

Chapter 2

ANAO report on managing assets and contracts at Parliament House

2.1 On 26 February 2015 the ANAO's report on the management of assets and contracts at Parliament House (ANAO Report) was tabled in the House of Representatives.¹ The ANAO made six recommendations in its report relating to strengthening DPS' asset management (including heritage management) and contract management arrangements.

2.2 The committee was particularly interested in the ANAO's findings on some key areas of concern identified in the committee's 2012 report, namely: contract management arrangements; the management of heritage assets; and management arrangements in DPS.²

Contract management

2.3 The ANAO outlined the extent and importance of DPS' contracting activities:

DPS administered some 190 contracts, involving expenditure of \$62.8 million in 2013–14. DPS also managed over 30 press gallery and retail licences, which generated around \$1.6 million in annual revenue for the department. The breadth and focus of its contracted activities reflect DPS' role as steward of a large building of public significance and heritage value, as well as its financial and other legislative responsibilities.³

2.4 While DPS has established a contract management framework which includes a range of policies, procedures and systems 'to encourage structured and consistent management of contracted activities', the ANAO found:

[S]everal systemic gaps and weaknesses have led to inconsistent, and at times non-compliant, contracting practices across the entity. Out-of-date guidance material, inadequate training, poor record keeping practices, and weaknesses in DPS' systems underpinning its contract management functions have, collectively, adversely impacted on the department's contracting activities, and ultimately its ability to demonstrate effectiveness of its contracting activities and financial accountability.⁴

2.5 Overall, the ANAO concluded there has been little improvement in DPS' contract management framework, processes or capability since the committee's 2012 report.⁵

1 *Votes and Proceedings*, No. 99 – 26 February 2015, p. 1152.

2 The ANAO report also covered asset management (Chapter 2) and the establishment and management of contracts (Chapter 5).

3 ANAO Report, p. 73.

4 ANAO report, pp 19-20.

5 ANAO Report, p. 16.

Management of heritage assets

2.6 The ANAO referred to the concerns in the committee's 2012 report about heritage management at Parliament House:

DPS has also invested considerable resources in responding to [the committee's] concerns about the need for better heritage management through changes to management arrangements and assessment processes. However, these changes have lacked continuity, and the department was unable to demonstrate broad or systematic consideration of cultural or heritage value in making changes to the building through its capital works program or in storing or disposing of assets in 2013 and 2014.⁶

2.7 The ANAO report noted that in November 2011, DPS had established a Heritage Management Framework, but following the criticism by the committee in its previous inquiry, this framework was disbanded in October 2012. In its place DPS is developing a Conservation Management Plan (CMP), however this is not scheduled for completion until mid-2015.⁷

2.8 At the public hearing, Mr Andrew Morris, Executive Director, Performance Audit Services Group, ANAO, acknowledged that the absence of any framework for guiding heritage management has had an impact:

By the time we went to do the audit, we would have expected to see quite a sophisticated system in place for heritage management; or at least be able to have good visibility about what the policies and procedures were, how they had gone about making assessments, what the criteria were for an assessment and then what the assessments had found. Nevertheless, [DPS] did have a heritage management team and they had a precursor to that team. We really would have expected more consistency across capital works and the particular heritage items. We were looking for some sort of evaluation of the heritage management and some repository of heritage assessments. We could not see that. I know that they are building towards this at this time. But that lack of a framework for the 18 months or two years really has stopped their progress.⁸

2.9 Mr Morris observed:

I think there was a tendency once there was criticism of the framework to think, 'We had better get a comprehensive new plan, a big new plan, in place that will be able to fix it once and for all very comprehensively.' So in their work towards bringing that about there seemed to be a reluctance, perhaps, to be putting policies and procedures in place that may not be consistent with what the new conservation management plan might prefer. There just seemed to be an absence of coordinated work.⁹

6 ANAO Report, p. 16.

7 ANAO Report, p. 18.

8 *Proof Committee Hansard*, 2 March 2015, p. 5.

9 *Proof Committee Hansard*, 2 March 2015, p. 5.

Management arrangements in DPS

2.10 The ANAO noted that from mid-2012, when Ms Mills joined DPS as Secretary, there had been a process to 'transform' DPS. That transformation process included 'an organisational restructure, the recruitment of senior executives to key leadership roles, and the conduct of reviews of capability, processes, practices and systems across many major functions of the department, including asset and contract management'.¹⁰ However:

At the time of the audit...a number of these reviews had yet to be completed and recommended changes implemented. Until such changes are embedded, the department's processes do not exhibit the discipline required to provide assurance that assets and contracts are being effectively managed.¹¹

2.11 At the public hearing on 2 March 2015, Mr Ian McPhee, the Auditor-General stated:

[W]hen introducing change agendas it is very important to prioritise work to make sure the general management of the department or organisation continues to perform at a reasonable level. But to get some early successes up, and to build on those successes and the change program, you need to bring people along; it is not an easy task but it needs to be done.¹²

2.12 The committee sought an example from the Auditor-General of an 'early success' in DPS' change program. Mr McPhee acknowledged that it was not clear that there were early successes on which to build.¹³

2.13 Mr Morris also admitted it was difficult to identify any successes:

Probably the most positive thing that we could see coming out of the report was the responses from the parliamentarians that did respond to our survey about their satisfaction with the services at Parliament House...

[Parliamentarians] were not happy with the food. No, that was at the bottom of the list. They were happy with some of the other elements. But I do take your point: apart from that, we were finding it difficult to find successes.¹⁴

2.14 In terms of the rate of progress in transforming DPS since mid-2012 the Auditor-General observed:

[T]hat progress has been 'measured'—and others might say it has been at [the] slower end—in this space and there is a serious job to be done to address all of the matters required by this department [DPS].¹⁵

10 ANAO Report, p. 15.

11 ANAO Report, p. 15.

12 *Proof Committee Hansard*, 2 March 2015, p. 2.

13 *Proof Committee Hansard*, 2 March 2015, p. 2.

14 *Proof Committee Hansard*, 2 March 2015, p. 2.

15 *Proof Committee Hansard*, 2 March 2015, p. 2.

Committee view

2.15 It has now been almost two-and-a-half years since this committee tabled its final report for its previous inquiry into the performance of DPS. The committee notes the Secretary's evidence that DPS is prioritising and working very hard on a number of the committee's recommendations and that the systems in place were much worse than she had anticipated when she took up the position in mid-2012.¹⁶

2.16 However, the committee believes that the ANAO Report demonstrates that there is little evidence of significant change in DPS since the committee tabled its final report in November 2012. In the committee's view, the Auditor-General has been generous in his assessment of DPS' progress in implementing the recommendations as at the 'slower end'.

Anne Zahalka Photography Commission

2.17 At the Supplementary Budget Estimates hearings in October 2014 the committee questioned the Secretary of DPS about a contract for \$30,000 for photographic works for the 25th Anniversary of Parliament House which was awarded to Ms Anne Zahalka.

2.18 Initially, Ms Mills informed the committee:

Ms Zahalka was chosen because of her international reputation and experience in photographic commissions. She is represented in major national and international art collections and in the Parliament House art collection. The process for procuring her was along the same model as we use for historic memorials collection. The contract...was based on the standard fee and was inclusive of associated travel and material costs and attendance by Ms Zahalka at a launch event. The project commissioned her to produce a folio of six to 10 large-scale photographic prints which would become part of the Parliament House art collection and which were brought into the collection at the approval of the [Art Advisory] committee at its most recent meeting.¹⁷

2.19 However, Ms Mills subsequently revealed she knew Ms Zahalka 'a little'.¹⁸ When pressed further on this point, Ms Mills informed the committee:

I know her because we live in the same neighbourhood in Sydney and I have met her a couple of times at Christmas functions.¹⁹

2.20 The fact that Ms Mills personally knew the artist who was commissioned to carry out \$30,000 worth of work for DPS, led the committee to further inquire into the nature of the process to select Ms Zahalka.²⁰

16 *Proof Committee Hansard*, 2 March 2015, pp 12-13.

17 *Estimates Hansard*, 20 October 2014, p. 153.

18 *Estimates Hansard*, 20 October 2014, p. 162.

19 *Estimates Hansard*, 20 October 2014, p. 162.

2.21 To summarise, in late 2012 DPS was involved in discussions with the then Prime Minister's office regarding events for the celebration of the 25th Anniversary of Parliament House.²¹ In January 2013, the then Director of Art Services at DPS prepared a draft brief for the photographic commission setting out a shortlist of nine artists for the commission, including Ms Zahalka.²² The Presiding Officers were provided with a brief on 5 March 2013, outlining the proposed activities to celebrate the 25th Anniversary, including 'a photographic history record of the twenty-fifth anniversary activities held this year that would form part of the Parliament House Art Collection'.²³ On 14 June 2013, an officer of DPS contacted Ms Zahalka to ascertain her interest in the project. The contract with Ms Zahalka was finalised on 22 August 2013.²⁴

2.22 The committee was informed there is a period of three months in the commissioning process, from early March to early June 2013 where 'there has been quite a lapse in the documentation process' and no documents exist for that period.²⁵

2.23 During that three month period, Ms Zahalka became the 'preferred tenderer' for the work, however DPS was unable to provide the committee with any documentation as to how that decision was made.²⁶ Further, there is 'very limited

20 A timeline of key events, as disclosed by DPS at the public hearing on 17 November 2014 and in answers to questions on notice following that hearing, as well as from other information received by the committee, is set out in Appendix 6. Ms Carol Mills, Secretary, DPS, advised the committee that the amount of \$30,000 was decided upon for the commission based on the standard historic memorials portrait commission price, *Estimates Hansard*, 20 October 2014, p. 153. Dr Dianne Heriot, Parliamentary Librarian, DPS, informed the committee that she had purchased a further two photographs from Ms Zahalka for the Parliamentary Library collection, for a total of \$10,000. The photographs were taken by Ms Zahalka as part of the original commission but were not included in the final 10 photographs selected for the Parliament House Art Collection; see *Committee Hansard*, 17 November 2014, pp 26-27.

21 Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, p. 30.

22 DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 299-300.

23 DPS, answer to question on notice, 17 November 2014 (received 30 January 2014), pp 307-308. The brief to the Presiding Officers recommended that they sign a request to the Finance Minister for one-off funding for DPS to meet the costs of 'permanent records of the twenty-fifth anniversary of Parliament House'. The Finance Minister responded in April 2013 advising that DPS would be receiving an addition \$85,000 for the 2012-13 financial year; see DPS, answer to question on notice, 17 November 2014 (received 30 January 2014), pp 307-313.

24 Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, p. 34.

25 Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, p. 31. See also Ms Myra Croke, Chief Operating Officer, DPS, *Committee Hansard*, 2 March 2015, p. 25.

26 See Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, pp 31-32.

recollection from the staff members involved as to what the process was in arriving at the decisions to approach Ms Zahalka' over the other eight artists who were identified as potentially suitable for the project in January 2013.²⁷

2.24 Ms Mills informed the committee that she did not make any formal written declaration of a conflict of interest regarding the fact that she knew Ms Zahalka in a personal capacity. Ms Mills' evidence was that she had provided verbal advice through the process, from January 2013 onwards, that one of the suggested artists was a person 'known a little to me', but that no formal conflict of interest disclosure had been made:

I did not believe at that time, and I still think this is right, that I had a relationship of a type that warranted full conflict of interest recognition, because I only know the person very briefly. I really know them through their work more than anything. And I felt that advising people that this was someone familiar to me was sufficient information for them, given the very tenuous nature of my relationship.²⁸

2.25 Ms Mills did admit discussing the potential commission with Ms Zahalka 'probably over Christmas' in 2012, prior to DPS briefing the Presiding Officers or receiving funding to go ahead with the commission.²⁹ Ms Mills' evidence to the committee was that, as far as she was aware, apart from this conversation, no one from DPS discussed the project with Ms Zahalka prior to 14 June 2013. Ms Mills agreed that 'it would have been a surprise' to Ms Zahalka to be contacted by a DPS officer in June 2013, some six months after the conversation at Christmas, to inquire as to whether she would be interested in undertaking the photographic commission.³⁰

2.26 However, it also came to the committee's attention that in May 2013, prior to DPS contacting Ms Zahalka to inform her that she was the preferred tenderer, the following interview with Ms Zahalka was published:

What is next for Anne Zahalka?

In collaboration with performance and multimedia artist Silvia Schwenk, I have undertaken a residency with HMAS Penguin to create an artwork for their centenary to be exhibited at the Mosman Art Gallery. A case study on my work currently at Lake Macquarie City Gallery features key works (including *The New Bathers*), and I have been invited to do a commission about the public and private areas of Parliament House for their forthcoming anniversary...³¹

27 Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, p. 32.

28 *Committee Hansard*, 17 November 2014, p. 36. See also, Ms Carol Mills, Secretary, DPS, 2 March 2015, p. 25.

29 *Committee Hansard*, 17 November 2014, p. 40

30 *Committee Hansard*, 17 November 2014, pp 40-41.

31 Lake Macquarie City Art Gallery, *A case study: Anne Zahalka*, Education Resource Kit, 2013, p. 19.

2.27 The ANAO Report provided the following assessment of the commissioning process:

The ANAO identified weaknesses in DPS' record keeping in relation to this matter. In particular, the department had not retained records outlining its consultation with the curatorial staff of the National Portrait Gallery, which was the agreed approach for selecting the artist, and thereafter deciding to only approach and commission Ms Anne Zahalka.

While the Commonwealth Procurement Rules allow limited tenders for procurements below the \$80 000 threshold, there are clear benefits for a department approaching more than one provider, particularly as the estimated cost of services increases. In this light, the procurement process and decision could have placed greater emphasis on the procurement principles of contestability and value for money. Further, the decision would have been more transparent had DPS maintained complete records covering its consultation and decision making processes. In this regard, it would also have been prudent for the Secretary of DPS to have documented an approach to manage any potential conflict of interest arising from her prior acquaintance with Ms Zahalka.³²

Committee view

2.28 In the committee's opinion, the commissioning of the photographs to mark the 25th Anniversary of Parliament House epitomises the failings that still exist within DPS. Crucially, DPS are unable to produce documents for a three-month period during the commissioning process. As former Senator John Faulkner summed up the situation:

We do not know why [Ms Zahalka] was chosen, we do not know who chose her and we do not know when she was chosen—but we know that, as a result of her being chosen, \$40,000 of Commonwealth money was provided to her after 12 photographs were provided to the Department of Parliamentary Services.³³

2.29 In addition to this three-month period of missing documentation, there is the issue of the Secretary's failure to declare the perceived conflict of interest, given her prior association with the artist who was selected for the commission. As the ANAO states, such a declaration in the circumstances would have been 'prudent'. To compound this situation, Ms Mills has admitted that she was reticent to inform the committee that she knew Ms Zahalka when the matter was first discussed at that Supplementary Estimates hearing on 20 October 2014 on the basis that 'people [might] jump to a false conclusion that I might know her well as a result'.³⁴

2.30 Finally, there is the unexplained situation where, aside from a conversation between Ms Mills and Ms Zahalka in or around December 2012, no one from DPS has

32 ANAO Report, p. 91.

33 *Committee Hansard*, 17 November 2014, p. 33.

34 *Proof Committee Hansard*, 2 March 2015, p. 24.

discussed the commission with Ms Zahlaka, yet in May 2013 Ms Zahalka effectively announced that she has been invited to do the photographic commission for the 25th Anniversary of Parliament House. While the committee does not have any evidence of wrongdoing, the fact that this situation has arisen in an already flawed process, does not reassure the committee that DPS is developing a strong culture of probity and accountability.

2.31 While the committee has spent some considerable time investigating the process for the photographic commission for the 25th Anniversary of Parliament House, it still has further matters to pursue on this matter during the remainder of this inquiry.

Inquiry into the use of CCTV material at Parliament House

2.32 On 5 December 2014 the Privileges Committee tabled its report into the use of CCTV material in Parliament House. In its report the Privileges Committee highlighted an apparent contradiction in evidence between statements Ms Mills made at the Budget Estimates hearings and the submission and additional documents that were provided by DPS to the Privileges Committee during the course of its inquiry. The Privileges Committee referred to the evidence that Ms Mills provided on 26 May 2014:

The DPS Secretary told the [Finance and Public Affairs Legislation Committee (F&PA Committee)] estimates hearing in May 2014 that the matter now referred to the Privileges Committee had only come to her attention on the day of that hearing, on the basis of inquiries she made after questions were asked of the Senate department.

[The Secretary's] evidence was that it was "possible DPS has breached the code [of practice] in investigating a case to do with a staff member", and she explained the apparent breach as "an inadvertent conflict between staff management issues and the protocol of the protection of members' and senators' rights to do business in the building". The Secretary told the hearing that "there may have been an inadvertent and ancillary breach of the statement of purpose" because the CCTV footage "may have captured [the employee] doing other activities in the building besides the one for which the CCTV footage was released".

When asked whether the activities she had referred to involved a person or people providing information to Senator Faulkner, Ms Mills replied "That is what I am looking into. That is the issue that was brought to my attention today..."³⁵

2.33 In contrast, DPS's submission to the Privileges Committee stated that the discovery of footage showing the employee placing an envelope under a senator's office door was communicated to the Secretary on 27 February 2014, three months prior to the Budget Estimates hearing. The Privileges Committee noted:

35 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160th Report, December 2014, p. 9.

[DPS] submission did not suggest that there had been an inadvertent conflict. Instead it is founded on the Secretary's response, given the same day [27 February 2014], "that 'contact by individuals with parliamentarians is not something we monitor...'. The [DPS] submission asserts that:

Accordingly, the footage relating to the visit to the Senator's office was not investigated further and Employee X was not questioned in any way in relation to her attendance at the Senator's office.

The submission contends that the Secretary "made a conscious decision *not* to take action in respect of Employee X's approach to Senator Faulkner by effectively instructing that DPS could not consider that conduct and had no interest in the matter."³⁶

2.34 Additional documents provided to the Privileges Committee by DPS also 'demonstrate[d] that the Secretary was made aware of all aspects of the incident as it transpired [in relation to the use of CCTV by DPS officers]'.³⁷ In particular, the Privileges Committee stated:

[T]he documents show:

- that when Ms Mills approved a preliminary code of conduct investigation on 25 February she also approved the release of still photographs from security cameras
- that the request which Ms Mills approved on 25 February informed her that the CCTV system had already been used to gather information on the matter
- that the discovery of footage showing the employee placing an envelope under Senator Faulkner's office door was communicated to Ms Mills on 27 February.³⁸

36 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160th Report, December 2014, pp 9-10. Ms Mills' response is contained in an email to one of her staff and states: 'You may be aware that contact by individuals with parliamentarians is not something that we monitor in order to provide privacy to them in the conduct of their business. Happy to discuss', see Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160th Report, December 2014, p. 10.

37 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160th Report, December 2014, p. 10.

38 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160th Report, December 2014, p. 10.

2.35 In respect of this contradictory evidence, the Privileges Committee concluded:

The submission and additional documents cast considerable doubt upon the evidence given by the Secretary [during the F&PA Committee estimates hearing]. The [Privileges Committee] has not been able to reconcile the evidence given at the estimates hearing with the submission and documents which DPS has subsequently provided, and considers that the Finance and Public Administration Legislation Committee was misled about the Secretary's knowledge of the events that led to this inquiry.

The committee has determined that it is appropriate in the circumstances to publish the relevant documents so that they are available to the Finance and Public Administration Legislation Committee in its oversight of the Department of Parliamentary Services.³⁹

2.36 The Privileges Committee recommended:

That the attention of the Finance and Public Administration Legislation Committee be drawn to the matters...relating to the misleading evidence given at its estimates hearing on 26 May 2014.⁴⁰

Secretary's response

2.37 Following the tabling of the Privileges Committee report, the committee wrote to the Secretary, noting the recommendations of the Privileges Committee, and invited Ms Mills to provide a submission outlining any further material or evidence for the committee to consider in its deliberations on this matter.

2.38 In correspondence to the committee the Secretary rejected the conclusion by the Privileges Committee that she or other DPS officers provided misleading evidence at the Budget Estimates hearing. Ms Mills stated that, following a 'series of broad questions about the CCTV operating policy' to the Department of the Senate on the morning of 26 May 2014, and an indication from the committee that they intended to take the issue up with DPS later in the day, she had sought to investigate what the questioning might relate to:

At the time I appeared before [the committee] I had not been able to establish that. There was nothing in the line of questioning that morning [to the Department of the Senate] that would reasonably suggest that I should have been able to make a connection between the use of CCTV and a case

39 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160th Report, December 2014, pp 10-11.

40 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160th Report, December 2014, p. 38. On 2 March 2015, the President of the Senate tabled his response to the Privileges Committee report agreeing to this recommendation of the Privileges Report, see *Journals of the Senate*, No. 79 – 2 March 2015, p. 2191. A copy of the President's response is attached to correspondence from Senator Jacinta Collins, Chair of the Privileges Committee, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 12 March 2014, available on the committee's website at: www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/DPS_2014/Additional_Documents.

early in the year where I had very clearly stated that 'contact by individuals with parliamentarians is not something we monitor'.⁴¹

2.39 Ms Mills insisted that nothing in her investigations on the morning of 26 May 2014 caused her to make the connection between the CCTV case earlier in the year with the line of questioning that the committee had taken with the Department of the Senate:

This includes advice I sought from the Clerk of the Senate to ascertain what the Senator might be referring to that morning. The Clerk advised me of the existence of a report relating to disciplining an officer for contact with a Senator's office. I was not aware of any such report.⁴²

2.40 The Secretary argued the description that the Clerk gave was such that she was unable to make the connection with the matter which was subsequently referred to the Privileges Committee:

It must be emphasised that the investigation which was the subject of the referral to the Privileges Committee was not an investigation into contact with a Senator, but into a very different circumstance of harassment of another employee of my Department. Knowing no further detail at the time of my evidence there was simply no way for me to directly connect that description to the case that was ultimately the subject of the referral to the Privileges Committee.⁴³

Correspondence from the Clerk of the Senate

2.41 Following publication of Ms Mills' response on the committee's website, the committee received correspondence from the Clerk of the Senate, Dr Rosemary Laing. The Clerk disputed Ms Mills' recollection of their meeting on 26 May 2014:

Ms Mills' account does not accord with my recollection of events on the morning of 26 May 2014.

As soon as I returned to my office at approximately 10.30am on that morning from giving evidence to the committee, my executive assistant informed me that Ms Mills wished to see me as soon as possible, to which I agreed. When Ms Mills came into my office I said to her words to the effect of, "you haven't been using CCTV for internal disciplinary matters, surely?" When Ms Mills denied it, I informed her that I had seen a draft report confirming that to be the case and that it raised highly problematic issues in

41 Correspondence from Ms Carol Mills, Secretary of DPS, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 20 February 2015, p. 1.

42 Correspondence from Ms Carol Mills, Secretary of DPS, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 20 February 2015, pp 1-2.

43 Correspondence from Ms Carol Mills, Secretary of DPS, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 20 February 2015, p. 2.

this environment because of the potential impact on senators carrying out their functions.⁴⁴

2.42 Contrary to Ms Mills' account of the meeting, the Clerk states that 'I neither perceived nor described the draft report as relating to contact with a senator but as concerning alleged dealings between DPS employees'.⁴⁵

2.43 The Clerk informed the committee:

I was in no doubt that Ms Mills was aware of the particular case because, although she denied having seen the draft report, she referred in my office to the victim of the alleged harassment by name and gave an account of how much the incident had upset the victim, coming on top of some personal issues.⁴⁶

2.44 The Clerk also addressed Ms Mills' claim that she only became aware of the matters which were referred to the Privileges Committee on the morning of 26 May 2014:

Some time, possibly weeks, later, I recall being puzzled by Ms Mills' claim that these matters had only come to her attention on the morning of the [Budget Estimates] hearing because I had a niggling recollection of her referring on another occasion to DPS staff being "caught" providing information to senators. Eventually, I sourced the recollection to a meeting of the heads of the parliamentary departments held on 28 February 2014. These meetings are held on a quarterly basis but that was the only heads' meeting Ms Mills attended in 2014. On checking the papers I located an email from Ms Mills, sent on 27 February 2014 at 1.08pm, asking to add to our agenda "a discussion on how parliamentary departments generally deal with issues like the unauthorised disclosure of information by their staff – not privileges but internal departmental information"...⁴⁷

2.45 The Clerk noted that Ms Mills' email at 1.08pm on 27 February 2014, adding the agenda item, was sent 'a few minutes after a response by Ms Mills to an email informing her that investigation of the particular disciplinary matter involving alleged

44 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, pp 1-2.

45 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, p. 2.

46 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, p. 2.

47 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, p. 2.

harassment had located additional CCTV footage showing the person under investigation placing a "brown envelope" under Senator Faulkner's door'.⁴⁸

Committee view

2.46 Ms Mills explanation contained in her letter of 20 February 2015 provides no reassurance to the committee that it was not misled at the Budget Estimates hearing on 26 May 2014. In fact, in the committee's view, the explanation that Ms Mills has provided further contradicts the evidence she gave to the committee on 26 May 2014.

2.47 The committee finds it implausible that Ms Mills now argues that on the morning of 26 May 2014, at the time she appeared before the committee, she effectively had not been able to connect the events of the matter which became the subject of the referral to the Privileges Committee with the preliminary code of conduct investigation which she had approved some three months earlier. This is despite Ms Mills informing the committee on 26 May 2014:

- that the matter involved a potential code of conduct case against a DPS staff member;⁴⁹ and
- that this was the only code of conduct investigation that she was aware of in which CCTV footage was authorised to be accessed.⁵⁰

2.48 The committee also notes the correspondence from the Clerk of the Senate which disputes Ms Mills' explanation in her letter of 20 February 2015. In particular, the Clerk indicates that at the time Ms Mills met with her on 26 May 2014, Ms Mills was aware that the matter involved a code of conduct dispute and, in fact, spoke specifically about the events which led to the instigation of the code of conduct investigation.

2.49 The committee intends to take up these inconsistencies, as well as the contradictory evidence identified by the Privileges Committee in its report, with Ms Mills during the remainder of the inquiry.

Conclusion

2.50 None of the evidence in this inquiry to date, or the material covered in the Privileges Committee and ANAO reports, gives the committee any comfort that DPS has made significant progress in terms of addressing the shortcomings which were identified in the committee's final report of November 2012.

48 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, pp 2-3.

49 *Estimates Hansard*, 26 May 2014, p. 33. See also *Estimates Hansard*, 26 May 2014, pp 37, 38, 39, 40.

50 *Estimates Hansard*, 26 May 2014, pp 34, 35, 37, 39. Mr Neil Skill, First Assistant Secretary, Building Management Division, DPS, also gave evidence that this was the only case he was aware of where CCTV footage was used in relation to staff matters, *Estimates Hansard*, 26 May 2014, pp 35, 40.

2.51 DPS drew the committee's attention to the several reviews it is undertaking pursuant to the recommendations in the committee's 2012 report.⁵¹ The committee notes that these reviews have been undertaken by external providers at significant cost and, in many cases, the outcomes of many of these reviews are yet to be implemented. DPS also referred to the recruitment of staff to key positions and a restructure of the management of the department.⁵² However, this recruitment appears to have taken DPS much longer than anticipated and, as the Secretary admitted, DPS' poor reputation means it struggles to attract staff.⁵³ Further, there was also evidence to the committee of an ongoing problem of low staff morale in areas of DPS.⁵⁴

2.52 The committee strongly disagrees with the Secretary of DPS, Ms Mills, that this lack of progress reflects the 'timeframe with which DPS has had to make the changes'.⁵⁵ DPS has had two-and-a-half years in which to address the recommendations and effect some change. Frankly, the complete lack of progress is unacceptable.

2.53 The ANAO report supports the committee's view of the lack of progress by DPS. The ANAO was highly critical of DPS and as the Auditor-General stated, the report is 'at the more critical end' of ANAO reports.⁵⁶

2.54 The committee notes that the six recommendations in the ANAO Report go largely to the review and further development of policies and ongoing training for department staff. The committee made similar recommendations in its 2012 report and the ANAO report highlighted 'inadequate staff training and out-of-date guidance material' were particular areas of concern in the audit.⁵⁷ Unfortunately, given that DPS has thus far been unable to implement the committee's recommendations from 2012, the committee holds little hope that DPS will be able to effectively implement the ANAO's recommendations.

2.55 Overall, the evidence to the committee so far demonstrates that DPS, as currently managed, is deeply dysfunctional.

2.56 Furthermore, the committee has no confidence in the evidence provided to date by Ms Mills to explain the contradictory evidence outlined in the Privileges Committee report or her role in the commissioning of the photographic works by Ms Zahalka. While the committee intends to provide Ms Mills with a further

51 Mr Neil Skill, First Assistant Secretary, Building and Asset Management, DPS, *Committee Hansard*, 17 November 2014, pp 3, 5-6.

52 See Mr Neil Skill, First Assistant Secretary, Building and Asset Management, DPS, *Committee Hansard*, 17 November 2014, p. 6; Ms Carol Mills, Secretary, DPS, *Proof Committee Hansard*, 2 March 2015, p. 12.

53 *Proof Committee Hansard*, 2 March 2015, p. 19.

54 See Ms Karen Greening, *Committee Hansard*, 17 November 2014, p. 11.

55 *Proof Committee Hansard*, 2 March 2015, p. 14.

56 *Proof Committee Hansard*, 2 March 2015, p. 2.

57 ANAO Report, p. 15.

opportunity to explain at a hearing, in the committee's view, this situation has seriously eroded her standing as a witness before the committee and casts doubt over other evidence provided by Ms Mills.

2.57 As the committee has noted, some of the matters in this interim report remain unresolved and the committee intends to continue to pursue these issues. However, the committee is also of the view that it is now time to look more broadly at the role, functions and structure of DPS within the current framework. The committee intends through the remainder of this inquiry to work with both Presiding Officers with a view to improving the management and operation of DPS.

2.58 After the committee drafted this report, and prior to its tabling, the committee was advised that Ms Mills ceased employment as Secretary of DPS.

Senator Cory Bernardi

Chair

