

## APPENDIX 6

### Timeline for the 25<sup>th</sup> Anniversary of Parliament House photographic commission

Date	Comment
From late 2012	<p>DPS is involved in discussions regarding events for the 25th Anniversary celebrations for Parliament House. Some of those discussions occurred between the Secretary of DPS and the then Prime Minister's office.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 30.</p>
Around Christmas 2012	<p>Ms Mills has a conversation with Ms Zahalka at the street Christmas party.</p> <p>On 17 November 2014 Ms Mills described the content of that conversation as she had told Ms Zahalka her 'there were projects go forward in the 25th anniversary and one of them might be a photographic exhibition'. See <i>Committee Hansard</i>, 17 November 2014, p. 40.</p> <p>On 2 March 2015 Ms Mills recounted the conversation to the committee again:</p> <p><i>...I told her that we were doing this project and we were hoping to get some resources for it but we were not sure. It was a sort of project that was a lot like the work that she does. As I said to you, I know her work well, I have known her work for 15 years. She is an appropriate type of artist, I do not think I went beyond a compliment that you might say at a Christmas function.</i></p> <p>See <i>Proof Committee Hansard</i>, 2 March 2015, p. 31.</p>
16 January 2013	<p>The then Director of Art Services, DPS, starts work on a brief for the photographic work to be undertaken as part of the 25th Anniversary celebrations. The brief sets out a list of nine possible artists which required 'further investigation to short-list'.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 299-300; Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 30.</p>
18 January 2013	<p>The Executive Assistant to the Secretary of DPS emails a copy of the draft brief back to the Director of Art Services. The emailed copy of the brief has the Secretary's handwritten notes on it, which comment on the scope of the project, based on the Secretary's discussions with the then Prime Minister's office about the nature of the procurement process.</p> <p>Under the heading 'Scope – Possible approaches/options' the Secretary circles 'direct source approach' (limited tender) as opposed to an open tender process.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 302-303; Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 30.</p>

21 January 2013	<p>The Director of Art Services produces a revised draft brief based on the comments by the Secretary. Under a heading 'Scope – Possible approaches/options (TBC)' is written:</p> <p><i>(Assuming it would be a direct source approach, not an open tender).</i></p> <ul style="list-style-type: none"> <li>• <i>One or two photographers and possibly one video artist would be commissioned to provide a specified number of images (perhaps 20-30 images each) responding to a different theme or subject – e.g. focussing on architecture, landscape, people, infrastructure/support systems, or from an indigenous perspective.</i></li> <li>• <i>DPS would then choose from the images submitted to select a final group for acquisition.</i></li> </ul> <p>There are no artists listed on the revised draft brief.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 304-305.</p>
5 March 2013	<p>The Presiding Officers are provided with a brief, under the Secretary's name, about events for the 25th Anniversary celebrations. The brief includes a request for the Presiding Officers to write to the Minister for Finance and Deregulation and request \$100,000 in additional funding for the 25<sup>th</sup> Anniversary events. The brief to the Presiding Officers refers 'very generally' to photographic work, but the commissioning process is 'not mentioned in detail'.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 307-308.</p>
5 March 2013 – 3 June 2013	<p>There is 'a lapse in the documentation process' for the commissioning process and '[t]here is very limited recollection from the staff members involved as to what the process was in arriving at the decision to approach Ms Zahalka over the other eight...artists that were initially suggested in the brief'.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, pp 31-32.</p>
13 March 2013	<p>The Presiding Officers sign a letter to the Minister for Finance and Deregulation requesting \$100,000 in additional funds for the 25<sup>th</sup> Anniversary.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 309-310.</p>
19 April 2013	<p>The Minister for Finance and Deregulation writes to the Presiding Officers confirming additional funding for the 2012-13 financial year of \$85,000.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 311-313.</p>

May 2013	<p>Ms Zahalka gives an interview in which she is asked about upcoming work and responds:</p> <p><i>'... and I have been invited to do a commission about the public and private areas of Parliament House for their forthcoming anniversary...'</i></p> <p>Lake Macquarie City Art Gallery, <i>A case study: Anne Zahalka</i>, Education Resource Kit, 2013, p. 19.</p>
3 June 2013	<p>The then Director of Procurement and Contract Management (Director of Procurement), DPS, writes to two directors in the newly established Parliamentary Experience Branch, DPS, confirming that the Commonwealth Procurement Rules permit a limited tender approach for the commissioning of artworks.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 315.</p>
4 June 2013	<p>The Director of Procurement writes to the National Portrait Gallery requesting advice on the commissioning of artwork and commercialisation of that artwork. The email notes that DPS did not have much experience in this area.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 317.</p>
Around 13 and 14 June 2013	<p>A director in the Parliamentary Experience Branch commences work with the Director of Procurement and a legal officer around the commissioning process, and particularly the drafting of the commissioning contract.<sup>1</sup></p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31.</p>
14 June 2013 (11.56am)	<p>The Assistant Director of Legal Services, DPS, emails the Director of Procurement stating that the photography contract needs to be progressed 'ASAP'. The Assistant Director notes that they need to discuss:</p> <ul style="list-style-type: none"> <li>- the form for the Statement of Requirement; and</li> <li>- procedures for opening discussions with the photographer before the contract is put in place.</li> </ul> <p>The Assistant Director also asks if the Director of Procurement has had any response from the National Portrait Gallery.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 318-19.</p>

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1 It appears from documents provided in answers to questions on notice that the director in the Parliamentary Experience Branch that Ms Kearney is referring to was the Director of Parliamentary Events and Business Development.

<p>14 June 2013 (1.14pm)</p>	<p>The Director of Procurement emails the Director of Parliamentary Events and Business Development (Director of Parliamentary Events) and the Assistant Director of Legal Services attaching the Commonwealth Short Form Contract and a previous Art Services contract 'that may assist in the scoping conversation' and suggesting they look at 'hard copies of the contracts from Museum of Australian Democracy to get some ideas'. The Director of Procurement also writes:</p> <p><i>In terms of where to from here, we are able to start speaking to the preferred tenderer, on the basis of seeking their interest for the work. It would be preferable to have the Statement of Work ready so that a quote can be provided by the tenderer. It would also be appropriate to flag at that time the intent for DPS to have rights to commercially exploit the work.</i></p> <p>The Director of Procurement states that he has 'had no luck with the Portrait Gallery', but intends to try again that afternoon.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 318.</p>
<p>14 June 2013 (2.09pm)</p>	<p>A representative from National Portrait Gallery responds to the Director of Procurement's email of 4 June 2013 and provides a template commission agreement.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 316-17.</p>
<p>14 June 2013 (3.41pm)</p>	<p>The Director of Procurement forwards the email from the National Portrait Gallery to the Director of Parliamentary Events and the Assistant Director of Legal Services.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 316.</p>
<p>14 June 2013</p>	<p>The Acting Assistant Secretary of the Parliamentary Experience Branch emails the Secretary of DPS, advising she has spoken to the Director of Parliamentary Events about 'recovering' the timeline of the commission. The subject of the email is 'conversation with Anne Zahalka':</p> <p><i>I asked [the Director of Parliamentary Events] to check whether, in the absence of the contract (first draft now rec'd) it was proper to write to her [Ms Zahalka] about it. [The Director of Parliamentary Events] checked with [the Director of Procurement] who said this was ok, and so he rang her.</i></p> <p>The Acting Assistant Secretary then provides a dot point summary of the conversation the Director of Parliamentary Events had with Ms Zahalka:</p> <ul style="list-style-type: none"> <li>• <i>I let Anne know that I was doing some research for a possible commission</i></li> <li>• <i>discussed her interest and availability for the project (she is interested and available)</i></li> <li>• <i>let her know that we wanted to have an exhibition of the works in November 2013 (this is do-able for her)</i></li> <li>• <i>let her know that the works would be part of the art collection</i></li> <li>• <i>Talked a little about the types of images...she was keen to photograph the spaces eg. Basement; library; members dining rooms, chambers (this may change as she thinks more about the project)</i></li> <li>• <i>She was not keen to do portraiture</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Anne wanted more information</i></li> <li>• <i>I asked about money (I did not let her know our budget) she was talking about \$5000 per image</i></li> <li>• <i>I let her now that I would speak with her either late today or early next week.</i></li> </ul> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31. DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p 321.</p>
4 July 2013	<p>The Acting Assistant Secretary of the Parliamentary Experience Branch provides a written brief to the Secretary on progress of the project:</p> <p><i>Renowned photo media artist Anne Zahalka has been identified as an excellent artist for this project...Zahalka is represented in major national and international art collections and has extensive experience in photographic commissions that connect the client with their audience...</i></p> <p>The Acting Assistant Secretary recommends that the Secretary approve the following:</p> <ul style="list-style-type: none"> <li>• the Director of Parliamentary Events contacting Ms Zahalka formally to discuss the project;</li> <li>• an amount of \$30,000 to be paid to the artist inclusive of travel, accommodation and printing;</li> <li>• the contract (attached to the brief);</li> <li>• the Photographic Commission Artist Brief (attached to the brief); and</li> <li>• a letter of invitation to Anne Zahalka (attached to the brief).</li> </ul> <p>The contact officer for the brief is the Director of Parliamentary Events and the brief is provided under the signature of the Acting Assistant Secretary. The brief is signed and dated by Ms Mills on 4 July 2013.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 326-7.</p>
Early July 2013	<p>A 'Photographic Commission Artist Brief' is provided to Ms Zahalka. This is a one-page document setting out the nature of project; contracting process and the budget. The contact for the brief is the Director of Parliamentary Events.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 32; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 322-323.</p>
Date unknown.	<p>Ms Zahalka provides a one-page proposal for the project in response to the request by the Director, Events and Business Development, Parliamentary Experience Branch, DPS.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 33; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 324.</p>
13 August 2013	<p>The Acting Assistant Secretary for the Parliamentary Experience Branch provides a written brief to the Secretary on commercial aspects of the contract. The Acting Assistant Secretary notes that Ms Zahalka has identified concerns with aspects of the Intellectual Property clause of the contract and requested some amendments to the contract with regard to the commercialisation of the work.</p>

To summarise, Ms Zahalka is seeking:

- to edition the works, with DPS receiving edition 1 of the suite and the remaining 4 being available for purchase through the artist's dealer;
- contractual reassurance that DPS will not modify or adapt images of the work, meaning that DPS would have to reproduce the image in full and not use cropped details of the image; and
- to ensure that she received a royalty fee if the work is used to generate income through commercial exploitation.

Ms Zahalka also agreed that the works can be reproduced in DPS non-commercial publications and in commercial publications such as catalogues which promote the commission and the Parliament House Art Collection.

The recommendations in the brief are that the Secretary agree that:

- no less than 3 images from the suite are exclusive to DPS and the edition size for the remaining images in the suite is no large than 5. Noting that the artist usually prints photographs in an edition of 5 and that gallery sales of the artist's work are valued at around \$5000 per image;
- DPS not agree to the reassurance about not modifying images and instead an arrangement be made so that cropped details of images may be used by DPS if a smaller version of the full image is printed on the reverse or inside of the publication. Notes that the National Gallery of Australia follows this practice.
- DPS not agree to a royalty fee. Instead:
  - The starting negotiating position should be that the artist is not entitled to further compensation beyond the initial commission fee in the event that DPS uses the works for commercial purposes.
  - As a fall back negotiating position, DPS propose that the artist will receive no fee for the use of the image on commercial paper products such as posters, cards and calendars and for online or digital purpose. The use of the images in other commercial products such as T shirts, mugs, mouse pads etc will be done in consultation with the artist and may incur a fee which would need to be negotiated at the time the contract is prepared. Notes if this is the agreed option, it is recommended that a flat fee is negotiated at the commencement of the contract rather than an ongoing royalty fee. There are sufficient funds in the budget to cover an additional fee of up to \$5000.
- DPS is able to reproduce the works for other non-commercial purposes, beyond promoting only the commission and the Art Collection, for example use of the works to promote Parliament House generally.

Further it is not recommended that DPS agree to both allowing the artist to sell the remainder of the editions commercially and to receive royalties in the event that DPS wishes to use the images commercially. Given the starting value of the commission, allowing both of these requests would significantly increase the potential value of the commission for the artist.

A hand written note on the side of the brief states that 'Carol' agreed to the fall back negotiating position about the use of images on commercial products.

The contact officer for the brief is the Director of Parliamentary Events and the brief is provided under the signature of the Acting Assistant Secretary. The brief is signed and dated by Ms Mills on 13 August 2013.

	DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 329-330.
22 August 2013	<p>Contract with Ms Zalhalka is finalised. The Director of Parliamentary Events signs on behalf of DPS.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 34; answer to question on notice, 17 November 2014 (received 30 January 2015), p. 291.</p>