

CHAPTER 11: OVERSEAS CONDITIONS OF SERVICE AND THEIR IMPLICATIONS FOR EFFICIENCY AND EFFECTIVENESS: SPECIFIC CONDITIONS OF SERVICE ISSUES

11.1 As well as the issue of the institutional framework for the setting and administration of overseas conditions of service, the Committee received evidence on several specific conditions of service issues. These included overseas living allowance, spouses' entitlements, representation funds, payments to domestic staff, senior executive cars and the entitlement to purchase cars free of duty during overseas postings.

Overseas living allowance

11.2 The centrepiece of the overseas conditions package is the Overseas Living Allowance (OLA). All Australia-based personnel, both civilian and Australian Defence Force members, who are posted overseas are paid OLA. Its function is to maintain the purchasing power of an officer's disposable salary by indexing it to costs at the overseas post. OLA also compensates for any additional costs associated with living overseas. The allowance reflects each officer's individual circumstances in relation to salary, length of overseas service, posting circumstances, family circumstances and post conditions.

11.3 The Committee heard no complaints about the general adequacy of allowance levels. DFAT told the Committee in its initial written submission:

The prosaic truth is that officers serving overseas live neither a penurious nor a luxurious life (Evidence, p. S73).

Since the underlying philosophy of the overseas conditions of service structure is "to determine conditions overseas which reflect employment conditions and standards of living in Australia and which compensate for the additional costs that staff incur in undertaking duty overseas" (Evidence, p. S544), it would appear that the levels of OLA are appropriate.

11.4 This is not to say, however, that there are not problems with OLA. All parties heard by the Committee commented on the complexity of the current overseas conditions package. DFAT and several other witnesses raised with the Committee their concerns about complexity, with DFAT also complaining about the administrative demands on its officers as a result of the need to collect price data and in managing allowance payments. Even DIR conceded that while the concept of OLA is simple, its "practical working out is, in some ways, complex" (Evidence, p. S546). In its initial written submission, DFAT commented:

the current system requires considerable duplication of effort in the collection of data and is characterised by a lack of transparency in the methodology involved. The methodology is, moreover, complex

and difficult to understand. The overall result is a resource intensive and overly complicated process (Evidence, p. S75).

11.5 FATA referred to the system of setting overseas conditions generally as "complex beyond description, mathematical or otherwise. Its methods of calculation are opaque" (Evidence, p. 123). The FSFA described the whole conditions structure as "cumbersome, opaque, very difficult to understand" (Evidence, p. 139). Concerns about OLA were prominent in the list of complaints of both bodies.

11.6 The issue of transparency is important. DFAT's Deputy Secretary, Geoff Forrester, stressed to the Committee the importance of OLA being based on data that "has credibility in the eyes of the organisation and staff ... [to] save a lot of unnecessary argumentation and dispute" (Evidence, p. 414). However, the present system does appear to be an improvement in that regard on its immediate predecessor.

11.7 Deficiencies in the OLA system applying in the late 1980s contributed to major industrial action by PSU members in 1990. DIR told the Committee that in December 1990 this led to "a number of changes which generally enhanced OLA..., although the basic structure remained unchanged" (Evidence, p. S546). DIR added that:

Whilst...changes [over the last three years] undoubtedly improved the situation of staff serving overseas, the possibility of achieving a simpler and more easily understood overseas allowance scheme needs to be pursued. The Department's current study on the feasibility of using external price information sources provides a starting point in this area (Evidence, p. 164).

11.8 Reform of OLA appears to be a recurring theme in the management of overseas conditions. The Committee heard from David Barritt-Eyles, Senior Assistant Secretary, Human Resources, Department of Defence, who had been head of the Overseas Branch of the Public Service Board when the OLA system was changed to the present index-based system. He told the Committee that that change from a budget-based system "which had the appearance of a black box calculation" (Evidence, p. 408) was made because of criticisms that the old system could not be understood. Mr Barritt-Eyles noted the complexity of the current cost of living index and observed that, with the new calls for simplicity, "we appear to have gone full circle in the last 10 years" (Evidence, p. 186).

11.9 It is understandable that there should be a cycle in the changes to OLA. There are only three broad approaches to reimbursement of excess costs incurred by employees in the course of their work:

- . specific reimbursement of all individual additional costs;
- . provision of standard periodic payments from which officers are expected to meet all the additional expenses; or

. a combination of the two.

The OLA system falls into the last category for good reason. A system of specific reimbursement of additional costs, although equitable, implies a very heavy administrative workload. It is unlikely that it would be cost-effective for the Australian Government, with more than 2000 officers posted overseas, to move to such a system. Reimbursement through regular, standard payments greatly reduces the administrative burden but at the cost of some equity and by creating the difficult problem of establishing rules for setting the amount of the periodic payment. Although manageable when the number of officers posted is small, this problem becomes very significant in an operation as large as Australia's overseas representation.

11.10 Dr Peter Rogers, a private sector expert on overseas conditions, told the Committee that private firms are more inclined to standardise their overseas service packages as the scale of their overseas representation increases (Evidence, pp. 392-3). OLA is a standardising approach and the compromise involved in it appears the only viable course for the Australian Public Service. This does not mean, however, that the present compromise cannot be improved upon. The Committee accepts the evidence presented to it to the effect that OLA is still complex and lacking in transparency to some degree. Although an improvement on its immediate predecessor, OLA could be further improved.

11.11 The Committee was told that DIR has recently taken measures in two areas to improve the OLA system. First, DIR informed the Committee in November 1992 that it had engaged the services of Employment Conditions Abroad Ltd (ECA), Dr Rogers's company, to provide it with world-wide cost of living data as a basis for the calculation of OLA. DIR stated that the use of ECA data for OLA calculations would result in:

- . an impartial source of pricing for the calculation of allowances;
- . a reduced need for detailed scrutiny and validation of prices;
- . the application of a shorter, simpler price regimen;
- . more effective overseas visits by DIR/DFAT inspection teams because of the greatly reduced emphasis on pricing as a component of the visits; and
- . savings in staff time for DIR and agencies, and for staff at many overseas posts (Evidence, p. S1279).

ECA provides a similar service for many Australian companies with staff overseas and is linked to a British firm which provides similar services. It therefore has long-established data sources and techniques for collecting price information. A condition of membership of ECA is that the member organisation's staff assist in the collection of price data but, since Australian Government employees overseas were required to do that under the previous system, there will be no additional effort required and, it

can be presumed, some reduction in effort as the workload will be shared across ECA's full membership.

11.12 The second recent major change flows from DIR's devolutionary initiatives. In its final written submission, DIR told the Committee that devolution to agencies of responsibility for reimbursing certain costs that are currently met through OLA or through various post-specific provisions will produce a simpler, more transparent overseas conditions package.

11.13 The Committee noted also that DIR has increased its efforts to ensure that officers posted overseas are aware of their entitlements. One example of this approach which was shown to the Committee was a videotape and accompanying booklet on OLA which provides an accessible overview of the allowance.

11.14 The Committee endorses the steps already taken to simplify and make more transparent the OLA system. It received no evidence suggestive of scope for any other major reforms to the system and can only urge that DIR continue to seek opportunities to simplify and open up the system to the maximum extent possible. The Committee notes that DIR has considered the possibility of undertaking an evaluation of the system towards the end of 1992 (Evidence, p. 746) and sees some value in the Department doing so.

11.15 The Committee acknowledges that DIR has responded positively to the major complaints raised before the Committee. Clearly, there will always be friction between the parties over the quantum of the conditions themselves but, if the calculation processes are comprehensive and comprehensible and the processes transparent, the scope for officer dissatisfaction is minimised, which can only have favourable implications for such OOAs as DFAT.

Spouses' entitlements

11.16 A major and recurring theme in the evidence was the inadequate recognition by the Australian Government of the contribution made by spouses of DFAT officers. For example, FATA referred to "a significant body of people who feel that their needs are not being adequately met...the spouses of officers" (Evidence p. 123), while FSFA complained of DIR's slowness "to respond to the changing needs of our members in the context of the profound changes in Australian society...[conditions are] based on a 1958 standard of the nuclear family" (Evidence, p. 139). FSFA further commented:

In the past, spouses of DFAT officers have made enormous contributions to the successful performance of overseas missions. Because these contributions cannot be quantified in hard numerical terms, they have been under-valued and their worth discounted (Evidence, p. S320).

11.17 The Association claimed that the government was frequently getting two employees for the price of one (Evidence p. 140) and it went on to say that 'in the

"user-pays" society there is an erosion of spouses' willingness to fill in the gaps as they used to' (Evidence, p. S320). In oral evidence, the Association alluded to an attitude persisting at posts that spouses ought to contribute (Evidence, p. 148). The Public Sector Union similarly referred to "[f]amily life in Australia now is quite different to what it was, say, 20 years ago" in the context of conditions not reflecting current societal developments (Evidence, p. 105).

11.18 The importance of spouses to effective diplomatic representation and the stresses they face as a result of postings are very common themes in the diplomatic memoirs. Sir Keith Waller, for example, who was Secretary to DFA from 1969 to 1974, commented on the role of the foreign service wife (after expressing the view that women who want a foreign service career should "in the nature of things" decide not to marry):

a foreign service officer can be aided very greatly by the help and support that he gets from his wife. If she is a good hostess, she can often overcome the disadvantages of her husband. She can make the Embassy or the second secretary's house, whatever it is, a place to which the nationals of the country in which they are stationed come in cheerfully and feel that they are having an enjoyable experience.

Waller also commented:

When an officer is posted he leaves a desk in Canberra and goes to Singapore; he's immediately put behind another desk there, it has an 'In' and an 'Out' tray, there's a secretary or stenographer, and he goes on automatically doing the sort of things he did in Canberra. In other words his working conditions are generally taken care of. But his living conditions are an entirely different thing, and these impose an immense burden on the wives (Waller 1990, p. 26).

11.19 One important change from Waller's era is that there is now a significant number of male spouses (Evidence, p. 138). There remains, however, a high degree of agreement in the evidence presented to the Committee with Waller's two basic points: that spouses contribute in a material way to diplomatic activities and the lot of the foreign service spouse is difficult.

11.20 In almost all cases, the spouse is required by the nature of a rotational foreign service, to give up or severely curtail an independent career (Evidence, pp. S242, S329). Related concerns expressed to the Committee were the frequent loss of a second income during postings and the loss to spouses of potential superannuation benefits which would otherwise have been obtainable from their employment (Evidence, pp. S242, S328, 124, 145). Several minor problems relating to entitlements on posting were also raised: there is no compensation for losses incurred on the sale of a second car, Australian family allowance entitlement ceases after three years overseas, there is no provision for assistance with expenses related to post-secondary dependent children, there are difficulties associated with renewing membership of private medical insurance funds on return to Australia, and reunion entitlements in

respect of blended families are inadequate (Evidence, pp. S330-334). Lifestyle problems, which tend to be stressed in the memoirs of retired diplomats, were less to the fore in the Committee's evidence, probably reflecting changes in social attitudes, but some such problems were raised (Evidence, pp. S242, S337-68).

11.21 DFAT has recognised the difficulties it faces in this area. The Harris Report on overseas representation, commissioned by the second last Secretary to the Department and issued in his name, commented:

Most overseas services face the same problem. Some have introduced special allowances or payments for services in various forms. In Australia, a number of ameliorating steps have reduced some of the worst features of past experience for spouses and provided some limited expansion of opportunities. Despite the obvious problem of spouse allowances in some form, this nettle will, in due course, need to be grasped (Harris 1988, p. 40).

Mr Woolcott, in his opening address to the Committee, referred to "the serious problem faced by spouses overseas ... many make a dedicated and unpaid contribution to the representation of this country which, in my view, is rarely recognised" (Evidence, p. 14).

11.22 Similar problems are also acknowledged in the private sector. A September 1992 report on expatriate employment by the Arthur Andersen accounting firm commented:

We believe, however, that the issue of spousal income and in particular dual income and career couples will become a significant issue in future expatriate transfers (Arthur Andersen 1992).

Nor is the problem unique to expatriates. As Mr Barritt-Eyles pointed out to the Committee, many of the problems faced by DFAT spouses apply equally to the spouses of ADF personnel on frequent posting within Australia and "this is a major problem and a growing one" (Evidence, p. 187).

11.23 DFAT has taken "ameliorating steps" of the type referred to by Professor Harris, including:

- . the appointment of a Family Liaison Officer in Canberra and the appointment of Community Liaison Officers from among the spouses at 16 of the largest or key posts;
- . payments to spouses from Representation Allowance for their involvement in organising representational functions;
- . training courses organised by the Department (Evidence, pp. S503; S1213);
- . negotiation of reciprocal employment agreements with some countries; and

. access by spouses for locally engaged staff (LES) positions at posts on merit.

11.24 Various additional measures to benefit spouses were suggested in evidence. These included:

- . payment of a spouse allowance in recognition of the spouses' contribution and, in return, establish an obligation on those accepting it to contribute to Australian diplomacy (Evidence, p. 743);
- . providing access by all spouses to the Public Service Superannuation scheme (Evidence, p. 124);
- . allowing spouses who are currently members of a Commonwealth Government superannuation scheme to continue to contribute to the scheme while on leave without pay (Evidence, p. S503);
- . providing a guarantee of leave without pay to spouses who are Commonwealth Government employees to accompany officers posted overseas (Evidence, pp. 740-1);
- . more aggressively pursuing reciprocal employment agreements with other countries (Evidence, p. 124);
- . abolishing rent and utility contributions for officers who maintain a residence in Australia for dependent children in post-secondary education (Evidence, pp. 124-5);
- . increased funding for health, security and welfare of posted officers and their families (Evidence, p. S317);
- . improving the quality of information on posts that is available to spouses and improve their opportunities for access to it (Evidence, pp. S323-8);
- . paying the family component of Overseas Living Allowance directly to spouses (Evidence, p. S329);
- . improving the access of spouses to employment as LES (some countries give spouses preference, Australia requires them to compete on merit) (Evidence, p. S504); and
- . covering medical costs incurred during transition periods when officers rejoin private health funds on their return to Australia (Evidence, pp. S331-2).

11.25 Some of these proposals would have relatively minor cost and appear amenable to a simple solution. To institute a right to leave without pay to accompany a spouse on an overseas posting, for example, would merely make mandatory what is now a common and sensible practice. It would have no cost implications but would remove one possible cause of uncertainty and occasional dispute. Other proposals

could have major significance. Allowing unlimited access by spouses to a public service superannuation scheme regardless of whether they are public servants, for example, would have very large cost implications. It would also be contrary to the underlying philosophy of superannuation, which is a benefit related to employment.

11.26 DIR and DFAT informed the Committee of recent measures that have been taken to meet some of these concerns. DFAT has now asked the Public Service Commissioner to amend the APS leave provisions so that a member of the Australian Public Service seeking leave without pay to accompany a spouse on an overseas posting is entitled to the leave as of right (Evidence, pp. 757-8). Senator Evans has written to the Minister for Finance on the possibility of spouses who are members of the APS being permitted to continue contributing to the any public service superannuation scheme of which they are members while they are on leave without pay (Evidence, p. 758). An agreement has been reached between DIR and DFAT to remit rent and utilities contributions where officers are required to maintain a household in Australia for any dependent family member. However, this condition has not yet been implemented because negotiations have to be completed with the Department of Finance about supplementary funding (Evidence, pp. 753-4). **The Committee recommends that the Government expedite the consideration of the proposals for:**

- . **a right to leave without pay so that a spouse can accompany an officer on posting;**
- . **a right for a spouse on leave without pay to continue contributing to an Australian Government superannuation scheme; and**
- . **remission of rent and utility contributions if an officer is required to maintain a household in Australia for a dependent family member;**

and inform the Parliament of the decisions in each case in its response to this report.

11.27 Three of the other matters raised by various witnesses appear amenable to early resolution. In particular, DFAT's performance in negotiating reciprocal employment agreements with other countries has fallen short of that of some other countries. These agreements permit the dependants of Australian Government officers overseas to work in the host country subject to a similar entitlement being available in Australia to dependants of host country officials. The Committee was told that Australia has negotiated only five or six reciprocal agreements with host countries compared to Britain's achievement in negotiating 23 such agreements (Evidence, pp. 146, S839). The proposal that the family component of OLA be paid directly to spouses would have minimal cost implications and would represent a recognition of the role of spouses. The present information services for spouses provided by the Family Liaison Officer could be made more accessible if the Department's central office moves, as is proposed, to a new building in Canberra. **The Committee therefore recommends that:**

DFAT regard as a matter of urgency the negotiation of as many reciprocal employment agreements as possible and give those negotiations a high priority;

the family component of OLA be paid directly to spouses;

DFAT ensure that the planning for the proposed York Park office building provide for the Family Liaison Officer and related advisory facilities for officers and spouses to be located in an area of the building that is readily accessible.

11.28 Other specific suggested reforms have larger implications. On the most significant of these, the Committee was not disposed to recommend that Australia lead the world in establishing the principle of payment of an allowance to spouses. It appears that few if any foreign services make such payments although it was suggested that the USA and some of the Nordic countries may have established such a system (Evidence, p. 131). DIR told the Committee that the principle involved was the extent to which the Commonwealth as an employer should make remunerative payments to a person who is not in an employment or a contractual relationship to it and commented:

spouses of staff serving overseas are not the only Public Service spouses who provide valuable assistance to staff in carrying out their official duties, nor are all spouses overseas actively involved. There is a variety of reasons for a lack of involvement such as paid employment obtained by the spouse during a posting, lack of opportunities where the staff member does not have a representational role or in some cases simply a decision to opt out of the role.

It is our view that it would not be appropriate to move in the direction of compensating spouses for work performed outside any employment or contractual arrangement (Evidence, p. S1274).

11.29 Dr Peter Rogers of ECA, stated that he knew of no Australian organisation which compensated spouses for loss of income but indicated that firms would often assist spouses in seeking employment or undertaking further study (Evidence, p. 395). The Arthur Andersen survey cited above identified spouse income as an emerging issue in the private sector but did not suggest that any practice of compensating for that factor was widespread. The results of a similar survey conducted by New York-based Organisation Resources Counsellors Inc. involving expatriate couples employed by 160 American, Australian, Canadian and European multinational corporations, showed 90% declining to compensate for loss of spouses' income. (Reynolds & Bennett 1991).

11.30 DIR also pointed out that the existing conditions of service provide a wide range of extra payments for officers accompanied by spouses. Officers with children also receive various types of assistance with their education and reunion costs. Thus,

the additional costs of taking family overseas are recognised although contributions made by family members at posts are generally not the subject of payment and losses they incur through restrictions on future careers, reduced superannuation, or inability to work at the post are not reimbursed. The introduction of an allowance to compensate for the last factors would necessitate a review of the whole conditions structure and the net benefit to families posted overseas might be less than its proponents expect.

11.31 Preference for employment as LES is superficially attractive but could have detrimental effects on DFAT's operations. One important role of the LES as a group is to provide continuity and corporate memory in posts where A-based staff come and go. This could be lost if LES positions were staffed in large numbers by the spouses of A-based officers. Any departure from the merit system also raises the risk of nepotism, which could easily go undetected in the DFAT environment of numerous, widely-dispersed workplaces, as well as the likelihood of reduced efficiency. The current arrangements allow spouses to compete for LES positions on merit. The Committee is not prepared to take the additional step of supporting a departure from the merit principle in recruitment. It would, however, support a policy of preference for the spouse of an Australia-based officer where merit was assessed as equal.

Representation funds

11.32 The Finance (Overseas) Directions permit an advance to be made to cover representation funds for officers on long term postings overseas. Items which are admissible for expenditure purposes are set out in guidelines issued by the Department from time to time. All heads of mission and most overseas personnel above the Administrative Service Officer Class 4 level have in the past been provided with advances against the costs of "representation". Representation funds were also available from a post pool to lower level officers according to their duties and responsibilities. The term "representation allowance" was commonly used to describe all these advances.

11.33 A recent DFAT circular has reminded officers that expenditure on representational activity is seen as a "tool of the trade" and is intended primarily to facilitate contacts with politicians, government and civic officials, business contacts, etc. in the host country (Evidence, pp. S725, S732). To stress this, DFAT has instructed that the term 'representation allowance' no longer be used and that the funds be called 'representation funds' or 'representation expenditure'.

11.34 The system until the end of 1991 was that heads of mission received quarterly advances of representation funds which were acquitted quarterly by the submission of returns to Canberra. Substantial under-expenditure or the failure to submit acquittal forms on time was supposed to lead to the withholding of subsequent advances. Enforcement of the latter measure, at least, may have been inconsistent until recent years. The Auditor-General reviewed procedures for payment of representation funds in July and August 1990 and found instances where acquittals were late, but advances had not been withheld (Auditor-General 1990a, p. 17). However, a review by Committee staff of a random sample of one-third of the head of mission

representation allowance files as at December 1991 found no cases where the Department had failed to apply its rule in this regard.

11.35 Eligible officers below head of mission level received fortnightly instalments of representation allowance with their salary. These were acquitted at post with six monthly returns to the head of mission. Over- or under-expenditure was reconciled only at the end of a posting with any under-expenditure being recovered from the officer at that time.

11.36 A component of representation funding separate from the former representation allowance was called 'representation supplement'. This component, which was only payable to officers who received annual representation funds exceeding \$250, was an entitlement under DIR rules and, being intended to meet small, ad hoc, out-of-pocket type expenses, was not vouchable. The supplement was taxable.

11.37 Cases 6 to 13 in Appendix III describe the results of a review by the Committee's staff of head of mission representation allowance files following the Committee's receipt of allegations from the DFAT Reform Group. The Reform Group claimed that the representation funding system was open to extensive abuse, had been extensively abused and would be abused even more following recent changes to the way it was administered. The staff review found little of significance to support the Reform Group claims but pointed to two features of the system:

- . much of the expenditure on representation activities was lumpy so that cash management could probably be improved if the large advances currently being made to officers long before the need for expenditure were to be replaced by direct payments from post funds for many items and activities as the costs were incurred;
- . the system of acquitting advances imposed an excessive administrative burden on both officers and the Department.

These were features of the system that operated until December 1991 but large changes were made in 1992.

11.38 In the first six months of 1992, the following changes were made to the representation funding system:

- . the system of paying representation funds and supplement with officers' salary ceased on 30 June 1992 and posts are now forwarded an amount for the posts' total officer representation funds. The amount for each post is determined taking account of the overall level of DFAT representation funds, post staff numbers, position levels, OLA post indices and post activity ratings;
- . heads of mission are responsible for approving levels of representation funds to individual officers and/or a pool of representation funds. Their approvals

must be based on a post Representation Expenditure Committee, which must contain a balanced representation of levels and gender of officers at the post;

. the Chief Accounting Officer (CAO) of each post will decide on suitable procedures to pay officers their representation funds and supplement. Thus payments could be made quarterly or biennially, advanced or reimbursed for specific large functions, reimbursed up to the approved yearly representation funds level, or the CAO may choose any combination of these options;

. acquittal of all representation advances, including from 1 January 1992 those to heads of mission, is now done at post;

. representation supplement remains an entitlement but vouchers are now required for expenditure above the petty cash limit, currently \$30, a change intended to make the supplement no longer taxable.

The Committee discussed this new representation funding system with departmental officers at a public hearing and was told that these changes greatly reduced the administrative burden of the system and reduced the scope for abuse (Evidence, p. 647). DFAT rejected the suggestion that the system could be improved by the direct payment of expenses by the Department, the greater use of government credit cards or by converting the representation advances to a taxable allowance, leaving verification of expenditure to the Australian Taxation Office. However, the Department's arguments against these proposals were mostly directed to the issue of administrative convenience and efficiency. The possibility of further improving cash management was not addressed in DFAT's evidence (Evidence, pp. 646-7).

11.39 The Committee accepts that diplomatic activity necessarily involves a degree of discretionary spending by its practitioners on representational activity. The Committee also acknowledges that the changes to the system recently introduced by DFAT, particularly acquittal at the post where the expenditure is being incurred, rather than at a desk in Canberra, are sensible. It remains concerned, however, that the system of advancing large amounts to heads of mission and officers in advance of the need for expenditure involves poor cash management.

11.40 At a late stage in the inquiry, the Australian Taxation Office (ATO) told DFAT and the Committee that the current system of payment of representation funds may create an income tax liability for officers and/or a fringe benefits tax liability for the Department. This is because representation funding is mostly an "entertainment expense", which is expressly non-deductible. If the representation payment to an officer is vouchable, it falls within the fringe benefits tax provisions; if it is non-vouchable, the officer would incur personal income tax liability. Since, in most circumstances, representation funding is vouchable, the Department appears to be liable for payment of fringe benefits tax (Evidence, p. 721).

11.41 The taxation issue is further complicated by DFAT's approval in 1990 of payments to spouses from representation funds of \$15 per hour up to a maximum amount of 20% of an individual officer's funds for assistance provided to the officer's

representational activity. It had been suggested to the Committee that such a payment should be taxable income of a spouse. However, according to the ATO, the representation payments would either be regarded as income of the officer or be taxed as a fringe benefit paid by the Department. Either approach would represent a change from what had been believed to be the taxation position.

11.42 DFAT claimed to have undertaken extensive consultation before introducing the recent changes, including discussions with the Public Sector Union, the Australian Taxation Office and the Department of Finance but it appears that the tax problems did not arise in these discussion. The ATO accepted responsibility for that omission (Evidence, p. 715). It now appears that it will be necessary to again review the representation funding system to take account of taxation issues.

11.43 In any case, the recent changes were directed at "more focussed allocation and efficient use of representation funds, ultimately...to officers' professional advantage" (Evidence, p. S728). Cash management does not appear to have been a major factor in their design. This is particularly evident in the continuation of the system of quarterly advances to heads of mission, who may for lengthy periods retain large sums of representation funds in their private bank accounts which, for a variety of sound reasons, they have been unable to use.

11.44 The Committee notes that one option for DFAT to prevent its officers incurring an income tax liability and to reduce its own fringe benefits tax liability while also improving cash management would be for it to reduce the representation payments to officers and to meet as many entertainment expenses as possible direct from departmental funds. As well as simplifying the taxation issue, such an approach would replace a system in which large amounts of money are advanced by the Government well in advance of need with one in which government expenditure would be deferred until it was needed. Cash management would also be improved by greater reliance on reimbursement of officers' representation expenses. **The Committee recommends that DFAT and the Department of Finance jointly review the possibility of improving cash management in the representation funding system by replacing as large a proportion as possible of the present representation advances with direct payments by DFAT or with reimbursement of expenses as they are incurred.**

Payments to domestic staff

11.45 The system for meeting the costs of officers' domestic staff, like that for meeting representation expenses, appears ripe for reform. While the system began as one in which officers were paid approved amounts from which they were expected to use in full to meet the costs of domestic staff, it now also allows for reimbursement of actual expenses or for posts to pay domestic staff directly. Any or all of the three approaches can be adopted at any post. DFAT told the Committee that a distinction between domestic staff and staff of a mission is made in the Vienna Conventions and that this distinction was the reason for the original approach of having officers make the payments to their own domestic staff (Evidence, p. S1193). This clearly is no longer necessary to meet the terms of the Conventions.

11.46 The Committee believes that it would be preferable for a standard system to be adopted in which all domestic staff would be paid directly by the Australian Government in a way which retained the Vienna Conventions distinction. This would reduce the scope for fraud and for erroneous perceptions of fraud. It would remove an administrative burden from officers and their spouses and would consolidate payments to domestic staff into the relatively secure commercial accounting package now used at posts. It would also reduce the risk of Australia transgressing local employment laws or becoming implicated in employment practices which would not be acceptable in this country. **The Committee recommends that all payments to domestic staff of Australian Government officers posted overseas be made directly by the administrative units at their posts.**

Senior Executive Service cars

11.47 All members of the SES are entitled to a private-plated car as part of their remuneration package. The entitlement includes fuel supplied at government expense except during periods of leave. Officers who take up their entitlement to a car are required to make a contribution of several hundred dollars per year, with a scale of contributions depending on the type of car.

11.48 As noted in Chapter 5 and case 21 in Appendix III, a large proportion of DFAT's SES officers used their government fuel charge cards while on leave during the first year that the cars were on issue, contrary to the rules applying to their issue. After the Officers' Revolutionary Council drew attention to this in a public circular, DFAT developed a system to ensure that the charge cards were not misused. The Committee notes that in this, as in other cases, DFAT's administration of entitlements relied too heavily on the honour system. If SES officers had been properly briefed on the entitlement to cars at the time it was introduced and if an administratively simple system for managing the entitlement had been implemented from the beginning, DFAT's senior officers would not have been placed in a position where their integrity could be questioned.

11.49 That aside, the system now in place for managing DFAT's SES cars includes a moderately labour-intensive check on use of fuel cards while on leave. Even if the system is only applied on a spot check basis, as would seem reasonable, it represents a heavy commitment of resources relative to the small amounts of money involved in the abuse it is intended to prevent (the average amount of incorrectly charged expense in the DFAT case was \$100). Since the entitlement to government-supplied fuel applies up to the day before proceeding on leave and from the day of return, the restriction probably has inequitable effect in any case. It can be presumed that the same problems occur across the public service as the car entitlement is identical for the whole SES and is administered centrally by the Department of Administrative Services (DAS).

11.50 Two approaches are available which would eliminate the need for checking. The first would remove any entitlement to free fuel for SES officers, with an appropriate reduction in the officers' contribution for the use of a car. The other would extend the entitlement to government-supplied fuel during periods of leave

subject to an increase in the officer's contribution. Removing the entitlement to government-supplied fuel would have the advantage of making officers responsible for their own fuel purchases and enhancing their awareness of their petrol consumption. This might, however, work against the present policy of requiring SES cars to be available for official use by non-SES officers during working hours, assuming that the policy is in fact implemented to any degree. The Committee recognises also the difficulty of removing an established condition of service. The alternative of permitting the use of government charge cards during periods of leave while increasing the officers' contribution would clearly be more easy to implement.

11.51 DFAT responded favourably to the suggestion that the entitlement be extended, with a compensating increase in officer's contribution to make the change revenue-neutral. However, the Department pointed out that the matter was one for the Departments of Administrative Services or Industrial Relations rather than DFAT (Evidence, p. 645). **The Committee recommends that the Departments of Administrative Service and Industrial Relations review the arrangements for the issue of private-plated cars to SES officers with a view to extending the entitlement to government-supplied petrol during periods of leave subject to an increase in the officers' contribution.**

Duty-free cars

11.52 One condition of official service overseas is a right to purchase some items free of local taxes and duties. This right is provided in accordance with the underlying principle of the Vienna Conventions on Diplomatic and Consular Relations that no sovereign state should tax the sovereign activities of another state, including that state's official representatives. The preambles of both Vienna Conventions expressly state that exemptions from local taxation laws are not granted for the personal benefit of individual officers (Evidence, p. S1259). However, in the case of purchase of cars duty free, the potential can exist in some countries for later resale at a profit.

11.53 The opportunity to profit in this way has led to notable scandals in Australia's diplomatic service. As noted in Chapter 12, there are two current cases in which the purchase of cars free of duty by heads of mission have led to public disputes and probable damage to Australia's reputation overseas. These cases occurred despite the detection of widespread and serious abuse of the duty-free privilege by Australian officers in Indonesia in the mid-1980s and the subsequent punishment of a large number of DFAT officers. In the Indonesian case, 11 DFAT officers were charged with misconduct under the Public Service Act for their actions in relation to the import and disposal of vehicles duty free. All the charges were upheld. Seven of the officers were fined the maximum amount possible in respect of the charges - then \$500 for each charge - and three were demoted. One officer who had been charged was counselled. Fifteen other officers whose conduct was considered to have probably constituted misconduct were not charged because of mitigating circumstances but were counselled. One case involving a member of the Australian Defence Force was referred to the police of the relevant armed service for action (Evidence pp. S702-17). It is likely that Australia is not alone in experiencing problems with this condition of diplomatic service.

11.54 The DFAT Reform Group complained to the Committee that the entitlement to purchase of cars duty free was open to abuse and inequitable. The potential for abuse has been amply demonstrated in the cases mentioned above. The perceived inequities cited by the Reform Group were:

- . accredited diplomats are entitled to purchase cars free of duty while posted overseas and other DFAT officers are not;
- . more senior DFAT officers are able to afford a larger investment in, and subsequent profit from, the purchase of a car (Submission 43, p. 5-27).

In fact, all officers attached to Australian diplomatic missions have some entitlement to duty-free purchase but the scale of the entitlement varies (Evidence p. S1171-3). In any case, the Group suggested that the entitlement to duty-free purchase of cars be replaced by a provision for the Australian Government to issue cars of a common standard to all officers posted overseas (Submission 43, p. 5-28).

11.55 The Group had also complained that the Trust Fund Other Trust Moneys (TFOTM) system, which allows official accounts to be used for approved private transactions, had been used improperly to repatriate private profits from the sale of cars. As reported in Appendix III, this claim was discounted. However, an internal DFAT review of the TFOTM system in 1987 showed that DFAT itself conceded the potential for private profit from resale of cars purchased free of duty. The report of the review included the comment:

From the analysis it is also very clear that in certain posts, where resale is potentially very attractive, officers have chosen to invest in vehicles that offer the best rate of return on such an investment, either to reduce a potential depreciation situation (loss) or to maximise a potential profit (Evidence, p. S1056).

11.56 Although the Vienna Conventions provide for duty-free purchase as a right, the application of that right is subject to regulation by both the host country and the country represented by the mission. DFAT supplied the Committee with the results of a survey of its posts, with 67 respondents, which showed that all host countries other than Singapore allow all officers at a foreign mission to purchase at least one duty-free vehicle during their posting (Evidence, p. S1171-3). The survey further showed that at 25 posts the host country makes no distinctions between officers at different levels. The Department indicated that the duty-free privileges accorded and received by Australia were broadly standard but that a degree of reciprocity exists in the entitlements permitted by different countries. Ros McGovern, Principal Adviser in DFAT's Corporate Service Division, told the Committee: "what we receive overseas is broadly similar to what we are offering" (Evidence, pp. 872).

11.57 Regardless of the host country requirements, it is open to a country to place limits on its officers' use of the entitlement. DFAT has promulgated directions for its staff which limit their access to purchase of vehicles (and currency, alcohol and cigarettes) using diplomatic privileges. Thus, while a small number of countries will

allow Ambassadors to purchase three vehicles duty free, DFAT issued instructions in 1987 that its representatives should not purchase more than two vehicles under diplomatic privilege in the course of a posting, but with a discretion to seek Canberra's approval for a third vehicle in "exceptional circumstances of family need" (Evidence, p. 847). The United States has banned its officers from deriving profit from the sale of cars that were bought duty free and requires that any profit that is received be donated to charity (Evidence, p. S1020).

11.58 The Committee was disturbed by what appeared to be an excessive focus on the issue of the duty-free car entitlement in some of the evidence it received. The issue required consideration out of proportion to its importance. In any case, the Committee sees no reason for the current arrangements to continue. The Vienna Conventions make it clear that the right to buy goods free of duty is not intended to provide profit to diplomats or other officers. The profits that can be derived in some cases are of a windfall nature, inequitably distributed and with the potential to distort posting patterns and to bring Australia into disrepute. The potential for abuse of the system is obvious and has been demonstrated in notorious cases. This abuse, when it does occur, clearly reflects on Australia's international reputation. The Committee therefore believes that the potential for officers to profit from the resale of cars purchased free of duty should be removed.

11.59 This could be achieved by following the practice of the United States in preventing officers from retaining any profit gained from the sale of a car that was purchased free of duty. An alternative is the DFAT Reform Group suggestion that the Government supply cars to officers posted overseas. Such a system would effectively be an extension of the scheme presently applying to SES officers, including most heads of mission and some other officers posted overseas. These officers currently may opt to pay the officer's contribution and receive private use of the head of mission vehicle or a car from the post pool to the same extent that SES officers in Australia have private use of a government car (Evidence, p. S1417). DFAT also allows officers of below SES or equivalent rank to use official vehicles on a short-term basis during the periods of settling in to a posting and immediately before departure (Evidence, p. S1173). Another alternative, recently considered by DFAT, would be for the Department to lease vehicles to staff posted overseas.

11.60 DFAT pointed out to the Committee that profits are by no means assured in the sale of cars overseas. The Department argued that any move to prevent officers profiting from such sales would open the question of compensation for the losses that can also occur (Evidence, p. 653). There is already a provision for compensation for excess losses incurred on the sale of cars prior to leaving Australia on posting (Public Service Board 1985).

11.61 The Department also told the Committee that it had investigated the feasibility of issuing cars to officers posted overseas. DFAT supplied the Committee with a copy of a February 1990 report which favourably assessed the feasibility of DFAT purchasing vehicles and leasing them back to officers overseas. The study was confined to a region in which the prospects of individuals profiting from the resale of cars were relatively poor and was said to have been prompted "by concern at the

rising costs of purchasing/selling motor vehicles faced by all officers overseas, viewing this as a major but hidden cost of overseas service" (DFAT 1990, p. 2). The study assessed the feasibility of standardising vehicle pools at posts and providing similar if not the same model to officers under a lease agreement.

11.62 Although the study concluded that a leasing scheme of the type considered could become self-funding within three years and would ultimately produce a small profit to the Australian Government, DFAT advised the Committee that the proposal had not been pursued. It was considered that the start-up cost of \$5 million was too great an obstacle to initiating the scheme (Evidence, pp. 847-8). The Committee believes that this decision should be reconsidered. A system in which the Australian Government leased vehicles to its officers and dependants overseas would remove the problem of excessive losses on resale suffered in some countries as well as removing the scope for serious abuse that now exists in other countries. Purchasing and maintenance arrangements for official vehicles are already needed for post vehicle pools and the operation of a pool of vehicles for lease to staff would not create any need for a new administrative structure.

11.63 The operation of a leasing scheme would raise the question of whether a separate vehicle is in fact required for each officer and dependant of driving age. In many countries, it might be preferable if the number of vehicles assigned to individuals were kept to a minimum and a larger pool of vehicles maintained for use by officers and dependants as required. A pool system would have the additional advantage of allowing vehicles to be held for the optimal period prior to replacement, regardless of the duration of individual postings.

11.64 DFAT's feasibility study suggested that a leasing scheme would eventually become self-funding but, if it were possible for the Government itself to lease vehicles for re-leasing to staff, the scheme might break even from the beginning. Such a system would eliminate the disadvantages of the present duty-free purchase system while ensuring that officers would not be disadvantaged by the possible loss of access to a car while on posting or by the limits to access that exist in posts where car ownership is likely to lead to financial loss on resale. **The Committee recommends that Australian Government officers and their dependants overseas be prevented from purchasing cars free of duty but be permitted to lease from the Australian Government cars of a reasonable but limited range of makes and styles or to participate in arrangements for the use of government cars for private purposes, subject to a contribution towards the cost of that use.**

11.65 Given the entitlement of SES officers to the private use of a government-funded vehicle, there is no reason for such officers to be allowed to purchase as many cars free of duty during a posting as are officers who do not have private use of a government car. **The Committee recommends that, pending a decision on the recommendation in the previous paragraph, DFAT should immediately reduce the entitlement of SES or equivalent officers, including heads of mission, to purchase cars free of duty when posted overseas from two to one per posting.**