

**INQUIRY INTO THE CENTENARY HOUSE LEASE**

Before the Hon David Hunt AO QC

Held at Level 5, 55 Market Street, Sydney

On Monday, 13 September 2004 at 10am  
(Day 21)

1 <IAN McPHEE, on former affirmation: [10am]

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3

<EXAMINATION BY MR ROBERTSON CONTINUING:

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MR ROBERTSON: Could we have brought up on the screen the transcript from the last occasion Mr McPhee gave evidence, page 1679.

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THE COMMISSIONER: Mr McPhee, you are still bound by the affirmation you took on the last occasion.

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12

THE WITNESS: Thank you.

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MR ROBERTSON: Q. Do you have that on the screen?

15

A. Yes.

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Q. Starting at line 37, there is a question asking you whether you were able to point to any occasion when the ANAO was advised to be aware of the possible impact of fixed rate escalators in leases - that is, any other occasion other than 25 June 1991?

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21

A. Yes.

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Q. If you need anything to be enlarged, they can do that.

25

26

A. That would be helpful, actually.

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Q. Then your answer referred to a file note from Mr Morison of the Audit Office. You have referred to a file note from Mr Morison dated 19 July 1991. He made the point that the ANAO would be free to make its own decisions regarding accommodation and be responsible for the consequences. You say, "I think the message got through". What I wanted to do is take you to that file note. If you wanted to go over the page in the transcript, I will have that brought up.

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A. Yes, if that could be just progressed, thank you. That's fine, thank you.

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Q. I will take you to the file note, CH94.002.0025.

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A. Is that in my papers here?

42

43

Q. No, I don't think it is, unfortunately. That is on my screen now. Is it on yours?

44

45

A. Yes.

46

47

Q. Again, if you need it enlarged, just tell the

1 operator?

2 A. Yes, please.

3

4 Q. That is the file note you are referring to?

5 A. Correct.

6

7 Q. It is correct, isn't it, that what Mr Morison says in  
8 that document, in the third paragraph:

9

10 *Department of Finance advised that fitout*  
11 *was not their concern but rather dead rent*  
12 *and it was dead rent that would need to be*  
13 *funded from a resource agreement.*

14

15 In the first paragraph Mr Morison says:

16

17 *Under the resource agreement we would be*  
18 *funded at a fixed amount per year adjusted*  
19 *for price movements less efficiency*  
20 *dividends. The ANAO would be free to make*  
21 *its own decisions regarding accommodation*  
22 *and be responsible for the consequences.*  
23 *Lumpy costs of fitout, dead rent, etc,*  
24 *could be met by savings on borrowings up to*  
25 *five years into the future...*

26

27 What I wanted to suggest is that that document does not  
28 indicate that any message in relation to fixed escalators  
29 or the risk that the deflator would not match rent  
30 increases did get through to the Audit Office?

31

32 A. Well, certainly Mr Robertson, the way I interpret  
33 that is that the Audit Office understood that they would  
34 be price-adjusted, but - sorry, their budget allocations  
35 would be price-adjusted, but they nevertheless would be  
36 able to choose the accommodation of their preference. So  
37 I - I certainly interpreted it - I guess where I come  
38 from, as meaning that they would have a budget allocation  
39 that would be subject to the normal arrangements, but if  
40 the Audit Office felt they could make savings elsewhere  
41 then they could put those savings towards their proposed  
42 solution, which is of course what they had in mind.

42

43 Q. Mr McPhee, I was suggesting to you that the document  
44 does not indicate that any message in relation to fixed  
45 escalators or the risk that the deflator would not match  
46 rent increases got through to the Audit Office.

47

1 view, I was certainly looking at that sentence:

2  
3 *Under the resource agreement we would be*  
4 *funded at a fixed amount per year adjusted*  
5 *for price movements less deficiency*  
6 *dividends.*  
7

8 Now, adjusted for price movements is, as I interpret that,  
9 a generic way of saying price indexation arrangements.  
10 That's like the running costs that everyone knows in the  
11 public sector. That's how they were adjusted for price  
12 movements, meaning by particular index. So, certainly I  
13 interpret Mr Morison's statement as reflecting an  
14 understanding of the regime as it applied.  
15

16 Q. Well, I suppose there are two parts to that,  
17 Mr McPhee. Firstly, on that basis you suggest the Audit  
18 Office should have been aware that there would be a fixed  
19 deflator applied to the rent increases regardless whether  
20 they agreed to a fixed escalator or not?

21 A. Correct.  
22

23 Q. But the second part of the proposition is that there  
24 was nothing there to indicate to the Audit Office that the  
25 deflator would not keep pace with the market.

26 A. I accept that point.  
27

28 Q. Can I take you, then, back to the transcript of your  
29 last occasion, to page 1681, if that could be brought up  
30 on the screen. When it comes up on the screen, if I could  
31 draw your attention to lines 29 to the end of the page.

32 A. Correct.  
33

34 Q. Have you had an opportunity to read that. Those  
35 questions are being asked by the Commissioner?

36 A. Mmm-hmm.  
37

38 Q. You said there, in response to the question:

39  
40 *When did you find out about the 9 per cent?*  
41

42 You said:

43  
44 *It was after the resource agreement was*  
45 *signed.*  
46

47 A. Yes.

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Q. The resource agreement was signed on 23 March 1992, which you indicated in the subsequent questions. I just wanted to confirm whether you found out about the 9 per cent before the lease itself, or the agreement to lease was signed on 8 April 1992?

A. Certainly I don't ever recall being advised of it before the transaction was put into place. And as far as I'm aware, neither were my staff.

Q. Perhaps to assist you in that respect, and this is not to contradict you, but perhaps to confirm that evidence, could you turn to the document, the bundle which is exhibit 69, which is the one with the yellow flags in it?

A. Yes.

Q. The flags I am taking you to, contrary to what I might have told you, are not in order. They are numbers 17 and 18.

A. Yes.

Q. They are DOFA.084.0106 to 0107, and DOFA.084.0102.

A. Yes, I have them.

Q. They appear behind the third tab in that folder which is exhibit 69. The first of those documents which is folio 0106 to 0107 contains your handwriting in the top right-hand corner.

A. Correct.

Q. The document itself is a minute paper from Mr Cooney to the First Assistant Secretary of Transport and Government, who I suggest was Mr Early at that time, was it?

A. Mr Early or Mr Thorn, yes.

Q. Mr Cooney is writing under the necessity to respond to some questions asked in Parliament in relation to some incentives in the property market?

A. Yes.

Q. Your note to Mr Pearson indicates:

*I suggest we see what develops in the Parliament before taking action on this.*

1 A. Correct.  
2  
3 Q. And then it says:  
4  
5 *Our response to the JCPA secretariat would*  
6 *then --*  
7  
8 is it "XY"?  
9  
10 A. "Cross-reference".  
11  
12 Q. "Cross-reference". That was referring to a response  
13 to the questions that had been asked in Parliament?  
14 A. I think, just having a quick look at that now, it is  
15 the suggestion that Senator Bishop then made that there  
16 was no substitute for regulation that could lay before the  
17 Parliament. My particular responsibilities included the  
18 financial framework which included the financial  
19 regulations as well. I think she was suggesting the  
20 guidance should be stiffened up with regulation, and I was  
21 just suggesting that we wait and see on that front.  
22  
23 Q. What I wanted to take you to, then, is the next  
24 document, DOFA.084.0102, which is, as I understand it, I  
25 would suggest, a draft letter from Mr Cooney, in response  
26 to Senator Bishop's comments?  
27 A. Yes.  
28  
29 Q. That bears a number of handwritten notes from  
30 officers of your section?  
31 A. Yes. It does.  
32  
33 Q. I think it starts down the bottom with Mr Cooney  
34 referring to his minute to Mr Early, which is the previous  
35 document, and he indicates "Draft reply for your  
36 clearance"?  
37 A. Yes.  
38  
39 Q. You then wrote to Mr Pearson and noted to Mr Pearson:  
40  
41 *Are you aware of any incentives offered to*  
42 *ANA0? - otherwise okay by me.*  
43  
44 That's on the left-hand side?  
45 A. Yes.  
46  
47 Q. It appears Mr Pearson has written to Mr Turner:

1  
2           *Please check Ian's comment about*  
3           *incentives - there are none to my knowledge*  
4           *but we do not have the lease.*

5  
6 And Mr Turner has then responded:

7  
8           *Mr Pearson, in all the correspondence we*  
9           *have on S 22 there was no indication of*  
10          *incentives (eg fitout/rent).*

11  
12 Would you have seen that minute after it had been down to  
13 Mr Turner - would that have come back to you?

14 A. I don't believe so, Mr Robertson. I mean, generally  
15 my queries are for the people to check before they get  
16 back to the originating areas.

17  
18 Q. Would you accept that those handwritten notes suggest  
19 that as at the date of that minute or draft letter, which  
20 is early June 1992, Finance did not appear to have a copy  
21 of the lease available to it?

22 A. That would certainly be the indication, yes.

23  
24 Q. In particular, as we now know, there were fitout  
25 incentives provided for in the lease?

26 A. Yes, correct.

27  
28 Q. Just one more question in relation to the transcript  
29 of the last occasion. Could we have page 1684 on the  
30 screen, please. Is that on your screen?

31 A. Yes.

32  
33 Q. I draw your attention to the question beginning at  
34 line 26. I have to say that the court reporters have done  
35 a very good job generally of transcribing questions which  
36 did get complex, but this one I think has really got  
37 confused, and what I would ask you to do is read that  
38 question. Certainly I don't blame the court reporters, I  
39 think that was me.

40 A. Yes.

41  
42 Q. What I would like to do is perhaps ask you the  
43 question in a different form, and that is taking the  
44 particular circumstances that arose in this case - that  
45 is, circumstances where agency heads had been accustomed  
46 to rentals being met by the APG or the Department of  
47 Administrative Services, rather than from their own

1 budget - was there not scope for agency heads to assume  
2 that that situation was continuing in the future in  
3 respect of whatever lease they negotiated?

4 A. And I think I am happy with the sort of response I  
5 gave - that is, you know, that there was scope for  
6 misunderstanding.

7

8 Q. The next issue I want to raise with you is the  
9 proposition that there was, right from the start - that  
10 is, from the time of delivery of the Joint Committee of  
11 Public Accounts' report number 296 - strong opposition  
12 within the Department of Finance to recommendation 78 in  
13 that report and to the Audit Office's quest for  
14 accommodation in the parliamentary area. In a general  
15 sense, would you agree with that proposition?

16 A. I wouldn't say strong opposition. I think I would  
17 say that Finance believed the case hadn't, at that stage,  
18 been made sufficiently.

19

20 Q. What I would like to show you is - and I have a copy  
21 which I will tender - a document again which comes from a  
22 file that was produced late last week. The page I want to  
23 draw your attention to is DOFA.091.0007.

24 A. Yes, I have that.

25

26 Q. Could I ask you, do you recognise any of the  
27 handwriting on that document?

28 A. I can't be sure, no.

29

30 Q. Was Mr Campbell someone in your --

31 A. Yes, Mr Campbell was - reported to Mr Wojcik and they  
32 were both in my area, yes.

33

34 Q. You say you are unable to identify the handwriting  
35 which says:

36

37 *There is no valid reason for the AG --*

38

39 Which we take to mean Auditor-General --

40

41 *to be in the Parliamentary Zone.*

42

43 A. Yes. That may have been placed on it, of course, in  
44 the Minister's office.

45

46 Q. Or in D&G?

47 A. Or in D&G division.

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Q. I won't take any more of your time with that. Could I draw your attention, then, to a document which appears in the bundle marked, "Further Documents Ian McPhee". That's the thicker bundle, which is exhibit 68.

MR ROBERTSON: I tender that document I have just handed up, Commissioner.

**EXHIBIT #74 FILE COVER SHEET OF THE DEPARTMENT OF FINANCE 88/1203 - JCPA INQUIRY INTO ROLE AND RESOURCES OF THE AUSTRALIAN AUDIT OFFICE - TREASURY AND TAX RESOURCES SECTION, BARCODED DOFA.091.0001; LETTER DATED 4/10/1989 FROM B NORTON TO MINISTER FOR FINANCE, BARCODED DOFA.091.0007; LETTER DATED 15/9/1989 FROM S WEST TO J C TAYLOR, BARCODED DOFA.091.0008; LETTER DATED 22/8/1989 FROM J C TAYLOR TO S WEST, BARCODED DOFA.091.0009**

MR ROBERTSON: Q. Could you turn to tab 4 in that bundle, please?

A. Tab 4.

Q. Yes. That is DOFA.083.0111.

A. Yes, I have it.

Q. That is copy of a letter from the Auditor-General, Mr Taylor, to the secretary of the Department of Finance, Dr Keating?

A. Yes.

Q. It is dated 12 July 1990. It appears to bear annotations addressed to you?

A. Yes.

Q. Is that Dr Keating's handwriting?

A. No, that is the deputy secretary's handwriting.

Q. Who was the deputy secretary at that stage?

A. Mr Barrett.

Q. Mr Barrett. That's not the same Mr Barrett who subsequently became Auditor-General, is it?

A. It is the same Mr Barrett.

Q. So the note on the first page says:

*Mr I McPhee. This is not good for one's*



1  
2           *The underlying reason for this*  
3           *recommendation was the need to provide a*  
4           *visible and permanent manifestation of the*  
5           *ANAO's part in the accountability process.*  
6

7           And one would suggest with either flippancy or cynicism,  
8           Mr Barrett has written, "Grow a tree".

9           A.    It looks something like that, Mr Robertson.

10  
11          Q.    Again, indicating a real attitude, a negative  
12          attitude - a very negative attitude to the Audit Office's  
13          claim to accommodation in the Parliamentary Triangle?

14          A.    Look, I think one of the issues in managing the  
15          resources related to the Audit Office is balancing the  
16          independent statutory position of the Auditor-General and  
17          the rules that Finance is required to apply to all  
18          agencies that government has endorsed as part of the  
19          budget process. So there is an inevitable tension between  
20          the two from time to time, and it is very important that  
21          Finance and its staff be able to manage that. I think the  
22          government had indicated in its response to the report  
23          that it would want to manage, you know, the ANAO's request  
24          through the normal processes, and I think perhaps some of  
25          these comments were, you know, showing a level of  
26          frustration with what we were trying to achieve here.

27  
28          Q.    And that is reflected in the comment on the front  
29          page, that it is "not good for one's blood pressure"?

30          A.    Yes, correct.

31  
32          Q.    Rather than reading the text against which the  
33          handwritten notes are set, the next handwritten note down  
34          the right-hand page is:

35  
36                *So has been and rejected.*

37  
38          A.    Yes, "It has been and rejected".

39  
40          Q.    Yes, in relation to the proposition the  
41          recommendation should be considered by the government?

42          A.    That's against that line - that's correct.

43  
44          Q.    Further down, against the proposition that an  
45          agreement in principle need have no more effect than to  
46          mark a spot on a map for action in coming decades,  
47          Mr Barrett has written "Come on". Is that suggesting that

1 the Auditor-General was being a little naive, or  
2 disingenuous, perhaps, in suggesting that an agreement in  
3 principle would not be utilised as more than simply  
4 marking a spot on the map?

5 A. I agree with that. Mr Robertson, can I just add a  
6 little bit of context - I don't want to interrupt your  
7 flow.

8

9 Q. Yes.

10 A. I think it is important to acknowledge that the JCPA,  
11 in their report, devoted less than a paragraph of  
12 supporting argument to the recommendation that the Audit  
13 Office plan for a building. I think they were their  
14 words, "Plan for a building". It wasn't a recommendation  
15 directed to the government. From a Finance point of view,  
16 from a budget point of view, that was certainly  
17 noteworthy, but the case still had to be made to look at  
18 the economics of such a move, and so it wasn't a case of  
19 just looking at the JCPA recommendation, but looking at  
20 the JCPA recommendation as well as the economics of the  
21 move, and it is always open to government, when it says it  
22 notes a particular recommendation - which is a neutral  
23 response, it is neither an "agree" or "disagree". If the  
24 economics are thereabouts, the government could decide, if  
25 there was a balancing issue, that because a parliamentary  
26 committee had recommended such, a government may use that  
27 as a balancing item to say, "Yes, this is sufficient to  
28 get it across the line". But we, in Finance, have to  
29 apply the analytics to the proposal to provide advice to  
30 the government.

31

32 THE COMMISSIONER: Q. But that's no more than what the  
33 government said in its formal response, is it not - that  
34 it would take its place in the usual course?

35 A. Correct, Commissioner.

36

37 Q. In other words, the usual procedures should be  
38 adopted in relation to that recommendation.

39 A. Correct.

40

41 MR ROBERTSON: Q. Would you not accept that  
42 Mr Barrett's comments indicate more than simply a  
43 determination that the matters should proceed through the  
44 normal channels, but really indicate opposition to the  
45 proposal that the ANAO should move to the Parliamentary  
46 Triangle?

47 A. It certainly doesn't reflect opposition. I think it

1 reflects a level of frustration in dealing with the Audit  
2 Office from time to time.

3

4 Q. Well, would you accept that it indicates an absence  
5 of sympathy with the Audit Office's claim?

6 A. I think it certainly is accepting that the case  
7 hasn't yet been made. I mean, it is --

8

9 THE COMMISSIONER: Of course, there is a comment, an  
10 important comment, upon this issue in the subsequent  
11 memorandum by whomever - Mr Wojcik, I think. Are you  
12 going to take Mr McPhee to how this may have been  
13 interpreted, perhaps cynically, by some others within the  
14 department, as meaning there was no chance?

15

16 MR ROBERTSON: There are some further documents that we  
17 will come to. We did, on the last occasion, Commissioner,  
18 go to the particular document I think you are referring  
19 to, which was the --

20

21 THE COMMISSIONER: Q. Yes, but that was, in effect, put  
22 to one side, because something led to what may have been a  
23 cynical view of the government's response, or perhaps of  
24 this particular comment, to suggest that there was no  
25 chance that the Audit Office would get what it wanted; you  
26 would agree with that?

27 A. I recall - I know the document you are referring to,  
28 Commissioner.

29

30 Q. Yes.

31 A. Can I say that, as I have said before, the case had  
32 to be made, and I just - I appreciate the point that you  
33 are making, but I also want to make the point that the  
34 steps Finance took to facilitate the borrowing arrangement  
35 under the new property operating expenses regime was a  
36 facilitatory step. It wasn't a blocking move in any way,  
37 and so we are always open to a good argument on the basis  
38 of a benefit for the budget and a benefit for the  
39 organisation, and by moving to that resource agreement we  
40 actually facilitated what otherwise may not have been able  
41 to be done, and that was a Finance suggestion, not an  
42 Audit Office suggestion.

43

44 MR ROBERTSON: Q. This issue will return as we go  
45 through the documents. What I would like to do now is to  
46 take you through the file which is exhibit 69 - that is,  
47 Department of Finance files provided on 7 September

1 2004 - and I have, since the last time you were here, put  
2 some yellow flags in that. Those yellow flags simply  
3 contain numbers to assist you to find documents more  
4 quickly. They have no other significance?  
5 A. Thank you.  
6  
7 Q. Could we start with document DOFA.088.0211, which is  
8 tab 1 in that bundle.  
9 A. Yes, I have that.  
10  
11 Q. That's a minute from yourself to Mr Pearson and  
12 Mr Wojcik dated 30 November 1990. It records that you had  
13 received a call from Mr Jacobs, and in that minute you  
14 asked that Mr Pearson and Mr Wojcik discuss with you the  
15 ANAO proposal and existing arrangements for property?  
16 A. Yes, correct.  
17  
18 Q. I take you to that more by way of background. You  
19 did receive a phone call from Mr Jacobs on about  
20 29 November 1990?  
21 A. Correct.  
22  
23 Q. The next document is tab 2, which is DOFA.088.0209.  
24 That is a response from Mr Turner to your note.  
25 A. Yes.  
26  
27 Q. That makes no reference to the proposal?  
28 A. That's correct.  
29  
30 Q. Only to the existing situation?  
31 A. Yes, correct.  
32  
33 Q. There is then a document DOFA.088.0199 that's tab 3.  
34 That is a handwritten note from Mr Wojcik dated 15 January  
35 1991 which is noted at the top:  
36  
37 *Mr McPhee*  
38 *Present position for your meeting with*  
39 *Mr Jacobs.*  
40  
41 A. Yes, correct.  
42  
43 Q. That indicates that Mr Wojcik spoke to Mr Campbell  
44 and Mr Whittaker of the Audit Office and it canvasses the  
45 proposal. I don't propose to ask you to read it. I will  
46 just draw your attention to the last dot point on page  
47 0200, which indicates:

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*Depending on the nature of the final proposal from Audit (which we can't be sure of until the developers agree to whatever) it may be a case that funding:*  
*- is subsumed in POE*  
*- should be looked at in works TNP (or equivalent)*  
*- new policy, depending on cost. (Value is usually > \$6m).*

A. Correct.

Q. I want to take you to another version of that file which appears at DOFA.088.0201-0202 - that's tab 4. Does that have your handwriting at the top?

A. The note?

Q. Yes.

A. No, that's not my handwriting.

Q. Do you recognise the writing?

A. I'm just wondering whether it is Mr Wojcik again who wrote the original file note, but I can't be sure, Mr Robertson.

Q. Well, the proposition set out there is:

*NOTE: 1) if pre-commitment lease will need Cabinet authority.*

A. That's certainly what it says.

Q. Was that correct?

A. I couldn't be sure, Mr Robertson.

Q. It would be fair to say that that was not the basis on which the Department of Finance subsequently proceeded, was it?

A. We were using the flexibility in the running costs arrangements to progress, yes.

Q. But the Department of Finance did understand that the Audit Office was entering into a pre-commitment lease agreement?

A. Yes.

1 Q. The next document is DOFA.088.0195-0197. That's a  
2 typed file note from Mr Wojcik to yourself regarding a  
3 meeting on 29 January 1991?

4 A. Yes.

5

6 Q. That doesn't really take the matter very far. It  
7 says under the heading "Property Matters":

8

9 *This has been discussed previously between*  
10 *yourself and Mr Jacobs. The matter hasn't*  
11 *progressed too far...*

12

13 Against that background, the next document is  
14 DOFA.088.0189-0191. Do you have that?

15 A. Yes, I do.

16

17 Q. That is a minute to the Minister, dated 29 January  
18 1991, providing a briefing with the Auditor-General to be  
19 held on 30 January.

20 A. Yes.

21

22 Q. That bears your handwriting in the top left-hand  
23 corner, does it?

24 A. It does.

25

26 Q. It says:

27

28 *The secretary's comment strongly reinforces*  
29 *the point made to the ANAO that symbolism*  
30 *doesn't carry weight; their case will be*  
31 *considered on economic grounds.*

32

33 A. Correct.

34

35 Q. When it refers to "the secretary's comment", that is  
36 referring to the note in relation to paragraph 7, which  
37 appears on folio 0191.

38 A. 0190.

39

40 Q. 0190, sorry, yes. That is a comment by Dr Keating,  
41 is it?

42 A. That's a comment by Dr Keating.

43

44 Q. It says:

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46 *I am doubtful that we will ever support*  
47 *this proposal.*

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A. That's what it says.

Q. In fact, when Dr Keating referred that paper to you, he expressly drew your attention to that comment by the note on the front page:

*Mr McPhee*  
*See comment on para 7.*

A. He did.

Q. May I suggest that your note on that page reflects the approach that you have suggested to the Commissioner was the Department of Finance's approach - that is, that the pace had to be considered on normal economic grounds - but that Dr Keating's comment indicates a far more negative approach - that is, "I am doubtful that we will ever support this proposal". Is that correct?

A. That's what it says.

Q. Well, would you accept that it appears that the approach that you suggest was the Department of Finance's approach was the one that you felt appropriate at that time, but that you were perhaps a little more amenable to the proposition than your superiors in the Department of Finance?

A. Mr Robertson, secretaries of Finance always have strong views on issues.

THE COMMISSIONER: Q. Do you mean strong negative?  
A. Always have strong views. They do change them from time to time. I - you know, when you are the secretary of Finance you cannot be wishy-washy. You need to be quite clear what your attitudes are, but they are always open, in my experience, to a good argument and a good case. So Dr Keating was making the point that the hurdle here is pretty high.

MR ROBERTSON: Q. I see. Could you recall, offhand, when Dr Keating ceased to be secretary of the Department of Finance and Mr Sedgwick took over?

A. Look, it was probably during the course of that year - that 1991 - but I can't be sure.

Q. Presumably the documentation will tend to suggest it, because Mr Sedgwick's name will appear --

1 A. Correct, as the secretary.

2

3 Q. I just invite you to look at the previous page - that  
4 is, 0188 - that's a Post-it note that was attached in the  
5 original file to that minute paper. That's a note from  
6 Mr Wojcik to Mr Turner:

7

8 *We'll have to keep secretary's comments in*  
9 *mind.*

10

11 A. Yes.

12

13 Q. That indicates, does it not, that those comments from  
14 the secretary did have significance for officers of the  
15 department?

16 A. Of course.

17

18 Q. For no other reason than if the secretary's comments  
19 were ignored, then proposals that went up to the secretary  
20 which did not take those comments into account were likely  
21 to be summarily rejected?

22 A. Well, not for that reason, but, look, in Finance, we  
23 always enjoy a good debate and it is very important to  
24 have a good debate about matters of importance. The  
25 secretary was indicating where he was coming from. It was  
26 a signal to us that if we wanted to take a different  
27 approach we would need to convince him of the merits of  
28 our position. But it was never, ever, taken as that was  
29 the end of the story.

30

31 Q. Perhaps I can take you to another document, which  
32 continues this like. It is tab 7, which is DOFA.088.0165.  
33 It is a little out of order because of the way the file is  
34 constructed.

35 A. I have tab 7, yes.

36

37 Q. That is a page that appears on its own in the file,  
38 but bears your handwritten note to Mr Pearson:

39

40 *For prompt response pls.*

41

42 A. Yes.

43

44 Q. And the prompt response is to the note at the bottom:

45

46 *Mr McPhee, what is proposed?*

47

1 A. Correct.  
2  
3 Q. And that was from Dr Keating?  
4 A. Yes, correct.  
5  
6 Q. That refers to the proposition:  
7  
8 *We are examining a proposal from ANAO on*  
9 *more permanent accommodation arrangements.*  
10  
11 Is that correct?  
12 A. Yes, correct.  
13  
14 Q. The response to that, or a draft response, commences  
15 at DOFA.088.0177, I suggest. It goes through to 0179.  
16 A. Sorry, I just don't have those particular references.  
17  
18 Q. Sorry, it is tab 8.  
19 A. Okay. Yes.  
20  
21 Q. Turning to folio 0178, Mr Turner has drafted on your  
22 behalf a minute to the secretary which says in the second  
23 paragraph:  
24  
25 *ANAO would like to accommodate all ACT*  
26 *staff in the same building or in close*  
27 *proximity.*  
28  
29 And he indicates that the options included the site  
30 opposite the National Press Club or two buildings in  
31 Barton?  
32 A. Yes.  
33  
34 Q. Is that your note in the side column?  
35 A. Yes, it is.  
36  
37 Q. Could I suggest it reads:  
38  
39 *They could do this in Queanbeyan. They*  
40 *were also tying it --*  
41  
42 is that "tying it"?  
43 A. "Tying it", yes.  
44  
45 Q.  
46 *...to the JCPA rec. You will need to make*  
47 *reference to govt response to this.*

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A. Correct.

Q. And in returning that draft to Mr Pearson, you made the note on 0177:

*Mr Pearson, I don't think the secretary's question was benign. We need to let him know our attitude/thinking, particularly in the light of his earlier comments.*

A. Correct.

Q. I suggest, again, that is a response which indicates that you were aware that the secretary had an attitude of strong opposition to this proposal, and that you understood the secretary's note, "Mr McPhee, what is proposed?", to be more than, "Just let me know what is happening", but, "Why aren't I being told about this? Don't you understand that I'm opposed to it?"

A. Oh, I think he is saying - certainly what is proposed, not only from an Audit Office point of view but what is proposed from a Finance point of view, so - and the reason I asked for the note to be strengthened was to clearly indicate to the secretary the type of proposal we had in mind.

Q. Type of the proposal you, being the Finance --

A. Being we in the division, in the Financial Management division

Q. The final minute is tab 11, DOFA.088.0163-0164, I suggest.

A. Thank you, yes.

Q. Is that correct - that is the final version of the minute?

A. Yes. That's the final version.

Q. That document, in response to your suggestion, does include a reference to the government's response to the JCPA recommendation?

A. Yes.

Q. It does so in terms that I think we discussed last time, reflecting not the government response but the Finance submission in relation to the government response;

1 would you agree with that, or do you wish me to take you  
2 back to the documents we discussed last time?  
3 A. It would appear to be referring to the submission  
4 dealing with this issue, yes - the Cabinet submission  
5 dealing with this issue.  
6  
7 Q. Dr Keating's response to this minute was:  
8  
9 *Mr Pearson,*  
10 *Please clear draft with me.*  
11  
12 That's the second page of that document?  
13 A. That's correct, Mr Robertson. You will note that the  
14 second-last, penultimate paragraph, also does signal to  
15 Dr Keating that there is "no reason to differ" from the  
16 government's response "unless a cost-effective proposal  
17 (with alternatives) is presented by ANAO". So we were  
18 flagging that that's a consideration that we, at least, in  
19 the Department, were taking into account.  
20  
21 Q. When that refers to "government's response", you  
22 would interpret that as referring to what was said to be  
23 the government's response - that is, the Finance  
24 submission or the Cabinet submission?  
25 A. I just want to make a technical point, that it really  
26 is the Minister's submission, when he takes it forward,  
27 but it would have been drafted by the Department.  
28  
29 Q. So I should say the Minister of Finance's  
30 submission --  
31 A. Yes, correct.  
32  
33 Q. -- to Cabinet?  
34 A. Correct.  
35  
36 Q. The next document is tab 12, which is DOFA.088.0149.  
37 This is perhaps out of that stream of correspondence, but  
38 it appears to relate to the same issues. It is a minute  
39 from Mr Cooney to yourself, isn't it, relating to the  
40 relocation of the Australian National Audit Office?  
41 A. It is to Mr Pearson.  
42  
43 Q. To Mr Pearson?  
44 A. Yes, Mr Pearson.  
45  
46 Q. Would you have reviewed that?  
47 A. Well, it didn't - on the face of it - come to me, so

1 probably not.  
2  
3 Q. I won't take your time any further with that, then.  
4 The next document, DOFA.088.0133, is tab 13, and that is  
5 the document that we, I think, have looked at on the last  
6 occasion?  
7 A. Yes.  
8  
9 Q. That was the one I referred to earlier.  
10 A. Correct.  
11  
12 Q. You agree with me?  
13 A. Yes, correct.  
14  
15 Q. You are comfortable with that. Thank you. That  
16 document is the draft of a letter which was sent to  
17 Mr Jacobs dated 2 May 1991, which, if you wish to see it,  
18 is tab 4 in the bundle of documents attached to your  
19 statement, which is exhibit 67. The document is  
20 CH94.009.0299-0301.  
21 A. Yes.  
22  
23 Q. I don't think I need to take you to that. You have  
24 commented on that in your statement. I just wanted to  
25 draw your attention to that before taking you to a copy of  
26 Mr Jacobs' response to that, DOFA.088.0101-0103.  
27 A. Has this got a tab in my documents?  
28  
29 Q. If you wanted to see it, it is tab 4 in the slim  
30 folder which has your statement in?  
31 A. Oh, yes, I have it. This is the letter of 2 May?  
32  
33 Q. Yes. In response to that you received a letter from  
34 Mr Jacobs dated 27 May addressed to the secretary, which  
35 was marked to your attention, and that is tab 14 in the  
36 bundle with the flags.  
37 A. Thank you.  
38  
39 Q. Part of exhibit 69. In relation to that letter, I  
40 wanted to draw your attention to a handwritten note on the  
41 third page of that document, first of all, on the first  
42 page, that you have passed that letter to Mr Pearson for  
43 urgent review as advised earlier?  
44 A. Correct, yes.  
45  
46 Q. And on the third page, I think it would be  
47 Mr Turner's handwriting?

1 A. Either Mr Turner or Mr Wojcik, I'm not sure which.  
2  
3 Q. Would you have seen that handwritten note at the time  
4 it was made, before it went on the file?  
5 A. Probably not. I mean, I sent it to the area - to  
6 Mr Pearson and Mr Pearson has obviously on-forwarded it  
7 and the comment was probably written at that point.  
8  
9 Q. I won't take your time with that any further. The  
10 next document I will take you to is DOFA.088.0100.  
11 A. Yes.  
12  
13 Q. That is your handwritten note of a telephone  
14 conversation with Mr Jacobs on 27 May?  
15 A. Correct.  
16  
17 Q. Would that have been after you received the letter,  
18 or before?  
19 A. Well, just by deduction, I would say it was before  
20 the letter, given it was dated on the 27th, and Mike  
21 Jacobs was going overseas. He probably phoned me in  
22 advance.  
23  
24 Q. It says:  
25  
26 *ANA0 will respond to our latest*  
27 *correspondence.*  
28  
29 And the last line refers to:  
30  
31 *... once we get the fax.*  
32  
33 Doesn't it?  
34 A. Yes.  
35  
36 Q. It says their reply will be faxed on Tuesday am.  
37 A. Yes.  
38  
39 Q. What it says on the left-hand side there, I don't  
40 know whose handwriting it is:  
41  
42 *Audit I understand are considering a new*  
43 *lease arrangement where the new premises*  
44 *would be rent-free for 2 years. But would*  
45 *then be higher (than currently) - must*  
46 *still go through WTNP.*  
47

1 A. Yes.  
2  
3 Q. Do you believe that that related to the Canberra  
4 proposal?  
5 A. I have no idea, Mr Robertson. It's obviously by  
6 either Mr Wojcik or Mr Turner and I do not know.  
7  
8 Q. Would you have seen the handwritten note at the  
9 bottom of the page:  
10  
11 *W/out detailed costings we can't agree.*  
12  
13 A. It is very difficult to tell just the timing, the  
14 sequencing, Mr Robertson. I can't accurately comment on  
15 that.  
16  
17 Q. Well, the suggestion is:  
18  
19 *- the secretary has indicated his position*  
20 *as to ANAO location - not w/in or adjacent*  
21 *to the Parliamentary Triangle.*  
22  
23 A. Yes.  
24  
25 Q. That seems to be recording a very firm view on the  
26 part of the secretary not that such a relocation needed to  
27 be justified, but that it simply would not be  
28 countenanced; would you agree with that?  
29 A. Well, as always, I would want to go back to see where  
30 and what the secretary actually said, but I appreciate the  
31 point that you are making - this is a shortened version, I  
32 think, of what the secretary said:  
33  
34 *- Not w/in or adjacent to the Parliamentary*  
35 *Triangle.*  
36  
37 Q. If there was no other document referring to the  
38 secretary's position, then you would say that that was  
39 perhaps an overly strong interpretation of what the  
40 secretary had said?  
41 A. Yes. I would.  
42  
43 Q. On the part of one of your junior officers?  
44 A. I would.  
45  
46 Q. The next document is tab 16, that is DOFA.088.0058  
47 and there are a number of following pages?

1 A. Yes, I have it.

2

3 Q. That is a copy of the letter generally referred to as  
4 the WTNP submission from the Audit Office dated 11 June  
5 1991?

6 A. Yes.

7

8 Q. I just wanted to draw your attention to the comments  
9 on the left-hand side of page 2. Do you see the words  
10 there:

11

12 *Not persuasive nor reliable.*

13

14 Are you able to identify that handwriting?

15 A. Again, it is either Eddy Wojcik or Wayne Turner.

16

17 Q. Can I then take you to the next tab in that bundle of  
18 documents, and just to one document in there,  
19 DOFA.087.0052. It is not tabbed, but if you go within  
20 that tab you will find the documents are not  
21 consecutively, but they are in order, so it would be about  
22 halfway through?

23 A. Tab 16?

24

25 Q. Sorry, it is behind the second tab in that bundle.  
26 You will see that those are documents are numbered  
27 DOFA.087, and then another number?

28 A. It must be a different bundle. This one only has a  
29 single document in tab 2.

30

31 Q. Perhaps if I might approach. DOFA.087.0052-0054 is  
32 the document. That is a draft, I would suggest, of a  
33 letter to Mr Meert from Mr Pearson, which bears  
34 handwritten annotations from a number of parties,  
35 including yourself.

36 A. Yes.

37

38 Q. At the top there is a note addressed to you from  
39 Mr Pearson, which says:

40

41 *Draft for your info and comment, given the*  
42 *proposed BC on AEM and APG, we may need to*  
43 *raise this aspect with ANAO.*

44

45 Do you understand what the proposed "BC on AEM and APG"  
46 would have been?

47 A. BC would refer to budget circular, on the

1 Australian - is it estate management and Australian  
2 Property Group. I can only imagine it is a forthcoming  
3 circular. Finance keeps agencies informed of budget  
4 process issues by these budget circulars and I expect  
5 there must have been one coming up on property operating  
6 expenses.

7

8 Q. This is a draft of the letter of October 1991. I  
9 will make sure I track the final version, which is  
10 CH94.002.0052. It is dated 18 October 1991. It appears  
11 that notwithstanding the letter was from Mr Pearson to  
12 Mr Meert, you, yourself, took quite an interest in the  
13 drafting of that letter?

14 A. Yes, I did.

15

16 Q. You have made lengthy handwritten notes on that  
17 letter down the left-hand side on the first page?

18 A. Yes.

19

20 Q. And on the right-hand side on the second page. I  
21 won't ask you to read those. I will take you to the third  
22 page. In paragraph 10, are those your handwritten notes  
23 on the right-hand side?

24 A. Yes.

25

26 Q. In that paragraph it is suggested that maybe the  
27 public works committee needs to be advised of the project.  
28 Your comment is a bit cut off. Is it that want the ANAO  
29 to do this separately?

30 A. Yes, that seems to be my question, yes.

31

32 Q. Does that suggest that ordinarily you would have  
33 thought it was the Department of Finance that would raise  
34 such issues with the public works committee?

35 A. Well, I guess I'll - I don't pretend to be an expert  
36 in this area, but I think the public works committee gets  
37 involved when the Commonwealth itself is constructing  
38 buildings over a certain value. I guess I'm saying the  
39 process would ordinarily be for a Minister, I would have  
40 thought, to raise it with the public works committee, but  
41 I'm just asking a question. It didn't sound right to me,  
42 basically, that the ANAO would write separately to a  
43 parliamentary committee.

44

45 Q. And then it raises the proposition that possibly the  
46 lease may be classified as a finance lease. Then you have  
47 said:





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Q. Could I now take you to paragraph 22 of your statement?

A. I have that.

Q. In that paragraph you have indicated that the Department wished to assist the ANAO if possible. That, I suggest, reflected your approach rather than that of your superior, Dr Keating, or --

A. I wouldn't draw such a large distinction, but certainly it was reflecting my view.

Q. You then say:

*The Department was sceptical about the assumptions the ANAO had made in relation to the costs of the move and comparative rents in the Woden and Barton areas.*

Again, that scepticism would largely be limited to your level, in that, as I understand the documents, the examination of the assumptions was not escalated to a level higher than yourself?

A. I particularly have in mind here those three versions of the spreadsheets, and my memory was they may have been forwarded to the secretary, or at least one of them was forwarded to the secretary.

Q. You are correct that three spreadsheets were forwarded to the secretary.

A. Yes.

Q. But do you recall the secretary, himself, having undertaken any analysis, that you are aware of, of the spreadsheets or --

A. Well, not explicitly. He would have focused on the minute.

Q. In other words, the scepticism was expressed in the minute to the secretary; you were not aware of the secretary expressing scepticism himself?

A. I'm not aware, but he would have understood the nature of the resource agreement we were proposing whereby the Audit Office was carrying the risk.

Q. Now, can I suggest to you that that scepticism about the assumptions related firstly to the relative cost of

1 rents in Barton and rents in Woden?  
2 A. Certainly that was part of it, yes.  
3  
4 Q. And it related to the expectations as to market  
5 rental movements in Barton?  
6 A. Correct.  
7  
8 Q. And it may be related to the size or amount of dead  
9 rent that might be incurred by the Audit Office as a  
10 result of the move?  
11 A. Yes, that, too. It also, of course, relied on the  
12 savings that the Audit Office were seeking to achieve as  
13 well.  
14  
15 Q. Those savings arose in two ways, I suggest: one,  
16 from the Audit Office occupying less space --  
17 A. Yes.  
18  
19 Q. -- the Department of Finance was not sceptical about  
20 that proposition, was it?  
21 A. We accepted that proposition on that.  
22  
23 Q. The Department of Finance was sceptical about the  
24 suggestion there would be savings from making the move  
25 because it was sceptical that the rent would be lower - as  
26 low as suggested?  
27 A. It was generally on the rent, but the other component  
28 of the accommodation wasn't just the consolidation of  
29 accommodation, but you recall that the Audit Office were  
30 proposing that they wouldn't provide desks for every staff  
31 member, but for - I think from memory - 70 per cent of the  
32 staff --  
33  
34 Q. 70 per cent, yes.  
35 A. -- and so they needed to deliver on that themselves  
36 as well. So that was another level of uncertainty.  
37  
38 Q. That was perhaps at that stage not understood as  
39 such, but what you would now call hot-desking?  
40 A. Indeed, yes.  
41  
42 Q. Do you suggest that the Department of Finance was  
43 somewhat sceptical about that working at that stage?  
44 A. No, but I'm just - I'm putting it into the mix of  
45 issues that there were doubts about the full range, but  
46 you are correct to say the primary focus of Finance was on  
47 the rental differential.

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Q. That scepticism did not, insofar as any of the documents refer, expressly relate to escalation of rentals independently of the market?

A. Correct.

Q. You accept that the Department of Finance had expressed on a number of occasions an expectation that rent increases in Barton would be likely to be greater than elsewhere?

A. Yes.

Q. The Department of Finance, as far as you are aware, did not at any time explicitly inform the ANAO of any expectation that since rent increases in Barton would be likely to be greater than elsewhere, then rent increases experienced by the ANAO would be likely to exceed the deflator?

A. We didn't explicitly say that.

THE COMMISSIONER: Q. What is the emphasis you add to the word "explicitly" there?

A. Well, Commissioner, it goes to the framework that we were - with government endorsement - putting in place to shift property expenses into running costs, and so the reference to "explicitly" was that there was, I guess, a fair amount of material around on the proposed framework and how it would work, but we never explicitly said to the Audit Office, "The deflator may not align with whatever the transaction is that you are getting into." We didn't explicitly draw that point out. But --

Q. But was there anything in these general documents which suggested that?

A. Oh, well, certainly from - in terms of the whole regime, there was. During that period, departments used to get a separate running costs appropriation and a separate property operating expenses appropriation. The running costs appropriation at that stage was indexed. Part of that was indexed by that GCFCE, that deflator we referred to earlier, so there was a general regime of deflators applying to the running costs arrangements. We were transitioning to move the POE into the running costs. Implicit in that is an assumption eventually that it will be subject to a deflator of some kind.

Q. I am still concerned, though, you will understand,

1 Mr McPhee, as to whether it was ever suggested in any of  
2 these documents that the deflator which would refer to the  
3 rental, or the rental expenses, would not match the  
4 market - meaning the local market.  
5 A. I mean, I think when you are dealing with agencies  
6 Australia-wide, and you have an expectation of a deflator  
7 being applied, there are going to be some winners and  
8 there are going to be some losers.  
9  
10 Q. That's because it has to be Australia-wide?  
11 A. Because of the Australia-wide nature. And that was  
12 the nature of the running costs deflator at the time.  
13  
14 Q. But, whereas most property operating expenses  
15 probably would be fairly universal throughout Australia,  
16 Canberra had its own problems for rent. Now, had anybody  
17 applied their mind as to what a department, which operated  
18 solely or principally in Canberra, was going to do in  
19 relation to this deflator?  
20 A. Well, as you are probably aware, Commissioner, there  
21 was guidance material that said that agencies who have a  
22 preponderance of property in one market can put their hand  
23 up for special treatment.  
24  
25 Q. And special treatment meaning - I can't remember the  
26 exact phrase, but you apply to the Finance department for  
27 special consideration?  
28 A. Correct.  
29  
30 Q. What's the name of it, again, I am sorry?  
31 A. Sorry?  
32  
33 Q. What was the name of this arrangement that you had to  
34 go into?  
35 A. Oh, I - probably a property scrutiny, perhaps, was  
36 that the jargon?  
37  
38 Q. No, it is not that.  
39 A. But it meant that the - the property proposals of the  
40 agency would be subject to much more intense scrutiny.  
41  
42 Q. Yes, meaning scrutiny by the Department of Finance?  
43 A. Exactly.  
44  
45 Q. Yes.  
46 A. Exactly.  
47

1 Q. So I think we are talking about the same arrangement?

2 A. Yes.

3

4 Q. And that was also set out in all these documents?

5 A. Well, certainly - I think it is referenced in some of  
6 the documents. It wasn't referenced, I don't think, in  
7 any direct correspondence Finance had with the Audit  
8 Office, but it was more the general material it was  
9 putting out on the proposed framework.

10

11 Q. My own recollection of reading through this material,  
12 and it may be faulty, because it was some time ago now,  
13 was that there was some memoranda between departmental  
14 heads, and one of them - I have forgotten which - actually  
15 sat down and worked it out and sent his views around to  
16 the various departmental heads. I'm not sure that it went  
17 to the agencies, of course - that's where we have the  
18 first problem - and it may be that there was some  
19 reference to it there --

20 A. Mmm.

21

22 Q. Can you suggest where we should be looking in order  
23 to determine how that information was sent to the Audit  
24 Office, as one of the agencies, rather than as a  
25 departmental head? I'm not suggesting you can actually  
26 produce the document, but where should we look?

27 A. Well, it would be in the general estimates memoranda  
28 or budget circulars that went around to agencies. If you  
29 would like, Commissioner, I can, out of session, have a  
30 look at the documents to see if I can come up with  
31 anything, and let your staff know.

32

33 THE COMMISSIONER: I would be very grateful for that. We  
34 will resume in 15 minutes.

35

36 **SHORT ADJOURNMENT**

37

38 THE COMMISSIONER: What was the term I was thinking of?

39

40 MR ROBERTSON: Property resource agreement.

41

42 THE COMMISSIONER: Q. Yes, that was the phrase I was  
43 thinking of. Was that the one you also were thinking of?

44 A. Indeed, Commissioner, yes.

45

46 MR ROBERTSON: Q. The property resource agreement  
47 entered into between the Department of Finance and the

1 Audit Office was something that post-dated the Morling  
2 Inquiry in 1994, wasn't it?

3 A. I don't think so, Mr Robertson. I would just check  
4 back with you.

5  
6 THE COMMISSIONER: If you have the date, we would be  
7 very grateful.

8  
9 MR ROBERTSON: Q. The resource agreement was 27 March  
10 1992. That was the resource agreement relating to the  
11 financing of the fitout and other costs of the move to  
12 Barton?

13 A. Yes.

14  
15 Q. The property resource agreement, by which there was  
16 long-term funding of the Audit Office's rent under the  
17 Centenary House lease, post-dated the Morling Inquiry?

18 A. I think I had moved on at that stage, Mr Robertson.

19  
20 Q. Yes. When you were seeking to refer to a property  
21 resource agreement, were you thinking of the one that was  
22 entered into in March 1992?

23 A. Yes, in the sense that we were bringing forward the  
24 consideration of the Audit Office's property expenses in  
25 the context of the regime which had yet to take place more  
26 generally. But, in answer to the Commissioner's inquiry,  
27 for most agencies it would have been the - the property  
28 resource agreement would have been the opportunity for  
29 special consideration if they had a preponderance of  
30 property in one place.

31  
32 Q. And it would be a fair summary of the evidence you  
33 gave on the last occasion you appeared here that as far as  
34 the Department of Finance's attitude in 1992 and  
35 subsequently was concerned, if the Audit Office wished to  
36 have special consideration in relation to the rent reviews  
37 under the Centenary House lease, that should have been  
38 raised at the time of the initial resource agreement and  
39 not subsequent to execution of the lease?

40 A. Yes, correct.

41  
42 Q. Could I take you to the document which appears at  
43 tab 12 of the bundle containing your statement - that's  
44 the slim bundle. That is a document referred to in  
45 paragraph 24 of your statement. Do you have that document  
46 at tab 12? It is CH94.002.0033-0036. That is a letter  
47 from yourself to Mr Jacobs, dated 13 August 1991. Do you

1 have that?

2 A. Yes, sorry, I do.

3

4 Q. In paragraph 24 of your statement you say:

5

6 *Paragraphs 2 and 4 of that letter were*  
7 *intended to be an express confirmation that*  
8 *the Audit Office was taking the risk of*  
9 *cost increases and any errors in their*  
10 *assumptions.*

11

12 A. Correct.

13

14 Q. In paragraph 2 you say:

15

16 *I note that you understand and accept the*  
17 *funding implications of such an agreement.*  
18 *Staff of the ANAO have been provided with*  
19 *details of our calculations of the*  
20 *financial aspects of the proposal and I*  
21 *understand that there has been general*  
22 *acceptance of the figuring, particularly*  
23 *with regard to the scenario which sets out*  
24 *our understanding of your assumptions and*  
25 *calculations. The latest version is at*  
26 *attachment A...*

27

28 And attachment A is one of the spreadsheets that was  
29 attached to the minute to the secretary?

30 A. Yes.

31

32 Q. When you refer to, "general acceptance of the  
33 figuring", that refers simply to the Audit Office's  
34 acceptance of the Department of Finance's calculations as  
35 set out on the spreadsheet?

36 A. Yes.

37

38 Q. Which incorporates the Audit Office's assumptions; is  
39 that correct?

40 A. Yes. Yes.

41

42 Q. To be fair, paragraph 2 does say:

43

44 *...particularly with regard to the*  
45 *scenario.*

46

47 You were not seeking to suggest by the word

1 "particularly", that the Audit Office had accepted the  
2 alternative scenarios in any way, were you?

3 A. No. Clearly from a strategy point of view we were  
4 running with the ANAO assumptions spreadsheet. That was  
5 deliberately so.  
6

7 Q. So there is no assumption that the acceptance of the  
8 figuring relates to any assumptions about rent reviews?

9 A. No, I think it more related to the components of the  
10 current costs and the projected costs. I think the  
11 comment related to the spreadsheet itself.  
12

13 Q. Can I draw your attention to paragraph 28 of your  
14 statement.

15 A. Yes.  
16

17 Q. In that paragraph you are implicitly, I suggest,  
18 referring to the obligations of the Auditor-General under  
19 regulation 44B of the Finance regulations?

20 A. Well, under section 2A(b) of the Audit Act, which  
21 basically says the head of each agency is responsible for  
22 applying the provisions of the Audit Act, the Finance  
23 regulations and directions.  
24

25 Q. And regulation 44B, which is set out at paragraph 80  
26 of the Department of Finance submission, which is to the  
27 Morling Inquiry, which is in the folder you have there if  
28 you wish to see it, CH94.003.0322-323?

29 A. Yes.  
30

31 Q. Regulation 44B provides:

32  
33 *...that a person shall not enter into a*  
34 *commitment requiring the expenditure of*  
35 *public moneys:*  
36 *"(a) unless a person who has authority to*  
37 *approve a proposal to spend the moneys has*  
38 *given that approval;*  
39

40 and over the page on 323:

41  
42 *(c) unless the person who enters into the*  
43 *commitment is satisfied, after making such*  
44 *inquiries as are reasonable, that when the*  
45 *commitment is entered into:*  
46 *(i) the Commonwealth is unable to obtain*  
47 *better value for the expenditure in all the*

1                   *circumstances...*

2  
3           Do you have that in front of you?

4           A.    I haven't got the exact reference.

5  
6           Q.    I am sorry.  If you go to the submission which is the  
7           first tab in that bundle --

8           A.    The first tab, sorry.  Has it got a page number?

9  
10          Q.    Page 323, or page 22 of the submission.

11          A.    Yes, correct.

12  
13          Q.    So, looking at subparagraph (c), that would be  
14          applicable because subparagraph (d), that is that the  
15          Minister had given approval in writing, is not applicable.  
16          What I am asking you is that, in terms of would have been  
17          reasonable for the ANAO to enter into, are you referring  
18          to that part of the regulation 44B?

19          A.    Yes, (c), (d) --

20  
21          Q.    I can show you a copy of the whole regulation if you  
22          would prefer?

23          A.    But I'm not - yes, I think we are emphasising (d),  
24          but obviously accepting the whole regulation applies.

25  
26          Q.    Would it be fair to say that as far as the Department  
27          of Finance is concerned, and yourself as a senior officer  
28          in that Department, once the prospect of a resource  
29          agreement was raised, the Department of Finance took the  
30          approach that if the Audit Office wished to, to use a  
31          colloquialism, hang itself, the Department of Finance was  
32          prepared to provide the rope?

33          A.    Certainly from a budget point of view, we were  
34          putting the risk squarely on the Audit Office's shoulders.  
35          I think it is important just to be clear that the  
36          compilation of the budget precedes, obviously, the  
37          introduction of the appropriation bills into the  
38          Parliament, and the passage of the appropriation bills.  
39          The Audit Act, Finance regulations and directions then  
40          apply to expenditure by agencies once the appropriation  
41          arrangements are in place.  So there is a distinction, I  
42          guess, between preparing the budget and the normal  
43          expenditure framework which applies to agencies every day  
44          of the week.

45  
46          THE COMMISSIONER:   Q.    But really I'm not sure that's an  
47          answer to the question.  What you were doing was certainly

1 placing the responsibility upon the Audit Office - I don't  
2 think there is any doubt about that. But I wonder if they  
3 were being asked to face up to their responsibility with  
4 full knowledge of what was going to happen.

5 A. Well, that's the \$64 question, Commissioner.  
6

7 Q. I know.

8 A. And that's why I have accepted earlier in evidence  
9 that there was some scope for misunderstanding. But  
10 certainly from Finance's point of view, we were quite  
11 clear on the position we were taking. Whether the Audit  
12 Office completely understood is a different issue.  
13

14 Q. Well, there is also the problem as to whether the  
15 Finance department sufficiently explained the problems,  
16 and I refer once more to what the deflator was likely to  
17 be.

18 A. Well, the only thing I would say, Commissioner, in  
19 respect to spending, or entering commitments, we then move  
20 into the framework of the Audit Act and the financial  
21 regulations which are in situ. What I was trying to say  
22 earlier, the preparation of the budget and the regime, the  
23 rules endorsed by government as to how you derive an  
24 agency budget are one thing, but when you move into the  
25 actual expenditure of funds, you straightaway get into the  
26 Audit Act and you get into section 2A(b) of the Audit Act,  
27 which, if I can quote, says:  
28

29 *The permanent head of a department is*  
30 *responsible for making appropriate*  
31 *arrangements for implementing the*  
32 *provisions of this Act, the Regulations and*  
33 *any directions given under this Act or*  
34 *under the Regulations in relation to the*  
35 *department.*  
36

37 The Audit Act is defined as a department in this context.  
38 So that regime applies, not just to POE, or anything else,  
39 but in the broad, and we are moving into the framework  
40 that applies every day. So it is the preparation of the  
41 budget - the point I was trying to make, the preparation  
42 of the budget is one thing, but the expenditure, you move  
43 into a very clearly understood framework and that's where  
44 the obligation is clearly and unequivocally on the  
45 shoulders of the secretary of the department.  
46

47 Q. Well, I have already accepted that you had placed it

1 upon the Audit Office, but I'm not sure if what you said  
2 answers the \$64 question, and I realise that you probably  
3 can't take it any further.

4 A. I appreciate that point. I'm just saying, though,  
5 that the secretaries of departments know that they have to  
6 abide by these arrangements in any event, and I guess my  
7 suggestion, at least, is that to be able to enter into  
8 these arrangements requires an understanding of the source  
9 of the funds and whether you have got the capacity to pay  
10 for the commitments you are getting into.

11  
12 Q. I don't overlook the evidence that perhaps Mr Taylor,  
13 but certainly some of his officers, made it abundantly  
14 clear to the Department of Finance that the Audit Office  
15 thought it was none of the Department of Finance's  
16 business, but, as I see it, there would still be an  
17 obligation on the Department of Finance to be sure that  
18 the Audit Office understood what it was doing. Now, if I  
19 am wrong on that, you had better set me right.

20 A. Well, you know, it is a question of where you draw  
21 the line.

22  
23 I firmly believe what Finance did was reasonable.  
24 Whether we could have done more, whether we could have  
25 assisted the Audit Office - who, after all, were a pretty  
26 key institution, who audit the financial framework day in,  
27 day out - the extent to which we should have gone further  
28 is a question I have asked myself as well and obviously is  
29 one that the Commission will need to address, but --

30  
31 Q. One of the facts or background facts that we have to  
32 take into account in this particular problem, or in  
33 resolving the \$64 question, is that this was probably the  
34 first big financial arrangement that was going to be  
35 entered into under the new regime, and it could be  
36 suggested that there was an even greater necessity for the  
37 Department of Finance to ensure that even the Audit Office  
38 understood its obligations under these new arrangements?

39 A. Well, as I said, I mean, I think what we did was  
40 reasonable. Whether we could have gone further is an open  
41 question. It seems to me it is the - you know, the issue  
42 that - the analogy I sometimes think about is if you are  
43 walking across the road with someone, if someone asks you  
44 directions, should you, you know, say, "Look left, look  
45 right, look left again", which is where I think we were,  
46 or should you actually step across the road with them.  
47 On the one hand, the answer to that might be if it is an

1 elderly person or a child, maybe the answer is you do  
2 cross the road with them, but if it is a mature adult, do  
3 you? I'm not convinced.

4

5 Q. I'm afraid to a lawyer the analogy is not apt because  
6 a person who is asked about crossing the street is under  
7 no obligation of the nature that I think the Department of  
8 Finance would have been when asked a question or when  
9 confronted with a particular problem.

10 A. Perhaps the analogy is more apt, Commissioner.

11

12 MR ROBERTSON: Q. First of all, after you read from  
13 section 2A(b) of the Audit Act - is that the current  
14 version or the version in effect as at 1991?

15 A. Well, the Audit Act has now been replaced. I assume  
16 it was as in situ, but I haven't confirmed that.

17

18 Q. That's something we can check.

19

20 THE COMMISSIONER: Q. There is one matter that arises  
21 out of this, I am sorry. During the Senate Estimates  
22 Committee there was a reference to some report made by the  
23 Auditor-General, I think Mr Taylor, concerning this very  
24 issue. Do you remember what that was?

25 A. Yes, I do.

26

27 Q. When was --

28 A. It was subsequent to this transaction. I think, from  
29 memory, '93/'94, something like that.

30

31 Q. I see. So it wasn't as if the Audit Office had not  
32 learned the error of its ways?

33 A. Well, I don't know.

34

35 Q. Perhaps that is unfair to ask you to comment upon.

36

37 MR ROBERTSON: Q. The second point is, on reading from  
38 section 2A(b), you subsequently said the "Audit Act" was a  
39 department for this purpose. I think you meant the "Audit  
40 Office"?

41 A. Sorry, what did I say?

42

43 Q. The transcript, correctly, I think, records you as  
44 saying, after reading from section 2A(b), that the  
45 Audit Act is regarded as a department for this purpose. I  
46 think you meant the Audit Office?

47 A. I am sorry, yes, the Audit Office.

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Q. I just wanted to make that clear.

A. Yes.

Q. What I would like to do, just to finish, is put a number of propositions and ask whether this would reflect your understanding of the Department of Finance's position in early 1992. First of all, you understood and the Department of Finance understood that the Audit Office, the ANAO, was taking a risk in entering into the Centenary House lease in terms of the accuracy of its assumptions.

A. I will just rephrase that slightly. Instead of "taking a risk", just "carrying the risk" in relation to the assumptions.

Q. The Department of Finance's attitude was that those assumptions were probably incorrect?

A. Well, certainly the other spreadsheet that showed the Finance assumptions had different assumptions. Now, all we were saying was that, you know, we were doing some sensitivity analysis around it, seeing what the potential financial impact on the Audit Office was, if the assumptions changed, but, as I have said previously, fundamentally we were happy to go with the Audit Office ones knowing that they would, you know, carry the risks.

Q. When you say you did some sensitivity analysis, the sensitivity analysis was all on the basis that the Audit Office assumptions proved to be optimistic in terms of rental?

A. Yes, correct.

Q. What I am suggesting is that the Department of Finance had repeatedly stated that it considered that the rentals assumed by the Audit Office were on the low side?

A. Yes.

Q. So that the Department of Finance in early 1992 expected that the Audit Office assumptions were likely to be proved incorrect?

A. Correct.

Q. So that on that basis, the Department of Finance actually, at the time of the resource agreement - that is, March 1992 - considered it likely that the Audit Office would have to fund its rent from other sources when its assumptions were proved, to a degree when its assumptions

1 proved incorrect?  
2 A. That's correct.  
3  
4 Q. What the Department of Finance, I suggest, did not  
5 realise, was the size of the problem that eventually  
6 arose?  
7 A. I think that's true, too.  
8  
9 Q. And it did not realise the size of the problem, I  
10 would suggest, for one of two reasons, and if you think  
11 there are others you might let me know. One is because it  
12 was not aware of the rent escalation provisions?  
13 A. Correct.  
14  
15 Q. The other possible reason is, and whether or not the  
16 Department of Finance was aware of the rent escalation  
17 provisions, the Department of Finance did not realise in  
18 March 1992 that the deflator that would be applied to  
19 rentals under the proposed new regime would be as low as  
20 1 per cent?  
21 A. And that's correct.  
22  
23 Q. So that what would follow from that is even if the  
24 Department of Finance had been aware of the 9 per cent  
25 escalator, it would not have anticipated that the problem  
26 would be as bad as it subsequently became?  
27 A. I think that's correct.  
28  
29 Q. Do you suggest that there was any other reason why  
30 the Department of Finance did not realise the problem  
31 would be as bad as it was?  
32 A. I think we presumed the Audit Office would have their  
33 eyes open in terms of the transaction itself, because, as  
34 I was saying, the budget was facilitating an arrangement;  
35 they were carrying the responsibility directly themselves.  
36  
37 Q. You suggest that the Department of Finance, at the  
38 end of the day, just concluded that it was not the  
39 Department of Finance's responsibility to vet the lease,  
40 and it left it to the Audit Office and those advising  
41 them?  
42 A. Absolutely.  
43  
44 MR ROBERTSON: I have no other questions.  
45  
46 <EXAMINATION BY MR SACKAR:  
47

1 MR SACKAR: Q. Mr McPhee, did you ever ask anybody in  
2 Audit, yourself, for even an outline of the terms and  
3 conditions of the lease that you believed they were  
4 proposing to enter?

5 A. No, I never did.  
6

7 Q. Was there any reason for that?

8 A. Well, because, as I have sought to make clear in my  
9 evidence, the transaction we were entering into was to  
10 facilitate funds to allow them to borrow money which would  
11 eventually be repaid, but the actual transaction itself  
12 was a matter for the Audit Office and, as far as I'm  
13 aware, Finance has never expressed a view on the merits of  
14 the particular transaction.  
15

16 Q. And wouldn't feel either any obligation to do so or  
17 any reason to do so; is that right?

18 A. That's right.  
19

20 Q. So the actual terms and conditions that Audit might  
21 have been considering, as a policy issue, would have been  
22 regarded as entirely within the province of the Audit  
23 Office?

24 A. Yes.  
25

26 Q. Your only concern would be to ensure that whatever it  
27 was that was going to be advanced in any budgetary context  
28 or any financing context, was, from their point of view,  
29 at least, addressed as to whether or not it would or would  
30 not come within the terms and conditions they were  
31 proposing to enter?

32 A. Yes, and, I mean, overall I guess we had an eye on  
33 viability, but apart from that, it was a re-arrangement of  
34 funding which had been allocated to the Audit Office in  
35 the budget year and the forward years.  
36

37 Q. In 1991 - Mr Robertson may have asked you this  
38 question directly or indirectly, and if so I apologise for  
39 repeating it - were you aware of any move by the Tax  
40 Office to establish their presence in a regional context  
41 or in regional contexts?

42 A. I would have been broadly aware of that, yes.  
43

44 Q. Were you aware that that was as a result of, perhaps,  
45 one or more of the following: firstly, innovation of  
46 fringe benefits tax or capital gains tax, leading to  
47 perhaps an expanded role on the part of the Tax Office?

1 A. I certainly wasn't aware of the specifics, but I was  
2 aware that the Tax Office was going through a very  
3 substantial modernisation program.  
4

5 Q. And it was called, I think, the modernisation  
6 process, or something to that effect?

7 A. It was.  
8

9 Q. Were you aware that persons from the Tax Office had  
10 been in negotiations with Barclays bank in 1991 for the  
11 purposes of the construction of, and, in turn, renting of  
12 a number of premises around Australia?

13 A. I wasn't aware of that.  
14

15 Q. I take it, therefore, you were not aware of any  
16 particular arrangements that the Tax Office were  
17 contemplating entering into in 1991?

18 A. Not in respect of property, no.  
19

20 Q. Can I take you, please, to CH94.012.0054? You won't  
21 have a hard copy of it. I will just call that first page  
22 up on to the screen. If I'm taking you out of context,  
23 please ask me and I will take you back into it, but,  
24 rather than take you back to the first page, I will just  
25 give a reference to the first page of this for the  
26 transcript - CH94.012.0028. I will invite you, Mr McPhee,  
27 to assume or accept that the first page that I have just  
28 referred to was the front piece of a discussion paper - I  
29 think you might have been shown it the other day?

30 A. Yes.  
31

32 Q. It was prepared by the Department of Finance in  
33 October 1990, and the paper was entitled, "Incorporation  
34 of Property Operating Expenses Into Running Costs. A  
35 Discussion Paper". I think you dealt with that with  
36 Mr Robertson?

37 A. I did, yes.  
38

39 Q. On the page that I have got you to look at, or  
40 invited you to look at - again Mr Robertson kindly took  
41 you to this the other day - I think you were invited to  
42 read the paragraph immediately before the heading  
43 "Construction Costs", and I think Mr Robertson referred  
44 you to:

45

46 *(Rents in Canberra, by comparison, are*  
47 *likely to be more robust.)*

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Do you see that statement?

A. Yes.

Q. At the top of the page, the same page, there is a reference to:

*The AVO data confirm...*

Et cetera. Do you see that?

A. Yes, I see that.

Q. Can I now take you, please, in the same document, to page 0073.

MR ROBERTSON: While that is coming up, might I suggest Mr McPhee does have a copy of this, it is in exhibit 68, behind tab 6.

MR SACKAR: Thank you.

Q. If that is more convenient, by all means look at that version. It probably would be more convenient to look at this particular document by reference to the hard copy, I expect?

A. Yes. So what page?

Q. Would you be kind enough to go about four pages from the end of the paper, and you will see it, hopefully, as attachment C?

A. Yes, I have got attachment C.

Q. First, I should ask you this: in 1990 were you in the Department of Finance?

A. Yes, I was.

Q. In 1991 and 1992 you were first assistant secretary. Prior to that, in 1990, what position do you recall --

A. I would have been assistant secretary in the department.

Q. Who would it have been, if you can recall, in 1990 who would have liaised with the AVO for the purposes of compiling or retrieving from them a table such as the one we see as attachment C. Would there have been any person in the Department of Finance whose function it might have been to do that?

1 A. The division with responsibility for implementing the  
2 new property reforms was the division called Defence and  
3 Government Division. You would have seen reference to a  
4 Mr Cooney. Mr Cooney worked in the Defence and Government  
5 Division. My division was the financial management  
6 division, and, as often occurred with public sector  
7 reforms, one area does the policy work and the framework  
8 and then the rest of us seek to implement that, consistent  
9 with government decisions.

10  
11 Q. Now apart from Mr Cooney, who the Commission will  
12 hear from subsequent to you, or a little later after you  
13 give your evidence, do you recall a man called Mr Joyce in  
14 that same section as Mr Cooney?

15 A. Yes, I believe he worked there - Michael Joyce. I  
16 think he may have even been a Canadian exchange person.  
17

18 Q. Can I take you back to the document, if I may, are  
19 you suggesting - and I don't put this disrespectfully -  
20 that it would be more useful for me to ask Mr Cooney some  
21 questions about attachment C than you?

22 A. Well, I'm saying that in terms of the responsibility  
23 for the preparation of this document, it wasn't mine. I  
24 obviously had a general awareness of the proposals, but it  
25 wasn't my direct responsibility.  
26

27 Q. All right. I will defer that issue perhaps until  
28 Mr Cooney comes. Can I take you, then, please, to another  
29 document, which is, if you have your statement before the  
30 Commissioner in these proceedings, the document that is  
31 behind tab 8. Mr McPhee, would you be kind enough to turn  
32 to tab 8. That's the memorandum prepared by Mr Turner, it  
33 seems, of a meeting at least which took place on 25 June.  
34 You have made some remarks about it at least in paragraph  
35 20 of your statement. I think also at paragraph 19, if  
36 you would just like to have a look at that.

37 A. Yes.  
38

39 Q. In paragraph 19, if I may just ask you something  
40 about it as we go through it, you make reference to a  
41 statement at the bottom of the second page of the  
42 memorandum?

43 A. Yes.  
44

45 Q. That is CH94.010.0034:

46  
47 *...the Government's response was that there*



1 A. I may well have been mistaken.  
2  
3 Q. Having seen the note, does the name "Ian Joyce" make  
4 any difference to you?  
5 A. Not - it is not as familiar, that's all I'm saying,  
6 but --  
7  
8 Q. All right. Can I take you, please, to the second  
9 page of the memorandum. Perhaps I should, in the first  
10 instance, in fairness to you, take you to the very last  
11 page first. The last page, for the transcript reference,  
12 is CH94.010.0037. Mr Turner apparently recommended that  
13 you brief the secretary in terms of the attached draft --  
14 A. Yes.  
15  
16 Q. -- which favours the Sydney and Brisbane proposals  
17 but does not support the Canberra proposal?  
18 A. Yes.  
19  
20 Q. Is that something you did, having presumably read  
21 this note of the meeting?  
22 A. Yes, that is - I have got in my papers a document  
23 which certainly does appear to do that, correct. So that  
24 is - yes.  
25  
26 Q. Well, does it mean that the recommendation was, can  
27 we take it, implicit, that if Mr McPhee agrees with the  
28 sentiments explained, then it was suggested that you might  
29 be the person who would, without me putting words into  
30 your mouth, take up the argument that Audit shouldn't move  
31 to Barton - or is that unfair to paraphrase it that way?  
32 A. I think it is unfair. Certainly it is not what was  
33 in my mind as I have previously indicated. I have said  
34 that if there was to be any move, basically, it needed to  
35 be - the argument needed to hold up on economic grounds.  
36  
37 Q. Did you agree, yourself, that there were no  
38 compelling reasons why Audit should be located in the  
39 parliamentary area?  
40 A. Did I agree with that statement? I didn't agree with  
41 that explicit statement, because it wasn't what the  
42 government indicated.  
43  
44 Q. Well, I didn't ask you that. Whatever the government  
45 or you might have thought the government was indicating,  
46 was it your view that there were no compelling reasons why  
47 Audit should be located in the parliamentary area?

1 A. I didn't agree with that.

2

3 Q. On the third page of the memorandum, there is some  
4 handwriting. Again, Mr Robertson may have asked you this  
5 and forgive me if I am repeating the question. Are you  
6 able to identify the handwriting on the page?

7 A. No, I would presume it is either Mr Wojcik or  
8 Mr Turner.

9

10 Q. The second paragraph from the top of page 3, for the  
11 transcript purposes, is CH94.010.0035. It says:

12

13 *The assumed rentals which ANAO used...were*  
14 *provided by APG but seemed on the low*  
15 *side...*

16

17 A. Yes.

18

19 Q. Part of the argument, if I may put it that way, which  
20 you did accept, given the analyses which have been done,  
21 was that whatever Audit were apparently predicting, in  
22 terms of the rental, indeed, whatever APG might have been  
23 predicting in terms of rental, Finance seemed to think  
24 that both of those assessments were on the low side, and,  
25 therefore, potentially unreliable as a safe or accurate  
26 guide for the future expenditure, that might be incurred  
27 if Barton were the chosen location; would you agree?

28 A. I'm not sure about unreliable, but certainly, I  
29 think, the Finance figuring suggests the rents would be  
30 higher than what the ANAO and APG assumptions were.

31

32 Q. We will come to that in a moment. Did you have any  
33 independent view - that is, independent of the view  
34 expressed at the meeting which you see expressed in the  
35 paragraph I have invited you to go to, and that is the one  
36 commencing, "The assumed rentals", et cetera - do you see  
37 that paragraph:

38

39 *The assumed rentals which ANAO used*  
40 *(\$320sqm) were provided by APG...*

41

42 Et cetera; do you see that?

43

44 A. Mmm-hmm.

45

46 Q. Just read that paragraph to yourself.

47

47

1 Q. Did you have any independent view of that issue, or  
2 did you, or would you have, relied entirely upon whatever  
3 analysis had been undertaken by Mr Wojcik or Mr Joyce, or  
4 whomsoever it was who had, (a), done the analysis, and,  
5 (b), perhaps expressed that view?  
6 A. Yes, I would have been happy to accept the views of  
7 those people who were providing this advice.  
8  
9 Q. You would have no basis yourself to agree or  
10 disagree, but you would merely have accepted their view,  
11 what, as relevantly people who ought to know what they  
12 were talking about?  
13 A. Yes. Yes.  
14  
15 Q. Can I take you to the spreadsheets, so-called.  
16 Again, I don't put that disrespectfully.  
17 A. No, no, that's fine.  
18  
19 Q. They are at tab 10 of your statement?  
20 A. Yes.  
21  
22 Q. Would you agree with me that moving from the  
23 back - that is, from attachment C - up to attachment A,  
24 that the Audit Office were assuming \$320, leaving aside  
25 the assumption that it would be the case for a decade?  
26 A. Mmm-hmm.  
27  
28 Q. APG, on the other hand, were predicting commencing at  
29 \$315 per square metre. They would then rise, I think, to  
30 \$365 from 93/'94?  
31 A. Yes.  
32  
33 Q. But that was obviously a significant increase on what  
34 ANAO was --  
35 A. Yes.  
36  
37 Q. -- assuming. Then your department, or your people,  
38 were higher again, were they not - if you go to  
39 attachment A?  
40 A. Yes, yes, they were.  
41  
42 Q. Again, if I may put it to you, you would have relied  
43 upon their view because you would not have regarded  
44 yourself as expert sufficiently to agree or disagree with  
45 the numbers they were projecting or suggesting?  
46 A. I was happy with this in view of the strategy that we  
47 had in mind, basically.

1  
2 Q. Well, okay, thank you. The resource agreement which  
3 ultimately was signed in the March of 1992, fixed, as it  
4 were, or required, which was agreed, that Audit would  
5 repay those moneys which were borrowed - and I won't go to  
6 the precise figure - at what was ultimately agreed would  
7 be the interest rate that would be apply, namely the  
8 10-year bond rate. Do you recall that or need I take you  
9 to that?  
10 A. Oh, I mean, broadly, yes.  
11  
12 Q. I think a little earlier in the negotiations Finance  
13 was trying to get a higher rate of interest on the  
14 repayment of those moneys, something in the order of  
15 13 per cent, but ultimately agreed to the 10-year bond  
16 rate. Does that more or less ultimately agree with your  
17 broad recollection?  
18 A. Yes, I didn't follow that closely. For me that was a  
19 fairly incidental point.  
20  
21 Q. May I just ask you this about the 10-year bond rate:  
22 when Treasury issues bonds, and 10-year bonds, as it were,  
23 that involves Treasury, does it not, having to form a view  
24 of what will happen over the next 10 years as to interest  
25 rates, doesn't it?  
26 A. I don't profess to be an expert in that area, but --  
27  
28 Q. Well, a 10-year bond rate, though, is a promise if  
29 one buys it in a secondary market from, say, Westpac or  
30 Commonwealth Bank; it is a promise to pay that interest  
31 rate shown on the bond, compounded over the length of the  
32 period - if it is 10 years, it is 10 years, isn't it?  
33 A. Agreed.  
34  
35 Q. And by Finance adopting that rate you were adopting  
36 what you thought was a conservative position, or an  
37 orthodox position, namely, requiring Audit to give you a  
38 rate of return which was the same as the bond rate?  
39 A. Correct.  
40  
41 Q. In your case, I think - when I say "your case", in  
42 Finance's case - the repayment was to be over seven years,  
43 though?  
44 A. I think that is right, yes.  
45  
46 Q. But the 10.07 per cent which Finance required Audit  
47 to pay was a fixed rate of interest, was it not, for seven

1 years - would you like me to take you to the agreement?  
2 A. Well, I am happy to accept. I am in your hands. I  
3 am happy to accept.  
4  
5 Q. Perhaps I can just show you. I invite the operator  
6 to call up CH94.002.0148. It is the second page of the  
7 letter, and by all means we will show you the first if you  
8 need to see it.  
9 A. Yes.  
10  
11 Q. It is a letter dated --  
12  
13 THE COMMISSIONER: Just so that I am clear, you said,  
14 first of all, it was compounded and then you said fixed  
15 rate of interest. Did you mean to repeat "and  
16 compounded"?  
17  
18 MR SACKAR: Yes, I do.  
19  
20 Q. Do you see at the top of the page this was a letter  
21 from Mr Sedgwick of 11 February to, if I can just tell  
22 you, Mr Taylor, and it was in the context of negotiations,  
23 but ultimately I want to suggest to you that the top  
24 bullet point:  
25  
26 *The ANAO's base Property Operating Expenses*  
27 *will be reduced by \$566,168pa for a period*  
28 *of 7 years, representing repayment of the*  
29 *additional appropriation and interest*  
30 *determined at a fixed rate equivalent to*  
31 *the Long Term Bond Rate as at 10 February*  
32 *1992 (10.07%);*  
33  
34 A. Yes.  
35  
36 Q. It is a mechanical aspect, but you would have been  
37 broadly familiar, I take it --  
38 A. Yes.  
39  
40 Q. -- at the time that that rate of interest was going  
41 to be charged to Audit --  
42 A. Yes.  
43  
44 Q. -- on a fixed term for seven years?  
45 A. Yes.  
46  
47 Q. May I ask you just a couple of questions about some

1 handwriting and, again, if you have already been asked,  
2 then I apologise. First, may I show you, before I come to  
3 handwriting, an ASIC return for a company called the  
4 Tuggeranong Office Park Pty Limited. I have opened it at  
5 page 3 of the ASIC return. Would you be kind enough just  
6 to have a look at that, please.

7

8 MR SACKAR: Mr Commissioner, could I hand a copy up to  
9 you so that you can follow. I think I gave one to  
10 Mr Foster on Friday.

11

12 THE COMMISSIONER: Is this going to be --

13

14 MR SACKAR: I was going to tender it in a minute.

15

16 Q. Mr McPhee, please don't, again, take this the wrong  
17 way. I don't ask you to speculate. Insofar as you know  
18 any of the personalities or persons who are said to be  
19 directors of the Tuggeranong Office Park Pty Limited,  
20 would you be kind enough just to indicate of those persons  
21 named as directors who you are familiar with or know of,  
22 and, if you are aware, further, whether they are in  
23 government or otherwise, if you are able to go any further  
24 on their identities?

25 A. Okay. I know Mr MJ Pahlow, who is currently a  
26 Finance officer. I know Tim Youngberry, who is an officer  
27 with the Department of Family and Community Services. I  
28 know a Phillip Prior. I assume that may be Phillip Prior  
29 - PJ Prior - who is currently a Finance official. And I  
30 know a Barry Jackson, who may be that BR Jackson as well,  
31 who was a Finance official.

32

33 Q. Are you aware that the company Tuggeranong Office  
34 Park Pty Limited is the company which owns the office park  
35 complex in Tuggeranong?

36 A. I wasn't specifically aware of that. I have never  
37 had much to do with this particular office development.

38

39 MR SACKAR: May I tender that, if the Commission pleases?

40

41 MR ROBERTSON: The concern I have, Commissioner, is that  
42 this is a current search of Tuggeranong Office Park Pty  
43 Limited and the directors referred to are directors as at  
44 2000 to 2003.

45

46 THE COMMISSIONER: Can you let us into the secret of how  
47 we should look at it?

1  
2 MR SACKAR: It is going to be a question in this case,  
3 and in other cases, of some of these leases that were on  
4 the list of leases to try and track down the history of  
5 these places. The Tuggeranong Office Park, so to speak,  
6 was the first item on that list. It was said to be, or is  
7 said to be - and I think Mr Jeffress gave evidence of  
8 this - a long-term lease, namely, 25 years, entered into  
9 back in I think 1989 or 1990, or thereabouts, with various  
10 features, which I won't repeat in front of the witness.  
11 Yes, this is a contemporaneous document. It is a complex  
12 commercial arrangement. I don't suggest that tendering  
13 this document is the complete answer to it; it is part of  
14 a jigsaw.  
15  
16 THE COMMISSIONER: I remember the name of the company and  
17 the situation in which it arose during the course of the  
18 evidence.  
19  
20 MR SACKAR: Yes.  
21  
22 THE COMMISSIONER: How will the 2003 report assist? I  
23 think that's what Mr Robertson is raising?  
24  
25 MR SACKAR: It comes to this point: if a number of the  
26 directors are from either present or past Department of  
27 Finance or other government departments, the inference  
28 would be that those departments ought, theoretically, be  
29 aware of the history of the arrangement. Now, that's an  
30 inference that might be drawn.  
31  
32 THE COMMISSIONER: What you are seeking to prove by this,  
33 then, is simply that it is now, in effect, a government  
34 company running the Park?  
35  
36 MR SACKAR: Well, it is a very complicated commercial  
37 arrangement. There appear to have been some members of  
38 government on the board. There appear to have been issued  
39 some time ago bonds for the purposes of financing this.  
40 Whether it was a joint venture or whether it was entirely  
41 a government lessor/lessee situation, I think, is at the  
42 moment quite unclear.  
43  
44 THE COMMISSIONER: One of the witnesses earlier on made a  
45 certain comment about it, which I perhaps shouldn't  
46 repeat, if you want to take it up with Mr McPhee, but that  
47 would have suggested that the government should by now be

1 somewhere where you suggest it is in having a large  
2 interest in it.

3  
4 MR SACKAR: Well, no, they haven't yet, because we have  
5 supplied to Mr Foster on Friday the best information we  
6 currently have. It seems that the running of this  
7 enterprise has been a joint exercise for some years. We  
8 don't understand yet that the reversion, if there be any  
9 to take place, has taken place, and the terms of it we  
10 gave Mr Foster on Friday - what we believe were the terms.  
11 They may not be right. However, we indicated to Mr Foster  
12 what we had been told. As far as we understand it, there  
13 has been no reversion yet.

14  
15 THE COMMISSIONER: So this is the first step, small step,  
16 perhaps, in establishing what you want to.

17  
18 MR SACKAR: Yes.

19  
20 THE COMMISSIONER: It will be exhibit 75.

21  
22 **EXHIBIT #75 ASIC COPY OF FINANCIAL STATEMENTS AND REPORTS**  
23 **OF TUGGERANONG OFFICE PARK PTY LIMITED,**  
24 **BARCODED EXH.075.0001**

25  
26 MR SACKAR: Q. Mr McPhee, may I just ask you to have a  
27 look at a couple of documents, please. Could I have  
28 brought up DOFA.088.0052? Are you able to indicate whose  
29 handwriting that is? If not, don't. Are you troubled by  
30 it?

31 A. I don't know whose it is.

32  
33 Q. May I take you, then, to another document,  
34 DOFA.088.0144. Are you able to identify any of the  
35 writing?

36 A. No, that's not familiar to me.

37  
38 Q. May I just ask this: the initials "FC", was that a  
39 person who was familiar to you? You will see on the  
40 right-hand side:

41  
42 *Asked FC 11-3-91.*

43  
44 Could that be Mr Campbell?

45 A. Yes, Frank Campbell worked in the Australian Audit  
46 Office. It could be Frank Campbell.

47

1 Q. I think you told Mr Robertson that you were not  
2 aware, at least prior to there being legally binding  
3 arrangement between the government and the lessor,  
4 owner/builder, so to speak, that there was a 9 per cent  
5 escalation?

6 A. Correct.

7

8 Q. During the Morling Inquiry did you attempt to find  
9 out whether you thought anyone in Finance was aware of the  
10 escalation clause or the concept of an escalator, prior  
11 to, let's say, April of 1992? I know it is going back a  
12 long way.

13 A. Look, it was my clear understanding that no-one  
14 within Finance was aware of it. Whether I then explicitly  
15 sought confirmation of that, the answer is no.

16

17 Q. Again, I know it is a very long time ago, do I take  
18 it that in relation to the note I am showing you now, not  
19 only do you not know whose handwriting it is but do you  
20 recall whether or not you had seen the note before I had  
21 just shown it to you?

22 A. I don't know whether it is in the context of the  
23 works technical new policy questions that were being  
24 considered at the time.

25

26 Q. Let me not take any more time on it. Would you be  
27 kind enough, then, please, to have a look at the  
28 handwriting, if the operator could be kind enough to call  
29 the DOFA.087.0042. Do you recognise any of the  
30 handwriting on that page? I appreciate it is a little --

31 A. I always recognise Mr Pearson's handwriting. He  
32 always had a thick fountain pen. So that word "already",  
33 would be his.

34

35 Q. Just let me catch up with you. Do you mean in the  
36 middle?

37 A. In the middle. I suspect the rest of it might be  
38 Eddy Wojcik's handwriting.

39

40 Q. The word "already" in the lower right-hand corner you  
41 think is Mr Pearson?

42 A. Yes, and by the look of it, Mr Wojcik, that seems to  
43 be his initial under 28/4. So I suspect the comments are  
44 probably his.

45

46 Q. Would you be kind enough to look at, if the operator  
47 would turn to the next page, DOFA.087.0043. May we take

1 it that consistently with your previous answers, you think  
2 that the heavy-ink writing on the page is likely to be  
3 Mr Pearson's?  
4 A. Correct.  
5  
6 Q. And that involves also identifying the words "The  
7 ANAO agrees that", right at the bottom?  
8 A. Yes.  
9  
10 Q. But perhaps not the writing which appears above the  
11 dashes that he has left?  
12 A. Yes.  
13  
14 Q. Are you able to identify whose writing it is that  
15 appears in the gap?  
16 A. No. No. I don't, Mr Sackar.  
17  
18 Q. One last document, please. DOFA.087.0148. Again,  
19 the handwriting - are you able to tell us, if you know?  
20 A. No, I think - it is likely to be Eddy Wojcik, but I  
21 don't know.  
22  
23 MR SACKAR: Thank you very much, Mr McPhee.  
24  
25 THE COMMISSIONER: Mr Beech-Jones informed us last  
26 Wednesday, I think it was, that he did not think he would  
27 have any questions of Mr McPhee, and, by his absence, I  
28 assume that is still the case.  
29  
30 MR SACKAR: It must be. He certainly hasn't contacted  
31 us.  
32  
33 **<EXAMINATION BY MR ROBERTSON:**  
34  
35 MR ROBERTSON: Q. Mr McPhee, you were asked about a  
36 number of directors of Tuggeranong Office Park Pty Limited  
37 and you indicated that a number of those individuals were,  
38 to your knowledge, members of the public service?  
39 A. Yes.  
40  
41 Q. Officers of various departments?  
42 A. Yes.  
43  
44 Q. Does that knowledge extend to whether those  
45 individuals held such offices in 1991?  
46 A. Oh, look, I think I could say without doubt none of  
47 them were there in 1991.

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MR ROBERTSON: I have no further questions.

THE COMMISSIONER: Thank you, Mr McPhee, for coming along. I am sorry you were kept waiting on Friday. It is very difficult to judge in advance how long a witness is going to take. Indeed, I think that you have probably taken longer than we anticipated anyway. I apologise for that.

THE WITNESS: Thank you, Commissioner.

THE COMMISSIONER: Thank you very much for attending. I hope we don't need you back, but if we do we will let you know.

THE WITNESS: Understood, thank you.

**<THE WITNESS WITHDREW**

MR ROBERTSON: I call Mr Cooney.

**<BRIAN CLIVE COONEY, sworn:** [12.47pm]

**<EXAMINATION BY MR ROBERTSON:**

MR ROBERTSON: Q. Your full name is Brian Clive Cooney?

A. That's correct.

Q. You live at 35 Beauville Avenue, Murrumbidgee?

A. Correct.

Q. In Victoria?

A. That's right.

Q. You are a public servant?

A. Correct.

Q. You are currently employed by the Australian Federal Police?

A. That's right.

Q. Have you signed a statement for the purposes of these proceedings?

A. I have.

Q. For this Commission?

1 A. I have.

2

3 Q. I will show you the original. Is that your  
4 statement?

5 A. That's my statement.

6

7 Q. Is that the original signed copy without attachments?

8 A. That's correct.

9

10 Q. Is that statement true and correct to the best of  
11 your knowledge?

12 A. It is.

13

14 **EXHIBIT #76 STATEMENT OF BRIAN COONEY DATED 30/8/2004,**  
15 **BARCODED WITS.027.0001**

16

17 MR ROBERTSON: I think all the attachments are already CH  
18 documents.

19

20 Before I ask Mr Cooney any further questions I do  
21 seek to tender - because the evidence that Mr Cooney gives  
22 was held with Mr Meert, and Mr Meert was not asked any  
23 questions about that - a bundle of correspondence with  
24 Mr Meert, in which Mr Meert was given an opportunity to  
25 respond to Mr Cooney's evidence, and in light of his  
26 responses, I don't believe there is any necessity to  
27 recall Mr Meert. I tender that correspondence which  
28 consists of a letter from the Inquiry to Mr Meert of  
29 24 August 2004, a response from Mr Meert dated 24 August  
30 2004, a further letter from the Inquiry to Mr Meert of  
31 1 September 2004, and another third letter from the  
32 inquiry to Mr Meert of 6 September 2004, and Mr Meert's  
33 response to both of those letters dated 7 September 2004.

34

35 **EXHIBIT #77 BUNDLE OF CORRESPONDENCE BETWEEN THE INQUIRY**  
36 **AND MR MEERT**

37

38 THE COMMISSIONER: Mr Sackar, having seen those  
39 documents, if you want to raise any issue, you can do so.

40

41 MR SACKAR: Thank you.

42

43 THE COMMISSIONER: I haven't seen them myself.

44

45 MR SACKAR: No, I think we are both seeing them at the  
46 same time. If we can take that course that would be  
47 convenient, thank you.

1  
2 MR ROBERTSON: Q. Mr Cooney, just to clarify that  
3 situation in which you came to make your statement, is it  
4 correct that you spoke to myself by telephone in  
5 Melbourne?  
6 A. That's correct.  
7  
8 Q. Sorry, when you were in Melbourne?  
9 A. Yes.  
10  
11 Q. And you were only shown at that stage a limited  
12 number of documents?  
13 A. True.  
14  
15 Q. Those documents are referred to in your statement?  
16 A. That's correct.  
17  
18 Q. What I would like to do, Mr Cooney, is show you some  
19 further documents, and just to explain to you the  
20 circumstances in which that occurred, what has happened is  
21 that some original files have been produced from the  
22 Department of Finance since you provided your statement.  
23 Could Mr Cooney be given exhibit 69, please. What you  
24 have there is a bundle of documents taken from original  
25 files recently produced to the inquiry by the Department  
26 of Finance. I want to take you to some of them. First of  
27 all, would you turn to the documents behind the second  
28 tab, which is marked, I think, 91/1796/2, behind the  
29 second cardboard tab. That's a file bearing the number  
30 RMS 9101796; is that correct?  
31 A. 9101796/02.  
32  
33 Q. Yes, that would be the one. The document I wish to  
34 draw your attention to bears a barcode placed on that  
35 document by the Inquiry. The one I wish to take you to is  
36 DOFA.087.0032.  
37 A. Yes.  
38  
39 Q. That is another copy of the clipping from the  
40 Canberra Times bearing your handwriting that you referred  
41 to in paragraph 4 of your statement, but it does not have  
42 the side of the page cut off in the way that the copy that  
43 was provided to you earlier does?  
44 A. Thank you.  
45  
46 Q. I just ask you to confirm that when the Inquiry  
47 suggested to you that the words cut off were "Mr Meert"

1 and "misguided" is correct?

2 A. That's correct.

3

4 Q. I want to draw your attention to the next two pages  
5 in that folder - that is, DOFA.087.0033 and 0034. I can  
6 show you the original if you wish, but would you take it  
7 that the page 0033 was a Post-it note attached to the next  
8 page?

9 A. Yes.

10

11 Q. You will see that that is another copy of the  
12 clipping with a further note from yourself. Is that your  
13 handwriting?

14 A. That's correct.

15

16 Q. What you have written on it, in your handwritten, can  
17 I suggest, is:

18

19 *Alan, I presume this comes as no surprise*  
20 *to you. AEM claim that they have still not*  
21 *been approached by APG (ANAO's real estate*  
22 *agent) seeking AEM approval.*

23

24 A. They are the words.

25

26 Q. And the notes "Mr Wojcik" and "Wayne ATT please" and  
27 a signature are not your handwriting?

28 A. That's correct.

29

30 Q. Can you indicate what you meant by the words "I  
31 presume this comes as no surprise to you"?

32 A. Commissioner, my memory doesn't hold accurately  
33 enough, over this period. I suspect that this note was  
34 written after a meeting we had with ANAO, at which point I  
35 think I can recall that AEM had not at that point given  
36 approval and, therefore, it was reinforcing that the AEM's  
37 approval hadn't been given by the time that this Post-it  
38 note was written.

39

40 Q. Are you suggesting that the Post-it note was  
41 referring not to the clipping but to the AEM claim that  
42 they had still not been approached?

43 A. No, the Post-it note, I'm not doubting, might have  
44 been attached to the clipping. I'm suggesting that the  
45 content of the Post-it note appears to have been around  
46 the time of the meeting of 16 January, and my surprise  
47 would be that either they hadn't had time since the

1 meeting to get that approval or that I had only received  
2 confirmation that AEM hadn't at that point when that note  
3 was written - had been approached.  
4

5 Q. Can I take you back to 0032, which is the other copy  
6 of the clipping?

7 A. Yes.  
8

9 Q. On that you have noted:

10  
11 *Discussed with AEM 16/1 they have not yet*  
12 *been consulted by APG or ANAO.*  
13

14 A. Yes.  
15

16 Q. Does that suggest that you made the inquiry of AEM  
17 prior to the meeting on 16 January?

18 A. I honestly couldn't swear one way or the other. It  
19 would have been around that time.  
20

21 Q. The question I am asking you is, is what you were  
22 suggesting came as no surprise to Mr Pearson - I presume  
23 who was Alan - the Canberra Times clipping headed "ALP In  
24 Rent Rort Says Opposition"? Would you agree with that  
25 proposition?

26 A. Sorry, could I have that proposition again?  
27

28 Q. Yes, that what you were suggesting would come as no  
29 surprise to Mr Pearson was the clipping itself headed "ALP  
30 In Rent Rort Says Opposition".

31 A. No, the presumption, I'm fairly confident, would have  
32 been the processes involved in getting AEM's approval. It  
33 may simply have been me providing a copy of the press  
34 clipping to the other division. They may not have had  
35 direct access to that clipping.  
36

37 Q. I wanted to take you to another document, which  
38 starts a few pages before that, 0027.  
39

40 MR ROBERTSON: I notice the time, Commissioner. It might  
41 be appropriate if Mr Cooney had the opportunity to read  
42 that over the luncheon adjournment.  
43

44 THE COMMISSIONER: Yes. Certainly. We will resume again  
45 at 2 o'clock.  
46

47 **LUNCHEON ADJOURNMENT**

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1           **UPON RESUMPTION:**

2  
3           MR ROBERTSON:   Q.   Mr Cooney, before the luncheon break  
4 I asked you to look at document DOFA.087.0027-0030. Have  
5 you had a chance to look at that?

6           A.   I have, thank you.

7  
8           Q.   In light of that document, do you - first of all, I  
9 should say do paragraphs 3 and 4 of that document reflect  
10 your recollection of the meeting of 16 January 1992?

11          A.   Yes, it does.

12  
13          Q.   Did you see this minute in early 1992?

14          A.   That I can't recall.

15  
16          Q.   Now, the handwriting down the left-hand side - I  
17 won't ask you about that, if you can't recall that you saw  
18 it certainly it is not yours?

19          A.   No, that's correct. It's not mine.

20  
21          Q.   I believe it is Mr Wojcik's. But, having reviewed  
22 that file note, have you had a chance to review again, the  
23 file - the documents I took you to earlier this morning,  
24 and that was DOFA.087.0033-0034?

25          A.   Yes, I have.

26  
27          Q.   Do you have anything to add to the answers you gave  
28 earlier?

29          A.   Having read the documents, it has prompted my memory  
30 a little, and the reference, "I presume this comes as no  
31 surprise to you", probably relates to an assumption on my  
32 part that the policy division overlooking the Audit  
33 Office would have known that the Audit Office was in  
34 consultation or seeking accommodation.

35  
36          Q.   Were you not previously already aware of that?

37          A.   I can't recall.

38  
39          Q.   Can I take you to another document in that bundle,  
40 and that is DOFA.087.0038.

41          A.   Yes.

42  
43          Q.   That is a document that bears a note from Mr Turner  
44 referring to a conversation with yourself. Do you have  
45 any recollection of the conversation referred to at the  
46 bottom of the page?

47          A.   I can't say that I do recall that particular

1 conversation. That's not to suggest in any way that it  
2 would not have occurred.

3  
4 Q. Do you recognise the typed part of this page as part  
5 of the draft resource agreement that was being negotiated  
6 between the Department of Finance and the Audit Office?

7 A. I don't recognise it as that, but it's the sort of  
8 document that I would have expected would have been  
9 drafted at that time.

10  
11 Q. Do you recall being given an opportunity to see that  
12 in late 1991?

13 A. Unfortunately I don't, but, again, it would be - I  
14 would have expected that the supply division would have  
15 given me an opportunity to see it.

16  
17 Q. The following document is DOFA.087.0042. That  
18 contains an instruction to send a copy of a draft to  
19 yourself in the top right-hand corner in handwriting?

20 A. Yes, I can see that.

21  
22 Q. Does that suggest that you did see it?

23 A. I would expect - yes, I confirm my earlier evidence  
24 that I would have expected to have seen it, it's just I  
25 don't have any contemporary knowledge.

26  
27 Q. Just reading the handwriting at the bottom of the  
28 page, it says:

29  
30 *Brian Cooney (D&G Div) advised me that he*  
31 *had seen a copy of the signed memo and*  
32 *thought that he was too late for any*  
33 *further changes to the agreement; he noted*  
34 *that para 6 was amended to require*  
35 *evidence. He is happy for the agreement to*  
36 *go as a final, however, he said ANAO should*  
37 *be under no illusions they will merely*  
38 *provide letters from PWC, NCPA etc and that*  
39 *would be the end of it. DOF may require,*  
40 *and are likely to, further examine the info*  
41 *provided by NCPA etc. Eg NCPA has 2 areas*  
42 *that would be involved and D&G would*  
43 *require advice from both areas and may also*  
44 *further query that advice.*

45  
46 That's dated 10 December 1991. In December 1991, did you  
47 have an intention that you, as D&G Division of the

1 Department of Finance, would seek to further query advice  
2 received from National Capital Planning Authority, and  
3 possibly other agencies in relation to the proposed Audit  
4 Office lease?

5 A. I would suspect that was more prudent Finance  
6 guidance, that the mere fact of tabling a letter from an  
7 organisation wouldn't be taken to be meeting the  
8 compliance requirements, that the contents of the document  
9 would be what would be important to the Department of  
10 Finance, and clearly, if this note is - well, assuming  
11 this note is accurate, we were trying to educate the  
12 supply division and Audit Office that when those letters  
13 came in, it wasn't a rubber-stamping process, there would  
14 be an examination of those documents.

15

16 Q. Do you recall that, when those letters did come in,  
17 there was any examination by the D&G Division?

18 A. No. My memory is not that good, unfortunately.

19

20 Q. On the assumption that the letters never gave  
21 approval to the proposal, had you received letters in that  
22 form would you have inquired further?

23 A. It would depend on the nature of the correspondence  
24 and each of the different approving authorities, whether  
25 it be the Parliamentary Works Committee or the National  
26 Capital Planning Authority, or Australian Estate  
27 Management, it would depend on the content of each of  
28 those letters, whether they'd satisfied any reservations  
29 or concerns we might have.

30

31 Q. If that review had occurred, you would have expected  
32 there would have been correspondence referring to it?

33 A. I would have expected that.

34

35 Q. So if such correspondence had not surfaced, you would  
36 expect that it did not occur?

37 A. That the correspondence that we received from those  
38 bodies was adequate to comply with the government's  
39 policies.

40

41 Q. Can I take you now to document DOFA.087.0055.

42 A. Yes.

43

44 Q. Did you have an opportunity to read this over the  
45 luncheon break as well?

46 A. I did.

47

1 Q. That's a letter from yourself to the State manager of  
2 the Tasmanian office of APG, dated 4 September 1991.

3 A. That's correct.  
4

5 Q. You will need to say "yes" or "no".

6 A. Yes. Sorry, that's correct, I have got that  
7 document.  
8

9 Q. It appears to have been copied to Mr Pearson, and  
10 bears Mr Wojcik's name at the top. In September 1991 you  
11 provided this document, which is a detailed advice in  
12 relation to an Australian Tax Office proposal to enter  
13 into a precommitment agreement. Do you understand that  
14 proposals of this nature entered into by the Australian  
15 Taxation Office, or on behalf of them, were vetted and  
16 approved by the Department of Finance and/or the Treasury  
17 during this period?

18 A. I don't have any current recall of that process, so I  
19 can't really assist you in that regard.  
20

21 Q. You have expressed the proposition on the second page  
22 of that letter, folio 0056, that the Barclays-type  
23 arrangement, as it is called there, should be treated as a  
24 finance lease which probably needs the approval of the  
25 Treasurer for inclusion under loan council approved  
26 borrowings, do you see that?

27 A. Yes.  
28

29 Q. Do you recall that any such consideration was given  
30 to the Centenary House lease, or the lease that  
31 subsequently became the Centenary House lease, in relation  
32 to whether it would be a finance or operating lease?

33 A. No, I don't recall any process of that - in that  
34 nature.  
35

36 Q. Was it the usual practice for your division to make  
37 that determination in respect of any proposed lease?

38 A. No. Matters concerning loan council were the  
39 prerogative of the Department of Treasury. Treasury would  
40 write to a range of agencies collating information, and,  
41 from time to time, the Department of Finance, I would  
42 assume, would get copies of that information, but I can't  
43 recall the process involved in that particular  
44 arrangement.  
45

46 Q. If you had become aware of a lease proposal which you  
47 had considered may qualify as a finance lease, would you

1 have required it to be referred to Treasury?  
2 A. I would have expected it to be referred to Treasury.  
3  
4 Q. It wasn't your role, I take it from that answer, to  
5 make any decision of that nature?  
6 A. No, you would have expected that the real estate  
7 agent acting on behalf of the - say, the Audit Office, or  
8 any other agency, would have given them a checklist of  
9 things that - of processes that would have gone through  
10 and that would have been one of them.  
11  
12 Q. By "real estate agency", you mean the APG?  
13 A. The Australian Property Group.  
14  
15 Q. I want to show you a number of further documents from  
16 the Department of Finance's files. I will start in 1989.  
17 I would just like to obtain some comments in relation to  
18 them. The first one is exhibit 74, if that could be  
19 brought up on the screen. The particular page is  
20 DOFA.091.0007. Can you read that, please. Do you  
21 recognise that letter in any way?  
22 A. No, I'm sorry, I don't recognise it.  
23  
24 Q. You don't recognise the handwriting on it?  
25 A. No, I don't.  
26  
27 Q. The note at the top suggests it came from the D&G  
28 Division. Were you employed in the D&G Division of the  
29 Department of Finance in October of 1989?  
30 A. I would have thought, over that period, I would have  
31 been, yes.  
32  
33 Q. Did you have any involvement in discussions in 1989  
34 as to whether there was valid reason for the  
35 Auditor-General to be in the Parliamentary Zone?  
36 A. No.  
37  
38 Q. The next document I want to show you is a document  
39 which is in the first section of that folder you have in  
40 front of you, exhibit 69. It is document  
41 DOFA.088.0149-0150. Do you have that?  
42 A. Yes, I do.  
43  
44 Q. That's a letter that was drafted by yourself?  
45 A. Yes, it would have been.  
46  
47 Q. That letter was drafted because you were asked to

1 comment on an Audit Office proposal to relocate from  
2 Medibank House to premises in Barton?

3 A. That's correct.  
4

5 Q. Your first concern identified there is the fact that  
6 the proposed new York Park building was under development?

7 A. It was - I'm not sure it was under development at  
8 that stage, but there was a proposal to bring forward a  
9 development. They probably would have had no firm  
10 authority at that point, but it would have been  
11 master-planned and ear-marked for development.  
12

13 Q. You were also sceptical about the proposition that  
14 the Audit Office needed to leave the Medibank building  
15 because of difficulties it was having co-locating in that  
16 building with the DEET?

17 A. I'm not sure sceptical - I think we were aware that  
18 there were some other moves of tenants going on in that  
19 general area that may have addressed some of those  
20 concerns that Audit would have had.  
21

22 Q. You then identify in paragraph 4 the:

23  
24 *... important for ANAO to at least identify*  
25 *the full costs of relocation. This would*  
26 *include the difference in rents and*  
27 *outgoings, restitution costs of Medibank*  
28 *House and the cost of dead rent in that*  
29 *building while a new tenant is found.*  
30

31 In paragraph 5, you raise an issue concerning the  
32 Australian Property Group's role and you suggest:

33  
34 *... it is important to realise that APG is*  
35 *a commercialised real estate agent which*  
36 *provides services for a fee.*  
37

38 And you have underlined "fee":

39  
40 *To some extent you should appreciate that*  
41 *APG's "keen interest in ANAO vacating*  
42 *Medibank House" reflect a business*  
43 *opportunity by that agency.*  
44

45 Did you have a view or a concern in March 1991 that the  
46 APG had a possible conflict of interest in relation to  
47 this transaction?

1 A. No. I think this was more aimed at educating my  
2 sister division that the model had changed, so we now had  
3 a commercialised business supporting a tenant, and that  
4 the advice that they would give would be in support of  
5 their tenant and therefore the weight given to APG's views  
6 as a real estate agent were different from the former  
7 Department of Administrative Services' view, which was the  
8 whole of government property developer, real estate agent.  
9 So that paragraph was more about assisting the other  
10 division of the Department of Finance under the shift that  
11 had been made in the model.  
12

13 Q. Does that mean that your comment there does not  
14 reflect a concern that the APG, which now needed to earn  
15 fees to fund its activities, would be more interested in  
16 promoting the removal of the Audit Office to new premises  
17 in order to earn a fee, rather than to stay where it was.

18 A. That's a consequence of the model, so that's a fair  
19 enough statement.  
20

21 Q. So that possible conflict of interest was a matter  
22 that you were referring to in that letter?

23 A. I wouldn't say it was a conflict of interest. It's a  
24 different property model in place. You would expect, if  
25 we pay a fee to someone to represent them, that's what  
26 they would do, and that isn't a conflict, as such.  
27

28 Q. Your concern was that the APG was not required to  
29 consider the Department of Finance's position?

30 A. That APG wasn't, if you like, required to consider  
31 whole-of-government issues.  
32

33 Q. I now take you to a document which appears behind the  
34 third cardboard tab in that file, that is DOFA.084.0040.  
35 I draw your attention also at the same time to the  
36 following two documents, which are folios 0102 and folios  
37 0106-0107.

38 A. Yes, I have got those.  
39

40 Q. Have you had a chance to read those over the luncheon  
41 adjournment?

42 A. I have.  
43

44 Q. The note at the bottom of 0102 from yourself to  
45 Mr McPhee of 1 June 1992 seeks clearance in respect of  
46 your draft reply to Senator Bishop and response in respect  
47 of issues raised in the Parliament?

1 A. They were actually raised in a committee hearing of  
2 the Parliament.  
3  
4 Q. I apologise. That's in the JCPA, in fact?  
5 A. Correct.  
6  
7 Q. And your final response, which was actually addressed  
8 to the chairman of that committee, states that:  
9  
10 *Property report incentives are at present*  
11 *mainly a feature of the property markets in*  
12 *the CBD of Sydney, Melbourne, Adelaide and*  
13 *Perth, and to a lesser extent Brisbane.*  
14 *Because incentives are not normally a*  
15 *feature in the ACT market, I would expect*  
16 *the proposed guidelines would have had*  
17 *little impact on the ANAO's decision.*  
18  
19 A. That's correct.  
20  
21 Q. That was on the basis, was it, that you, in June  
22 1992, were not aware of the free fitout that was provided  
23 to the ANAO as part of the Centenary House lease  
24 agreement?  
25 A. That's correct.  
26  
27 Q. Your draft, which is folio 0102, suggested that the  
28 proposed guidelines would have had "no impact on the  
29 ANAO's decision". Someone has written on that "little" and  
30 in fact your final version uses the word "little". Do you  
31 recall what it was that caused you to change "no" to  
32 "little"?  
33 A. I don't believe - that correction from "no" to  
34 "little" is far too neat to be my writing. So I can't  
35 claim to be the author of that change. It could simply be  
36 a prudent change - "no" being absolute, to "little" being  
37 a bit more conservative.  
38  
39 Q. Are you suggesting to the Commissioner that, in fact,  
40 someone having suggested the change, you saw no reason to  
41 resist it?  
42 A. Correct.  
43  
44 Q. Finally, I will take you to your next tab in that  
45 bundle, to document DOFA.085.0139-0140.  
46 A. Yes, I have got that.  
47

1 Q. And that is what you call a PPQ, is it?  
2 A. That's a possible parliamentary question.  
3  
4 Q. Referred to as a PPQ for short?  
5 A. Yes.  
6  
7 Q. And it is directed to a Minister, in circumstances  
8 where it is anticipated that a question may be raised, by  
9 presumably the opposition, in Parliament?  
10 A. Yes.  
11  
12 Q. That is dated 24 September 1993. It addresses the  
13 running costs property index, which was the index applied  
14 to the Audit Office budget in 1993 to 1994 to increase its  
15 rental payments?  
16 A. It applied to all Commonwealth agencies' budget  
17 adjustments, so that they could adjust the value of their  
18 resources through that index to meet general adjustments  
19 in the marketplace.  
20  
21 Q. This was in response to the situation that had arisen  
22 that the forecast was 1 per cent and the ANAO's rent  
23 increase would be 9 per cent?  
24 A. On one of its leases.  
25  
26 Q. I suggest it would suggest the most significant --  
27 A. The significant lease, yes.  
28  
29 Q. In fact, overwhelmingly the biggest of its leases,  
30 was wasn't it?  
31 A. Yes.  
32  
33 Q. On the second page of that document you have  
34 indicated that the Australia-wide forecast applies not  
35 only to all rentals but also outgoings, and the suggestion  
36 is that it's largely but not solely based on a national  
37 index of rent movements 1 per cent across 1992/1993. You  
38 then indicate that in fact in the ACT it was admittedly  
39 marginally higher, about 1.3 per cent.  
40 A. That's correct.  
41  
42 Q. In circumstances where the ANAO was heavily committed  
43 to one lease in one region, was there not provision under  
44 these arrangements for the Audit Office to receive special  
45 supplementation in respect of that lease?  
46 A. There was provision for any agency who felt that the  
47 index would not fairly reflect their mix of property to

1 come to the Department of Finance and seek special  
2 approval to have that indexation arrangement set aside and  
3 a specific resource agreement put in place to cover those  
4 exposures.

5  
6 Q. And is that something that was available to the Audit  
7 Office at this time?

8 A. It would certainly have been available to the Audit  
9 Office. I don't know that it would have been available to  
10 the Audit Office at that time. It would be prior to  
11 entering into the general resource agreements. That sort  
12 of exposure, if it was a concern to the Audit Office,  
13 would have been, I would have thought - they would have  
14 identified the potential for that and made a point of  
15 evaluating that with their real estate agents before they  
16 entered into this particular lease.

17  
18 THE COMMISSIONER: I just want to have this made clear  
19 to me. Are we talking about resource agreements or  
20 property resource agreements here? I think if you  
21 wouldn't mind following that up, Mr Robertson, because I  
22 don't want there to be any mistake.

23  
24 THE WITNESS: Commissioner, perhaps I could - I was  
25 referring to property resource agreements that were  
26 specifically agreed by government could be looked at in  
27 regard to the impact of the general deflator.

28  
29 THE COMMISSIONER: Q. I was concerned because you used  
30 the expression "general resource agreements". I'm having  
31 a hard enough time grappling with these concepts without  
32 having it confused. You were referring to property?

33 A. I was referring to a property resource agreement.

34  
35 MR ROBERTSON: Q. A property resource agreement is not  
36 the sort of resource agreement that was entered into by  
37 the Audit Office with the Department of Finance in March  
38 1992?

39 A. I would need --

40  
41 THE COMMISSIONER: Q. That was for the fitout?

42 A. I would have expected a property resource agreement  
43 to be comprehensive and take into account all aspects  
44 associated with fulfilling the project, so if it involved  
45 fitout or involved rent or any aspect of the development,  
46 I would have thought that if it was known, it would have  
47 come to the fore at that point.

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MR ROBERTSON: Q. Can I take you to the resource agreement entered into in March 1992, which is the previous tab and it is DOFA.084.0007?

A. Yes, I have got that.

Q. Paragraph 2 says:

*The purpose of this Agreement is to allow the ANAO to fit out and occupy leased premises in Section 22, Barton.*

In paragraph 8:

*The ANAO's Property Operating Expenses funding arrangements developed as resource agreements in the context of transferring Property Operating Expenses into Running Costs will have regard to the principle set out in clause 7. The agreement reached here with regard to funding Canberra accommodation will not be reopened in that context.*

Does that indicate to you that the property resource agreement, which is, I suggest, the form of agreement which was to be developed in the context of transferring property operating expenses into running costs, was a different sort of agreement to the one that is set out here?

A. Can I just have a moment to refresh my memory on this?

Q. Yes, certainly.

A. I would take it to mean that, having established that there were sufficient resources to meet the costs of the rent index over time, and the impact that has on the ANAO, the only thing that they were looking at in this agreement was funding the fitout arrangements, if you like, the one-off cost of the initial fitout.

Q. Can I remind you in that context, Mr Cooney, that at this stage - that is March 1992 - the incorporation of property operating expenses into running costs was not a final policy that had been approved by Cabinet; it was merely a draft? Does that affect your answer?

A. Paragraphs 7 and 8 seem to me to only make sense in

1 the context that there was arrangements either in place or  
2 known that would have constrained resource agreements on  
3 running costs, but, to be honest, in the time that's  
4 passed, I couldn't be definitive.

5  
6 Q. I think I will have to accept that answer, Mr Cooney,  
7 unless the Commissioner wishes to take it --

8  
9 THE COMMISSIONER: I don't think the witness could do  
10 more.

11  
12 MR ROBERTSON: Q. DOFA.085.0139, if I could just take  
13 you back to that document that we were just looking at,  
14 the second page, which is 0140 --

15 A. Just bear with me. Could that come up on the screen?

16  
17 Q. What I just wanted to ask you about was the last  
18 paragraph of that document which refers to advice given to  
19 the Department of Education, Employment and Training on  
20 the 10 Mort Street project in April 1992. Do you now have  
21 a recollection of that advice, beyond what's set out in  
22 this document?

23 A. I can't recall the arrangements for the Department of  
24 Education, Employment and Training. I do have a limited  
25 memory that they did enter into some sort of lease  
26 agreement that committed them with the private sector, and  
27 I don't think the Department of Finance gave any guarantee  
28 in terms of the general deflator to apply.

29  
30 Q. Well, the last sentence suggests that, in fact, the  
31 DEET in fact negotiated a different adjustment clause when  
32 the Department of Finance refused to guarantee the  
33 adjustment.

34 A. Yes.

35  
36 Q. Does that refresh your memory as to the circumstances  
37 in which that occurred?

38 A. No, I must confess that I can't remember those  
39 details.

40  
41 Q. At the time that you drafted this minute would you  
42 have had access to files relating to that negotiation?

43 A. Perhaps not the files, but I would have got access to  
44 the supply office. I was involved in that particular  
45 transaction and condensed that into that dot point.

46  
47 Q. Do you have any recollection as to when it was that

1 the 10 Mort Street project was finally signed off?

2 A. No, I'm sorry, I can't help you.

3

4 MR ROBERTSON: Those are the only questions I have.

5

6 <EXAMINATION BY MR SACKAR:

7

8 MR SACKAR: Q. Mr Cooney, in 1991, did you become aware  
9 that the Tax Office was investigating or proposing to  
10 consider entering arrangements around Australia in  
11 relation to the construction of a number of buildings and  
12 their leasing of them?

13 A. There's a reference that we made in earlier evidence  
14 that indicates that, yes.

15

16 Q. Without testing your memory, perhaps if we can come  
17 to that letter again, and we can just go through it -  
18 DOFA.087.0055 - for the purposes of the transcript, if I  
19 can give a CH reference to the same document in the event  
20 that later it is thought to be more desirable -  
21 CH94.012.0121. I will ask that the Department of Finance  
22 reference letter perhaps be brought up. I will have to  
23 just ask you to bear with me a little while I take you  
24 through the letter. I appreciate that it is perhaps a  
25 long while ago since you have thought about these issues.  
26 So that I don't go to the last page of the letter, let me  
27 just remind you that there was a letter dated 4 September  
28 1991. You will see that your signature appears on the  
29 last page above the name "ER Thorn, first assistant  
30 secretary".

31 A. Thank you.

32

33 Q. Before I come to some of the detail, perhaps I can  
34 ask you about a particular person. Did you know in 1991 a  
35 gentleman called Ian Joyce?

36 A. Yes, I did.

37

38 Q. Was Ian Joyce then in the Department of Finance in  
39 the D&G Division section of the Department?

40 A. He certainly was in the Department of Finance, and at  
41 some stage he was in Defence and Government Division. I  
42 think he moved divisions over that period, but I - so he  
43 certainly was in the Department and was a member at some  
44 stage of the Defence and Government Division.

45

46 Q. All right. I take it it has been some time since you  
47 have had contact with him?

1 A. Yes, that's right.  
2  
3 THE COMMISSIONER: You asked the same set of questions to  
4 the previous witness.  
5  
6 MR SACKAR: Yes.  
7  
8 THE COMMISSIONER: I don't think Mr Joyce's name is on  
9 any list of ours at the moment for calling, but are you  
10 suggesting we should call him?  
11  
12 MR SACKAR: Perhaps I should speak to Mr Foster about it.  
13  
14 THE COMMISSIONER: He's in this quartet of people who  
15 were involved.  
16  
17 MR SACKAR: I think the answer might be: it might be  
18 subject to Mr Wojcik. He may or may not have some  
19 knowledge of him. I am not going to make any suggestions  
20 about his current state of health, having perhaps made a  
21 statement about Mr Coleman being not what I was told. The  
22 answer is it depends on what Mr Wojcik says. It may be  
23 that he will be sufficient for our purposes.  
24  
25 THE COMMISSIONER: If you would keep in touch with  
26 Mr Foster about it. As I say, he's not on the list at the  
27 moment. I don't know why.  
28  
29 MR SACKAR: I will take that up with Mr Wojcik, or  
30 perhaps Mr Robertson might do that.  
31  
32 Q. Back to the letter, if I may, Mr Cooney. On behalf  
33 of the Australian Taxation Office - and this came from the  
34 State manager, Tasmanian office of the APG, or so it  
35 seems?  
36 A. Correct.  
37  
38 Q. And they were seeking your views - that is, the  
39 Department of Finance's views - as to a proposal to enter  
40 into a precommitment lease financed by Barclays Bank, so  
41 it seems?  
42 A. That's right.  
43  
44 Q. And particularly they are interested in the Finance  
45 view of the lease arrangements proposed by the bank. You  
46 then say, "Your question raises a number of issues", et  
47 cetera, "Policy". The third paragraph:

1  
2           *As to the over all accommodation strategy*  
3           *proposed by your client (ATO), we*  
4           *understand that in the very near future*  
5           *APG, acting on behalf of ATO, proposes to*  
6           *invite expressions of interest to offer*  
7           *precommitment leases in Sydney (Penrith and*  
8           *Hurstville) and Wollongong that may elicit*  
9           *financing deals similar to the Barclays'*  
10           *package. Further leases in Bankstown,*  
11           *Canberra, Melbourne, (possibly Box Hill and*  
12           *Moonee Ponds), Queensland and Western*  
13           *Australia are also envisaged.*  
14

15           Now, there's a reference to what was called the Barclays  
16           package in that paragraph. Do you have any recollection  
17           now of what the Barclays package was in broad terms? If  
18           not, in a little more detail, if you have it?

19           A. I can only assume it was a set of financing  
20           transactions to underpin a landlord developer producing  
21           buildings on behalf of Tax.  
22

23           Q. All right. Well, now, Tax was going through, at this  
24           time, what was to be described in another document we  
25           might look at shortly as its "Modernisation Phase", if you  
26           like. You have just nodded?

27           A. Correct, yes, to my knowledge.  
28

29           Q. As far as you can recall - I know this is going back  
30           to 1991 - what did the modernisation phase in the ATO  
31           involve?

32           A. I'm not well placed to answer that question,  
33           unfortunately. That would have been something that the  
34           division that looked at after tax would have provided me  
35           guidance on.  
36

37           Q. Let me try this, if I may: do you recall the Tax  
38           Office seeking to expand its operations around about this  
39           time by reason of, say, the introduction of fringe  
40           benefits tax and/or capital gains tax?

41           A. That's quite likely, but I didn't have any  
42           involvement in that particular policy development, so I --  
43

44           Q. But whatever the reasons for the expansion, it seems,  
45           according to the information presumably you had back in  
46           September 1991, that Tax was - I say aggressively, but it  
47           certainly seemed to be expanding or proposing to expand or

1 investigating, perhaps, expansion in a number of regional  
2 locations around Australia?

3 A. That's correct.

4

5 Q. I don't mean to suggest that you have got a memory of  
6 this. Would you agree with me that it seems, from that  
7 third paragraph, that the arrangements appear to have  
8 been, or at least many of them seem to be, precommitment  
9 leases or offers?

10 A. They would appear to be that way.

11

12 Q. All right. The particular arrangement that you were  
13 then focusing on - it seems exclusively, although it seems  
14 you had knowledge of other expansion - was the Tasmanian  
15 operation of the Tax Office?

16 A. Not necessarily. It may have been simply that the  
17 Tasmanian office of APG sought some guidance from us about  
18 a particular solution that it had found a la Barclays  
19 Bank.

20

21 Q.

22 *That precommitment strategy raises policy*  
23 *issues...*

24

25 You then talk about long-term leases and possible  
26 purchases that could be negotiated on favourable terms and  
27 so on. Is it fair to say that, as a matter of concept,  
28 speaking for yourself, you would have preferred government  
29 to own and control its developments, as far as it could,  
30 as opposed to inviting or permitting private sector to  
31 make profits out of buildings for government - did you  
32 have a view about that or is it really fair to say it  
33 really depended on the deal that was offered?

34 A. I didn't have a personal view, and I would have  
35 thought it's a little bit of horses for courses. There  
36 would be times where, if the Commonwealth had long - very  
37 long-term expected tenure, or the site had some  
38 significance, then it might have made more sense to be the  
39 owner/developer, as separate from the private sector, and  
40 location would have been a significant factor too. So it  
41 was very much on the particular case that was being put  
42 forward.

43

44 Q. All right. This may not be an issue that you can  
45 answer, but perhaps I can suggest this to you: from a  
46 commercial point of view, you can understand that if, for  
47 example, a private developer were going to put a

1 proposition to build a building in, say, a regional area  
2 such as either Penrith or Hurstville, or Wollongong - a  
3 suburb of Sydney, I should say - or Bankstown or somewhere  
4 like that, you can understand the concept of precommitment  
5 coming into the commercial discussions?

6 A. Absolutely.

7  
8 Q. And equally, I suppose, you can understand, leaving  
9 aside the Tax Office's desire, that a developer would be  
10 looking logically in 1991 for perhaps a long-term  
11 arrangement of at least 10 years?

12 A. Yes.

13  
14 Q. And coupled with a precommitment, may or may not be  
15 looking for some sort of fixed escalator over that period?

16 A. The developer may be looking for a fixed escalator?

17  
18 Q. Yes.

19 A. Yes, I could imagine any developer would be pushing  
20 the envelope, for the maximum commercial benefit.

21  
22 Q. Quite. And certainly in 1991, in September, you had  
23 heard of fixed escalators in leases, had you?

24 A. I would think the answer would be yes.

25  
26 Q. Over the page, you make some comments about a remark  
27 by Sir William Cole. You say, at the bottom of page 1:

28  
29 *Recently Sir William Cole criticised*  
30 *Commonwealth agencies for spending too much*  
31 *on accommodation rather than "making do",*  
32 *and for going ahead with new buildings in*  
33 *the light of current property market. To*  
34 *avoid adverse publicity for the APG (we*  
35 *recall the expectations raised when the*  
36 *lease proposal for Patents at Woden, ACT*  
37 *was advertised) and as this step involves*  
38 *potential tenderers going to some expense,*  
39 *it may therefore be prudent to have this*  
40 *strategy confirmed before inviting public*  
41 *submissions.*

42  
43 The Woden proposed Patents building was an idea which was  
44 in the end not proceeded with, was it?

45 A. I think - no, I think there was - I think there is a  
46 development providing accommodation for the Patents Office  
47 in Woden now. At what time --

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Q. No, but back in 1991 there were expressions of interest and then it seems to have been shelved, at least in 1991?

A. At that point, yes.

Q. Forgive my ignorance, who was Sir William Cole?

A. Sir William Cole was head of the Australian Public Service, but at that particular point, I'm not sure what particular role he had in making those observations.

Q. You deal with finance lease and operating lease in the next paragraph, and a little further down you talk about the parliamentary approval via public works. Also in that paragraph you talk about, in addition, in the middle of the paragraph commencing "Another procedural step is gaining parliamentary approval":

*In addition, where some form of "ownership" is involved (or in this case, where it is sensible from the Commonwealth perspective to at least examine the option), the Committee should also be consulted.*

So what you were really trying to tell Tax, or rather, should I say, the APG and in turn its client, the Tasmanian section of the Tax Office, to alert them to the issues and the protocol, as you saw it, for approval of such things?

A. Correct.

Q. Now, in the last paragraph on the page, you say:

*The proposed lease also has many clauses that we believe are not in the tenant's interest...*

Now, that probably assists you to recall, although you probably haven't got the faintest idea now what they were, that it does seem likely that you had before you either a proposed lease or some document which would enable you to make the comment that you did?

A. If we didn't have the document by Barclays, we would have at least had some sort of synopsis that APG would have provided us.

Q. That was 4 September 1991. I should have read on.

1 You make a reference to abatement of rent and lack of  
2 termination. You then say:

3  
4 *It seems to us that the liabilities of*  
5 *ownership but not the benefits rest with*  
6 *the tenant under the Barclays' scheme. We*  
7 *understand some non-standard clauses sought*  
8 *by the financier would not normally be*  
9 *considered appropriate by the Commonwealth*  
10 *and you are seeking the legal implications*  
11 *of these.*

12  
13 Do you see that?

14 A. Yes.

15  
16 Q. On the next page of the letter:

17  
18 *Notwithstanding that ATO is your client,*  
19 *given the significance of the expenditures*  
20 *proposed, there is also a need for ATO's*  
21 *function and perspective to be balanced*  
22 *with a Commonwealth wide perspective, eg*  
23 *ownership of the asset should at least be*  
24 *an option canvassed.*

25  
26 You then conclude by saying:

27  
28 *A copy of this memorandum is being*  
29 *forwarded to the Department of the*  
30 *Treasury...*

31  
32 Et cetera. And to others.

33 A.

34 *Accordingly, we suggest you consult with*  
35 *AEM as the Government's representative on*  
36 *the matter.*

37  
38 Q. Yes. Did it come to your attention that  
39 notwithstanding your alluding to various protocols and the  
40 desirability of ownership and matters of that sort, that a  
41 lease was ultimately entered into in September - I can't  
42 show you the precommitment documents for the moment - in  
43 relation to the construction of what was called the Hobart  
44 Tax Office?

45 A. Sorry, is that a question?

46  
47 Q. Yes. Did you become aware subsequently - that is,

1 subsequent to September 1991 - that the Tasmanian office  
2 of the Tax Office, as it were, went ahead, precommitted  
3 and entered an arrangement, ultimately entering the  
4 arrangement in 1992?

5 A. I don't have any direct knowledge, or recollection at  
6 this point. That's not to say that --

7

8 Q. All right. Well, let me show you a lease entered  
9 into between the Commonwealth of Australia and a company  
10 called Hansen Yuncken Pty Ltd. Perhaps if I can refer  
11 you to a couple of clauses to assist you. I can't at the  
12 moment burden you with one, Mr Commissioner, I will supply  
13 Mr Robertson with one and do so as soon as I can.

14

15 THE COMMISSIONER: Do you want to tender it eventually?

16

17 MR SACKAR: Yes, I will. It may be possible for a copy  
18 to be run off while I'm doing this.

19

20 Q. If you could go forward a few pages - indeed,  
21 probably for or five - you will come to a page which has  
22 at the top "Annexure Referred to (Page 1)".

23 A. Do you have an item number?

24

25 Q. It has right at the very top "Annexure of Memorandum  
26 of Lease Dated 2/2/93". Just go to in particular,  
27 schedule 1?

28 A. Yes.

29

30 Q. It's got the lessor and the lessee, the lessee being  
31 the Commonwealth of Australia. Item 1(ii) - the building  
32 was at 200 Collins Street, Hobart.

33 A. Yes, I can see that.

34

35 Q. And it was known as the Australian Taxation Office.  
36 You will see "10 year term commencing 5 September 1992"?

37 A. Yes, I can see that.

38

39 Q. I take it that, interesting though it may be for you  
40 to be asked to acknowledge various terms of this document,  
41 you believe or do not believe you have ever seen it  
42 before?

43 A. I'm very confident I have not seen this before.

44

45 Q. Did you ever become aware of - that is, subsequent to  
46 September 1991 - what had happened to the ATO's  
47 aspirations in relation to the Barclays package in Hobart,

1 or is it fair to say that as far as you can recall at the  
2 moment, after you wrote the note and distributed it  
3 accordingly, effectively, it may or may not have become  
4 AEM's problem, but certainly ceased to be a concern or  
5 interest of yours?

6 A. I'm certainly aware that the Tax Office had developed  
7 buildings, because I'd seen them, but in terms of the  
8 processing of that, I can't recall whether those  
9 suggestions were taken up and, if they were, how they were  
10 taken forward.

11  
12 Q. And what, if any, approval process had been  
13 undertaken?

14 A. No, I can't recall.

15  
16 MR SACKAR: I will tender that, if I may.

17  
18 MR ROBERTSON: Without conceding its relevance, I don't  
19 object to it being tendered at this stage.

20  
21 THE COMMISSIONER: Eventually we will get a copy of it.

22  
23 MR SACKAR: Mr Robertson has a clean copy. If that could  
24 become the exhibit. Perhaps the one I have handed the  
25 witness is the exhibit.

26  
27 **EXHIBIT #78 LEASE BETWEEN THE COMMONWEALTH OF AUSTRALIA**  
28 **AND HANSEN AND YUNCKEN PTY LIMITED, BARCODED EXH.078.0001**  
29

30 MR SACKAR: Q. I want to show you another lease, which  
31 you will see from its face has a commencing date of  
32 28 April 1992 for a term of 10 years in relation to what  
33 is described, if you will agree with me, as the Bankstown  
34 Tax Office. Would you have a look at that document.  
35 Again, I don't want to make it an interesting excursion  
36 through the document. If you have no knowledge of it,  
37 then so be it.

38 A. I'm, again, confident that that's not a document that  
39 I have seen. I should say that it's not a document that I  
40 would have expected to see, though, in the role I had.

41  
42 Q. All right. May I ask this, though, that insofar as  
43 if you were to assume that both in Hobart's case and in  
44 Bankstown's case they were leases that had the following  
45 components: precommitment; a long-term lease, at least  
46 10 years; an escalator for each year; and no reversion of  
47 ownership; that is something that you find surprising or

1           unsurprising?

2           A.    I'm rarely surprised, in my role, of things I see,  
3           so, in answering it wouldn't have surprised me; it  
4           shouldn't be taken to be a view that I would hold, on  
5           policy grounds, of being appropriate or inappropriate.  
6

7           Q.    I'm not inviting you at the moment, from the policy  
8           point of view, to either condemn them or applaud them, but  
9           it would seem that what Tax was alluding to, and what you  
10          seem to have some warning of, if you like, in September of  
11          1991, is what appears to have been a fairly widespread  
12          interest in the Tax Office, at least, for buildings, and  
13          it seems with Barclays, wanting to replicate the financial  
14          arrangements that it had been discussing in relation to  
15          Hobart, but on a wider scale?

16          A.    If I could answer it this way: it wouldn't have  
17          surprised me had all those processes that I thought was  
18          appropriate to have gone through, and the result being  
19          this type of solution.  
20

21          Q.    Yes. With the components that I put to you?

22          A.    Yes.  
23

24          MR SACKAR: I tender that also, if the Commission  
25          pleases.  
26

27                **EXHIBIT #79 LEASE COMMENCING 28/4/1992 FOR A TERM OF TEN**  
28                **YEARS IN RELATION TO THE BANKSTOWN TAX OFFICE, BARCODED**  
29                **EXH.079.0001**  
30

31          MR ROBERTSON: The same comment applies.  
32

33          THE COMMISSIONER: I acknowledge there is no acceptance  
34          of its relevance.  
35

36          MR SACKAR: Q. Do I take it apart from any other  
37          document I may show you - I'm not suggesting I do have one  
38          to show you just for the moment - I think you answered a  
39          moment ago that you are not particularly familiar with  
40          what, if anything, occurred in relation to the proposals  
41          that you alluded to in your letter - namely for Penrith,  
42          Hurstville, Wollongong, or for that matter anywhere else?

43          A.    No, they were matters for the consideration by the  
44          Financial Management Division that overlooked the Tax  
45          Office.  
46

47          Q.    And was that a division within the Department of

1 Finance?

2 A. That's correct.

3

4 Q. And who was the person who, in the second half of  
5 1991, let's say, if you can recall, was the most senior  
6 person in that division?

7 A. I really can't, but it was the same division that  
8 came under the Audit Office as well.

9

10 Q. Right.

11 A. So if you have those details in respect of the Audit  
12 Office, it would apply equally to the Tax Office.

13

14 Q. Can I take you to CH94.012.0127. This was a letter,  
15 again, if I can just tell you, dated 11 October 1991, and  
16 perhaps if I can just ask the operator if she would be  
17 kind enough to go to the last page for the moment,  
18 CH94.012.0129. Mr Cooney, is that your signature?

19 A. Yes, it is.

20

21 Q. This time you were signing on behalf of a  
22 Mr Sainsbury, or is it Mrs Sainsbury?

23 A. Mr Sainsbury.

24

25 Q. Could I then invite the operator to go to page 0127,  
26 if we could just go back to the last page, you will see in  
27 paragraph 1:

28

29 *Australian Estate Management's memorandum*  
30 *of 13 September 1991 sought Finance's*  
31 *advice on a variety of matters arising...*

32

33 In this particular case, it was in respect of a new office  
34 space in Belconnen.

35 A. Yes, I can see that.

36

37 Q. And in paragraph 3, as we understand it, in this  
38 case, the AT0 was seeking approval for the use of two  
39 prime office sites in Belconnen:

40

41 *This is to enable AT0 to enter into a*  
42 *precommitment lease arrangement with the*  
43 *private sector.*

44

45 Et cetera:

46

47 *An issue that you think may arise is that*

1           *national land could be sold at a discount*  
2           *with ATO being the beneficiary....*

3  
4 Et cetera. Et cetera:

5  
6           *...reduced rent as part of a lease*  
7           *arrangement and ATO and the private*  
8           *developer.*

9  
10 Q. Now, again, it is stretching your memory, I guess,  
11 but have you any idea what happened to that proposal?

12 A. This minute appears to be policy advice to the  
13 government's estate manager.

14  
15 Q. Yes.

16 A. I can't recall the outcome of those arrangements for  
17 the Tax Office in Canberra.

18  
19 Q. Just read, if you would, the first page, and I will  
20 turn to the second page. There are a couple of things I  
21 want to ask you about that. When you will have finished  
22 the first page, let the operator know and we will go to  
23 the second page.

24 A. Yes.

25  
26 Q. Just before we go to the next page, does it appear  
27 that the Department of Finance's view as at October 1991  
28 was that if there be precommitment arrangements it would  
29 be preferable that AEM be involved in the precommitment -  
30 in other words, be the builder/developer as opposed to the  
31 private sector as a preferred option?

32 A. This is specifically in relation to the ACT.

33  
34 Q. Yes, quite.

35 A. A unique property market in Australia.

36  
37 Q. Why is that?

38 A. Essentially, the main driver of occupancy was the  
39 public service, the government itself, particularly in  
40 those days. Therefore, when you compare that market to  
41 somewhere like Sydney or other major capitals, where a  
42 variety of tenants and owners were in the mix, the ACT  
43 market did have a different flavour to it and different  
44 drivers.

45  
46 Q. Then I distracted you by asking you the question why,  
47 but leaving, if it be relevant, the unique nature or the

1 special nature of Canberra to one side. What the  
2 Department of Finance was putting here was the preferred  
3 position, at least in the ACT, that, like Townsville,  
4 where there had been a successful building of a  
5 development for Tax by the AEM, as it were, as the builder  
6 in a precommitment context, that would be, from your  
7 department's point of view perhaps a preferred position in  
8 relation to the ACT as well?

9 A. We certainly took the view that the government should  
10 be given the opportunity to consider the merits of such a  
11 development.

12  
13 Q. All right. Thank you. What you said in paragraph 9  
14 was:

15  
16 *These matters need to be considered against*  
17 *a range of policy implications (discussed*  
18 *in Attachment A); namely...*

19  
20 You rightly point to the ACT office environment, planning  
21 processes, various AEM responsibilities and the concept of  
22 precommitment leases for the Commonwealth. So you were  
23 raising, or, rather, the Department was raising the whole  
24 concept of precommitment in the Commonwealth context, as a  
25 matter of policy for consideration?

26 A. That's correct.

27  
28 MR SACKAR: Thank you.

29  
30 MR ROBERTSON: Nothing further.

31  
32 THE COMMISSIONER: Thank you very much, I. You are free  
33 to leave. If we need to get you back, we will let you  
34 know, but we hope that is not the case.

35  
36 <THE WITNESS WITHDREW.

37  
38 MR ROBERTSON: I all Mr Wojcik, Commissioner.

39  
40 <EDDY WOJCIK, sworn: [3.10pm]

41  
42 <EXAMINATION BY MR ROBERTSON:

43  
44 MR ROBERTSON: Q. Your full name is Eddy Wojcik?

45 A. Yes.

46  
47 Q. You live at 27 Coolibah Crescent, O'Connor, in the

1 Australian Capital Territory?  
2 A. Yes.  
3  
4 Q. You are a private investor?  
5 A. Yes.  
6  
7 Q. And you were a public servant until January 1999?  
8 A. Yes.  
9  
10 Q. Have you prepared a statement for the purposes of  
11 this Inquiry?  
12 A. Yes.  
13  
14 Q. Is that an original copy of the statement you signed?  
15 A. Yes.  
16  
17 Q. Is that true and correct to the best of your  
18 knowledge and belief?  
19 A. I have been given some additional papers. It might  
20 help me if I clarify one or two of the comments I made in  
21 that statement.  
22  
23 THE COMMISSIONER: Let's make it an exhibit first.  
24  
25 MR ROBERTSON: I will tender that.  
26  
27 **EXHIBIT #80 STATEMENT OF EDDY WOJCIK DATED 13/9/2004,**  
28 **BARCODED WITS.028.000, AND DOCUMENTS REFERRED TO IN**  
29 **STATEMENT**  
30  
31 MR ROBERTSON: Q. Do you have a copy of the statement  
32 in front of you?  
33 A. Yes.  
34  
35 Q. The additional papers you have given were a bundle of  
36 papers extracted from the Department of Finance files?  
37 A. Yes.  
38  
39 Q. And you have had an opportunity to review those while  
40 waiting to give evidence this afternoon?  
41 A. I have gone through the first one and a half of those  
42 documents, part 1, and halfway through part 2.  
43  
44 Q. What I'd like to do is give you a copy of exhibit 69,  
45 which is a barcoded version of those documents. You will  
46 find the papers in that bundle are in the same order, but  
47 they contain barcodes which enables us to know which

1 document you are talking about. By reference to that  
2 folder could you perhaps inform the Commission what  
3 changes you wish to make to your statement, if any.

4 A. Well, if we go to my statement, in paragraph 9, I  
5 mention that I had no recollection of the conversation of  
6 15 January 1991, but I presume that telephone call was  
7 made in response to a request from Mr McPhee. Now, I  
8 found some papers in that part 1 of the file, which  
9 suggest to me that Mr Neil McKenna might have been acting  
10 in that position at that point of time. It may well be  
11 that I actually made that Inquiry of the Audit Office in  
12 response to a question from Mr McKenna, but I can't be  
13 100 per cent sure. It is probably more likely that I did  
14 get a request from Mr McKenna rather than Mr McPhee.

15  
16 Q. Are there any other changes you wanted to make?

17 A. Yes. In paragraph 42 of my statement, I referred to  
18 a meeting - actually, I guess it's the meeting referred to  
19 in paragraph 41, 16 January. In paragraph 42 I stated  
20 that I was probably not at that meeting. Having read  
21 through the papers, or some of the papers that I've just  
22 been given, it seems there was a meeting on additional  
23 estimates, of which one of the topics covered would have  
24 been a reference to that Canberra Times article. So I was  
25 definitely at one meeting on that day, which actually  
26 covered that topic. Whether there was one or more  
27 meetings, I can't be sure.

28  
29 Q. Thank you, is there anything else?

30 A. No.

31  
32 Q. Thank you. Just to avoid confusion, if you wouldn't  
33 mind just putting to one side the documents you've been  
34 looking at and sticking to the folder in front of you  
35 which has got the barcoded versions in it. Now, I want to  
36 take you through those documents, and I will say this:  
37 the originals are available, so if you feel at any time  
38 that you need to look at the original document, just say  
39 so, and I'm sure you can have a look at it. The first  
40 documents I want to take you to are part 1 of the file  
41 91/1796, which is document bearing barcodes commencing  
42 DOFA.088 - and I will identify my copy. The first  
43 document I want to take you to is DOFA.088.0201-0202 and a  
44 similar document, which is 0199 to 0200. Can you find  
45 that document? The numbers start from 1 and go up,  
46 although they are not consecutive.

47 A. My first page 1 - I now see on the screen the note to

1 Mr McKenna.  
2  
3 Q. That is the document where you thought it was  
4 Mr McKenna that asked you to make the phone call to  
5 Mr Jacobs?  
6 A. That's what I'm presuming, after having read that.  
7  
8 Q. To the Audit Office, sorry.  
9 A. Yes, that's what I assume after having read that  
10 document. He must have been acting in that FAS position  
11 at the time.  
12  
13 Q. Can I just take you to the second page, which is  
14 0200. Page 0202 is also the same copy. The last bullet  
15 point on that page says:  
16  
17 *Depending on the nature of the final*  
18 *proposal from Audit (which we can't be sure*  
19 *of until the developers agree to whatever)*  
20 *it may be a case that funding:*  
21 *- is subsumed in POE*  
22 *- should be looked at in works TNP (or*  
23 *equivalent)*  
24 *- new policy depending on cost (value is*  
25 *usually greater than \$6m).*  
26 *NB: nothing likely to happen until*  
27 *February, except A/E's.*  
28  
29 What are they?  
30 A. Additional estimates.  
31  
32 Q. I see. Should the Commission understand from that  
33 document that you had been told that the Audit Office had  
34 a proposal to move to premises in Barton, but the details  
35 of the terms on which that move was to take place,  
36 including the terms of the lease that they were to enter  
37 into, had not been settled?  
38 A. I think even at this stage there was no proposal in  
39 writing. I think there had been an earlier reference to a  
40 phone call back in December 1990, and this was a more or  
41 less follow-up phone call inquiry from, as I was saying  
42 before, Mr McKenna, or Mr McPhee.  
43  
44 Q. Can I take you to page 0201.  
45 A. Page number?  
46  
47 Q. DOFA.088.0201.

1 A. Yes.  
2  
3 Q. That's a version of your file note which bears some  
4 handwriting at the top. Is that your handwriting?  
5 A. Against the note, or --  
6  
7 Q. Yes. "Note 1) if precommitment lease"?  
8 A. Yes, that's mine.  
9  
10 Q.  
11 *Note 1) If precommitment lease will need*  
12 *Cabinet authority.*  
13  
14 A. Yes.  
15  
16 Q. Did you understand, in early 1991, that if an agency  
17 or department wished to enter into a precommitment lease,  
18 it did need Cabinet authority to do so?  
19 A. I think that was the advice I would have received  
20 from our property people in Defence and Government, to  
21 oversight for all property issues relating to --  
22  
23 Q. Well, looking further down the track, you were aware,  
24 weren't you, that the lease that the ANAO was  
25 discussing --  
26 A. Yes.  
27  
28 Q. -- with the ALP, as you understood it, was a  
29 precommitment lease? Not necessarily at this stage, but  
30 further down the track, Mr Wojcik - I'm particularly  
31 referring to --  
32 A. Could have been an option, yes.  
33  
34 Q. What I'm suggesting is that in June 1991, you assumed  
35 that it would be a precommitment lease. In fact, the note  
36 made by Mr Turner in respect of that meeting of 25 June  
37 1991 - which I'm sure you are familiar with - does refer  
38 to the fact that it would be a precommitment agreement?  
39 A. At that stage, I think there was a more firm  
40 indication from the ANAO and in writing that that was the  
41 way they wanted to proceed. That was the proposal they  
42 were putting up at the time.  
43  
44 Q. So it is fair to say that at least from that point  
45 you were aware that there was to be a precommitment  
46 agreement?  
47 A. Well, I'm not sure we had enough details in the

1 middle of January. If you are talking from June, well --  
2  
3 Q. No. I'm asking about your knowledge of there being a  
4 precommitment agreement that the ANAO proposed to enter  
5 into. I'm taking you forward to June, from which time you  
6 did understand that there was to be a precommitment  
7 agreement?  
8 A. Well, there would still be a whole lot of processes  
9 to go through before a precommitment lease was entered  
10 into, as I understand it.  
11  
12 Q. Yes, but one of those processes that was not, as you  
13 understood it, gone through, was the obtaining of Cabinet  
14 authority?  
15 A. That's correct.  
16  
17 Q. Does that indicate that your understanding in January  
18 1991 was shown to be incorrect?  
19 A. No, my understanding in January would have been there  
20 were some options. We didn't have any details about what  
21 those options might be or what the Audit Office might  
22 pursue.  
23  
24 Q. I'm asking about your understanding in January 1991  
25 that a precommitment lease would need Cabinet authority?  
26 A. Yeah, that would have been my understanding in  
27 January 1991, yes.  
28  
29 Q. Was that understanding subsequently shown to be  
30 incorrect?  
31 A. I think the circumstances might have changed a bit in  
32 terms of the advice we might have been getting from our  
33 property people - our property experts in the Defence and  
34 Government Division.  
35  
36 Q. To put it simply, by the time that the lease was  
37 finally executed, it was not the Department of Finance's  
38 view that a precommitment lease needed Cabinet authority?  
39 A. I think the lease was executed some time in 1990.  
40  
41 Q. 1992?  
42 A. 1992, yes.  
43  
44 Q. I now take you forward just one document, to  
45 DOFA.088.0195-0197. That's the next document forward in  
46 the bundle. That is a minute from yourself to Mr McPhee  
47 regarding a meeting with Mr Jacobs on 29 January, which

1 you understood Mr McPhee was to have with Mr Jacobs.  
2 A. Yes.  
3  
4 Q. You state under "Property Matters":  
5  
6 *This has been discussed previously between*  
7 *yourself and Mr Jacobs. The matter hasn't*  
8 *progressed too far...*  
9  
10 A. Yes.  
11  
12 Q. I draw that to your attention just to put things in  
13 context. Can I then take you to document  
14 DOFA.088.0188-0191. 0188 is a handwritten Post-It note in  
15 your handwriting?  
16 A. Yes.  
17  
18 Q. And it refers to the secretary's comments and you're  
19 suggesting to Mr Turner:  
20  
21 *We'll have to keep secretary's comments in*  
22 *mind.*  
23  
24 A. Yes.  
25  
26 Q. The secretary's comments, I suggest, arose next to  
27 paragraph 7 of the attached document?  
28 A. Yes, it could be paragraph 7 or Mr McPhee's notation.  
29  
30 Q. Well, it refers to the secretary's comments, doesn't  
31 it?  
32 A. Yes.  
33  
34 Q. And Mr McPhee's notation in the top left-hand side of  
35 0189 also refers to the secretary's comment.  
36 A. Yes.  
37  
38 Q. So the secretary's comment, I suggest to you, is a  
39 comment next to paragraph 7:  
40  
41 *I am doubtful that we will ever support*  
42 *this proposal.*  
43  
44 Is that correct?  
45 A. Yes, but Mr McPhee has made the comment that their  
46 case will be considered on economic grounds.  
47

1 Q. Did you understand Mr McPhee to be saying to you if  
2 they can make out an economic case, then Finance can  
3 support this proposal?  
4 A. That would be a possibility, yes.  
5  
6 Q. Did you understand the secretary to be saying, "I'm  
7 doubtful we'd ever support it under any circumstances"?  
8 A. I think the - well, I don't want to put any thoughts  
9 into what the secretary's comment is, but I think it would  
10 be on the basis that it could not be justified on economic  
11 grounds.  
12  
13 THE COMMISSIONER: Q. I'm sorry, that it --  
14 A. I don't want to put any words into the --  
15  
16 Q. I'm sorry, it was the last thing you said: " I think  
17 it would be doubtful we'd ever" - what was your answer  
18 intended to suggest in relation to that?  
19 A. Well, I guess as per Mr McPhee's comment, if the case  
20 could be justified on economic grounds, then maybe.  
21  
22 MR ROBERTSON: Q. I now take you to DOFA.088.0165.  
23 That bears an annotation from Mr McPhee to Mr Pearson  
24 saying:  
25  
26 *For prompt response pls.*  
27  
28 It is dated 11 March. Mr Pearson has asked you to discuss  
29 it with him?  
30 A. Yes.  
31  
32 Q. What those comments refer to is the note at the  
33 bottom:  
34  
35 *Mr McPhee, what is proposed?*  
36  
37 A. Yes.  
38  
39 Q. In respect of a proposal from ANAO on more permanent  
40 accommodation arrangements, and the response to the  
41 secretary is, I suggest, DOFA.088.0163.  
42 A. Yes.  
43  
44 Q. Did you have involvement in drafting that document,  
45 as far as you recall?  
46 A. Excuse me?  
47

1 Q. Did you have involvement in drafting that document,  
2 as far as you recall?

3 A. I would think so, yes.  
4

5 Q. Just perhaps out of fairness I should take you to  
6 DOFA.088.0175, which appears to be an earlier draft  
7 bearing your handwriting.

8 A. I have certainly made some comments in the margin  
9 there.  
10

11 Q. Those comments are then incorporated into the version  
12 that I have just taken you to?

13 A. Yes, as you can see my note there talks about asking  
14 Mr Turner to do another draft, incorporating those  
15 comments. So Mr Turner would have drafted the document  
16 and it would have been --  
17

18 Q. You need to speak up, Mr Wojcik. You are very quiet.

19 A. As my note says there, I have asked Mr Turner to "do  
20 another draft, please", so Mr Turner's drafted this  
21 document and I have added my comments and suggestions.  
22

23 Q. Which Mr Turner has then incorporated?

24 A. Yes.  
25

26 Q. What you suggested was that the words be included:  
27

28 *The Government's response to that Report --*  
29

30 that is JCPA report number 296 --  
31

32 *noted there were no strong reasons for all*  
33 *parts of the ANAO to located in the one*  
34 *building or for a new building to be*  
35 *constructed in the Parliamentary Triangle.*

36 *The response also noted that decision*  
37 *had already been taken to accommodate a*  
38 *major component of the ACT office within*  
39 *Tasman House (Civic) on a long term lease*  
40 *of 10 years. It was also suggested that it*  
41 *may be more effective to locate both*  
42 *national and regional offices within this*  
43 *area.*  
44

45 Mr Wojcik, those are the words that you have written in  
46 the margin. In suggesting that those words be included,  
47 did you have in front of you a document from which you

1 were extracting those passages?  
2 A. I couldn't be sure.  
3  
4 Q. Well, the government's response to JCPA report  
5 number 296 was a document tabled in Parliament, was it  
6 not?  
7 A. Yes, I believe that to be the case.  
8  
9 Q. If that document doesn't include any of the material  
10 that you have set out there, would you accept that you  
11 were not thinking of the response, but more likely of the  
12 submission made to Cabinet in relation to the formulation  
13 of that response?  
14 A. That sounds more correct, yes.  
15  
16 Q. I take you next to DOFA.088.0149-150. Do you have  
17 that?  
18 A. Yes.  
19  
20 Q. That's a letter from Mr Cooney to Mr Pearson.  
21 Mr Pearson referred to you and you referred to Mr Turner  
22 with the note:  
23  
24 *Have we finalised our response to ANAO?*  
25  
26 A. Yes.  
27  
28 Q. Mr Cooney raised a number of caveats in relation to  
29 the ANAO proposal, didn't he?  
30 A. Yes.  
31  
32 Q. Those caveats subsequently found their way into  
33 correspondence with the Audit Office?  
34 A. Yes, I understand that to be the case.  
35  
36 Q. I refer you to a minute dated 2 May 1991, which I  
37 will have brought up for you. It is CH94.009.0299. Do  
38 you see that?  
39 A. It's not on my screen yet. 299 now, yes.  
40  
41 Q. If you wish to see the next page, you can ask the  
42 operator who is just to your left there.  
43 A. Yes.  
44  
45 Q. Do you accept that in that letter, which I take it  
46 was drafted by yourself and Mr Turner, most of the  
47 matters, if not all of the matters, raised by Mr Cooney

1 have been incorporated?

2 A. Yes.

3

4 Q. Can I just take you to an earlier draft of that  
5 document - that's DOFA.088.0133-0135.

6 A. Yes.

7

8 Q. You will see that in the second paragraph of that  
9 draft some of the wording utilised in the minute to the  
10 secretary, to which I raised with you, has been repeated -  
11 that is, that the government did not support the  
12 recommendation of the JCPA report number 296, in the  
13 government's view there being no strong reasons for all  
14 parts of the ANAO to be located in the one building, or  
15 for a new building to be constructed.

16 A. Yes.

17

18 Q. I think Mr McPhee suggested that that was going a  
19 little bit far, but that what the government did was noted  
20 the recommendation?

21 A. That's right.

22

23 Q. And in response to that caveat from Mr McPhee you or  
24 Mr Turner have changed the letter to the final version  
25 which said that the government only noted the  
26 recommendation, and then refers to the submission which  
27 commented that the JCPA recommendation was not supported  
28 by any detailed justification. Does that confirm the  
29 proposition that you agreed with a little while ago, that  
30 the detailed objections to the JCPA recommendation were  
31 from the submission and not from the government response?

32 A. I think so, yes.

33

34 Q. In that respect, I will just take you to paragraph 12  
35 of your statement, which actually refers to that letter,  
36 and I note that in paragraph 12 you say:

37

38 *The submission referred to was the*  
39 *Government response to the JCPA Report.*

40

41 I just wanted to confirm that you now have agreed that in  
42 fact the submission was more likely to be the submission  
43 to Cabinet in respect of that response, rather than the  
44 response itself?

45 A. That doesn't --

46

47 Q. If you wish to see the response, I'm happy to show it

1 to you.  
2 A. Well, yes, I think I'd like to see that.  
3  
4 Q. The response is part of exhibit 37, COMM.010.0001.  
5 The particular response to recommendation 78 is 0022, if  
6 that could be brought up. I will read the number again:  
7 COMM.010.0022.  
8 A. Yes, I see that.  
9  
10 Q. Are you now comfortable with the proposition I put to  
11 you?  
12 A. That was the government submission.  
13  
14 Q. That was the submission to Cabinet --  
15 A. Cabinet submission rather than the government  
16 response, yes.  
17  
18 Q. I now take you to DOFA.088.0101, and, in particular,  
19 the third page, 0103. Can I ask you, is that your  
20 handwriting at the bottom of that page?  
21 A. Yes.  
22  
23 Q. What you have written is:  
24  
25 *Without detailed costings it is difficult*  
26 *to say anything - the secretary indicated*  
27 *that he was doubtful whether we would ever*  
28 *support an accommodation proposal by Audit*  
29 *within or adjacent to the Parliamentary*  
30 *Triangle.*  
31  
32 A. Yes.  
33  
34 Q. You have written "(see" and you seem to have stopped.  
35 I can assure you that there is nothing else on the page.  
36 A. Well, I'm not sure whether I did or did not write  
37 anything else on that page.  
38  
39 Q. Does that note indicate that as far as you were aware  
40 at that time the secretary's view in relation to the Audit  
41 Office's ambition for accommodation in the Parliamentary  
42 Triangle was not just related to financial issues, but was  
43 founded just simply upon the proposition that Audit should  
44 not be within or adjacent to the Parliamentary Triangle ?  
45 A. Oh, I guess the secretary knew that there was no  
46 reason for the Audit Office to be accommodated there.  
47

1 Q. If there was no reason for them to be there they  
2 shouldn't be there; is that the conclusion one should  
3 draw?

4 A. Well, I mean, that was not something I had to make a  
5 judgment on.  
6

7 Q. Can I take you to the previous page, the page in  
8 front of that, DOFA.088.0100. Do you have that?

9 A. Yes.

10  
11 Q. That is a file note of Mr McPhee's, or a note or  
12 minute from Mr McPhee to Mr Pearson dated 27 May,  
13 presumably 1991. Is that your handwriting at the bottom  
14 of the page?

15 A. Yes.  
16

17 Q. That says:

18  
19 *Without detailed costings we can't agree -*  
20 *in addition the secretary has indicated his*  
21 *position as to ANAO location - not w/in or*  
22 *adjacent to the Parliamentary Triangle - (I*  
23 *am checking with D&G re Section 22 Barton).*  
24

25 A. Yes.  
26

27 Q. That's a similar note to the one on the document we  
28 just went to, but that note, "I am checking with D&G re  
29 Section 22 Barton," did that indicate that you had asked  
30 D&G to tell you whether Section 22 Barton was within or  
31 adjacent to the Parliamentary Triangle?

32 A. I think so.  
33

34 Q. On the basis that, as you understood it, the  
35 secretary was vehemently opposed to the ANAO being  
36 accommodated within the Parliamentary Triangle.

37 A. Yes, I think so.  
38

39 Q. Is that your handwriting down the left-hand side of  
40 the page?

41 A. Yes.  
42

43 Q. That refers to:

44  
45 *A new lease arrangement where the new*  
46 *premises would be RENT-FREE for 2 years.*  
47

1 To the best of your recollection, does that relate to the  
2 Canberra proposal or does it relate to one of the Sydney  
3 or Brisbane proposals which seem to have been on foot at  
4 the same time?

5 A. I'm not sure whether it would relate - whether it  
6 does relate to the Canberra proposal.

7  
8 Q. As far as you recall, did you ever understand or  
9 believe that there may be a two-year rent-free period in  
10 relation to the ANAO's proposed move to Barton?

11 A. No.

12  
13 Q. I take you to DOFA.088.0096-0098.

14 A. Yes.

15  
16 Q. Is that your handwriting on the top right-hand corner  
17 of that page?

18 A. Yes.

19  
20 Q. That is suggesting to Mr Turner that:

21  
22 *Perhaps Libby could do an analysis of these*  
23 *costings - as discussed yesterday Audit*  
24 *will have to provide more details to*  
25 *convince us that the move is*  
26 *cost-effective.*

27  
28 "BUT", in capitals:

29  
30 *We should be able to work out what*  
31 *questions we need answered (and get info*  
32 *from Audit).*

33  
34 A. Yes.

35  
36 Q. I take it from that that your assessment of this  
37 document dated 27 May 1991 from the Audit Office was that  
38 it contained insufficient detail to enable you to assess  
39 proposed move from Woden to Barton?

40 A. That's correct.

41  
42 Q. I take it that in response to that, you either  
43 contacted or had someone else contact the Audit Office and  
44 told them they would have to provide more details?

45 A. Yes, that's what would normally happen in these  
46 circumstances.

47

1 Q. Before leaving this bundle of papers for the moment,  
2 can I just take you to document DOFA.088.0052. Do you  
3 have that page?  
4 A. Yes.  
5  
6 Q. I just want to ask you at this time is that your  
7 handwriting?  
8 A. No.  
9  
10 Q. That's Mr Turner's, is it?  
11 A. Yes.  
12  
13 Q. Do you recognise the document, looking at it?  
14 A. No.  
15  
16 Q. I will try and get you some context in a minute --  
17 A. Well --  
18  
19 Q. What I want to do now is turn to the meeting which  
20 was held - perhaps I will take you to the document first,  
21 DOFA.088.0050. That's a note from Mr Turner to file, is  
22 it?  
23 A. Yes.  
24  
25 Q. It is dated 21 June 1991. Would you have seen that  
26 at the time?  
27 A. I can't be sure, but Mr Turner would have - if I  
28 didn't see the document, Mr Turner most likely would have  
29 conveyed the contents of it to me.  
30  
31 Q. It concerns a discussion that apparently took place  
32 between Mr Turner and Mr Joyce concerning the WTNP memo  
33 from the Audit Office?  
34 A. Yes.  
35  
36 Q. Can I just ask you, is Ian Joyce the same person as  
37 Michael Joyce, or are they different people?  
38 A. Different people.  
39  
40 Q. Michael Joyce, who was a senior officer with the  
41 Department of Finance, is not Ian Joyce, who was also with  
42 the Department of Finance at that time?  
43 A. Michael Joyce was Ian Joyce's boss at one point in  
44 time - not direct boss, but he was in charge of the branch  
45 in which Ian Joyce worked. Ian Joyce worked to Brian  
46 Cooney, I think, at that time.  
47

1 Q. And this letter appears to record a conversation  
2 between Mr Ian Joyce and Mr Turner relating to the Audit  
3 Office's WTNP submission?  
4 A. Yes.  
5  
6 Q. The WTNP submission was the letter dated 11 June  
7 1991, which I think you --  
8 A. Yes.  
9  
10 Q. -- referred to in paragraph 14 of your statement.  
11 A. Yes.  
12  
13 Q. This records Mr Joyce's views that:  
14  
15 *The costings included in the memo are not*  
16 *totally acceptable, especially in the case*  
17 *of the ACT proposal of getting a new*  
18 *building in S 22.*  
19  
20 Then he says:  
21  
22 *Re ACT --*  
23  
24 A. Yes.  
25  
26 Q.  
27 *Re ACT -*  
28 *Mr Joyce had reservations about the*  
29 *estimated rentals, the lack of present*  
30 *value costing over 10 to 15 years, and the*  
31 *inadequate background as to how the*  
32 *proposal was intended to proceed.*  
33  
34 A. Yes.  
35  
36 Q. Mr Joyce suggested the ACT matter would be a new  
37 policy proposal as it would involve a building for the  
38 Commonwealth that would cost over \$6m?  
39 A. Yes.  
40  
41 Q. Mr Turner advised he was to meet the ANAO on Tuesday,  
42 the 25th, and send him a copy of the ANAO's other memo,  
43 which also did not contain any detail of costings. What  
44 seems to have happened, Mr Wojcik, is that Mr Joyce came  
45 along to that meeting on 25 June?  
46 A. Yes.  
47

1 Q. Along with yourself. To make sure I can clarify this  
2 today, do you know what happened to Mr Ian Joyce?  
3 A. In what --  
4  
5 Q. Have you heard from him lately?  
6 A. No, I haven't heard from him for - I can't recall the  
7 last time I saw him, or might have seen him.  
8  
9 Q. He was employed in the D&G section, Mr Cooney would  
10 have been at your level and Mr Joyce would have been at a  
11 level below you?  
12 A. The same level as Mr Turner.  
13  
14 Q. I want to take you to the meeting of 25 June 1991,  
15 and, first of all, show you DOFA.086.0176-0177, 0178.  
16 They are the last three pages in the whole folder.  
17 A. 086 to?  
18  
19 Q. Sorry, DOFA.086.0176 - the last three pages in the  
20 folder. The page on the screen is 0176.  
21 A. Yes.  
22  
23 Q. Is that Mr Turner's or your handwriting?  
24 A. Mr Turner's.  
25  
26 Q. 0177 and 0178?  
27 A. Yes, they look like Mr Turner's.  
28  
29 Q. Would it be a correct conclusion that those documents  
30 would reflect Mr Turner's handwritten notes of that  
31 meeting on 25 June?  
32 A. I couldn't say.  
33  
34 Q. You do note the similarity between the notes on the  
35 first page of the typewritten minute and the document as  
36 set out on page 176?  
37 A. Yes. They cover some similar points. Obviously his  
38 file note was expanded.  
39  
40 Q. Over the page it refers to Sydney and then on the  
41 third page it refers to Brisbane?  
42 A. Yes. What I was suggesting before was I'm not sure  
43 whether they were pre-meeting or after the meeting. Well,  
44 they look like, to me, just notes.  
45  
46 Q. Notes made --  
47 A. They could have been notes doing an analysis of the

1 proposal --

2

3 Q. If that were correct, Mr Wojcik, the comment on page  
4 176, which says:

5

6 *Op comments.*

7

8 Presumably that means "opening comments"; would you agree?

9 A. Probably, yes, yes.

10

11 Q. If they were pre-meeting notes, that would suggest  
12 that those were matters that you had discussed with  
13 Mr Turner prior to the meeting, as matters that it would  
14 be important to talk about with the Audit Office?

15 A. Well, it's most likely I spoke about a lot of these  
16 issues with either - both Mr Turner and Mr Joyce before  
17 the meeting.

18

19 Q. Sitting here now - and I understand the difficulties  
20 of memory - what's your best - I shouldn't say "guess",  
21 but your best recollection of whether, in fact, there was  
22 a discussion beforehand which involved the preparation of  
23 some notes to talk to, or --

24 A. I'm sure I had a long discussion with Ian Joyce  
25 beforehand.

26

27 Q. Can I just go back to a document I showed you a  
28 little while ago, DOFA.088.0052. That's the handwritten  
29 page. In this case I may have to show you the original.  
30 The copy you have won't disclose the pencil handwriting at  
31 the top. You will note the pencil notes at the top:

32

33 *DEET going out?*

34 *Precommitment lease?*

35 *HIC - owned by Estate Mgr?*

36

37 What I want to suggest to you, Mr Wojcik, is that this  
38 page is also part of Mr Turner's handwritten notes of that  
39 meeting. Are you able to comment on that proposition?

40 A. It looks like that, yes.

41

42 Q. Either notes made before the meeting or notes put  
43 together during the meeting?

44 A. Yes, I would think so.

45

46 Q. I will show you the original of the three pages I  
47 took you to earlier. If you note that the writing on page

1 0176 is in black ink, whereas some of the rougher notes on  
2 the following pages are in blue ink, although it appears  
3 there is some shifting between pens. Does that give you  
4 any assistance in determining whether those notes were  
5 made before or during the meeting?

6 A. Look, I'd only be speculating on exactly when they  
7 were made.

8  
9 MR ROBERTSON: I think that's a convenient time,  
10 Commissioner.

11  
12 THE COMMISSIONER: We will resume again at 10 o'clock in  
13 the morning.

14  
15 **AT 4PM THE COMMISSION WAS ADJOURNED TO TUESDAY, 14**  
16 **SEPTEMBER 200410AM**

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