report '*Managing People in the Australian Public Service: dilemmas of devolution and diversity*'. This committee noted in that report:

> In the decades following the Royal Commission's review, the Australian Public Service has been dramatically changed with a far-reaching program of reforms introduced during the 1980s and 1990s.

More recently, the task force on management improvement surveyed 10,000 staff at all levels and locations before its December 1994 report, '*The Australian Public Service Reformed*'. The McLeod committee undertook consultation, including with Australian Public Service employees, before its 1994 report of the Public Service Act review. My

colleague, Mr Lilly, was a member of the McLeod committee whose broad thrust the coalition undertook before the election to implement, if elected.

The ACTU has responded to Peter Reith's discussion paper, 'Towards a Best Practice Public Service', and we have also responded to the Public Service and Merit Protection Commission and Department of Industrial Relations paper, 'The Public Service Act 1997: accountability and devolved management.' I have provided a copy of those two documents to the secretariat.

CHAIR—So that members of the public can have copies of these documents I will receive those as submissions now, moved by Mr Griffin and seconded by Senator Gibson. There being no objection, it is so ordered. They are now public documents covered by privilege.

Mr Moylan—Thank you, Mr Chairman. We have raised important concerns in these submissions and in discussions with the government. Our major concerns have not been met and are reflected in our submission to the committee. We appreciate both the importance and the complexity of the legislation before the committee, and the associated instruments which have not yet been developed. I have also provided to the secretariat a copy of an ACTU August 1997 document which outlines the impact of provisions of the bills against our major concerns.

CHAIR—We will receive that.

Mr Moylan—The Minister's discussion paper and the resultant bills represent major changes in powers and rights from those envisaged in the joint committee's 1992 report or in the McLeod committee's 1994 report. The government proposals reject recommendations of this committee and of the McLeod committee. It would be useful if Mr Lilly were to complete our opening statement by pointing to some of these major concerns. We are happy to discuss our submission with the committee and, if the committee so wishes, to provide subsequent assistance to the committee.

Mr Lilly—APS unions have supported more than a decade of legislative reform that has enhanced merit-based selection, equal employment opportunity programs, industrial democracy programs, and more flexible selection and transfer processes. We have supported a truly independent appeals system to protect staff from arbitrary or discriminatory treatment in selection, promotion, misconduct and inefficiency processes. We have supported greater transparency and accountability of public procedures to citizens through freedom of information, administrative appeals, privacy legislation and the ombudsman. These bills would destroy much of this reform.

APS unions were active participants in the McLeod review of the Public Service Act. That review involved a process of extensive consultation by the review group with APS employees and managers, state and territory public sector managements, and a range

of academics. The unions also conducted an independent process of consultation with their members in developing their input and response to the McLeod report. By contrast, the approach adopted in developing these bills was one of selling a pre-determined agenda. The bills represent a radical departure from the evolutionary reform of recent times. These bills would result in an unhealthy shift of power to agency heads combined with the removal of a number of rights and entitlements of Australian Public Service employees.

In summary, we wish to see the bills amended: one, to strengthen the proposed APS values, and we are proposing eight specific amendments to the values; two, to ensure the APS remains apolitical; three, to enshrine the definition of merit; four, to maintain independent, binding appeal mechanisms in relation to selection, misconduct, inefficiency and grievances; six, to maintain a legislative prescription of equal employment opportunity programs; six, to ensure that employment conditions cannot be diminished by administrative action; seven, to maintain a career service where permanent employment is the norm; eight, to include a clause on the entitlements of APS employees; nine, to provide for fair processes in relation to action which may result in the termination of employment; ten, to provide protection against arbitrary transfer of employees; eleven, to maintain mobility between APS agencies, and between APS agencies, the parliament and other public employment which is in the public interest; twelve, to maintain the senior executive service as an APS-wide resource; and 13, to ensure public scrutiny of executive salaries.

Given the scope of matters proposed to be covered in subordinate legislation, all proposed regulations and commissioner's directions should be available for scrutiny by this committee, the parliament and interested parties prior to the passage of the bills. Agreements must also be finalised with APS unions on matters relating to employment arrangements and conditions. Unions represent an overwhelming majority of APS employees and are supportive of continuing a constructive process of reform in the Australian Public Service which advances the interests of the community and APS employees. In their present form, these bills do not meet that criterion.

Mr GRIFFIN—You would have heard earlier today the Public Service Commissioner make a number of comments on the bill. There was some debate around the question of workplace diversity programs. Could you expand on your position on those workplace diversity issues and any concerns you might have about what has been said so far today and also what you know has been planned in terms of the bills?

Mr Lilly—In our submission, we said we believed that there should be a legislative prescription for EEO within the public sector. We are suggesting that a broadening of the coverage of the Equal Employment Opportunity (Commonwealth Authorities) Act might be the way to go if the government wants to make the Public Service legislation a fairly small piece of legislation. An alternative could be to expand the coverage and scope of the legislation which covers the government business enterprises rather than removing totally legislative prescription of EEO in the APS and replacing it

with a single line requiring agencies to have workplace diversity programs.

It alarmed me to hear this morning the Public Service Commissioner indicate that there is no surety that there would even be a commissioner's direction in relation to workplace diversity programs. Despite their concerns about the current programs being paper driven, there is no surety at all that this new approach would result in any better focus on outcomes and achievement of those outcomes.

Senator FAULKNER—Just to follow that through, do you share some of the concerns that I was presenting to Dr Shergold this morning about the issue of subordinate legislation? Dr Shergold, in his sales pitch for the legislation, rightly, in my view, pointed to the issue of simplification. But on closer analysis we find that there are so many areas that are difficult for the committee to pass judgment on or even objectively analyse because we require that draft subordinate legislation to be provided to us. Is that a concern that is shared by the ACTU at this stage, in terms of the parliamentary scrutiny of the legislation?

Mr Lilly—Yes. We are particularly concerned, as we have indicated in our submission, that this is only the tip of the iceberg in terms of knowing what the full package of legislation and subordinate instruments will be. We have had undertakings that there will be consultation with the unions about the substance of these regulations and directions, but there is too much uncertainty at the moment for us to have any confidence in the outcomes.

Concern was also raised this morning about the potential impact of the Legislative Instruments Bill, where many of these matters, regulations and directions could be subject to termination through a sunset clause, which also takes away a level of certainty that we might currently have if the matters are encompassed in the primary legislation. On EEO, it appears also that if these provisions proceed where there is only a single reference in the Public Service Bill to workplace diversity programs, the next step would be to make similar amendments to repeal the statutory authority legislation and the affirmative action legislation applying to the private sector.

Senator FAULKNER—Has there been any negotiation or discussion with you about the proposed parliamentary services bill, or is that intended?

Mr Lilly—We received an outline of the proposed parliamentary services bill about three weeks ago and I had a preliminary discussion with the officers of the parliamentary departments. Yesterday, they provided us with a draft bill and we are scheduled to have a meeting with the officers of the parliamentary departments this Friday to start consultation about the content of those bills. I have not gone through them in detail as yet, but they appear to substantially mirror the Public Service Bill.

Senator FAULKNER—There is a significant number of unions who are

represented within the parliamentary departments, as I understand it. That certainly used to be the case; I assume it still is.

Mr Lilly—Yes. We will be having a meeting on behalf of all the unions representing workers in the parliament.

Mr GEORGIOU—What about the exclusion of the definition of merit from legislation? I do not follow. Is there a definition of merit in the current legislation that has been excluded?

Mr Lilly—There are currently three definitions of merit in the Public Service Act, which relate to promotion. There is a separate definition, I think, which applies to the senior executive service. There is some similarity in them. We support having a single, clear definition and that is—

Mr GEORGIOU—Is there any one of the existing ones that you like?

Mr Lilly—We have made a recommendation which is very similar to what the McLeod report recommended as a definition of merit which should be encapsulated in the legislation. It is an important enough issue to be included in the legislation and not left to the commissioner to define.

Mr GEORGIOU—My problem is that the second value of the Public Service does have a commitment to merit and I am puzzled about your reference to an exclusion of a definition when the current act does not have a consistent definition. You have mentioned three.

Mr Lilly—We think that is a deficiency in the current legislation and that there should be a single clear definition of merit.

Mr Moylan—The two questions go to one of our fundamental concerns—that is, we are not opposed to modernisation of legislation, but we are not imbued per se with the removal of matters from legislation and putting them into subordinate instruments, particularly subordinate instruments that are amenable to bureaucratic variation without processes of consideration by this parliament. For example, in terms of the EEO provision we were keen advocates of having the parliament expressly legislate to require EEO programs. We do have difficulty in comprehending how one of the claims for the new package is that it would cement the concept of merit, but yet this important matter is seen as being appropriate for some subordinate form of expression.

Mr GEORGIOU—You actually want everything embodied in the legislation. Part of the object is to slim the legislation down, which I think is worth while. Given that you have a whole list of problems, can we have some prioritising of the list?

Mr Lilly—I think we have summarised our main areas of concern in our opening statement.

Mr GEORGIOU—But they are very extensive. Are some things more important or less important?

Mr Lilly—Certainly, we see the total removal of appeal rights as they currently exist as being a fundamental concern. We are being provided with a scheme which would enhance the powers of agency secretaries quite considerably and yet, at the same time, remove the checks and balances in the system, such as those available through the MPRA, from the process. The Public Service commissioner has made it quite clear that all existing appeal rights would be abolished and that it is not intended to provide a mechanism to overturn any primary decisions as a result. If you look at the area of misconduct you find they are seeking legislative prescription of penalties that can be imposed on individuals and yet provide no remedy, other than dismissal, in cases where those actions might be inappropriate.

Mr GEORGIOU—All that I am trying to get at is that you have a list of different perspectives on the bill and how it could be improved and what I am also asking is that if you had to list them—and you could just about go through the alphabet—in order of priority what would be the things that you would be most concerned about? You can take that on notice if you like.

Mr Moylan—I am reluctant to do that for the reason that you are wanting us to drop things off.

Mr GEORGIOU—I am just asking for a list of priorities. Not everything in life has equal weight.

Mr Moylan—Another important priority, which was raised in your discussion with Dr Shergold, relates to the question of whether you see public sector employment, including Public Service employment, as being interrelated or whether you see the Australian Public Service as being a number of more or less autonomous employing agencies that make decisions in what are seen as the interests of those agencies as a whole. I think it is interesting to reflect that already we have had a ministerial change which has resulted in some officials who used to work in the department of industry on small business matters now joining the old Department of Industrial Relations. In addition to questions of mobility to work for members of parliament or to work as statutory officers, the bill does not, in our view, adequately address the question of mobility within the Public Service.

Mr GEORGIOU—So essentially you are saying that appeal rights and mobility are at the top of your list?

Mr Lilly—The issues that directly affect the APS are obviously of prime concern but we have other concerns about, for example, the eight amendments to the values which we think fundamentally would strengthen the proposed bill.

Senator FAULKNER—In relation to the review rights and processes, what we will see is the repealing of the Merit Protection (Australian Government Employees) Act. As far as I can see, it is difficult for the committee to grapple with what goes in its place in terms of appeal processes.

The conclusion that I have come to is that the bill basically recognises the entitlement of APS employees to the review of actions that relate to their employment. It relegates to as yet unseen regulations the precise processes for what that review might be and then leaves to the discretion of the Public Service commissioner the question of the appointment of an independent reviewer. With the repeal of the current act goes all of the appeal processes and the independent statutory functions of the merit protection commissioner. Is that a fair assessment of where we are at and, if it is, what is the view of the ACTU in relation to leaving these matters effectively to the discretion of the Public Service Commissioner?

Mr Lilly—I think it is worse than that. It has been made quite clear to us that there will be no binding nature in any decisions made by the external review process. There will be only recommendations, and there will be only a moral pressure for the agency to accept the recommendations that come out of that so-called independent review process.

The current provisions enable individuals to appeal against selection decisions and to appeal against misconduct penalties that might be imposed short of dismissal. We have accepted that the dismissal provisions go to the Industrial Relations Court. They enable a number of other grievances relating to employment matters to be dealt with in a binding nature by an independent tripartite committee, which has on it a representative from the Merit Protection Review Agency and a union nominee. In our view, that scheme adds considerably to the acceptability of those review mechanisms by APS employees.

Replacing it with a scheme which has no binding outcomes to it, and which it is not guaranteed it will be independent from the agency processes, will not be an acceptable substitute for the rights and entitlements that APS employees currently have. We also question the independence of having the Public Service Commissioner as the provider of the independent review. You will have noticed that the Public Service Commissioner will be the executive officer of the Management Advisory Committee. As well as issuing many of the directions for employment matters, he or she would also be bound up with the management processes across the whole Public Service; therefore, in our view it will not be genuinely independent. There should be the maintenance of an independent statutory office holder responsible for those external appeals matters.

Mr GRIFFIN—Dr Shergold commented this morning that he did not see that as being a problem, that he did not see himself playing that sort of role. But, from your analysis of what is there, you are confident that there is a real problem.

Mr Lilly—Certainly, what they are saying is that they will remove existing rights of appeal, which would have a binding outcome. That is definitely a problem when—

Mr GRIFFIN—What I am getting at is that Dr Shergold, in regard to that conflict of interest that you are pointing to in respect of the Public Service Commissioner and the role that it plays, said that he saw his role as not being like that under the legislation.

Mr Lilly—I do not think he was questioned this morning about his other role as executive officer of the Management Advisory Committee. As I recall it, he was talking about his role as the Public Service Commissioner without that other hat that he will wear as the executive officer of the Management Advisory Committee.

Mr Moylan—Since the 1980s, the ACTU and affiliates have been strong advocates of an independent review mechanism for the Australian Public Service. We were able to achieve that in the Public Service Reform Act 1984. Before that we were faced with a parallel situation where the then Public Service Board had within its body the review processes while it was the body which was responsible for setting frameworks for decisions which were matters for the review.

Mr GRIFFIN—So it is back to the future this way?

Mr Moylan—It is the same. There are some changes, but the principle, where we are seeking the continuance of an independent review mechanism, continues. Some people could say that, if you are moving to a situation where you are giving greater powers to the heads of individual agencies, the case for an independent review mechanism is strengthened, not removed.

Mr Lilly—Clause 57 provides for the establishment of a Management Advisory Committee. This is to replace the existing Management Advisory Board under the current act. Its membership is to be expanded. It provides that it will be chaired by the secretary of the Prime Minister's department; it would have all the other departmental secretaries as members; the Public Service Commissioner would be the executive officer; and the committee would have the function of advising the government on matters relating to the management of the APS. In reading the summary provided by the secretariat this morning, I think that this concern about the independence of the commissioner has also been raised by the former Public Service Commissioner, Mr Denis Ives, in his submission.

Senator FAULKNER—Do you have a copy of the explanatory memorandum?

Mr Lilly—Yes.

Senator FAULKNER—I refer to you page 34, part 4.41.3, which says:

> The Bill will provide the statutory framework for this new, streamlined approach to review of actions, while ensuring that they assist in the protection of the merit principle.

I would be interested in your response to that claim from the government, particularly in the context that the government does not regard the merit principle as important enough to define in the legislation.

Mr GEORGIOU—It could be regarded as important enough to define it three times in three ways.

Mr Lilly—In our view it is certainly important enough to have a single and clear definition and one which the parliament has had some input into. We think it is a fundamental principle that should be enshrined in the legislation. But we fail to see how the new scheme of review will in any way substitute for the scheme that we have at the moment, which has the confidence of APS employees in ensuring that not only is the merit principle upheld but also there is natural justice in a whole range of other matters which affect their conditions of employment and there is a fair process in handling such matters as misconduct and inefficiency provisions.

Mr Moylan—The existing MPRA legislation sets out a framework for these reviews, which is accessible to potential appellants and to others, which indicates who will do the reviewing, the basis for the review and, in broad, the processes.

This is being replaced, under this regime, by those very general provisions in clause 33. If you look at 44(1)(6), you will see that there are powers available to the Public Service Commissioner or to any other person or body conducting a review. It is important for us to have spelt out in legislation who will be empowered to conduct the review. Are independent or external consultants, whose continuance they might see as being dependent upon favourable outcomes, to be engaged for this purpose or not? It is important for us to have statute provide for the clear responsibility to indicate who will do those reviews.

Senator HOGG—It seems to me that one of the things emerging from this is that there is a certain vagueness that exists right across the scope of the legislation and as a result that will lead to a high volume of litigation to re-establish all the benchmarks. Is that a fair way of reading this?

Mr Lilly—Certainly that is one of the concerns that we have raised in our submission, that in the absence of these processes being retained in legislation there will be an increase in litigation to test the boundaries of some of these provisions. If people have not got a method of reviewing decisions which they find fair and equitable they will resort to the courts, and precedents will be set through that process rather than currently,

where the rights and responsibilities are set out in existing legislation and everybody knows their rights and entitlements and the processes they need to go through to address any grievances they have in relation to selection or other matters.

Mr Moylan—Before the MPRA legislation was passed there were significant cases of litigation. I think people might be tempted to go elsewhere, including to your side of the table and ours, if there is no satisfactory independent mechanism within the Public Service to resolve their grievances.

Mr GEORGIOU—What does that mean? They might approach members of parliament directly?

Mr Moylan—Yes or unions or the media or various other outlets. What you might do about it is a different matter. I think it is useful, although there will be an attempt to have these matters independently resolved.

Mr GEORGIOU—I have lost touch with the Public Service in a sense. They do not go to the unions at the moment.

Mr Lilly—Yes, they do and they go to local members of parliament as well. There are formal mechanisms at the moment which the majority use. As Mr Moylan has indicated, the amount of litigation of matters such as promotions and selections has diminished considerably since we have had this scheme in place.

Mr GEORGIOU—More people may go to the unions or to MPs than do so at the moment, in your view. We are not looking over the edge of the abyss or anything.

Mr Moylan—In my view they would be tempted to go to you or to us or to others in respect of a large number of matters in which there is now a satisfactory independent mechanism within the service. It is difficult for someone, for example, if it is a question of whether they should have got promoted for a job and they have been through the appeals mechanism and not been successful. That does not necessarily satisfy people but it ends the matter for a number of people. This is also in a context where the bill envisages that the arbitrary powers for the agency heads will be increased. So there is potentially a larger number of matters upon which people will be aggrieved.

Mr GRIFFIN—To encapsulate it, what you are saying is that at the moment there are processes there and there is a clarity of understanding within the service as to what those processes mean. They may be complex in their own way but at least there is an understanding of rights and responsibilities.

Mr Lilly—And a general acceptance of the process and the outcomes to put an end to the matter.

Mr GRIFFIN—The concern you have with respect to what is being proposed is that words like rights and responsibilities are being used but their definitions at this stage are unknown and may be, at the end of the day, not very clear and, therefore, that will lead to increased uncertainty and potentially more difficulties both within the service and for others who will be brought into it along the way.

Mr Lilly—And no guarantee that there will be a binding outcome.

Mr Moylan—The question of the MPRA raises another matter as to the genesis of the legislation. As I indicated in my opening statement, there has been a history of reviews including the McLeod review, which actually consulted people before they did their report, not the Peter Reith approach of issuing the document and then going around and saying, 'This is what we are proposing to do.' That body had recommended the continuance of the independent review mechanism. We have been unable to have any satisfactory advice from the government as to why this change is, except in terms of general rhetoric about wanting to streamline the powers of heads of agencies to manage affairs efficiently as they see fit, et cetera.

Mr GRIFFIN—Dr Shergold mentioned that report in his opening statement. It was like a forerunner, in effect, to this particular legislation. But from what you are saying its findings are significantly at odds with what has been put forward. Is that correct?

Mr Lilly—There are a number of areas where the thrust of McLeod has continued. In other fundamental areas, such as the availability of reviews and maintaining a level of consistency on a number of matters such as the handling of misconduct, the current proposals are significantly at odds with what the McLeod report recommended. For example, we see no sense whatsoever in compounding the complexity of administration across the Public Service by having every agency develop their own misconduct procedures. There should be a common standard in the APS of how cases of alleged misconduct are handled. It is a waste of resources in every department to re-invent the wheel when there could be a common approach adopted.

Mr GRIFFIN—Dr Shergold made a point repeatedly about the fact that the Public Service, in his view, was very different. You cannot compare Customs to DEET and so on and so forth. Would you like to comment on that issue?

Mr Lilly—Certainly we have never accepted that the Public Service is totally uniform. We have been involved in negotiating different terms and conditions in a range of agencies but within the framework of some core conditions. I suppose there is a degree of emphasis about what level of divergence there should be.

Clearly there is a difference between Customs and the CES. Clearly there may be, in the area of misconduct, a different emphasis on particular sorts of offences. If a customs officer is privately convicted of marijuana possession, his/her agency might

obviously want to view that offence more seriously than if it were somebody working in Social Security, for example, because of its impact on the nature of the work of the agency. We are not saying that individual agencies cannot have a different emphasis on how allegations of misconduct are dealt with, but there should be common procedures across the APS to ensure that people are treated fairly in all agencies.

Mr Moylan—Mr Griffin, in our submission, we do point to a number of areas where we are advocating that recommendations of the McLeod report get picked up in the legislation. I find it telling that two of those are that the legislation excludes a detailed statement of the responsibilities of agency heads, or these people who are getting the power. Firstly, they have excluded McLeod's recommendation that there be a substantive statement of their responsibilities. Secondly, the bill excludes McLeod's recommendation that there be a statement of the rights of APS employees.

Senator HOGG—Do you have a list of core provisions which should be service wide at this stage, or is that something that you see subject to negotiation?

Mr Lilly—There are matters which we are currently negotiating at an agency level relating to conditions of employment. There should be common access to appeals processes across the Public Service that are currently encompassed in legislation. There should be common procedures for handling misconduct. There is a range of other matters which we see no sense in diverging. We believe there should be a common classification structure but with the ability to adapt classifications at the agency level. We believe that classification structure should be the subject of an industrial agreement, not unilaterally imposed, as is being proposed both through this legislation and current negotiations with the Department of Industrial Relations.

Senator HOGG—On the classification structure, who should have the determination of how the classifications are worked out?

Mr Lilly—We believe that it should be a matter that relates to the terms and conditions of employment. It should be a matter that is negotiated to agreement with the unions.

Senator HOGG—As I understand the current legislation, that is not the thrust of it. The classifications are determined independently by the agency head.

Mr Lilly—The broader classification structure is a determination which can be made by the public service board or the Department of Industrial Relations at the moment. As proposed, new legislation would enable that to continue, but the application of the structure or any broadbanding of the structure is generally subject, or has been in the past, to negotiation either at the APS wide or at the agency level.

Mr Moylan—Senator, I want to add one thing. Dr Shergold said that, by and

large, the transitional legislation reflected technical amendments. Senator Faulkner raised the question of the mobility provisions, which are in that transitional bill. For us there is another very important provision; that is, that a number of the employment conditions are contained in determinations—DIR or commissioner determinations—under 82D. This bill would have the effect of lapsing those determinations in one year. In the period before that lapsing, that would make them amenable to—it looks on the face of it—unilateral variation by the heads of agencies.

Senator FAULKNER—The only issue I would raise with you is whether it is one year or not. Is that clear?

Mr Moylan—For the lapsing of the determinations, it is one year in the bill. For the question which you were pursuing with Dr Shergold about the so-called transitional provisions for staff of members of parliament, for example, to return to the Public Service, he said that is not stated in the legislation. I think we have heard one year or two years.

Senator FAULKNER—Can I ask you a general question that goes to an issue that you raise in your submission, which is the establishment of executive agencies and some concerns you have around that. I thought it might be useful to hear from the ACTU a little more about your concerns in that area and implications for APS employees of executive agencies.

Mr Moylan—In terms of them assuming they are government issues, this is a new category which—as the explanatory memo concedes—has been introduced without any discussion. We have not received any rationale, and you cannot find it in the explanatory memo for the introduction of this new category of employment. The Public Service has been basically constituted by departments of state which have explicit legislative responsibility for specific pieces of legislation, as outlined in the administrative arrangements or statutory authorities which act under specific requirements contained in their statute.

In very general terms, I think this provision provides for the dismantling of existing agencies and for the setting up of bodies, without a requirement to come anywhere near the parliament, without a requirement for any clear legislative basis for the setting up of those agencies. Potentially, it would lead to a major proliferation of the Australian Public Service, which in turn would compound the mobility problems which we have been talking about. In addition, there are some changes in the powers. I think it might have been you, Senator Faulkner, who picked up this morning that the minister responsible for such an agency would be the person who determines the salary of the head of that agency. It is not even a matter that the Prime Minister gets involved in. So it is a mystery and a worrying factor in the legislation.

Mr GEORGIOU—Mr Moylan, which part of the bill do you actually like in particular?

Mr Moylan—Our submission indicates that there are a number of factors which we see as an improvement. They were not beyond suggesting some improvements. There is the statement of APS values around clause 10. We do see some advantage in the whistleblower provision, although it is a very limited provision. It does not go to the substance of the whistleblowers' concerns.

Mr GEORGIOU—I have read your submission. I did not actually identify any bits in which you said, 'This is really good.'

Senator FAULKNER—The title is terrific.

Mr GRIFFIN—With Dr Shergold this morning we were talking about the question of arrangements for termination of employment, not directly but indirectly. He talked about, as I recall, putting things on a similar footing to the private sector. Would you like to comment on that particular issue?

Mr Lilly—We have accepted for some time that the unfair dismissal provisions in the Workplace Relations Act should be the appeal mechanism that governs termination within the Australian Public Service. We accepted that, in the current enterprise agreement which we struck in 1995-96, the appeal provisions in the Public Service Act would be overridden as a result of that agreement. What we do take issue with, though, is the lack of process in relation to matters which could result in termination and are being removed from the legislation.

There are currently a number of provisions which go through the steps which might result in termination either through misconduct or through inefficiency, both of which are in the current legislation or are the subject of industrial agreements, particularly the inefficiency provisions. Although we do accept the appeal at the end of the process as the appropriate one and consistent with that that applies to the rest of the community, we believe that there should be a proper process which should be service wide leading up to any decision which might result in termination of employment. That is where we take issue.

Mr Moylan—The Public Service is, in our view, a different area of employment than the private sector. That is reflected in this legislation which lays out a number of responsibilities, obligations, et cetera, on Public Service employees which are not imposed upon other members of the community. So you need to have a legislative regime which reflects that. As Mr Lilly has indicated, it relates to an earlier question about the termination of SES officers.

This legislation would exclude them from access to the industrial tribunals which they would otherwise have. It has been said, 'Oh, well, you must take account that these are a special category. They shouldn't have the same rights as the work force generally. These people need to have restrictions on them.' So they get caught.

Mr GRIFFIN—That brings me to another question. There was some discussion this morning about fearless advice from public servants which, I guess, in the circumstances, is often going to be more at that senior level because they are the ones that are directly liaising with departmental heads and political masters. Would you like to comment on that issue in terms of whether there are concerns in this bill as to how the nature of the service in terms of that advice role could be affected?

Mr Lilly—As we have indicated, we are alarmed to see that frank and fearless advice was not included in the values. As has been indicated, the word 'timeliness' has been seen to be more important than those words. We think it is a significant deficiency in the values that there is no reference to advice being frank, fearless or honest. That combined with the ability for SES employees—principal APS employees who are responsible for providing frank and fearless advice—to be dismissed without any recourse makes us particularly concerned about the fact that, despite including a value about the apolitical nature of the APS, some of these changes are going to make the Public Service more political and that people in those positions are only going to provide the advice that their political masters want to hear because they will have no recourse or remedy if their employment is terminated.

Those employees currently do have access to the unfair dismissal provisions. Although they are over the salary limit, they are covered by an award. Therefore, they retain the unfair dismissal appeal rights under the Workplace Relations Act. We believe that removing those rights, although in our experience it has only been exercised once by an SES officer, will contribute to a greater politicisation of the SES in particular and the APS as a whole as people are more fearful of loosing their job if they give unpalatable advice.

Mr GRIFFIN—Dr Shergold also commented in answer to a question by the Chair on the issue of morale within the service. He made some comments about why he thought morale was a problem in the service. Would you care to comment on the question of morale in the service?

Mr Lilly—We do not think this bill is going to contribute anything to improving morale. Obviously, with a change of government significant turmoil occurs as different priorities take effect. The Public Service has shown its ability to adapt and change direction. The level of constant change and the introduction of measures which leads people to be uncertain about their future employment does nothing to enhance morale in the Public Service. Introducing legislation which gives bland powers to departmental secretaries to terminate your employment does not give you any security about the continuity of your employment. Removing the current protections we have through the officer provisions under the current act is going to do nothing to improve morale.

CHAIR—Thank you very much, Mr Lilly and Mr Moylan. The committee stands adjourned for lunch.

Luncheon adjournment

[2.08 p.m.]

BOSSER, Ms Catherine Eleanor, Acting Principal Adviser, Australian Government Employment Group, Department of Workplace Relations and Small Business, GPO Box 9879 Canberra City 2601

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

BURTON, Dr Clare Margaret, Member, Women's Electoral Lobby, PO Box 191, Civic Square, Australian Capital Territory 2608

FORWARD, Ms Ann Margaret, Merit Protection Commissioner, Merit Protection and Review Agency, PO Box E440, Kingston, Australian Capital Territory 2604

GOURLEY, Mr Patrick Dennis, Member, Institute of Public Administration, PO Box 3147, BMDC, Australian Capital Territory 2617

HEWITT, Sir Lenox, OBE, 9 Torres Street, Red Hill, ACT 2603

HUNT, Mr Christopher Terence, Agency Member, Merit Protection and Review Agency, PO Box E440, Kingston, Australian Capital Territory 2604

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

LILLY, Mr Douglas Stephen, Assistant National Secretary, Community and Public Sector Union, Level 5, 191 Thomas Street, Haymarket, Sydney 2000

MACINTYRE, Ms Janice, Member, Women's Electoral Lobby, PO Box 191, Civic Square, Australian Capital Territory 2608

MOYLAN, Mr Peter Augustine, Industrial Officer, Australian Council of Trade Unions, 393 Swanston Street, Melbourne 3000

SHERGOLD, Dr Peter Roger, Public Service Commissioner, Public Service and Merit Protection Commission, Edmund Barton Building, Barton, Australian Capital Territory 2600

STEWART-CROMPTON, Mr Robin, Deputy Secretary, Department of Workplace Relations and Small Business, GPO Box 9879, Canberra City, Australian Capital Territory 2601

UHR, Dr John Gregory, 31 Millen Street, Hughes, Australian Capital Territory

WATERFORD, Mr Jack, *Canberra Times*, 9 Pirie Street, Fyshwick, ACT 2610

CHAIR—I declare open this afternoon's public hearing for the review of the Public Service Bill and the Public Employment Amendment Bill and welcome all witnesses here today. Sitting at the table is Senator Allison, from the Australian Democrats. She is not a formal member of this committee, but she has had a longstanding interest in this issue. We will play it by ear as to her participation, if any.

I have to read out this formal statement about how the proceedings will be conducted today. We will be running this session in a round table format, which means that there will be opportunities for participants to comment on each other's views on clauses of the bills. However, I must ask participants to observe a number of procedural rules. Firstly, only members of the committee can put questions to witnesses if this hearing is to constitute a formal proceeding of the parliament and attract privilege. If other participants wish to raise issues for discussion, I ask them to direct their comments to me. It will not be possible for participants to respond directly to each other. Secondly, witnesses should, to assist Hansard, identify themselves whenever they wish to make a comment. Thirdly, given the short time available, statements and comments by witnesses should be kept as brief and succinct as possible.

In the normal course of events the committee would swear witnesses or take affirmations, but to do so with the number of witnesses here today would be rather unwieldy. However, I remind you that the hearing this afternoon is a legal proceeding of the parliament and warrants the same respect as proceedings of the house itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. 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 statement are available from the secretariat staff present at this meeting.

I will now review the bills. The committee has received 28 submissions. At the start of today's proceedings, we had received 25 submissions; we now have 28. We have distributed a paper listing those issues which we intend to address in that order. We realise that there will be some overlap between some of the issues, but we would appreciate participants confining their remarks as far as possible to the specific issue under consideration. If participants have comments on particular clauses of the bill other than

those expressed this afternoon, the committee will accept written supplementary submissions until Wednesday 13 August.

The order of issues to be addressed are questions of merit, values, conduct, code of conduct, equity, termination of employment, whistleblowing, external review of decisions, the role of the Public Service Commissioner, subordinate instruments, the concept of a career service, annual reporting and lack of mobility between parliamentary service and public service.

I might direct the first question to Ms Ann Forward. Why is it important that merit be defined in primary legislation? What are the direct advantages of this approach over the inclusion of these matters in commissioner directions?

Ms Forward—Can I clarify that? Why is it important to spell it out in legislation?

CHAIR—Why is it important that merit be defined in the legislation itself?

Ms Forward—So that it can be beyond argument. While it is inferred or referred to as an absence of certain things, while it is defined only as a negative—that is, the absence of patronage and favouritism—it seems to be not a very useful basis for the employment decisions said to be so important to the Public Service. If it is spelt out in the legislation, then there can be no ambiguity about what it means. It is a reference point which is used very frequently. I believe there was another part to your question.

CHAIR—Well, that was basically it. What are the advantages of that approach over the inclusion of these matters in commissioner directions?

Ms Forward—It is not subject to variation. It is there in the legislation for all to see, for the general public and for anyone else who wishes to know, in a readily accessible form which cannot be changed except with the direct authorisation and participation of the parliament.

Senator FAULKNER—Would you agree, Ms Forward, it really goes to the issue of how important we ought consider the merit principle? In other words, it is either in the primary legislation or it may be contained in subordinate legislation. The committee, certainly in the submissions before it, has received a significant amount of evidence suggesting that this is of sufficient importance that in fact it should be in the primary bill.

Ms Forward—I absolutely agree with you. Yes, it is of primary importance to the whole of the proposed legislation. I agree it should be there and not in subordinate legislation.

Mr GRIFFIN—Is there any alternative view to that?

CHAIR—Does anyone feel strongly in support of that view?

Dr Burton—I do.

Mr GRIFFIN—There are many heads nodding. So no-one disagrees with the position that basically it should be part of legislation?

Mr GEORGIOU—I think we should ask the Public Service Commissioner.

Mr GRIFFIN—I think we should ask him that question when he gets here, I agree. But we can establish whether there is a consensus other than the Public Service Commissioner's.

Dr Uhr—One of the indicators of how important it is to put it in the primary legislation comes from the minister's second reading speech where he went out of his way to identify the importance of a clear, unambiguous, uncontested definition of merit. Drawing it to our attention in his second reading speech is kind of flagging, or an indication of, how important it is going to be for the general operations of this legislation. I think we should support his identification of the priority by doing everything we can to push it into the legislation and not leave it at the discretion of the commissioner at some point down the track.

Mr GEORGIOU—How many definitions of 'merit' are there in the current act? I would like to know because we keep saying that we need a definition of merit, the act has been in operation for 75 years. So, how many definitions of merit are there in the current act? How identical are they—I will not say similar? How do they vary?

Mr Lilly—As I indicated this morning, there are three definitions of merit in the current legislation. They have a lot of similarity, but they apply in different circumstances: one in relation to the SES, one in relation to general promotions and the other one in relation to temporary—

Mr GEORGIOU—Why do you need three definitions of 'merit' in the act?

Mr Lilly—We would have to ask parliament that. They were the ones who legislated for three different definitions.

Mr GEORGIOU—Let me ask: why have we needed three definitions of merit in the act?

Mr Lilly—I do not think I can answer that. It is certainly our view that there should be a single clear definition and that it should be in the new bill.

Mr GEORGIOU—But the act has managed to survive and the Public Service has

managed to operate for a substantial period of time with what I would assume are not quite consistent definitions of merit which apply in different circumstances, and that is why the parliament generated three to cover different circumstances. The Public Service Commissioner is here and I would like to pursue it with him.

Dr Shergold, we are just pursuing the issue of merit and you made a point in your submission that in the present act there is not an unambiguous reference to merit in it. In your presentation you said that the present act lacked 'an unambiguous reference to merit'. We are trying to chase down the differences in the references to merit in the present act, the variations.

Dr Shergold—I apologise for arriving late. The references to merit and how it is to be interpreted will be in the commissioner's directions which will articulate for agency heads what is meant by the reference to merit in the values. It will apply to all employment decisions rather than to a limited range of employment decisions. It will provide a definition of merit, which will probably be the one that has been proposed to us by the Women's Electoral Lobby, based I think upon the clearing house definition. It will then move from that definition of merit to saying how it should be applied in particular employment situations such as selection, recruitment or advancement.

As I have indicated, I would envisage that in a couple of weeks the actual direction would be before you so you could see how in the subordinate legislation merit is to be defined. But it will start from a single definition of merit to apply to all employment decisions and then we will indicate how in some specific employment actions it has to be applied.

Mr GEORGIOU—Sorry, you made a criticism of the existing act that there was no unambiguous reference to merit.

Dr Shergold—Yes.

Mr GEORGIOU—I understand that to mean there were several definitions of merit differing either a little or a lot. Did they differ a little or a lot—I have not looked at the act?

Dr Shergold—There is no single definition of merit contained within the 1922 act. There are only references to its application in terms of selection, promotion and, I think, the Senior Executive Service.

Senator FAULKNER—Could you, Dr Shergold, make the case to us for actually having this contained in the subordinate legislation as opposed to the primary legislation, which I expect at the end of the day is pretty fundamental in terms of the debate we are having around the merit principle?

Dr Shergold—I think there is an advantage in having it in a single direction provided for agency heads as to how merit is to be applied. It is possible that the application of that definition will need to be changed over time.

Let me give you an example. One of the key issues in the way the Public Service is changing at the moment is, with the devolution of employment powers, people will be able to broadband classifications. So in some organisations there may be a broadbanding of APS 1 to 6 and senior officers 1 and 2. In other agencies, they may wish to keep all eight classifications.

In the present legislation, there is reference under section 50 to transfer level. It is obviously crucial to the definition of 'merit' that in this new environment we think, 'What, if anything, does a transfer at a level between agencies mean if people have different broadbanding of classifications?' We would address that in the initial commissioner's directions on the basis of the classification rules that have already been extended, but it is quite possible that with this or a future government those classification rules may be changed or removed. It will be necessary to change the way that the merit principle is applied therefore to issues of transfer between agencies. So I think there is an advantage in having it in a separate commissioner's direction which is subordinate legislation and which is a disallowable instrument.

Senator FAULKNER—But, as we talked this morning, I put to you the fact that of course disallowable instruments, with the regulations or commissioner's directions being disallowable, really gives a house of parliament very limited flexibility. You can disallow the instrument that might have unforeseen consequences or massive consequences that make that a very unlikely event to actually take place. As I understand from your evidence this morning, if the legislative instruments bill, which is currently now on the forward legislation program of the Senate, were passed by the Senate in its current form, that would actually mean that, for the merit principle, effectively that direction would lapse after five years. Would I be correct in that interpretation?

Mr Kennedy—That will be dependent on whether the exemption that I mentioned is agreed to in the passage through the parliament, but, as I mentioned in the drafting of the commissioner's direction, we have already proposed for consideration that the direction itself lapse after five years anyhow so we had already incorporated the concept of a sunsetting irrespective of whether it is covered by the legislative instruments bill or not.

CHAIR—Ms Forward, do you want to make a comment on that?

Ms Forward—Just to go back a little, there was discussion in which, I think, Doug Lilly referred to three different definitions of 'merit' and there seemed to be some sort of confusion. In fact, the current 1922 Public Service Act does not contain a definition of 'merit'; it contains three different definitions of 'relative efficiency', which

has been assumed to be the same thing as 'merit'. You might like to question whether in fact it is the same thing as 'merit', but that might have led to some of the confusion there was a bit earlier.

Mr GEORGIOU—The confusion was due to the fact that we were advised that there were three definitions of 'merit'. That is what caused the confusion. So there is no definition of 'merit' in the current Public Service Act?

Mr Lilly—That is right—

Mr GEORGIOU—Thank you both for your advisings.

Mr GRIFFIN—On that issue, you are saying it has been taken to be read as a definition of 'merit'—that is, three different definitions of 'merit'. Is that so?

Ms Forward—That is correct.

Mr GRIFFIN—Do you believe that in effect they have served that role well, badly or indifferently? Are those definitions very different in themselves?

Ms Forward—The definitions are not different in themselves. They are marginally different according to whether they are used for, as Mr Lilly said, promotion or recruitment to the SES and so on. The definitions are only very marginally different. It has been quite useful because it has spelt out the attributes and the circumstances that persons required to make employment decisions have to consider in making those decisions. They spell out things like the requirement to look at skills and experience and personal attributes and so on so that those things are identified. Whilst I do not believe that doing what that definition says automatically delivers merit, I do think that at least it makes sure that those issues are addressed which is a good way to achieve the desired outcome.

CHAIR—Dr Shergold, before you arrived here there was a strong feeling among the participants that 'merit' should be defined in the primary legislation. As you have spoken on that, I invite anybody else who wants to make a comment now, given the Commissioner's statement, to do so.

Dr Burton—I want to make a couple of points. One is that I do not believe that there is necessarily a problem having a definition of 'merit' in the legislation with respect to the sorts of arrangements that Peter Shergold talked about—for example, transfer at level. I think those sorts of administrative arrangements and decisions as to how they might operate do not go to the heart of the merit principle whose components, I believe, remain the same under different sets of circumstances. The definition of 'merit' that the Women's Electoral Lobby has offered, and which has been used by the CCH publication *Australian and New Zealand Equal Opportunity Law and Practice*, has three elements to it.

One element is that the concept refers to the relationship between a person's job-related qualities and those genuinely required for performance in particular positions. The second element that it is a competitive process where people are assessed in relation to others' claims on that position or positions. The third, and important, element—and I think this is where the descriptions of suitability in the old act are probably out of date—is that an understanding of 'merit' nowadays, partly as a result of the workings of anti-discrimination law, focuses more on people's capacity to achieve job outcomes rather than comparing only a set of qualifications and skills. That focus on job outcomes is a critical shift in emphasis and it is also one, we believe, that produces less bias in selection processes.

I would also like to give one additional reason for the merit principle to be included in the legislation rather than in the directives only. Apart from the symbolic statement that makes that this is indeed a concept that is held dear to the government and the Public Service, we are finding in other countries where work has been done that, with the devolution of human resource management decision making, the concept of merit is shifting from suitability in the way in which we have customarily understood it to acceptability. It is a great deal easier when those decisions are devolved for managers to determine what constitutes merit for themselves and in part that is to do with what the workplace or the manager finds acceptable with respect to the personal qualities or attributes of the individual. Hence the importance of having a focus on outcomes and having it embedded in the legislation as a strong signal to the Public Service that this is what it means.

Mr GRIFFIN—Dr Shergold, you said that there would be one definition of merit as such, but you then mentioned that there may be circumstances which would mean there needed to be some expansion on that and the intention is, at this stage, to have all of that in a commissioner's direction. Is it possible to have the one definition in the act and, if there are other issues that need to be addressed in some detail, can they be included in the commissioner's direction?

Dr Shergold—That would be possible. Let me make it clear in case there was a misunderstanding of what I said this morning. I had hoped I had said that there were three references to merit within the existing Public Service legislation which was with regard to selection, promotion and the SES—not three definitions of merit—but that those three references to merit do not provide an unambiguous reference to what merit means. Nor, indeed, in the existing act, is there a recognition that merit is a key principle, such as is set down in this new bill.

It is possible that you could incorporate within that bill the definition of merit that is to be applied, and then, in the Commissioner's direction, say how that interpretation is to be applied with respect to recruitment or selection, or promotion and advancement. That would be an alternative way. What is presently proposed is both the definition—the interpretation of the value of merit—and how it is to applied would be contained within

the commissioner's direction. There are two alternative ways of presenting it that will have the same legislative force.

Mr Moylan—If I can respond to the deputy chairman's earlier question, which was after having heard Dr Shergold, 'Does one change one's mind about whether the provisions should be in the act?', my answer is that we do not change our position on that. There is an interesting discussion in the McLeod report which, in part, states:

> The merit principle is the cornerstone of employment in the APS. APS staffing decisions have been, and will continue to be, based on the concept of open competition based on merit. Application of the merit principle is essential for the preservation of an impartial APS in which staffing decisions are not influenced by nepotism or patronage. It is also central to the aim of enhancing the efficiency of the APS by selecting the best people for employment and advancement.

That is quite a useful statement in support of the merit principle and its importance. In the light of those considerations one is at a loss as to why it is being suggested that it not be provided for in the legislation.

Mr GRIFFIN—When we talk about that question of definition, though, there is the issue of the definition, and Dr Shergold has suggested that there is then a range of other things that come from that. The last question I asked was on whether the definition itself can be in, but then those other issues are taken care of in a commissioner's direction. Is that desirable in itself or would it, in fact, still allow for a range of the questions, which have been raised about why the definition should be in the legislation, to still be issues? Can I get some comments on that?

Mr Lilly—I think we would be happy to see a continuation of some of the current arrangements where these other matters are covered, either by regulations or directions, provided that there is the enshrining of the core definition of merit in the legislation. But the detailed application of the processes surrounding selection, et cetera, can quite adequately be covered in either commissioner's directions or regulations.

CHAIR—Does anyone else wish to comment on that issue?

Mr Uhr—To support it, I think it does nothing for community confidence in government for the core definition not to be included in the parliamentary provisions so that there is some public—community—definition of what constitutes merit. I support Commissioner Shergold's option, that he was just sketching for you to consider very closely, that the core definition be there and some of the operational principles be fleshed out in subordinate legislation.

Mr GEORGIOU—Is there is a core definition in the current act that people like?

Dr Shergold—There is no core definition.

Mr GEORGIOU—Because we can keep on saying that merit is the cornerstone of the act, but there is no definition of merit, as you have now explained it to me. There are particular applications in particular circumstances. We have had an act which is based on merit but which does not define it explicitly. But, somehow, the Public Service has managed to find its way through three-quarters of a century without it being defined. I now understand the point you are making, but that was not the point that was picked by some other people providing testimony to the committee here.

Mr GRIFFIN—I think a lot of people were talking around the issue and the circumstances and I do not think there is any intention by anyone to mislead. It was just a question.

Mr GEORGIOU—No, no, not at all.

Mr GRIFFIN—The fact that it is a range of processes developed over time. The WEL definition was mentioned by Dr Shergold I think. Is everyone basically happy with that as a core definition? I will put it another way: is anyone not happy with that as a core definition?

Dr Burton—I made the recommendation about it because I have noticed that the Merit Protection and Review Agency has a list of words which includes the word 'competencies', which might well inform the WEL's definition. Would you like me to read out the WEL's definition?

CHAIR—Please do.

Dr Burton—'The concept of merit refers to the relationship between a person's job-related qualities and those genuinely required for performance in particular positions. The focus of a competitive merit selection or promotion process is on what the applicants possess by way of—' this is where the list comes in '- skills, experience, qualifications and abilities—' and the MPRA's list might be considered as a replacement list there '- which are required to achieve the outcomes expected from effective job performance.'

CHAIR—Dr Shergold, could that be condensed into a definition that could be included in the legislation?

Dr Shergold—It could be condensed into a definition which could be in the legislation or in the commissioner's directions.

Mr GRIFFIN—As you mentioned in terms of the two options you outlined before, the real need—from your point of view—in terms of the question of using commissioner's directions, is actually a need for some flexibility around the edges. But you still see a situation where the core definition ought to be immutable and therefore, in that situation—although that is a decision for government to take—you do not see a problem with it

being in the legislation?

Dr Shergold—No. There is no technical problem with placing the definition within the legislation.

Mr Lilly—From our point of view, we have picked up a couple of other points—the achievement of recognised competencies and training—but we think there is scope within the WEL's definition to come up with something which is acceptable, but it should be in the legislation.

CHAIR—I think we have covered the issue of merit. We will move on to values and code of conduct. Do participants wish to comment on any aspect of values or code of conduct set out in the bill? Who would like to lead off?

Mr Uhr—Just to pick up the deputy chair's comment about immutability, as though that was an argument for including a specification of any of the values, I think that would be to misunderstand it. The importance of putting content into something like merit as a specific value is not because it is immutable; it is because it becomes a community definition which is subject to amendment in parliament. If you put it in a regulation—or any of the other values in regulation—it is, in fact, more immutable. Parliament can vote it up or down within a certain limited time, and then it is beyond public and parliamentary control.

CHAIR—Right. Code of conduct or values. Does anyone wish to lead off on that issue? Is everybody happy with what is in the bill?

Mr Lilly—We have raised, in the ACTU submission, eight separate enhancements we believe should be made to the values—a number of them amending what is proposed and a few additions. The first one goes to 10(c). We believe it should read 'that the APS provides a workplace that is free from discrimination and its work force reflects the diverse nature of the community it serves,' rather than the current wording which has it recognising the diverse backgrounds of its employees. We believe that the EEO programs or the workplace diversity programs should ensure that the APS reflects the constitution and the Australian community. Just recognising the constitution of the work force after it has been constituted is not, in our view, adequate. Do you want me to go through each of these or open each one for comment?

CHAIR—Yes.

Mr Lilly—We believe that in (e) there should also be a reference to ministerial responsibility. In (f), as was discussed this morning, we do not believe just having a requirement that advice is timely is adequate. There should be a reference to frank and fearless advice, or 'honest and comprehensive' might be additional words that could also be added there. In (g), we believe there should be a reference to the procedures that are

used in the Public Service being transparent. In (i), there should be a recognition of participation of employees in workplace relations; and one that does recognise the role of negotiations rather than just consultation and communication.

We believe three other additional values should be looked at for inclusion. The first one is an aspect of the current legislation which is encompassed in clause 33(1)(a), where all persons who are eligible for appointment to the service have, so far as is practicable, a reasonable opportunity to apply for appointment to the APS. We believe that is an important value that should be maintained in the new legislation. We believe there should be a reference to the APS being a career based service and we have drawn there some words from the McLeod report. Finally, we believe there should be provision of a fair system of review of decisions as they relate to members of the community and APS employees.

CHAIR—Does the commissioner wish to comment on those views?

Dr Shergold—I do not think I do wish to comment. They are useful suggestions as to how the APS values might be re-worded and perhaps improved. I would only make the point that there are no such values in the present act.

I suppose I would have some reservation with changing the value on cooperative workplace relations to deal with negotiation because, as I understand the application of the Workplace Relations Act—which is, after all, the law which governs myself and other agency heads—that is not required. What is required is that they communicate and consult with my staff and, with respect to a certified agreement, put it to them to vote. I would not want to be including in values something that seems to be at odds with the Workplace Relations legislation under which we operate.

CHAIR—Any other comments or questions?

Senator FAULKNER—In relation to (e), Dr Shergold, can you see a case for saying the APS is accountable for its actions and for the bill stating to whom it would be accountable?

Mr Kennedy—We cannot actually find the summary that has been circulated so it was the wording of the amendment that we did not catch.

Senator FAULKNER—I am going from part 3 section 10(e) of the bill.

Dr Shergold—In terms of (e), which states that 'the APS is accountable for its actions', my view is that elsewhere in the bill it makes relatively clear what the lines of accountability are. An agency head is accountable under an agency minister and the lines of accountability are through government to parliament and then to the public. So I think the lines of accountability are set out elsewhere within the legislation.

Senator FAULKNER—It would seem to me that adding words such as 'within the framework of ministerial responsibility to the government, the parliament and the public' would actually be a useful addition. I am interested to hear whether there is an argument against it.

Dr Shergold—The argument against it is simply that in the objects clause it makes clear that the lines of accountability are in serving the government, the parliament and the Australian public. In terms of the agency heads, there is a clear reference to the fact that the agency heads serve under the agency minister except that under clause 19 it makes it clear that that line of accountability does not mean that a minister is able to involve himself or herself in individual staffing decisions. So my only comment was that I think there is sufficient in the bill already to make the lines of accountability clear.

Senator FAULKNER—One of the other debates this morning was in relation to (f) and the Ron McLeod's alternative that frank, honest, comprehensive and accurate be included. I was interested in hearing any views that witnesses might have as to having that as a possible inclusion in 10(f).

Mr Waterford—It is a jolly good idea.

Senator FAULKNER—Dr Shergold, do you have a view on that?

Dr Shergold—The view I have is that it is certainly the government's intention that it is appropriate to provide frank and fearless advice. So the question is purely a technical one of whether it should be incorporated in this legislation—and that is an option that is available.

CHAIR—Does anyone else have any comments to make on that particular point?

Dr Uhr—In listening to the Senator's proposed amendment that he was foreshadowing or flagging it seemed to address a range of issues that are equally fundamental to the ones identified in (f). As I re-examine it now, (f) does appear to be pretty restrictive in talking about timely response to government. It is not a government service bill we are examining it is a Public Service bill and the issues that Senator Faulkner identified about frank and fearless advice may be part of the aspirations. If they are then perhaps they should be included in an amended version of (f).

Senator FAULKNER—If you like there are two possible alternatives. Frank and fearless was, I think, a suggestion that emanated from the ACTU and the other words that I mentioned came from Ron McLeod. They are at least options that the committee and, no doubt at some later stage, the parliament might grapple with.

Mr Moylan—I wonder whether Mr Stewart-Crompton could convince Dr Shergold that it would not be illegal for him to negotiate that his objection to the inclusion of the

words ‘and negotiation’ be dropped?

Mr Stewart-Crompton—I think that is an invitation to me to make a comment, and I will take it up if it is all right by you, Mr Chairman. I agree with Dr Shergold that I do not think values is the right place to introduce the concept of negotiation, and the particular value in which it was suggested it be included is not the right place to introduce the concept of negotiations. When I look at the APS values I see a set of high order values which all public servants should aspire to and consultation and cooperation seem to me to underpin the effective operation of any workplace and this is, after all, a piece of legislation designed for that purpose.

Negotiations imply that there will be a process of demands and concessions and quite possibly the use of bargaining power to enforce a particular point of view. As Dr Shergold has pointed out, the Workplace Relations Act sets out what the parliament has said is the appropriate framework for that kind of relationship in workplace relations. I think there would be perhaps some unfortunate confusion between the aims and purposes of the new Public Service Act and the Workplace Relations Act if we had the concept of negotiations sitting as a value of the Public Service with no further explanation.

Elsewhere in the Public Service Bill we have got a reference to the Workplace Relations Act where it is clearly stated that the legislation is subject to the Workplace Relations Act, and I think that is sufficient to capture the concept of negotiations. I would put to the committee it would be inappropriate to pick up that particular suggestion from the ACTU.

The other point I would make is the parliament has made quite clear, as I have said, what its view is on the framework for negotiations. The government itself has made quite clear its policy towards a constructive approach towards negotiations, where negotiations are required, in all workplaces, not just the public service. I think it is likely that the government would take the view that matters relating to negotiation over employment relationships are better left to the Workplace Relations Act.

Mr GRIFFIN—On the issue of equity, and I suppose particularly on the question of pay equity, there is a fair bit of research around which has pointed to the fact that decentralised wages systems and performance pay have a detrimental effect on pay equity. The public sector itself has generally had a pretty good record on the question of equity in relation to pay. But when we look at the changes that are being proposed on an agency basis, I have some concerns on that particular issue. Can I get some comments first from Dr Shergold on that issue and also on the question of whether the bill should provide for monitoring and reporting on the impact of agency negotiated remuneration and performance pay on women and other designated groups.

Dr Shergold—Mr Chairman, I should make it clear that the obligation on an agency head under this bill is to manage performance. The way in which performance is

managed is up to the agency head. It may be that some agency heads believe remuneration performance pay is an effective mechanism for managing performance; it may well be that other agency heads do not believe that is effective in their own environment. So there is no obligation in this bill that there has to be performance pay. What this bill does is to devolve those employment powers to agency heads, tell them that it is necessary for them to manage performance, but leave it for them and their employees to decide what is the most appropriate way of doing so.

Mr GRIFFIN—But you accept that one possible implication of that is a situation of two people doing the same job in two different agencies being paid significantly different levels of pay?

Dr Shergold—It is possible right now that two different people doing the same job are paid two different salaries because of where they are on the incremental scale. It is certainly possible that that will continue into the future, because two different people doing the same jobs may be doing it to different levels of performance with different efficiency and with different skills being brought to the job.

Mr GRIFFIN—At the moment, I think, incremental scales normally relate to the question of years of service at a particular level; is that correct?

Dr Shergold—That is correct. You move up the incremental scales on the basis of conduct, diligence and efficiency. I think it is true to say that 97 per cent of those in the Australian Public Service climb the incremental scales; so it is a relatively weak test.

Mr GRIFFIN—Sure. But, given the implication for that change, does anyone see that as an issue that is of some concern?

Dr Burton—Yes. Women's Electoral Lobby is going to leave 1½ pages of very brief notes with the committee at the end of the day. There are various dimensions of that issue, but one is the actual performance management systems that agency heads set up. Women's Electoral Lobby made some comment on that in its submission. Given the evidence of gender bias in systems that are not set up to operate in a valid and reliable manner, WEL believe that they must come under some commissioner directive. It would be preferable, but probably not practical in this environment, to suggest the sort of accreditation system that occurred within the New South Wales government some years ago—I do not know whether it is still occurring. We are concerned about the development of performance management systems that might lead to biased outcomes.

On performance based pay, we do recommend that the commissioner should be reporting specifically on performance pay data by sex and by agency, because of the evidence that there is a differential outcome by gender. A few years ago there was a Senate committee of inquiry into that matter. The figures that were discussed in front of that committee, which were provided by the Department of Finance, showed a consistent

difference in the bonuses paid on average to men and women—

Mr GRIFFIN—Dr Shergold, on the basis of that issue though, is there any proposal from you as Public Service Commissioner to review the results on an agency by agency basis to see whether any structural flaws occur which lead the sort of outcomes that have been mentioned?

Dr Shergold—Through you, Mr Chairman: there is not an intention to do so at the moment, although it would clearly be possible through the *State of the Service Report*. That could be one of the issues which was investigated. But before we do that, I think we would need to recognise there are two key issues which are being brought forward here.

I certainly agree with Clare Burton that at the present time we do not manage performance well. Indeed, I do not think we manage people well. Why is that? The key reason we do not manage people well is that we do not devolve the responsibility for management. Managers will only learn to manage when they are given the responsibility of management and are held accountable for the way they manage, and that is what this bill provides.

I would certainly not want any indication that some central agency—the commission or the Department of Workplace Relations and Small Business—will be coming in to agency heads and telling them what is the most appropriate way of managing performance and what is the most appropriate way for applying a workplace diversity program and for ensuring that they have a nondiscriminatory workplace. I would much prefer that they were held accountable for doing it.

The second issue is one of reporting. Yes, we could report—as was suggested this morning—on equity outcomes. I personally think it is a good idea. Yes, we could if we wished ask agencies to report on whether they have introduced performance pay and what are the outcomes. But I must tell you that one of the significant costs of management in the Public Service today is the range of requirements that are imposed upon us.

If we are talking about introducing new reporting requirements we also need to think of other ways in which those reporting requirements can be streamlined. We need to get a balance of what is being asked. We need to ensure that scrutiny is effective, but I do not think that the most effective scrutiny will come from simply a proliferation of reporting requirements that are imposed on agencies.

Mr Stewart-Crompton—On the question of reporting without going into the question of reporting by individual agencies, I just want to remind the committee that under the Workplace Relations Act there are already mechanisms for reporting on the outcomes of bargaining through certified agreements. With the AWAs, the employment advocate has recently established an initiative whereby there will be a major research project undertaken to analyse the effect of bargaining for the purposes of AWAs on a

number of factors which I think would be of interest to the vice chairman.

I do not think I need take up the time of the committee to go into this but I would want to reinforce a point that Dr Shergold had made. In many ways there is not a lack of information about the outcomes of bargaining in particular, and indeed the parliament has chosen to put in legislative means whereby there will be reporting and scrutiny of the overall outcomes. I recognise that is a separate question from individual results in public sector agencies, but I think it ought to be kept in mind that the issue is not one which has been overlooked either by the government or by the parliament.

Dr Burton—I think it is terribly important that we understand why the issue is there. There is evidence from all over the world that people who are not structurally in strong positions in the labour market are not able to bargain for the sorts of rights and conditions that those who are more powerful just through their location or occupation or level are. There is evidence that women are increasingly trading off one valuable condition for another valuable condition. The pay rates indicate that there is going to be a problem.

I understand that everyone in the community, including government spokespeople, are aware of the possibility that for women and other groups disadvantaged in the labour market the outcomes of the Workplace Relations Act might be disadvantageous. Therefore, it is utterly important that we collect the data and monitor what is happening so that modifications, adjustments and, if necessary, compensatory mechanisms can be developed. We must know what is happening given the general community concern about the possible outcomes for those who are not in a strong bargaining position in the labour market.

CHAIR—Dr Shergold, do you want to respond to that?

Dr Shergold—Yes, only to say that I suppose the proof of the pudding will be in the eating. I believe that there will be significant variations in the certified agreements and the Australian workplace agreements that are agreed in different agencies. My impression at least is that one of the key elements in that range of certified agreements and AWAs will be gender issues in negotiating, consulting and discussing a certified agreement for the Public Service and Merit Protection Commission. For example, issues of gender and balancing work and family are key issues and are likely to be reflected in the final certified agreement.

Mr GRIFFIN—You do not have an in-principle objection to the question of, say, the operation of the proof of the pudding being reviewed after about three years or something like that?

Dr Shergold—I have no objection to that. My difficulty is linking it to the legislation which is before us in that none of this legislation imposes any requirements on any agency head to manage their work force in a particular way other than upholding the values which are set out in the legislation.

CHAIR—Anybody else got a comment on equity?

Senator FAULKNER—Could I ask a question about clause 17, which is the clause before promotion of employment equity, which is about the prohibition of patronage and favouritism. I am interested to know how this is going to work. Dr Shergold?

Dr Shergold—The way it will work is that any public servant who believes that they have been treated in the workplace in a way in which they have been subject to patronage or favouritism, political or administrative, will be able to seek a review of the employment decision which has resulted from that patronage or favouritism.

Senator FAULKNER—Who will determine that?

Dr Shergold—It will be determined in the first instance within the agency. If it is not satisfactorily resolved at the agency level there can be external review by the Public Service Commissioner.

Mr Kennedy—I would like to add to that. In contrast to the current act which had the obligation in the passive, where it was not identified as being imposed on any particular person, we have now changed that in the drafting of this bill so that it is a person exercising powers. That will make it easier to achieve the results that Dr Shergold described. Then under the current act, where it is expressed in the passive, the question is: who has breached it, if it has been breached?

Senator FAULKNER—It must be a great relief to people that it will not apply to the appointment of secretaries or heads of executive agencies.

Dr Burton—I want to add a couple of equity issues. One is in response to what has been said earlier; that is, the idea that the only way a manager is going to learn to manage is by doing it, particularly with respect to the management of performance of others. It is because the Women's Electoral Lobby is not confident that managers will be able to do things according to best practice straightaway that we made the recommendation that the commissioner's directives with respect to some of those human resource management issues be compulsorily followed for the first three years, unless the head of the agency can show that the practices that they are setting up are consistent with best practice models.

I would also like to say that the Women's Electoral Lobby indicated in its initial submission that, wherever prohibition of patronage and favouritism were referred to, discrimination could be added. We also believe strongly that just as the act is subject to the Workplace Relations Act—which does make reference to the range of anti-discrimination acts that exist at the federal level—we particularly feel that reference should be made to those acts if this piece of legislation is going to be a set of guidelines

for APS employees and managers.

We would like reference to the sex, racial and disability acts in the bill, and I say that particularly with respect to the bill's provision for secretaries, giving them the capacity to carry out health assessments. We have included in our submission some strong arguments as to why they should be alerted and be thoroughly familiar with the Disability Discrimination Act's provisions, as well as in other parts of the bill where the provisions of the discrimination acts with respect to both direct and indirect discrimination should be brought to the attention of agency heads and managers in the same way that the values and code of conduct and so on are.

CHAIR—Thank you. If there are no more comments on equity, I might move on to termination of employment.

Mr GEORGIOU—We began this topic this morning. I would like to ask Dr Shergold essentially the same issues so that this can go around the table. In terms of the protection of strong, effective and unpalatable advice, why would not the termination of employment provisions 29 and 38 not blunt effective, strong and unpalatable advice?

Dr Shergold—I do not believe that the existence of clause 29 on the termination of employment of employees will act to constrain the provision of robust, frank or fearless policy advice. There are restrictions on the termination, which are actually set out in the Workplace Relations Act, and that is why there is a note in that regard. It is true that with respect to the senior executive service there are somewhat fewer protections than exist at the moment. It is expected that senior executives within the APS will operate much more as do their private sector counterparts.

Mr GEORGIOU—I would like to pursue that. I understood this morning—I may have misunderstood two things today—that there were additional protections which would be inserted outside the major act. Did I misunderstand that? I am perfectly happy to be told that I did. I thought that we were advised this morning that there were additional protections outside the Workplace Relations Act.

Mr Kennedy—Mr Chair, it was probably an answer that I gave this morning that Mr Georgiou is talking about. The commissioner is empowered under clause 36 of the bill to issue directions in writing about employment matters relating to SES employees. In the course of talking about that, I said that it was proposed to include in the directions on the senior executive service a provision which would produce the same substantive protections that are contained in section 76L, which is what I might loosely term the compulsory termination power for the SES that is in the current act. So I said that, not Dr Shergold.

Mr Stewart-Crompton—I would like to make a comment. If I understand Mr Georgiou's question, in the absence of the Workplace Relations Act, it is: what is that? The answer to that is there is a number of avenues that an SES officer would be able to

pursue. Before I come to those, I would like to advise the committee that on the information that we have after consulting all of the other jurisdictions, every other jurisdiction provides that its SES equivalents do not have access to their unfair dismissal laws.

For example, in New South Wales there is an expressed provision included in their unfair dismissal laws in the Workplace Relations Act, which excludes the access of their SES to the unfair dismissal provisions and so on. WA has a different arrangement. So I exclude WA from my rather sweeping observation at the beginning.

That said, the policy behind this has been one which reflects the government's view that as far as possible the public sector should be operating on a similar basis as to the private sector. It takes the view that for the most senior public servants—of whom there are about 1,500—the unfair dismissal provisions of the Workplace Relations Act should not be available. Just as one would find in the private sector, under the Workplace Relations Act it would be rare for a senior executive to have their wages and conditions covered by an award. Therefore, those people do not have access to the Workplace Relations Act remedies.

The remedies that are available include access to the common law. For people of the seniority of SES people, there would be a requirement of reasonable notice except where the conduct of the officer was so egregious that summary dismissal was justified. In normal circumstances, reasonable notice would be available. Judging by the way that senior executives have been dealt with by the common law courts, such notice might amount to a period of months. The ADJR Act applies to the decision making process. If there was a question about the propriety of the decision making process, it would be possible to seek administrative review of such a decision.

Ultimately, although one would think it would be an unusual circumstance, and I say this for completeness, there is under the constitution a right to seek review on administrative grounds by way of prerogative writ. These sorts of applications are serious matters. Prerogative writs are probably not the way that one would expect a normal termination to be dealt with. Depending on the nature of the office and the circumstances, there may be circumstances that one could conjure up where a review would be sought in that way.

Those are the main remedies that we see as being available. I should also note that I had some of my colleagues do an examination of the records of the unfair and unlawful dismissals since the introduction of that legislation in 1994. We could not find a single case where an SES officer had found himself or himself in circumstances where he or she thought it was necessary to make an application. However, there have been a number of cases where there has been termination of employment but usually through voluntary retirement.

Mr GEORGIOU—Can I play the problem back over. The concern is that there is a reduction in the protection afforded by the current Public Service Act to people who give unpalatable advice. For this purpose, leave the Workplace Relations Act aside. What I am asking is: firstly, does this involve a diminution? Secondly, if this act involves the diminution, is that diminution addressed in other instruments? I appreciate your exposition of the other, but this is what I am faced with.

Mr Stewart-Crompton—As far as SES officers are concerned, unarguably the bill removes access to the termination of employment provisions of the Workplace Relations Act. It does not substitute another legislative regime for it except for what is implied by the Public Service Bill and what may be the consequence of directions by the Public Service Commissioner. We are seeing something new coming into the field in terms of protecting the values which are implicit in the legislation.

In terms of the practical consequence of whether the absence of access to the Workplace Relations Act remedies would have a direct effect on the quality of advice, one would have to say it is hypothetical. It is one of those propositions that is very hard to test. But it seems to me that when one looks at experience in the Public Service, it is unlikely that the availability or otherwise of those provisions, whatever other arguments might be made about the availability of the remedies under the Workplace Relations Act, would have a major or direct effect on the advice that public servants gave or the quality of the advice, particularly given the obligation that they face under the values in the Public Service Act and the code of conduct.

Mr GEORGIOU—No, I am sorry; you have run that a couple of times. So if I am dealing with somebody who does not like unpalatable advice, I am going to hold the book up and say, 'Gee, I'm conforming with the code and the values.'? There are presumably circumstances where people do not like the advice that they are getting. I am old enough to remember that, in the past, we used to say that is why we make them permanent so they can give that sort of advice without being concerned about the response of the individual, superior or superordinate, whichever one you like. What I am asking is: how far does this change diminish those protections? Is the only diminution that the access to the employment acts is removed? Is that all?

Mr Stewart-Crompton—There is one point that has to be acknowledged in this process. The removal of the application of the Workplace Relations Act removes the statutory remedy of reinstatement. If there has been a valid termination, unless there has been such a fundamental flaw in the action of the decision maker in relation to the terminated officer so that the contract has remained on foot at all times, the other remedies are unlikely to lead to reinstatement. The legal remedies are more likely to lead to remedies of damages, and in some cases that might be quite substantial.

There is a separate question of what happens where you have had a decision maker who has behaved in such an outlandish way as to put himself or herself in breach of the

values in the act and the code of conduct, and whether that in itself tempers the behaviour of the person who is the supervisor of the officer who is giving the apparently unpalatable advice.

Mr Hunt—The focus of this discussion to date has been on the fairly extreme situation of where an SES officer might be dismissed by virtue of offering frank and fearless advice which somebody else disagreed with. It is also important to bear in mind that the explanatory memorandum contemplates that SES officers will be denied all forms of external review whilst they remain as officers. Therefore, where a less extreme action than dismissal is contemplated for an SES officer, they will not, as the present scheme is presented, have access to any form of external review.

In the agency's experience it certainly would be true to say that cases where SES officers seek to pursue concerns by virtue of having offered such advice are few and far between. But I can assure you that when they arise they are extraordinarily difficult, sensitive and labour-intensive cases. There is no right, other than the sorts of rather expensive and heavy-handed judicial remedies that Mr Stewart-Crompton was talking about, that would be available to SES officers in the legislation as it is now proposed.

Dr Uhr—I am just wondering, looking at the bill rather than the explanatory memorandum, whether it is possible that the unpalatable SES officer or group of unpalatable SES officers might have a right of review under section 33. It all depends upon the regulations. We have not seen the regulations, so we do not know at the moment. It is in a kind of limbo.

Mr Hunt—The explanatory memorandum expressly proposes that SES officers be excluded from external review rights.

Dr Shergold—Mr Chairman, I want to confirm that. It is the intention at the moment that the Senior Executive Service will be excluded from review of employment actions.

Mr GRIFFIN—Reasons why?

Dr Shergold—The reasons why are that they are senior executives.

Mr Gourley—We, as you know, have not put a submission in to your committee, but we did make a submission to the minister earlier this year that covered this very point. I think the general position that formed the institute's submission was that the lower the levels of protection on tenure then the more difficult it will be to maintain the traditions of frank and fearless advice. The institute was concerned about the effects of contract employment on that issue. It also said that the arbitrary removal of secretaries at ministerial whim for casual reasons will do great damage to the capacity of the service to provide frank and fearless advice to governments and the effectiveness of government

itself. It seems to me that this issue has been very neatly and crisply summed up in the submission the committee has before it from Sir Lennox Hewitt, and that is a position I think the institute could well identify with.

Sir Lenox Hewitt—I do not want to anticipate the hearing tomorrow at which you have invited me to give evidence, but in answer to your colleague's question, I want to say most definitely that this clause will rule out the prospect of frank, fearless and honest advice to ministers. That is the threshold—the threat; it is not the actual dismissal, the lack of review rights or appeal rights. And it is laughable to suggest that somebody thrown out into the gutter with a mortgage and children to educate would contemplate taking out a writ under the constitution to try to get himself reinstated because of unjust dismissal. That is palpable nonsense. It is the threat that is contained in this clause that will destroy what the Commonwealth Public Service, now the Australian Public Service, has done honestly to the best of its ability since 1901.

CHAIR—Dr Boxall, as the only permanent head here, do you have a comment to make on this?

Dr Boxall—Thank you, Mr Chairman. I am glad to have been made permanent! I do have a comment on this. I do not quite see the gravity of the situation as outlined by Sir Lennox. I think of the current system where, I guess if you applied the same principle, if you gave frank and fearless advice now, you would not be promoted, you would get no performance pay and things like that. So I do not see that this will reduce the amount of frank and fearless advice. I think that people in the SES are quite capable of standing up, are quite capable of doing their job—which they are being paid for under contract or they are being paid under an AWA or something like that—and they will give the advice. In relation to the point made by Mr Stewart-Crompton, if somebody is going to act to literally dismiss somebody because they gave the advice that they did not like, they themselves would be subject to review, they themselves would have to answer as to why they did that.

Senator FAULKNER—Can I raise another aspect of the same issue, and I would like to ask Mr Waterford a question, if I could, because perhaps he comes from a different perspective on this. I am interested whether this can in effect have an impact on the nature of advice—in other words, self-censorship, if you like, of officers of the Australian Public Service. Doesn't it defy logic that, when a person's employment lies in the gift of a departmental secretary or agency head, he or she will be in a position to provide frank and fearless advice?

Mr Waterford—The example we all imagine is frank and fearless advice to the minister. But I am as worried these days about frank and fearless advice to one's next immediate superior. In a situation where the tenure of all of those is quite limited, where it is now far easier—and I make no particular criticism of it—to have overtly political appointments of permanent heads and so forth, the censorship process, the chilling effect,

will go right down to the bottom of the service. It is not just a question of tampering one's advice to the minister in terms of what he or she wants to hear; it is a matter of being afraid even to give the right information, possibly to people at the top who would give frank and fearless advice.

Senator FAULKNER—So this is really another aspect, isn't it? It goes to the nature and the quality of the advice—a bit like self-censorship of the officer responsible for providing the advice.

Mr Waterford—And the advice of course is not necessarily just simply things that the minister does not want to hear, in the sense of facts that they do not want to hear or something like that. Sometimes the advice is, 'No, Minister.' It is, 'I have some independent statutory functions,' or 'there are some facts which have to be determined and I do not believe these are the case and, however politically inconvenient this is to the government of the day, I cannot honestly make that decision.'

Dr Boxall—Just on those points—I am sure you discussed this before I arrived, and I am sorry I was late—the question here is about getting a public service that delivers the best value for money for the Australian taxpayer. So an agency head is not going to dismiss people who say things that they do not like. An agency head wants to be in a position to give the best possible advice to their minister.

Mr Waterford—That is not necessarily the same thing.

Dr Boxall—Through you, Mr Chairman, I take issue with that. It is the same thing. The agency head is given a job to do. They are asked to provide the best possible advice to their minister. Some of that will be advice the minister does not want. The agency head will want that advice coming up through the ranks to them. I would argue that people who deliberately withhold the best advice will be picked up under a decent performance management system and asked why they did not offer the advice and why they did not point out this or that or the other thing.

I come back to the current system where, if this argument has any force, it has equal force under the current system. Under the current system, we have promotions and we have selection committees where senior officers sit on selection committees and select the best possible candidate. So if the argument has force under the new system, it has force under the current system.

Mr GRIFFIN—With respect to that issue, my understanding—please correct me if I am wrong—is that the current system is looking to be changed on a number of these issues. We are talking about a situation where there will be much more scope for the agency head to be able to hire and fire. There are concerns about the detail about how issues like merit protection will actually operate.

As I understand it, you could be seeing a situation where, under the new system, the scope for an agency head to have more actual control themselves, which should assist in terms of management—and I understand that—will also possibly lead to a situation where that management head has in fact a lot more influence over what occurs, and that could be a good thing.

What we are looking at here is the sometimes unlikely circumstance—but the possible circumstance—that in fact it is not a good thing. We could find a situation where—and it might take 12 months, two years or longer for a particular problem with an agency head to be discovered—in the circumstances over that period, not only has good government been put at risk but also a number of good public servants could have been put at risk.

Dr Boxall—In answer to the Deputy Chair's point, the thing about the current bill is that it puts the accountability on the agency head to deliver. If the agency head is not delivering, it will become obvious very quickly to the minister that something is wrong. The point I was making was that if this general line of argument, which is going back and forth at the moment, has any force—and I doubt that it does—it will do damage under the current system.

The reason why it does damage under the current system is that you have the same senior people making the decisions that you will have under the new system. But also, you cannot really hold the agency head completely accountable under the current system. Therefore, if the agency head is not delivering under the current system, they can turn around and say, 'Well, we're not delivering because we have to abide by this; we have to abide by that; we have to do that and do something else.' The point that the Deputy Chair was making cuts both ways.

Mr GRIFFIN—I agree that it cuts both ways. My concern about what is being proposed is in fact that it may cut all one way.

Dr Uhr—In fact, there has been an empirical test of this under the current regime. I do not have it with me, but there was a report prepared by Mr Gourley's institute, by Professor Weller and Professor Wanna from Griffith University, surveying the state of mind of current agency heads. My recollection is that the report—and it is only about two to three months old—documented a degree of nervousness and fragility amongst the agency heads since the last election that was not there before, based upon statements directly to the reviewers.

Dr Shergold—Mr Chair, I wonder if we are talking about two different APSs, because I must tell you the APS that you are discussing around the table is not the APS I know from having worked in it. We have an APS at the moment that is based on permanency and the iron bowl of tenure. Is this an APS that is giving energetic, creative, frank and fearless advice to government?

The empirical study that was done by the National Commission of Audit says no, just the opposite. We are an APS that is conservative, remarkably risk averse, bound in a grievance mentality and far too interested in our rights rather than our responsibilities. That is the sort of service we have created through permanency and tenure. You put that together with layers of hierarchy—of checkers checking checkers, three deep—and you may, as a government, get frank and fearless advice. But I can pretty well guarantee you will not get creative and imaginative advice, which is often at lower levels within the service.

I see no evidence whatever that the permanence and tenure that we presently have, have given governments of the day a creative and imaginative force for providing policy advice. I must say that I see no evidence whatever that the move from permanent secretaries—who after all could also be removed at whim overnight from their position—to a fixed term contract has reduced the quality, the frankness or the fearlessness of the policy advice provided by secretaries.

Mr GRIFFIN—What evidence do you have to show that that is the case? We are talking about a situation where the question of permanency, as you are saying, is still a central component of the service. You are talking about a situation of contract senior executives which we have not had to a great level until very recently. Now you are saying that basically that is fine. Yet you do not appear to have given any evidence to suggest why that is the case. It is a personal opinion—and I accept a personal opinion from someone in your situation has some merit—but I would also say it is no more than a personal opinion.

Dr Shergold—It is, but I would put the argument to you that, if as in the past you went into the Public Service with only one expectation—that is, it would be your career for life—then, to be honest, I think there would be some constraints on the advice that you provided when you were at a senior executive level. If, by contrast, you went into the senior executive to work alongside career public servants, you may be on a contract for three or five years, in some ways I would think you would be less fearful of providing policy advice.

Senator FAULKNER—It depends on your approach, Dr Shergold. I fundamentally see the Australian Public Service as having been strong, as having been a unified and an apolitical public service that I believe has served this country very, very well, and I believe it is held in very high regard internationally. That is my view and, I suppose, I have the had the experience, unfortunately, now from both sides of the table at committee hearings like this.

With the benefit of Dr Boxall being present, and I raised with Dr Shergold this morning the issue of salaries of departmental secretaries and agency heads, and as you know the salaries of secretaries are to be set by the Prime Minister, I am interested to know whether you, as a departmental secretary, see a justification for seeking to change

the current arrangements whereby the salary is no longer set by the Remuneration Tribunal.

Dr Boxall—This is a question to me?

Senator FAULKNER—Yes, I thought it would be interesting to hear your view because you proffered advice to us on a number of other areas, which I appreciate. As you are the first departmental secretary who has appeared before the committee, I thought it would be useful to hear your view in relation to that.

Dr Boxall—To be honest, I have not given the matter much thought. As a senior public servant, I recognise that most of us are paid below market and we just do it.

Senator FAULKNER—Dr Shergold was able to inform us that, in the explanatory memorandum for the bill, the Prime Minister or minister would normally be only making a determination of salary level for a secretary or agency head after consultation with the Remuneration Tribunal. The issue that I am interested in pursuing is that there is in fact no obligation on the decision maker to take the advice of the Remuneration Tribunal.

Dr Boxall—On that issue, I do not have a problem with the way it is proposed in the bill. I think that in practice the Prime Minister, I would imagine from either side, would tend to take on the advice of the Remuneration Tribunal as that would be one of the factors that they would take into account in setting the salaries. Basically, the salaries need to be set to provide appropriate remuneration to the people that they want to attract to the positions.

Senator FAULKNER—When I asked Dr Shergold this morning about the transitional arrangements bill, including amendments to the Remuneration Tribunal Act to specifically remove from the tribunal the function of providing advice on remuneration for secretaries and the Public Service Commissioner, he suggested kindly that I direct questions on that to someone else—namely, the Department of the Prime Minister and Cabinet. But I was interested in hearing a view from anyone else around the table who might think that this is an issue of substance.

Basically, as you know, the bill proposes that the salaries of secretaries be set by the Prime Minister, the salary of the Public Service Commissioner by the responsible minister for the Public Service and salaries of executive agency heads by the agency minister. This is quite a significant change, as opposed to being set by the Remuneration Tribunal. I was wondering whether there were any views around the table about this and whether it might have any impact on the concept of an apolitical public service.

Mr Lilly—This is a matter that we have raised in our submission. We are concerned that there is a shift away from the Remuneration Tribunal being the body which sets these salaries. In fact, it is an issue that we raised with Minister Reith at the time we

saw early drafts of the bill. Unfortunately, one of the 30 amendments they did make to the bill was to change what was proposed for setting the salary of the Public Service Commissioner, and that was a retention of the Remuneration Tribunal. After we raised this point, in the next draft we saw one of the amendments was that that position too would have the salaries set by the relevant minister—in this case, the minister for public service matters.

We believe that it is sending the wrong signal to the rest of the work force—that is, these salaries would be set by a process which is not as transparent as the Remuneration Tribunal provides. In fact, as is reported to us, there would be some disclosure in annual reports of the salary bands of certain senior executives and agency heads, but that obviously is at the end of the process and not in any Commonwealth public debate which might occur when originally setting the salary.

Our concern is highlighted by some of the speeches that have been made in recent times, particularly by the Secretary to the Department of the Prime Minister and Cabinet, bemoaning the fact of the salary levels of chief executives in the Public Service. One speech indicated that international best practice was that senior executives should be paid 25 times the base salary in an organisation. So we believe that there is more to this than meets the eye, that it is a way of freeing up salaries to have some very significant increases paid to those people through the backdoor and not publicly able to be scrutinised through the Remuneration Tribunal.

Senator FAULKNER—Could I ask if the Institute of Public Administration has a view on this issue, which I think is an important one?

Mr Gourley—I am not exactly sure of the view of the Institute of Public Administration but I do have a personal view, if I could offer that. As I understand it, the Remuneration Tribunal was established, at least in part, in an attempt to depoliticise the fixing of remuneration for secretaries and senior statutory officers. It would be difficult to mount a case that the tribunal has been overwhelmingly successful in meeting that objective, and in these circumstances it seems that the proposal that is now on the table is probably sensible. As I understand it, it is really going back to an arrangement that existed before the establishment of the Remuneration Tribunal where the Prime Minister took these decisions on the advice of a committee that was known as the Permanent Heads Committee. I think the experience of those arrangements pre the Remuneration Tribunal did not really suggest at that time that those arrangements had any effect upon our old friend, frank and fearless advice.

CHAIR—Senator Gibson, do you have a comment?

Senator GIBSON—Thank you, Mr Chairman. I would like to get back to the fundamentals. Earlier this afternoon, Dr Shergold said that there was evidence that the Public Service has been not a very good manager of people, and that a lot could be done

to improve the management of people within the service. I would like to refer to the key points he made with us this morning. He said that, following Minister Reith's extensive consultations throughout the Public Service, there basically was unanimity among all the public servants they consulted with that they wanted the key challenge points to enable the Public Service to cope with market competition—in other words, to be able to be benchmarked; secondly, to bring employment arrangements into line with community standards; to promote a much stronger performance culture—and that is to recognise positive performance and also to do something about negative performance; and to remove central bureaucratic control and prescription.

There has been some questioning this afternoon about whether we are heading forward or not. It seems to me that there has been sufficient evidence that we do need to move forward, and these are the key things that have been identified. I think this new act is heading in the right direction, and I commend Dr Shergold for his presentation this morning about that. I think we are basically talking about some of the minutiae around what is proposed. I am sure we can make some significant changes, but it seems to me the fundamentals are that we are heading in the right direction.

CHAIR—Does anyone wish to comment on that?

Mr Moylan—I would commend the committee to take account of a range of advice that is accessible to it. As I mentioned this morning, there is not only the previous report of this committee in 1992, there was an extensive survey of 10,000 staff by a task force of management improvement in 1994, which has been documented; there has been the extensive documentation of the McLeod committee report. I would countenance the committee against placing sole reliance upon what Dr Shergold said was an empirical review by the commission of audit, which was just a passing glance at the Public Service, or at the reported results of the consultation in response to the minister's paper. As I mentioned this morning, there have been other documents where the recommendations and advice were prepared subsequent to the consultation rather than in the case of the minister's paper where the paper was issued and then the consultation took place.

CHAIR—This is an opportune time to stop for two minutes for a teabreak. We can all get a cup of tea and bring it back in, but that reminds me of a comment Fred Chaney made to me before he left the parliament. He said, 'In this game you have to learn to crawl before you can work.' So we will adjourn for two minutes.

Short adjournment

CHAIR—The next issue we are to look at, in order on the list, is whistleblowing. Are there any comments to open the discussion on whistleblowing?

Dr Burton—Can I make one comment with respect to what we were just talking about before we broke?

CHAIR—Right.

Dr Burton—When we are talking about the private sector and best practice, and level playing fields, and community standards and so on, I think we should be absolutely clear that in certain important respects the Public Service has led the field, particularly with respect to the application of the merit principle. There is no question at all, from my research and from the research of other people, that the private sector still has a lot to learn in relation to compliance with anti-discrimination laws and the application of the merit principle. I want to make that point clear because otherwise, in the attempt to set up a level playing field, we will be reducing some of our standards, not leading the field and encouraging the private sector to take up the standards of the Public Service.

Secondly, my understanding is that the remuneration packages of CEOs is one of the issues that particularly concerns institutional investors and shareholders. A lot of shareholders and institutional investors regard the remuneration packages of CEOs in the 1990s as far too high, given the high rates of unemployment, the lowering of wages in some respects, the increase in part-time and casual work and so on. I think that the Public Service should be leading in that respect, too, and not moving too quickly towards what some would regard as obscene rates of pay for chief executive officers.

I do not think we should forget that there do tend to be some differences in the self-selection of people for public service and for private sector activity. There are some differences, as there are with academics and people who might be able to use their professional experiences in the private sector. We should not assume that what some regard as obscene rates of pay are necessary to attract people of the calibre we want to the Public Service.

Mr Waterford—I just want to pick up on one point that Peter Shergold made when he talked about public services that he recognised. I was amazed and astonished to hear him say that he recognised the public service that was described, I think he said by the Commission for Audit but I saw it in the best practice public service, as a public service that was timid, hopeless, learned in helplessness and whatnot.

I am an outsider, but I am quite proud of the Australian Public Service, and, while I think there are plenty of criticisms of it which are viable, I think it is of world standard. It has been shown to be of international best practice in a host of regards, and it still—in spite of a lot of difficulties—is a model for probity, honesty, integrity and performance.

I suppose, speaking as a journalist, I could say that I look forward to some of the things in this act because I see signs that it would bring us back to Queensland circa 1985 and provide lots of stories for my newspaper. But speaking as a citizen, I look to a lot of this with a great deal of trepidation.

I have a great deal of confidence in the integrity of individuals, but I also think

that when we are talking about public rights, public duties and public trusts there have to be protections explicitly built into the system for the public, for the public officials in whom we give powers and responsibilities but who also need protections against politicians and others and for the politicians. It worries me enormously that Peter, who is a person I admire enormously, is in a position of being chief advocate for the act when he is going to be the person that we are going to be looking to most to provide the protections against the fears and trepidations that a lot of people quite honestly fear will occur if we let things rip and give the cowboys their entire way.

CHAIR—I presume you meant Peter Shergold?

Mr Waterford—Yes.

Dr Shergold—I will respond to Jack Waterford and Clare Burton because I do not think they were here this morning. I have said this afternoon that I believe that the National Commission of Audit was right when it criticised the Australian Public Service for being conservative and risk averse. Part of that, of course, reflects the political environment within which we operate though I do believe we can do far more to take a prudent and strategic approach to risk. I said too—and I agreed with the National Commission of Audit—that at present we have a public service which emphasises too much grievances and is too keen to recognise rights and not keen enough to recognise responsibilities.

I would like to place that in the context of what I said this morning which was that in certain regards the Public Service is second to none in terms of management of this country. I specifically identified employment equity and the management of cultural diversity where I do not believe there is a private sector employer in the country who can hold a candle to our achievements. I also mention the strong progress on financial management of results and our worldwide ethical standards. I want to get a balance in my reflection of service. What I am saying however is that if we are even partly what the National Commission of Audit suggested—conservative and risk averse—that that is as much of a threat to frank, fearless and robust policy advice as any change in the contract and remuneration arrangements.

CHAIR—If there are no further comments on that issue, we will move on to the non-controversial issue of whistleblowing! Does anyone want to open the discussion on whistleblowing?

Mr Moylan—I should explain the position that we have put in our submission, which is not available to everyone. It is actually not that which is contained in the very useful summary that the secretariat has prepared. We were getting progressively used to the nuances of language I had thought and we had recommended that the committee support legislative provisions assisted by the recommendations of the report of the Senate select committee.

What we have pointed out is that clause 16 of the bill is concerned only with a limited range of matters—that is, it is concerned with non-victimisation of employees who report breaches of a code of conduct, which applies to APS employees, to certain specified employer representatives. It is a very limited provision. We drew attention to the select committee report because it goes to key elements of a scheme in respect of whistleblowers. These include: that there be an authority to investigate the claims of whistleblowers not just to look at the question of victimisation; that the sorts of matters which could be subject to whistleblowers be spelt out; and that the MPRA have a role in investigating complaints of victimisation or harassment of public sector whistleblowers, and we indicated this morning our support for the MPRA rather than the Public Service Commissioner to perform such functions.

We are suggesting to the committee that the provisions in the bill are very much a partial description of what would be required for whistleblower provisions. We are asking the committee to take a broader view of that. I have noticed in the summary that various other people have commented on other matters including Mr Whitton from Queensland who has had significant experience in respect of these matters. Certainly we would say that there needs to be provision for the investigation of the claims and there needs to be an independent protector of the whistleblower.

CHAIR—Quite a few submissions have expressed the view that clause 16 does not provide sufficient protection for whistleblowers. Does anybody want to talk about clause 16?

Mr Hunt—Firstly, I want to respond to one element of Mr Moylan's comments. The MPRA is probably not going to exist after this legislation is enacted, but in principle we would endorse the proposition that Mr Moylan has put forward that there should be a separation of the roles of, on the one hand, the person or authority who investigates the matter that is the subject of whistleblowing and, on the other hand, the person who, in our view, would be a new external review body and who would protect the interests of the person who blows the whistle.

I wonder if I might also quickly make three other points about the clause. Firstly, I believe there would be considerable advantage if bodies such as the Ombudsman and the Auditor-General were expressly mentioned as authorities to whom a whistleblower can take a matter of concern. I do not see any reason why the Public Service Commissioner or the agency head should not also be expressly mentioned, but most whistleblowing legislation envisages specific external roles for the Ombudsman or the Auditor-General for people who feel more comfortable with those two bodies.

Secondly, I would suggest that consideration be given to protecting government contractors in some way in the legislation; in other words, not simply restricting it to employees. Some might say that is perhaps for a separate legislative exercise rather than as part of a public service act. But there is at least one precedent physically nearby for

doing it that way, and that is the ACT Public Sector Management Act which in turn implemented the Gibbs committee Commonwealth recommendations on whistleblowing protections and rights not only for employees but for government contractors—the latter are an increasingly important component of public administration as we move to outsourcing and privatisation.

Thirdly, it seems to me—and I think Mr Whitton has made the same point in the sheet you were distributed—that in somewhere, such as in the code of conduct, there needs to be an express obligation on public servants to report breaches of the code of conduct. I have a basic concern with the structure of the legislation now that whistleblowing is somehow seen as an abnormal, exceptional thing; whereas the starting point ought to be that all public servants are under an obligation to report breaches of the code of conduct. Possibly that is something that could go in the code of conduct itself.

CHAIR—Any other comments on whistleblowing?

Dr Shergold—Mr Chair, it may be that clause 16 is partial, but the obvious point needs to be made—it replaces nothing. This is a new initiative. It is also important to point out that this clause relates to protection from victimisation or discrimination. In the commissioner's directions will be set out, as Mr Moylan has suggested, the provision for the investigation of the whistleblowing allegations by the Public Service Commissioner.

Senator FAULKNER—I have a question to Dr Shergold on this issue of whistleblowing: do you think it would be fair to characterise the approach to whistleblowing in the new bill as cautious, conservative and risk averse?

Dr Shergold—I think my frank and fearless reply would be that it is relatively imaginative. It is incorporating for the first time in legislation a clear recognition that a public servant has a role to identify where she or he believe there has been fraud or misconduct and provides the protection for a public servant in doing so. It is perhaps cautious in that it does only apply to those within the Australian Public Service, and there has been a suggestion made that it could be extended to government contractors. I suppose the question there is: why only this clause? If you start to go down that track the question is: if there are the variety of deliverers of government services the question is: why shouldn't these values and conduct, et cetera, apply? But this bill, like the act it replaces, refers only to those organisations and those employed in those organisations who come under the Public Service Act. In that way it is restricted as now, if not cautious.

CHAIR—Dr Shergold, do you want to comment on the question of contractors and subcontractors?

Dr Shergold—I am not sure I would want to comment more than now. It is possible that a government, perhaps through policy direction, might want to say that parts of what are set out within this public service legislation should also apply to alternative

service deliverers or to government contractors. I think that is possible as a government policy decision. I do not think it would be appropriate to place within the Public Service Bill.

CHAIR—If there is nothing further on whistleblowing, we go on to the next one which is independent external review. This is an issue that John Faulkner raised some matters on this morning. Do you want to take the lead on this, John?

Senator FAULKNER—I am happy to, Mr Chairman. I asked Dr Shergold and also the representatives of the ACTU a number of questions in relation to this particular issue. I make the general point here that we discussed at length the issue of so much of what the government is proposing to put in place of the review rights and processes that are set out in the Merit Protection (Australian Government Employees) Act at this stage unavailable to us because we await the details of the subordinate legislation. And Dr Shergold indicated—and I do not want to put words into his mouth—in answer to my questioning that the committee will have the advantage of seeing draft regulations before we are preparing our final report, which I think is an absolute necessity.

With the bill before us, I believe that we are faced with a situation where the bill does little more than recognise the entitlement of APS employees to review of actions that relate to their employment. As I say, it relegates to as yet unseen regulations—at least unseen by this committee—what the precise processes would be for such a review and leaves to the discretion of the Public Service Commissioner the question of the appointment of independent reviewers.This is a very significant change and I will be interested in Ms Forward's views perhaps to kick off any discussion we have in relation to independent external review. I do not know whether you would agree with the comments I have just made. I have tried to encapsulate as best I can the nature of the discussion around the table, inevitably with a bit of a spin on it. I suspect politicians do that from time to time. Do you share any of those concerns, Ms Forward?

Ms Forward—Like you, Senator, I have not seen the proposed regulations or any directions which might be proposed in respect of these matters. Therefore, comments that I or my agency might make are somewhat limited by that lack of knowledge. Our major concern with the issue might be summarised by the lack of independence in the proposals as they now stand. We have spelt that out in our written submission to the committee. We remain concerned about that issue. I think other concerns that might follow when we see the regulations may very well relate to those same issues of principle about being independent from the decision makers and the executive of the Public Service.

Senator FAULKNER—This really goes to your own position as an independent statutory authority as opposed to what I think the government envisages, which is leaving to the discretion of the Public Service Commissioner the question of appointment of an independent reviewer. Would that be fair, do you think?

Ms Forward—I think so, yes. Our concern very much is that the people who seek review should be confident that the people doing the review have no association, obligation or any other sort of relationship with the reviewer. That is what the current provisions allow for. The MPRA is a separate statutory authority administratively a part of the PSMPC at this stage. Nevertheless, I am a statutory officer and cannot be directed in how to do my work.

It is the case that people who bring matters to the MPRA believe and understand that that is an independent review process. We have no part of the management of the service and ought not to. Nor are we part of the staff of the service and we are not advocates for either side. It is our role to be independent and to be trustworthy in a confidential place where people can bring their concerns.

I would like to comment in that context that there has been frequent reference to the grievance mentality in the Public Service. I checked on the figures. The next annual report we put into the parliament will reveal that in the last year there were about 334 grievances, which I think you will agree is a fairly small number. The problem is not as big as it has been made out to be. In the previous couple of years there were in the order of 270 grievances. It is that issue of independence we are concerned about—employees of the Commonwealth having confidence in the independence of the organisation which reviews their concerns and, accordingly, the public can have confidence that the processes in the Public Service are in fact above board.

Senator FAULKNER—Your preferred model is the Commonwealth Employment Ombudsman, as per your submission.

Ms Forward—I think we recognised the encroaching tide, Senator, and acknowledged that the agency as it now exists would probably be in some senses anomalous under the new regime of the impending Public Service Act. In order that the processes of review might be streamlined to match other changes, we proposed the establishment of a Commonwealth Employment Ombudsman to be in our preferred position a separate statutory body or alternatively to be identified with some other independent review body such as the Commonwealth and Defence Force Ombudsman. There are other independent review bodies. I do not know where things are at in respect of the proposed Administrative Review Tribunal, which might also be another place that is independent of the executive of the Public Service.

Senator FAULKNER—Dr Shergold, would you be willing to share with the committee your advice to government on any suggestion or proposal of a Commonwealth Employment Ombudsman?

Dr Shergold—I am happy to share with you my advice or views to the committee. I think there is an issue about conflict of interest under a situation in which the Public Service Commissioner is the employer of public servants. Under this new legislation that

will not be the case. I am therefore unconvinced that the Public Service Commissioner is not the appropriate source of external review and review of whistleblowing allegations.

It seems to me clear that the commissioner is an independent statutory officer who can use those powers. I do not see any advantage in placing those powers elsewhere whether that be to a Merit Protection Review Agency or a Commonwealth Employment Ombudsman. It seems to me there is an advantage in the Public Service Commissioner who, in effect, sets the standards for the service having the responsibility for upholding those standards in part through the mechanism of external review.

Mr GEORGIOU—How does the MPRA feel about that? You have said on a number of occasions in your submission that there is an inherent conflict of interest. Do you still maintain that position in light of Dr Shergold's assurances?

Mr Hunt—I might comment on that, as I am from the agency. I should say at the outset that we very much recognise and endorse the general role proposed for the Public Service Commissioner in the legislation as a fundamental statutory, pivotal point for standard setting and accountability. However, the fact is that as part of that role as envisaged by the legislation, the commissioner, for example, will be issuing binding directions, providing best practice guidelines to agencies and, generally speaking, inevitably and appropriately working closely with agency management.

I think the difficulty in terms of public confidence and the perception of employees that is going to arise is when an employee wishes to complain, for example, about the standard itself. In some way they are saying, for example, that the standard set by the Public Service Commissioner is failing in some way, or they may wish to complain about something and their own agency responds and says, 'Well, we just follow the Public Service Commissioner's best practice guidelines.' In those sorts of situations, with all the best will and skill in the world, I think it is going to be very difficult to convince either the public or employees that the Public Service Commissioner stands independently apart from the matters that are being pursued through external review. That is the difficulty we have.

To reinforce what Ann was saying a moment ago, we do not seek to impose significant new external review structures for the public sector, particularly as the number of grievances is, and ought to be in the future, at a very low level. Therefore, a model such as conferring a new jurisdiction on the Commonwealth Ombudsman seemed to us to be a cost-effective way of addressing these concerns.

Mr GEORGIOU—I am puzzled about your disavowal of a potential conflict of interest. We have had one instance about making judgments on the standards themselves. I will come back to the issue of a finding by the commission that something has gone dramatically wrong—an appeal to the commission against action which follows its own conclusions. That is, to me, a very real problem. None of the analogies that I can recollect

you raising this morning actually did deal with it. That is, you do an investigation. The investigation leads to disciplinary action being taken against a member of the Australian Public Service. The outcome of that disciplinary action may then be subsequently appealed to you.

Dr Shergold—I am not sure how that would be a different scenario from what we might presently have with the Merit Protection and Review Agency and the Merit Protection Commissioner or, indeed, with the Commonwealth Ombudsman. You could have the same potential, could you not?

Mr GEORGIOU—What, the Ombudsman has an allegation made to him or to her about the behaviour of somebody in the Ombudsman's office and has to adjudicate?

Dr Shergold—Yes.

Mr GEORGIOU—The possibility in your case would seem to be rather more systemic than random.

Dr Shergold—It is possible that you could deal with those instances through providing a mechanism, if that situation emerged, just as I think we have similar mechanisms right now for if that actually occurs with the Commonwealth Ombudsman.

Ms Forward—The fact of the matter is that the Ombudsman now is prohibited from dealing with issues relating to the employment of Commonwealth public servants. We deal with those issues at MPRA. The first step in most of the processes is to be taken by law by the department. A grievance must be lodged within a department, or an action is taken by a department, against which an appeal—which would include a discipline appeal—may be lodged with the MPRA.

We then have our own staff who report to me as a statutory officer, and I have reporting rights direct to the parliament through the minister assisting in relation to the Public Service, which is a very useful sanction. That is in relation particularly to grievances and similar processes. There is no association with the department. Our role is to be even handed and take account of the concerns and interests of both sides of an argument.

In relation to matters such as discipline, where a disciplinary action is taken by a department in respect of an employee, that person nowadays for penalties less than dismissal, which goes to the industrial tribunals, can lodge an appeal with the MPRA. It is our obligation to establish yet another statutory body, a disciplinary appeal committee. We simply appoint a convener of that committee, and there are quite significant qualifications required to become such a convener. The department and the relevant trade union have representatives on that as well. We simply provide secretariat services to it.

That disciplinary appeal committee is statutorily independent of the MPRA as well

as of the rest of the Public Service. So this is a sort of double layer of independence in respect of disciplinary appeals. The same currently applies with promotion appeals, which it is proposed will not exist either in the new regime. The question of independence is very clearly defined in the current arrangements.

CHAIR—The next item on the agenda is the role of the Public Service Commissioner. We have started on the external review, but we have also discussed the role of the Public Service Commissioner in the same discussion. So are there any further questions on either of those now?

Mr Lilly—As we have indicated in our submission, we are fundamentally opposed to what is proposed here. We do not think any case has been made to repeal the Merit Protection (Australian Government Employees) Act and all the provisions that go with it in relation to the rights of APS employees to appeal against such matters as selections, misconduct other than dismissal and a range of grievances.

We are particularly alarmed that there is not to be proposed in the substitute provisions any binding outcome that the external reviews would not, in the words of the Public Service Commissioner, be able to overturn the primary decision. We think this is particularly alarming where the legislation would enable penalties to be imposed in the case of misconduct ranging from reduction in classification, reassignment of duties, reductions in salary and fines. For the parliament to allow those sanctions to be imposed without providing a corresponding remedy against inappropriate imposition of those penalties is, in our view, an abuse of power. Individuals would end up seeking redress through other processes in the courts, rather than an internal system, which would give them some opportunity to remedy any injustice they felt.

Dr Uhr—There is a form and substance issue associated with section 33. It is possible for the commissioner's regulations to specify all of the matters that Mr Lilly just identified. It is also possible for the commissioner's regulations to identify the Ombudsman as the appropriate body to review these matters. The real trouble is the form. Here we have a provision that is really an inappropriate delegation of legislative power. I would be very surprised if the Senate's scrutiny of bills committee does not look at this as a suspect provision because it really is determining that a range of entitlements will not be made in the primary legislation but will be left to the subordinate legislation. I think that that in itself is a grave issue.

Mr Hunt—I want to raise a separate issue. The explanatory memorandum says at the end of section 33 that, as a matter of practice, there will be a capacity for the Public Service Commissioner to report to the minister or parliament. The capacity for a body that has Ombudsman-like functions to report ultimately to parliament is a very powerful and important weapon in securing compliance by agencies with recommendations.

As I read the legislation, although the Public Service Commissioner has a capacity to report to the minister, I cannot find anywhere other than in annual reports the capacity

to report to parliament as a sanction for non-acceptance of recommendations. I would fairly strongly put forward the view that, whether or not it is the Public Service Commissioner who retains the review function, there should be an explicit power to report to parliament in the event that a recommendation is not accepted.

Dr Shergold—I have three comments. The first is that I would be very surprised if there was not support for the widening of the review powers as set out in section 33—namely, that an APS employee can seek a review of any APS action that relates to his or her employment. I do not believe it could have been couched in much broader terms.

In terms of the likelihood, as I have indicated, that the external review powers of the commissioner will not overturn the primary decision, what is being proposed are, in effect, the powers that are presently enjoyed by the Commonwealth Ombudsman—namely, the power to make recommendations. It is quite possible that in the regulations drafted there will be an explicit power of the commissioner to report to parliament with respect to those recommendations.

CHAIR—Power but no compulsion. You have the power to report; you also have the power not to report.

Dr Shergold—Precisely, as is with the Commonwealth Ombudsman.

Mr Hunt—If I may make a further observation, I think, hearing what Dr Shergold says, there is not a lot of difference in principle but I would suggest that the power or duty to report to parliament is something that is important enough to be in substantive legislation rather than in subordinate legislation.

Ms Forward—I should also say to clarify matters that I referred to two sorts of processes that the MPRA undertakes. One is the grievance handling. In respect of that matter, the MPRA has only advisory recommendatory powers to the heads of agencies in which the event occurred which is investigated. The binding decisions which may be taken in respect of appeals are taken by those statutorily independent committees. They are not taken by the Merit Protection and Review Agency. They relate only to promotion appeals and discipline appeals.

Dr Shergold—Most of those powers are related to only one group of public servants, AS0 1 to 6.

Ms Forward—No. The promotion appeals are only available to Administrative Service Officers grades 1 to 6. The discipline provisions can apply to any public servant, including the secretary. They have rights of appeal.

Mr GEORGIOU—Does that mean that the analogy is more appropriate with MPRA rather than the Ombudsman?

Dr Shergold—When I was using the analogy of the Ombudsman it was not to suggest that the Ombudsman had the powers to look at employee actions in the APS. You get the same conflict of interest if there is a complaint about the service provided by the Ombudsman's office. You have the same dilemma of how you then deal with that issue of a conflict of interest. That was the example I was trying to put forward.

Mr GEORGIOU—But in terms of coming to a conclusion and having it accepted by the agency, is it more appropriate to look at the powers of the Merit Protection and Review Agency or the Ombudsman because you have raised the Ombudsman, underscoring the fact that there is only recommendatory power there as well?

Mr Kennedy—If we say for the public at large with the Ombudsman that the results of their reviews should be recommendatory, it is strange that we would say for this particular group of the public—namely, APS employees—that they should have something more than the public at large can get from the Ombudsman. I would have thought going the recommendatory route is probably a way of, again, bringing us into line with the community at large.

Mr GEORGIOU—You are cutting either way.

Mr Kennedy—We are looking at a bill and the Ombudsman's act was accepted by the parliament, and, after consideration, it presumably reflects a view.

Mr GEORGIOU—So was the MPRA.

Ms Forward—Our powers are very similar. What is different between my role and that of the Ombudsman is the jurisdiction.

CHAIR—We will have to move on. I think we have covered the role of the Public Service Commissioner. Does anyone wish to raise any matter regarding the commissioner? If not, we will move on to the concept of a career service. Does the bill mean an end to the traditional notion of a career service? Aren't there circumstances where an agency by agency approach will impact on the effectiveness of whole of government approaches to the implementation of certain policies or programs? Will the end result be a proliferation of different terms and conditions of employment which will make inter-agency mobility more difficult and which will also lead to greater inefficiencies in management of leave and other conditions? Does anyone wish to comment on what this bill does to the concept of a career service?

Mr Gourley—I think it is fair to say that traditionally our Public Service has sought to promote the notion of a career service through some commonality in things like recruitment standards, pay classification and conditions, particularly those that have cumulative benefits. It seems to me that there is a risk that, to the extent that those matters are differentiated across departments, the career service—whatever that phrase might be taken to mean—will tend to move commensurately with it.

I guess it is hard to make very firm statements about what will happen and, in the words of Dr Shergold earlier, the proof of the pudding is probably in the eating. But, if you look at experience outside of the Public Service, in the Commonwealth, for example, where, with those areas of employment outside of the Public Service Act, agencies have developed different approaches to personnel management and terms and conditions of employment, you will see that there is no way in which you could describe those agencies as representing a career service in any generally accepted understanding of the phrase.

There is probably some experience that can be drawn upon from some other countries. As I understand it, the Swedish Public Service in recent years has acted to devolve very significantly the fixing of pay and conditions in particular in its organisations. I think that it would be freely admitted by people in that administration that they no longer have a career service. So I guess the general point I am trying to make is that the greater the differentiation that arises the further we will move away from the traditional concept of a career service.

Senator FAULKNER—Can I just ask about employment conditions, because this morning Dr Shergold talked about the plethora of determinations that we have in relation to employment conditions. I think one of the concerns here is that we will have a plethora of government departments and agencies making a plethora of determinations. The issue of simplification, which is something that we spoke about in a little more detail than we will have an opportunity to do now, is an important one. I was wondering whether there were any views in relation to that.

Dr Shergold was kind enough this morning to put up a slide of a rather big man juggling all these employment conditions. I was expecting the next slide to be of a whole lot of little men juggling exactly the same employment conditions. He probably did not do that because he could not fit it on to one slide. I was just interested in hearing from any of our witnesses whether those sorts of concerns are reflected amongst those of you who are appearing before us.

Dr Burton—The Women's Electoral Lobby indicated that we felt that particularly classification decisions, pay rates and structures, given that they are employment practices under anti-discrimination law, should have some guidance from the commissioner. Again, we have all sorts of ideas about how work can be organised without necessarily there being a strong understanding of the equal remuneration provisions in the Workplace Relations Act. It is a worry that there can be a whole range of ways in which these things might be organised but which may not necessarily be appropriate, in particular appropriate to the nature of the work that is being carried out.

Mr Stewart-Crompton—I was going to make the observation that I think a lot of this probably falls outside the scope of the impact of the Public Service Bill. Much of the changes that we are seeing in terms of the determination of wages and conditions of employment of employees in the APS has to do with the policy of the government and the framework provided by the Workplace Relations Act. In the submission put forward by

the PSMPC and my department we include as an attachment the parameters for bargaining which the department has issued reflecting the government's policy. There is a clear government policy that departments and agencies should take advantage of the Workplace Relations Act to develop terms and conditions of employment for employees in those departments and agencies that are suitable for the particular circumstances in which they find themselves.

Certainly the Public Service Bill provides powers for the making of determinations relating to wages and conditions of employment, but those are subject to awards and to agreements under the Workplace Relations Act which will essentially be the main mechanisms for the determination of enforceable terms and conditions of employment. I think that it would be misleading if the committee were to think that the Public Service Bill or the new Public Service Act was going to be the main determinant of that policy or how it is implemented. I think in fact the much more important elements are the approach taken by the government towards the determination of wages and conditions and the instructions that are given to all departments and agencies by the government on how they are to go about the process of implementing its approach towards employment conditions. For that, I think the framework of the Workplace Relations Act is a much more important element.

Dr Shergold—I would like to assure Dr Burton that there will be guidance provided by the commission—guidance developed in partnership with a range of Commonwealth agencies—on good practice in employment action. That guidance is necessary because, at the moment, the APS is remarkably fragmented in the sharing and adapting of management initiatives. The guidance will be provided. What will not be provided, however, is the mandated regulation, in a highly prescriptive way, of what agencies have to do. It is the provision of guidance rather than the imposition of regulation.

Senator FAULKNER—I wondered whether the ACTU would be interested in making a contribution on this point?

Mr Moylan—The bills are to some extent the vehicle for the disparity which would result. This morning I mentioned particularly the provisions under the transitional legislation which would have the effect of causing the redundancy of the determinations under which many employment conditions are currently spelt out in 12 months and also, in the interim, apparently permit agency heads to vary those matters.

In our submission we also point to the anomaly in the former minister's concern about the number of types of leave currently within the Public Service while then proceeding to list framework legislation which would permit agencies to, as we say in paragraph 12 of our submission, not only develop their own leave arrangements but also develop arrangements applying to selection and recruitment, discipline training, grievance handling and a host of other matters. Although Mr Stewart-Crompton is correct in saying that we have the government's industrial relations policy and we have this bill, there are

ways in which this bill is being used as a vehicle for implementation of a policy which would lead to significant variations between agencies. As I mentioned this morning, I do not know how Peter Reith would have coped with the new arrivals in his department who came from another department if they had been employed under these different arrangements.

Dr Uhr—One aspect of the career service that this bill impacts on is the extent to which agencies report there performance and outcomes in a common manner. The current legislation gives the responsibility to your committee to specify the types of performance measures and information that agencies will report on. Looking at this issue from outside the Public Service as an external observer, those annual reports at a certain point in the mid-1980s were valuable documents. They have become less valuable documents over time as the categories of information have been less clearly specified. I suspect we are about to enter into an area where it will be an open guess as to how useful those will be in the absence of some provisions in the legislation which your committee has had responsibility for.

Mr GEORGIOU—I understand that the general view is that a number of annual reports have improved very substantially over the last decade.

Dr Uhr—I think in the first half of the decade that is certainly true.

Senator FAULKNER—Could I ask Dr Shergold a question on notice. Would you be able to provide the committee with a brief outline sketch on the sort of information we will be providing to parliament in his annual report. If that is not a difficult task that would be useful. Obviously, I do not want the detail but just the issues that you might be proposing to canvass. I think that would be helpful to the committee if the commissioner was able to provide it.

CHAIR—We might as well move on to annual reporting which is the next item.

Senator FAULKNER—Would that be possible without putting you to too much trouble?

Dr Shergold—Yes, I would be happy to do that.

Mr Stewart-Crompton—I want to respond to something that Mr Moylan said. As an explanation of why the section 82(d) determinations under the existing Public Service Act are coming to an end after 12 months, I would simply refer the committee to the explanatory memorandum. I will not take up your time to explain it now. Basically, it is to move from service wide determinations to agency based determinations and make sure that they are brought up to date.

CHAIR—In terms of annual reporting, does the bill provide for reliable and effective reporting to parliament. That is a broad sweeping question.

Senator FAULKNER—Would it be useful if we defined down a little your broad sweeping question?

CHAIR—Certainly.

Senator FAULKNER—In the submission that we received from the Women's Electoral Lobby there are a range of issues that go to what the Public Service Commissioner might include. As you respond to the question I have asked on notice, Dr Shergold, would you be able to pick those up and indicate to us whether those sorts of issues would be likely to be canvassed in your report? That would be useful information too. I only ask it in this form because we are running very short of time now. If we could also have that information that would be great.

Dr Shergold—Sure.

CHAIR—There being no other questions on that issue, we will move to subordinate legislation which is the second last item. We have pretty well covered this item when discussing other issues. We have heard from the Public Service Commission and the ACTU on this issue. Most submissions canvassed the pros and cons of having subordinate legislation in the principal act. Does anyone want to make a comment on that?

Senator FAULKNER—The only point I would make in relation to mobility and subordinate legislation is that these two issues were the subject of quite lengthy questioning this morning with Dr Shergold and it might be useful for witnesses to read the *Hansard*. Dr Shergold did indicate the timetable in relation to the provision of draft regulations and so forth.

CHAIR—The final item is mobility between the parliamentary departments and the APS if the parliamentary departments are divorced from the APS into a separate parliamentary service. Do you anticipate that there would likely to be significant disadvantages for parliamentary departments because of their size if this were to happen, there would be more limited career paths and there would be problems in attracting and retaining quality staff in the parliament? There being nothing further on that point that concludes the round table hearing. We will send out the transcript to every participant. We invite you to make comments to us in writing if you have any afterthoughts when you read the comments of others. We would appreciate those comments as quickly as possible.

Resolved (on motion by Senator Gibson):

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 5.02 p.m.