

**SENATE COMMUNITY AFFAIRS
LEGISLATION COMMITTEE**

ADDITIONAL ESTIMATES 1999-2000

REPORT ON RECONVENED HEARING INTO MRI ISSUES

MAY 2000

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Senate Community Affairs Legislation Committee Secretariat

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Secretary

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MEMBERSHIP OF THE COMMITTEE

Senator Sue Knowles, Chairman	LP, Western Australia
Senator Lyn Allison, Deputy Chair	AD, Victoria
Senator Kay Denman	ALP, Tasmania
Senator Chris Evans	ALP, Western Australia
Senator Brett Mason	LP, Queensland
Senator Tsebin Tchen	LP, Victoria

Substitute Member

Senator Ray to replace Senator Denman for the consideration, in accordance with the order of the Senate of 10 April 2000, of additional estimates relating to magnetic resonance imaging scanner installations

ALP, Victoria

ADDITIONAL ESTIMATES 1999-2000

REPORT ON RECONVENED HEARING INTO MRI ISSUES

Introduction

1.1 On Monday, 10 April 2000, the Senate passed the following resolution:

That the Senate -

- (a) notes the failure of the Minister representing the Minister for Health and Aged Care (Senator Herron) to comply in full with the order of the Senate of 21 October 1999 for the production of documents relating to magnetic resonance imaging;
- (b) orders the Minister to comply in full with the order by 6.30 pm on Monday, 10 April;
- (c) in the event that the Minister fails to comply in full with the order by the time specified, instructs the Community Affairs Legislation Committee to reconvene for the consideration of additional estimates on 11 April 2000, at 8 pm until no later than midnight, to hear further evidence from the Minister representing the Minister for Health and Aged Care and relevant officers concerning the investigations into magnetic resonance imaging scanner installations and to report to the Senate on the results of that hearing; and
- (d) directs the Minister to ensure that the relevant officers appear before the Committee at that hearing for that purpose.

1.2 Later that day the Minister, Senator Herron, wrote to the Acting President, Senator West, indicating that he was unable to provide any documents in compliance with the order by the time specified. The original order of 21 October 1999 for the production of documents is at Appendix 2. A copy of the Minister's letter, tabled in the Senate on 10 April, is at Appendix 3.

1.3 In accordance with the instruction from the Senate, the Legislation Committee reconvened on 11 April 2000 for the consideration of additional estimates to hear further evidence from the Minister representing the Minister for Health and Aged Care and relevant officers concerning the investigations into magnetic resonance imaging (MRI) scanner installations. Pursuant to the direction in the resolution, the Minister ensured that relevant officers appeared at this hearing. Details of the public hearing are referred to in Appendix 1.

1.4 A variety of issues including the purchase and installation of MRI scanners, the negotiations surrounding the extension of a Medicare rebate for MRI services, the parliamentary procedures to have documents relevant to these issues tabled in the Senate, and the actions of departmental officers and ministerial staff, were discussed in detail at the hearing. The *Hansard* transcript of the proceedings of the hearing will be tabled in the Senate and is also available on the Internet at: www.aph.gov.au/hansard.

Background

1.5 On 12 May 1998 the Government announced in its Budget for 1998-99 that approval for the payment of Medicare benefits for MRI services would be allowed for the first time from 1 September 1998. In order to ensure that the supply of MRI could be managed, conditions of eligibility for machines and practitioners under which Medicare benefits would be paid were announced subsequently by the Department of Health and Aged Care.

1.6 The Health Insurance Commission (HIC) was responsible for processing the documentation for eligible machines and eligible practitioners, including statutory declarations from radiologists and copies of contracts or leases purported to have been signed prior to the Budget announcement on 12 May 1998. In December 1998, following receipt of a specific complaint of irregularity in which it was alleged that statutory declarations lodged with the HIC may be false, an investigation commenced in the HIC's central office. In February 1999 the investigation was broadened, eventually including all scanners that were uninstalled as at the time of the Budget announcement. The HIC reported on 22 December 1999, resulting in cases involving 19 scanners being referred to the Director of Public Prosecutions (DPP). A copy of this report was sent to the President of the Senate on 23 December and tabled on 15 February 2000.

1.7 The HIC is currently working with the DPP to prepare formal briefs of evidence from the material gathered during the HIC investigation. The HIC is also continuing to investigate eight cases where it did not believe that there was sufficient evidence to go to the DPP, but where it believed that civil action was warranted.¹

1.8 A further issue arose as to whether or not people involved in consultations on the proposed Budget measure had used information to gain a commercial advantage and access to Medicare benefits to which they were not entitled. This issue is currently the subject of an inquiry by the Auditor-General. Details of the scope of the Auditor-General's inquiry were contained in correspondence tabled at the hearing (see Appendix 5). The Committee was advised that the Auditor-General has provided a draft report and sought responses from the relevant department and others. It was expected that the final report would be tabled in May, subject to any further discussions or drafting by the Auditor-General.²

Parliamentary action

1.9 Questions relating to the issues surrounding the MRI scanners were asked in Parliament and at Senate estimates hearings during 1999. These culminated in the order of the Senate on 21 October 1999 for the tabling of specific documents. The Department confirmed at the hearing that the relevant documents include minutes to the Minister, briefing notes, draft cabinet submissions and proposals, and draft letters around those proposals.³

1.10 On 29 November 1999 the Minister, Senator Herron, wrote to the Clerk of the Senate in response to the order. The letter included reference to certain public interest considerations and was based on internal legal advice and advice from the Australian

1 *Committee Hansard*, 11.4.00, p.242.

2 *Committee Hansard*, 11.4.00, pp.231, 233.

3 *Committee Hansard*, 11.4.00, p.220.

Government Solicitor.⁴ A copy of the Minister's letter is at Appendix 3. At the request of Senator Chris Evans and in response to the Minister's letter and the answers to questions in the Senate concerning the withholding of information about the purchases of the MRI scanners, the Clerk provided written advice relating to public interest immunity on 26 and 29 November. The Clerk's advice is at Appendix 4.

1.11 The Minister, Senator Herron, then wrote to the President of the Senate, Senator Reid, on 23 December 1999 in reference to the order of 21 October and attached a copy of the report of the HIC investigation (subsequently tabled on 15 February 2000). Senator Herron noted in the letter that the Minister for Health and Aged Care, Dr Wooldridge, expected to complete a review of certain documents covered in the order 'in the very near future' when an appropriate response would be forwarded to the President. A copy of this letter is also at Appendix 3.

1.12 With no further response being received the Senate agreed to the resolution of 10 April 2000 which resulted in the hearing on 11 April.

MRI and the Budget decision

1.13 The background to the purchase and installation of MRI scanners, the lead up to the budget decision and events following the budget decision, are outlined in the HIC report.

1.14 On 10 February 1998 negotiations commenced between the College of Radiologists and the Department on the management of diagnostic imaging and the expanded funding of MRI. This process involved the development of an agreement between the College and the Government. On 6 May 1998 at a meeting attended by the Minister, the College of Radiologists, a ministerial staffer and a departmental officer, it was confirmed that agreement had been reached. Formal acceptance of the agreement was contained in an exchange of letters between the Minister and the College on 12 and 15 May.⁵ Copies of these letters were tabled at the hearing (see Appendix 5).

1.15 Considerable debate during the hearing centred around the creation and maintenance by the Department of written and electronic records of meetings, especially during the negotiations prior to the Budget and of questioning about the potential leak of the budget decision.⁶ A number of administrative deficiencies were identified, about which the Secretary conceded 'I think it is fair to say that our records management in this area has not been as good as it ought to be. That is something we are certainly conscious of and taking action on'.⁷

Senator Sue Knowles

Chairman

May 2000

4 *Committee Hansard*, 11.4.00, pp.223-6.

5 *Committee Hansard*, 11.4.00, pp.241, 245-7, 258-60.

6 *Committee Hansard*, 11.4.00, pp.234-9, 249-50, 253-4.

7 *Committee Hansard*, 11.4.00, p.234. Also pp.235, 237.

APPENDIX 1

PUBLIC HEARING

A public hearing was held on 11 April 2000 in Senate Committee Room 2S1.

Committee Members and other Senators in attendance

Senator Sue Knowles (Chairman)

Senator the Hon Rosemary Crowley

Senator Chris Evans

Senator the Hon John Faulkner

Senator Brett Mason

Senator Robert Ray

Senator Tsebin Tchen

Witnesses

Ministers in attendance:

Senator the Hon John Herron, Minister for Aboriginal and Torres Strait Islander Affairs, representing the Minister for Health and Aged Care

Senator the Hon Ian Macdonald, Minister for Regional Services, Territories and Local Government

Officers in attendance:

Department of Health and Aged Care

Mr Andrew Podger, Secretary

Mr David Borthwick, Deputy Secretary

Dr Louise Morauta, First Assistant Secretary, Health Access and Financing

Ms Wynne Hannon, Head, Legal Services

Health Insurance Commission

Dr Jeff Harmer, Managing Director

Mr Ralph Watzlaff, General Manager Professional Review

APPENDIX 2

ORDER OF 21 OCTOBER 1999 FOR THE PRODUCTION OF DOCUMENTS

Order of the Senate agreed to on 21 October 1999:

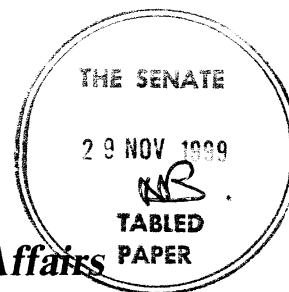
That the Senate –

- (a) notes that there are serious concerns about the integrity of the process that led to the decision of the Minister for Health and Aged Care (Dr Wooldridge) to extend Medicare funding to magnetic resonance imaging machines; and
- (b) requires that there be laid on the table by the Minister representing the Minister for Health and Aged Care (Senator Herron), no later than 3 pm on 22 November 1999, documents containing the following information:
 - (i) the dates on which each contract for a magnetic resonance imaging machine is purported to have been signed prior to the 1998 Budget deadline of 12 May 1998 but, because there is an ongoing Health Insurance Commission investigation, the Senate does not seek any identifying information about these contracts, merely the dates they were claimed to have been signed,
 - (ii) minutes of all meetings between the Department of Health and Aged Care officers and representatives of the Royal Australian and New Zealand College of Radiologists during the period 10 February 1998 to 31 May 1998, and
 - (iii) copies of all advice provided by the department to the Minister on the radiology agreement and the extension of a Medicare rebate for magnetic resonance imaging services.

APPENDIX 3

LETTERS FROM SENATOR JOHN HERRON, MINISTER FOR ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

- Senator Herron to Mr Harry Evans, Clerk of the Senate, dated 29 November 1999
- Senator Herron to Senator Margaret Reid, President of the Senate, dated 23 December 1999
- Senator Herron to Senator Sue West, Acting President of the Senate, dated 10 April 2000



Minister for Aboriginal and Torres Strait Islander Affairs

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600

Mr H Evans
Clerk of the Senate
Parliament House
CANBERRA ACT 2600

29 NOV 1999

Dear Mr Evans

Thank you for your letter of 21 October 1999 transmitting the text of an order agreed by the Senate on that date pursuant to standing order 164 concerning extending Medicare funding to magnetic resonance imaging machines.

I note the serious concerns of the Senate about the integrity of the process that led to the decision of the Minister for Health and Aged Care (Dr Wooldridge) to extend Medicare funding to magnetic resonance imaging (MRI) machines

In regard to the Senate requirement that there be laid on the Table by the Minister representing the Minister for Health and Aged Care documents containing specific information as outlined in the order, I am asked by the Minister to convey his regret for the delay in replying to the request from the Senate. You will be aware, of course, that I did provide an oral response on behalf of the Minister at Question Time on Tuesday, 23 November 1999.

The Minister has advised me that the Auditor-General has been invited to conduct a probity audit into the circumstances surrounding magnetic resonance imaging. The Minister wishes to advise the Senate that all files and other materials requested under the Senate order have been made available to the Auditor-General in order to assist his inquiry. It is also relevant that a number of cases have now been referred to the Director of Public Prosecutions. The issue is about whether and when it is appropriate to make the material requested by the Senate publicly available, which then raises issues related to public interest and public interest immunity.

I refer to the specifics of the Senate order request, to which the Minister offers the following response.

The Minister for Health and Aged Care has indicated that he is not prepared to release the information requested under (i) for reasons related to the nature of the ongoing investigations being conducted by the Health Insurance Commission (HIC). The Minister has stated in Parliament on several occasions that to release the information relating to investigations may compromise the HIC process. He has also indicated the importance of allowing the investigations to run their due course to ensure that any fraudulent activity in relation to MRI

orders can be followed through. When the HIC has completed its investigation, a report will be made available. This is expected to be by the end of this calendar year.

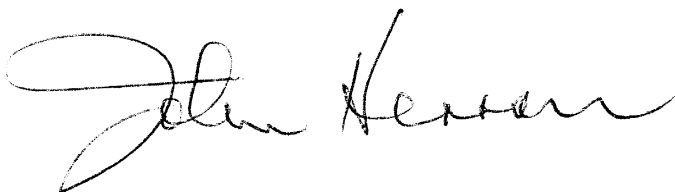
In relation to the information requested under (ii) the Minister for Health and Aged Care has said in Parliament that he has been advised by the Department of Health and Aged Care that no minutes or notes were taken of the meetings between its officers and the Royal Australian and New Zealand College of Radiologists (RANZCR) during the period 10 February 1998 to 31 May 1998. There being no minutes of the meetings, I am unable to table them.

In respect of part (iii) of the Senate order request for documents which relate to advice provided by the Department of Health and Aged Care to the Minister on the radiology agreement and the extension of a Medicare Rebate for MRI services, the Minister has indicated that he needs more time to review the documents requested in order to ensure that matters of public interest have been taken into account before the materials are released. On further examination of these documents there may be grounds for a claim of public interest immunity should the documents contain matters such as:

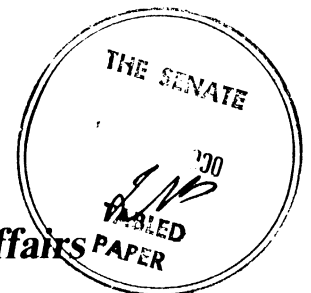
- opinion, advice and recommendations prepared for consideration by the Minister and the Government, the disclosure of which could prejudice the Government's relationship with the profession and could also be misleading as to the reasons for the decisions taken; and
- information about the affairs of radiologists and the College which may prejudice the Government's relationship with the profession and the future supply of information to the Government.

Following the review of these documents, the Minister expects to be in a position to release information related to part (iii) of the order by the end of the calendar year.

Yours sincerely

A handwritten signature in cursive script, appearing to read "John Herron". The signature is written in black ink and is positioned above the printed name.

SENATOR JOHN HERRON



Minister for Aboriginal and Torres Strait Islander Affairs

PARLIAMENT HOUSE
CANBERRA. A.C.T. 2600

Senator the Hon Margaret Reid
President of the Senate
Parliament House
CANBERRA ACT 2601

RECEIVED

12 JAN 2000

CLERK'S OFFICE

23 DEC 1999

Dear Senator Reid

I refer to the to Senate Order 164 of 21 October 1999, seeking material relating to the radiology agreement and the extension of the Medicare rebate for MRI services.

In my response of 29 November 1999 to the Clerk of the Senate, I indicated that the Minister for Health and Aged Care, the Hon Dr Wooldridge, was not prepared to disclose the documents requested in part (i) of the order, namely the dates on which MRI contracts were signed prior to the Budget announcement, for reasons related to the nature of the ongoing investigations being conducted by the Health Insurance Commission (HIC).

These investigations have now been largely completed and the HIC has provided the Minister with a report. This includes information on the week each contract in question was signed, with particular information for each day in the week prior to the Budget announcement. A copy of the report is attached.

I have previously advised that no minutes were kept of the relevant meetings and so no documents are able to be provided for part (ii) of the order.

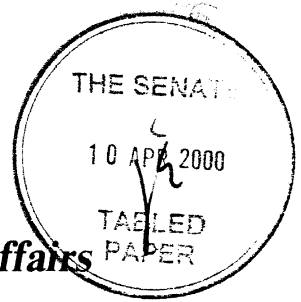
The Minister has advised me that he has not yet had the opportunity to complete the review of the material in part (iii) of the Senate Order, to ensure that matters of public interest have been taken into account before the materials are released. The Minister expects to complete the review in the very near future when he will provide me with the appropriate response that will be forwarded to you as soon as possible.

I trust this accords with the Senate's request.

Yours sincerely

SENATOR JOHN HERRON

opened JER.
9am
30-12-99



Minister for Aboriginal and Torres Strait Islander Affairs

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600

Senator S West
Acting President of the Senate
Parliament House
CANBERRA ACT 2600

10 APR 2000

Dear Acting President

I write in response to motion 528 passed earlier today by the Senate. As you are aware, the Senate has asked that all documents identified in part (c) of Senate Order 164 be produced by 6.30pm tonight and, if those documents are not produced, that the Senate Community Affairs Legislation Committee reconvene tomorrow to consider those issues.

I have discussed the production of documents with the Minister for Health and Aged Care, the Hon Dr Michael Wooldridge MP, who has advised me that he is still considering whether the documents should be released or whether there are issues of public interest immunity that must be raised in relation to those documents.

I have previously advised the Senate that all files and other materials requested under the Senate order have been made available to the Auditor-General to assist the Auditor-General in his inquiry into these matters. I understand that the Auditor-General has provided a draft of his report to the Minister and relevant parties and that there are statutory deadlines in which a response may be provided to that draft report. The Auditor-General's final report can therefore be expected to be released some time in May 2000 (the final timing is, of course, entirely in the hands of the Auditor-General). That would seem a more appropriate time for the Senate Community Affairs Legislation Committee to consider these matters.

I therefore wish to inform you that I am unable to provide any documents by 6.30pm on 10 April.

Yours sincerely

SENATOR JOHN HERRON

APPENDIX 4

ADVICES FROM MR HARRY EVANS, CLERK OF THE SENATE

- Mr Evans to Senator Chris Evans, dated 26 November 1999
- Mr Evans to Senator Chris Evans, dated 29 November 1999



AUSTRALIAN SENATE

PARLIAMENT HOUSE
CANBERRA A.C.T. 2600
TEL: (02) 6277 3350
FAX: (02) 6277 3199
E-mail: clerk.sen@aph.gov.au

CLERK OF THE SENATE

hc/let/12668

26 November 1999

Senator C. Evans
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Evans

MRI MATTER

You asked for a note on the ground put forward in answers to questions in the Senate for the withholding of information about the matter of purchases of magnetic resonance imaging machines.

The ground which has been suggested by the Minister representing the Minister for Health and Aged Care, Senator Herron, in answer to a question without notice on 23 November 1999, is that it would not be appropriate to provide information which is the subject of investigations by the Health Insurance Commission and the Auditor-General. The minister has not formally raised a claim of public interest immunity. The ground advanced by the minister would not provide a basis for such a claim. The fact that administrative inquiries are occurring into a matter, including an inquiry by the Auditor-General, has not been accepted by the Senate as a basis for declining to provide information to the Senate. The minister added that "the government would not want to compromise any of the investigations already under way", which is suggestive of a claim of public interest immunity on the ground of prejudice to inquiries, but this argument is not developed. I do not see how disclosure of information to the Senate could in any way compromise inquiries by the Commission or the Auditor-General. Presumably the minister is not suggesting that the Commission or the Auditor-General would be in any way influenced by the public disclosure of information which would be laid before them in the course of their inquiries in any event; such a suggestion would be absurd. Perhaps there is a suggestion that witnesses or persons who hold documents might be influenced in the evidence they give to the Commission or the Auditor-General, but such a suggestion is almost as implausible. In any event, the Senate has never accepted that administrative inquiries are entitled to the same degree of deference as proceedings before courts.

There was also a suggestion by the Minister for Health and Aged Care, in debate in the House of Representatives on 21 October 1999, that, as a result of inquiries by the Commission and the Auditor-General, matters may be referred to the Director of Public Prosecutions for consideration of legal proceedings. The Senate has in the past recognised that in some

circumstances Senate inquiries should not be pursued where matters are under consideration by law enforcement and prosecuting authorities, but has never conceded that the mere possibility of future proceedings is a ground for withholding information. Such a concession could never reasonably be made, because any administrative inquiry could be said to involve the possibility of future legal proceedings.

While it is for the Senate to decide whether a ground for non-disclosure of information should be accepted, there appears to be no basis at this stage for the information sought being withheld from the Senate.

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Harry Evans". The signature is fluid and cursive, with the first name "Harry" and the last name "Evans" clearly distinguishable.

(Harry Evans)



AUSTRALIAN SENATE

PARLIAMENT HOUSE
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E-mail: clerk.sen@aph.gov.au

CLERK OF THE SENATE

hj/5008

29 November 1999

Senator Chris Evans
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Evans

MRI MATTER — LETTER FROM SENATOR HERRON

You asked for advice on the letter of today's date from Senator Herron concerning the order of the Senate of 21 October 1999 for documents relating to the magnetic resonance imaging machines matter.

Before proceeding to the minister's letter, I reiterate the observation I made in the letter, also of today's date, to the minister, that the questions referred to in my letter to you of 26 November 1999 are not questions of law, and nor does the minister's letter refer to questions of law. Contrary to the minister's suggestion in his answer to your question at question time today, the status of being called a lawyer is irrelevant to any advice which may be provided on this matter. Moreover, as the Committee of Privileges has indicated in several of its reports, for questions of law persons called lawyers are often not the soundest advisers in any event.

The first substantive observation of the minister's letter, in paragraph 4, is that "files and other materials requested under the Senate order have been made available to the Auditor-General in order to assist in his inquiry". The letter does not explain the significance of this observation. Perhaps it is intended to suggest that originals of documents cannot be provided to the Senate because they are in the possession of the Auditor-General, but the letter does not say so. If the minister intends to convey that this is a problem, it can be overcome very simply by providing copies of the documents to the Senate. The Senate has in the past accepted copies of documents in response to its orders for documents.

The minister then states that "a number of cases have now been referred to the Director of Public Prosecutions". Again the letter does not draw any conclusion from this observation. If the minister intends to imply that publication of documents might in some way inhibit the consideration of them by the Director of Public Prosecutions, the letter does not say so. It is difficult to consider grounds for the non-production of documents if they are not explicitly stated. Such a suggestion would be highly implausible and a reflection on the capacity of the Director of Public Prosecutions.

The next substantive observation is in paragraph 6 of the minister's letter and relates to the information required by sub-paragraph (b)(i) of the Senate's order. The minister states that this information is not to be produced "for reasons relating to the nature of the ongoing investigations being conducted by the Health Insurance Commission", and that "to release the information relating to investigations may compromise the HIC process". It is not explained how the provision of this information to the Senate could compromise the investigations by the Health Insurance Commission. Why would the provision of information about dates of contracts in any way inhibit the Commission in any consideration of those contracts as part of its investigations? As I indicated in my earlier letter, prejudice to administrative inquiries has not been accepted as a ground for withholding information from the Senate, but even if it were the minister has not explained how any prejudice to the Commission's inquiry could occur by the mere disclosure of dates of contracts to the Senate. Surely the Commission is not such a feeble body that its inquiry would collapse if the Senate were provided with some information which the Commission is also to consider. This ground raised by the minister requires explanation at least, but I cannot see how any explanation could justify it.

In relation to the documents required under sub-paragraph (b)(ii) of the Senate's order, the minister states in paragraph 7 of his letter that the documents do not exist. That statement, if correct, disposes of that part of the order.

In relation to sub-paragraph (b)(iii) of the order, the minister states in paragraph 8 of his letter that the documents are to be examined to determine whether there may be grounds for a claim of public interest immunity. Three possible grounds are suggested:

- "the Government's relationship with the profession and the future supply of information to the Government" could be prejudiced
- disclosure of the information "could also be misleading as to the reasons for the decisions taken"
- the information includes information about "affairs of radiologists and the College".

I do not know what the first two grounds mean. They are new grounds for a claim of public interest immunity. As I have indicated in earlier advice, it is for the Senate to determine whether it will accept any ground for a claim of public interest immunity, but new, unexplained and obscure grounds seem to be multiplying. I think that the minister should be invited to explain what these new grounds mean. Does the government's relationship with radiologists depend upon secret transactions? If the information would mislead as to reasons for decisions, is not the remedy full disclosure of all relevant information?

The third ground may be an attempt to suggest that disclosure of the information would violate the privacy of radiologists and the College. Again the minister's letter does not explicitly say this. Breach of privacy of individuals is an established ground for a claim of public interest immunity, which of course needs to be justified in particular circumstances, but apart from that justification it needs to be explicitly stated.

I can only reiterate my earlier advice: while it is for the Senate to determine whether any ground for a claim of public interest immunity is sustained, such grounds have not yet been made out in relation to this matter, largely because they have not been explained.

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Harry Evans', with a stylized, cursive script.

(Harry Evans)

APPENDIX 5

DOCUMENTS TABLED AT HEARING ON 11 APRIL 2000

1. The Hon Dr Michael Wooldridge, Minister for Health and Aged Care to Mr Pat Barrett AM, Auditor-General, dated 18 October 1999
2. Mr Barrett to Dr Wooldridge, dated 5 November 1999
3. Dr Wooldridge to Professor Michael Sage, President, The Royal Australasian College of Radiologists, dated 12 May 1998
4. Dr John Earwaker, A/President, The Royal Australasian College of Radiologists, dated 15 May 1998

① TABLED AT HEARING

11.4.00

The Hon Dr Michael Wooldridge
Minister for Health and Aged Care

18 October 1999

Mr Pat Barrett AM
Auditor-General
Centenary House
19 National Circuit
BARTON ACT 2600

Dear Mr Barrett

I am writing to ask you to inquire into and report on the probity of the processes surrounding the negotiation of the agreement between the Government and the diagnostic imaging profession covering the period 1998-99 to 2000-01 announced in the 1998 Budget on 12 May 1998. I would like you to focus especially on those aspects of the agreement leading to the introduction of Magnetic Resonance Imaging (MRI) to the Medicare Benefits Schedule (MBS).

MRI is a relatively new scanning technology. In 1997 the Australian Health Technology Advisory Committee (AHTAC) released a review of MRI that among other things recommended extension of MBS benefits to MRI services.

Although government funding had until that time been limited to 18 MRI units in public teaching hospitals, there were 62 MRI units operating in Australia at the time of the AHTAC review. Those operating outside public hospitals were funded from a variety of sources including direct charges to patients.

Following the AHTAC review the Government decided that there was a clear need to make MRI services more accessible to patients at a reasonable cost to the Government. To facilitate this, the Government entered into negotiations with the Royal Australian and New Zealand College of Radiologists (RANZCR) to reach an agreement to manage the orderly introduction of MRI in the context of a capped funding agreement covering all diagnostic imaging services. While the negotiations were of a confidential nature, it was recognised that formal confidentiality agreements for the College's negotiators would be inappropriate because of their need to consult the College membership more widely on aspects of the agreement.

The Government informed the College that while it intended to extend access to the MBS to MRI services, it would only do so in the context of a supply-side measure that would constrain growth in benefits. However, as prior knowledge of the details of the supply-side measure – limiting access to the MBS to service provided to machines in place or on order before the Budget – would have been advantageous to those radiologists with access to that knowledge, the measure was not discussed in the negotiations.

- 2 -

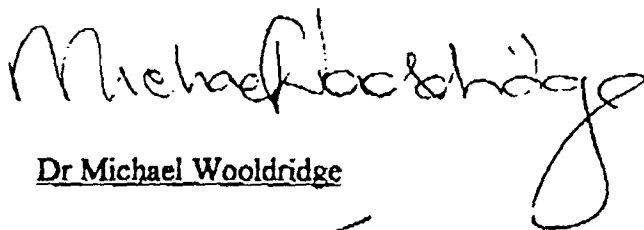
An agreement was reached with RANZCR on all elements except the supply-side measure just before the 1998 Budget. The supply-side measure, introduced by regulation, was announced as part of the Budget.

Under the regulation operators seeking to have services provided on their machines covered by Medicare were required to notify the Health Insurance Commission by 11 October 1999 of the details of the machines. The Commission has now been notified of 111 machines, 59 of which were in place on Budget night and 52 of which are were claimed to have been on order at that time.

There have subsequently been a number of accusations that those persons placing orders for machines in the period preceding the Budget had access to information about the particular measure to be announced in the Budget. I would like you to focus your inquiry upon these accusations and the probity surrounding the processes leading to the introduction of MRI to the MBS.

As you would appreciate, there is a significant dilemma facing Governments in negotiating agreements such as the diagnostic imaging agreement with professional organisations. It is difficult to negotiate agreements around potentially commercially sensitive issues without revealing information that could be advantageous to some members of the group. I would welcome any observations you may have about how similar processes might best be handled in the future.

Yours sincerely

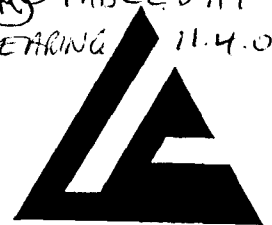


Dr Michael Wooldridge

HF - DT
MW - MW

TABLED AT HEARING 11.4.00

Diagnostic



Australian National Audit Office

RECEIVED
- 9 NOV 1999
Parliamentary Section

AUDIT-IN-CONFIDENCE

5 November 1999

The Hon Dr Michael Wooldridge, MP
Minister for Health and Aged Care
Parliament House
CANBERRA ACT 2600

Minister for Health and Aged Care
 M9901360A

Secretary	
Chief Clerk	
Principal Clerk	
Administrative Clerk	
Parliamentary Clerk	

27/11
FAXE
5/11/99

Dear Minister

I refer to earlier correspondence concerning an audit of the probity of the processes surrounding the negotiation of the agreement between the Government and the diagnostic imaging profession announced in the 1998 Budget.

My officers have now undertaken a preliminary assessment of the issues involved to determine the scope and objectives of the audit. My intention is to undertake an audit under section 18 of the Auditor-General Act (the Act) with the objectives of examining and reporting on the effectiveness and probity of the processes involved in:

- (a) the development and announcement of the proposal to improve access to Magnetic Resonance Imaging (MRI) services announced in the 1998 Budget, including negotiation with the diagnostic imaging profession; and
- (b) the registration of 'eligible providers' and 'eligible equipment' to enable the payment of claims for MRI services on the Medicare Benefits Schedule in relation to these services, and related administrative and monitoring arrangements.

The examination will include an assessment of the:

- adequacy and timeliness of advice provided to the Minister for Health and Aged Care by his Department and the Health Insurance Commission, including advice in respect of the identification and treatment of risks;
- adequacy of the protection of sensitive budget information in the period leading to the Budget announcement, including steps taken to avoid conflict of interest;
- adequacy and timeliness of actions taken by the Department and the Health Insurance Commission in response to indications of unanticipated or inappropriate MRI submissions; and
- scope to improve administrative processes surrounding the Budget development and advice processes involving potentially commercially sensitive information of this kind.

The audit will not focus or report on individual cases of potential fraud. These are matters for the Health Insurance Commission, the Australian Federal Police and the Director of Public Prosecutions. Equally, matters of any individual breaches of budget confidentiality are matters primarily for the Australian Federal Police.

As you would be aware, my powers are not those of a Royal Commission. As indicated above, the audit will be undertaken pursuant to section 18 of the Act which enables me to invoke the information gathering and access powers under sections 32 and 33 of the Act.

The section 18 audit's primary focus will be the administration of relevant Commonwealth agencies and will also include a review of the involvement of your office in so far as this is relevant to the audit objectives. The audit will also involve as appropriate, discussions with, and access to relevant information and records held by, third parties including professional organisations, individual members of the diagnostic imaging profession and industry suppliers.

I appreciate that you have informed Parliament that you are happy to cooperate in all ways with the Auditor-General. We have received legal advice on how best this could be achieved and this advice suggests that there would be merit in extending the section 18 audit by entering into an agreement with you pursuant to section 20 of the Act. An audit under section 20 of the Act would put beyond doubt my legal authority to review the role of you and your staff in the matters to be examined.

I would therefore like to raise with you the possibility of formalising the cooperative arrangements by entering into an agreement pursuant to section 20 of the Act. These arrangements would be made under sub-section 20(1)(b) of the Act and cover your role and that of your office. An agreement under section 20 of the Act will provide the Auditor-General and authorised officials with the necessary authority to access all relevant information and records and review all matters as far as they are relevant to the ANAO's examination of the issue. The objectives of this audit will be to examine and report on the effectiveness and probity of your role, and that of your office, in relation to the matters set out in (a) and (b) above.

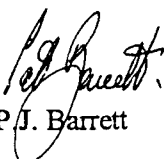
The Auditor-General and authorised officials will require full and free access to relevant records and information held by yourself and your office, and will necessarily involve discussions with yourself and relevant members of your staff. It may be necessary for my staff to request that the information obtained or answers to questions given be verified or given on oath or affirmation. This will ultimately be a matter for decision by me.

This latter work will be done in tandem with the performance audit to be conducted under section 18 of the Act. The audit report on this aspect will be incorporated into the audit report to be conducted under section 18, which will be tabled in the Parliament as required by the Act.

It would be appreciated if you could confirm your agreement to the above arrangements in respect of a section 20 audit at the earliest opportunity. My officers would be happy to discuss this matter with you or your staff. The relevant contact officer is Mr John Meert, Group Executive Director (ph: 02-6203 7360). I would, of course, be happy to talk with you if you consider that necessary.

Regarding the timing of the audit, at this stage we aim to complete our inquiries to enable a report to be tabled by April 2000. This timetable is dependent on the availability and timely cooperation of all parties involved. In the latter respect, I particularly appreciate your statement to the Parliament.

Yours sincerely



P.J. Barrett

The Hon Dr Michael Wooldridge
Minister for Health and Family Services
Professor M. Sage
President
The Royal Australasian College
of Radiologists
Level 9
51 Drutt Street
SYDNEY NSW 2000

Dear Professor Sage

I am writing to advise you of key Budget decisions made by the Government in relation to diagnostic imaging.

As part of its 1998-99 Budget, the Government has endorsed the partnership agreement the College has negotiated with the Government for a three year program to improve Australians' access to magnetic resonance imaging (MRI) services and to better manage growth in overall diagnostic imaging outlays under the Medicare benefits arrangements over the period, 1998-99 to 2000-01.

Improved access to MRI services will be achieved through a new and expanded three year funding and delivery program. Government funding for MRI services will be expanded significantly from \$19.8 million to \$49.3 million in 1998-99. In the following two years, funding will increase from \$20.3 million to \$56.7 million and from \$20.6 million to \$59.5 million. This expansion in services is in line with the recommendations of the Australian Health Technology Advisory Committee (AHTAC).

The Government's funding of MRI services will move to the provision of Medicare benefits with a series of measures to ensure quality, appropriate and cost effective use and practice, and manage costs to Government and the taxpayer.

MRI services will continue to be a service requiring a referral from a specialist medical practitioner and the range of services to be funded will be in line with AHTAC's advice on where MRI has a proven clinical role. New clinical applications of MRI beyond those advised by AHTAC to have a proven clinical role will require assessment of the evidence under the new Medicare Services Advisory Committee (MSAC) arrangements prior to any consideration of funding.

As you are aware, AHTAC found that excess MRI capacity exists in Australia with services not always in ideal locations. In response to this advice, the Government has decided on a number of measures. In order to attract Medicare benefits, services must be provided with equipment which is in use in hospitals or practices at 7.30 pm EST on Tuesday, 12 May 1998. This requirement will be relaxed to allow Medicare benefits to be paid for services provided with equipment which has been either ordered or leased under an unconditional and enforceable contract at 7.30pm EST on Tuesday, 12 May 1998 but are still to be delivered at that time. As well, providers may need to satisfy other eligibility criteria such as siting and accreditation/quality assurance system requirements, as recommended by AHTAC.

Also, an Adjustment and Relocation Scheme is being considered to look at ways to encourage the relocation of MRI services to under serviced regions. This will be discussed with the College. Its aim is to assist in sectoral adjustment to the new arrangements and ensure best possible patient access outcomes.

These arrangements will be monitored closely and reviewed after an initial 18 months. They expand significantly the range of services funded from the existing 18 public hospital MRI units to some 60 Australia wide, give greater choice and assure quality while continuing a managed approach to the funding and delivery of this specialised medical service.

There will also be additional funding for MRI-related anaesthesia services under the Medicare benefits arrangements.

The new arrangements for MRI services will commence on 1 September 1998.

An information package on the new arrangements and how they work will be available prior to their commencement on 1 September 1998.

The partnership agreement also provides for better management of overall diagnostic imaging expenditure under the Medicare benefits arrangements. As part of this partnership, the College has agreed to better manage diagnostic imaging expenditure by working within agreed annual growth rate targets of 7 per cent, 6 per cent and 5 per cent for each of the three years, 1998-99 to 2000-01 using the 1997-98 actual expenditure outcome as the base.

This involves on-going co-operation to manage expenditure with adjustments made as necessary to operate within the agreed parameters. There is also provision for renegotiation in light of significant changes including emergence of significant new tests and diseases or significant changes in economic circumstances.

The partnership agreement also comprises a number of reinforcing measures which address inappropriate diagnostic imaging use and practice, the better management of demand and the development of a stronger evidence base on the role, value and place of diagnostic imaging services in patient care.

Implementation of the package will be managed through existing consultative mechanisms established to implement, monitor and review the 1996-97 Diagnostic Imaging Savings/Reform package.

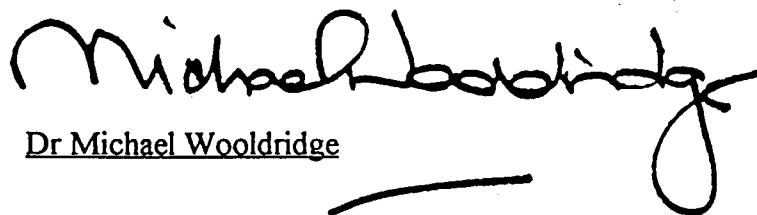
It has been estimated that the package will result in savings on projected expenditure estimates of \$80.2 million over the four years.

In the Budget papers, the funding arrangements for this package appear in a number of appropriations. This was due to tight timelines for finalisation of Budget documentation. This presentation will be adjusted to reflect the final nature of the partnership agreement. I have asked my Department to liaise closely with you on these issues.

I would like to thank the College for working constructively with the Government on the development of strategies for addressing the diagnostic imaging area. The College is to be congratulated on the partnership agreement negotiated with Government for this Budget. It addresses problems and deficiencies in the current funding and delivery arrangements for MRI services and persistent high underlying growth rates in diagnostic imaging under the Medicare Benefits Scheme. It builds on previous co-operative initiatives, gives greater certainty to Government and the profession, and demonstrates the capacity to reform within the fee-for-service arrangements of Medicare.

I would appreciate it if you would advise your College membership of these outcomes.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael Wooldridge". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dr Michael Wooldridge

12 MAY 1998

HB-DT
M

DRAFT - CONFIDENTIAL
④ TABLED AT HEARING 11.4.00

Minister for Health and Family Services	
M9807653	
19 MAY 1998	
Signatory Minister Chief of Staff Principal Adviser Min Fam Serv Parl Secretary	Department Response Approp Action Phone Call Information Campaign



The Royal Australasian College of Radiologists

The Honourable Dr Michael Wooldridge
Minister for Health and Family Services
Parliament House
CANBERRA ACT 2600

DET SEARCH
Mr. Remy Rogers
As discussed
22/05

RECEIVED
25 MAY 1998
Parliamentary Section

Dear Minister

Agreement for the Expansion of Funding for Magnetic Resonance Imaging

Thank you for your letter of 13 May, which set out in some detail the circumstances under which the Government has decided to expand public funding for MRI in line with the recent AHTAC Report.

The College believes that this agreement, which establishes MRI as an item on the Medical Benefits Schedule, is a significant initiative which will have a positive impact on the health care provision throughout the Australian community. It also represents the culmination of a productive dialogue between College representatives and senior officers of your Department.

The agreement has been endorsed by the College Council with several reservations, which were communicated to you by the President, Professor Sage and Acting-Chairman of the Diagnostic Economic Standing Committee, Dr Carr, at your meeting last week. These reservations relate to the proposed control by site limitation and the impact of MRI funding upon the diagnostic imaging schedule which will result from an insufficient proposed number of funded MR scans.

The final draft of the proposal, which forms the basis of the partnership agreement to which you refer to in your letter, is enclosed. This document details the financial structure of the new arrangements and also sets out the responsibilities and risks to be assumed by each party.

The core elements of the program, upon which the College Council's acceptance was based, are -

- global diagnostic imaging Medicare outlays will grow at 7%, 6%, and 5% pa over the next 3 years respectively commencing 1 July 1998;
- the existing Health Program Grants for MRI will cease on 31 August 1998 and will be replaced by a modified listing of MRI in the MBS from 1 September;
- funds directed currently to the Health Program Grants (HPGs) will be re-allocated to partially underwrite the new MRI arrangements;

- the annual budgeted "HPG allocations" will be added to the prior year's outlays aggregate target to create a grossed-up base to which the agreed growth percentage will be applied. Budgeted HPG funds for the next 3 years are deemed to be \$20M, \$20M, and \$21M for the purposes of this grossing-up process. There will be a pro-rata adjustment in 1998-99 to recognise the 1 September commencement;
- the expansion program allows for funding to a limit of 403,000 MRI scans over a full 3 year period in keeping with community need identified by AHTAC. Additional services above this number will require additional Commonwealth funding unless the capped aggregate is breached by inappropriate practices;
- the cost of providing an aggregate of 403,000 MRI scans is calculated to be \$164M. The MBS fee for the test will be \$475.00 for the first 2 years and will increase to \$529.00 in year 3, to more closely approximate provider cost recovery and thus facilitate appropriate maintenance of the installed base of plant and equipment;
- cost of the MRI program is to be underwritten by technology substitution and active management of global diagnostic imaging outlays within the growth targets, in addition to the HPG re-allocation;
- MRI funding will be targeted to clinical need throughout the community through a range of mechanisms including specific clinical indicators, specialist-only referral and other strategies which may be initiated by the Government to manage the supply-demand balance in line with the expectations of the AHTAC Report;
- diagnostic imaging outlays will be monitored and managed co-operatively through the CCDI. Growth targets will be quarantined from influences beyond the control of the CCDI, including State to Medicare cost-shifting and self-referral;
- the partnership agreement allows for the re-negotiation of growth targets in a number of unforeseen circumstances which might otherwise adversely prejudice the continuing delivery of high quality services to the community; and
- the RACR will accredit MRI sites on the basis of quality assurance. All RACR-accredited sites will be considered by the Government for eligibility to provide funded MRI services under the Medicare scheme.

On behalf of the broad Fellowship of the College, I express the College's appreciation to both yourself and to your senior advisers for the very positive way the MRI issue has been dealt with. This has undoubtedly underpinned the co-operative development of a global policy framework designed to meet the reasonable expectations of the community at large, the Government and the profession.

This letter constitutes the College's formal acceptance of the partnership arrangement as detailed above and in the attached document.

Yours sincerely



Dr John Earwaker
A/President

15 May 1998