

**INQUIRY INTO THE CENTENARY HOUSE LEASE**

Before the Hon David Hunt AO QC

Held at Level 5,  
55 Market Street, Sydney

On Tuesday, 14 September 2004 at 10am  
(Day 22)

1 MR ROBERTSON: I thought it appropriate that I tender the  
2 originals of those handwritten notes that Mr Wojcik was  
3 shown yesterday, the notes of the 25 June meeting,  
4 DOFA.016.0176-0178 and DOFA.088.0052. It is probably best  
5 if I mark the files for identification and then the  
6 original documents which are within those files can become  
7 exhibits.

8  
9 THE COMMISSIONER: You mean the file covers marked for  
10 identification or the whole file?

11  
12 MR ROBERTSON: The whole file.

13  
14 THE COMMISSIONER: What's going to be the exhibit?

15  
16 MR ROBERTSON: It may be easier just to tender the whole  
17 file. They are already on the system.

18  
19 THE COMMISSIONER: Those two files will be exhibits 81  
20 and 82.

21  
22 **EXHIBIT #81 FILE OF THE DEPARTMENT OF FINANCE 91/2334 -**  
23 **ANAO - POE - FINANCIAL AND ADMINISTRATIVE ESTIMATES**  
24 **SECTION, BARCODED DOFA.086.0001-0249**

25  
26 **EXHIBIT #82 FILE OF THE DEPARTMENT OF FINANCE 91/1796 -**  
27 **ACCOMMODATION ARRANGEMENTS - ANAO - FINANCIAL AND**  
28 **ADMINISTRATIVE ESTIMATES SECTION,**  
29 **BARCODED DOFA.088.0001-0221**

30  
31 <EDDY WOJCIK, on former oath: [10.05am]

32  
33 <EXAMINATION BY MR ROBERTSON CONTINUING:

34  
35 MR ROBERTSON: Q. You took away with you a copy of the  
36 documents from the exhibit 69, the folder you have in  
37 front of you right now. That's correct, isn't it?

38 A. Well, I haven't seen exactly what's in front of me  
39 now, but if it's those documents I was handed yesterday,  
40 yes.

41  
42 Q. Did you look at them last night.

43 A. I looked some of the documents, yes.

44  
45 Q. Was there anything, having looked at those documents,  
46 that you wish to add to the evidence that you have given  
47 so far?

1 A. Just a query, you asked a question yesterday about  
2 whether there was any lease rent free for two years that  
3 we knew about. I'm not sure whether on reflection you  
4 were referring to just the Canberra proposal or any  
5 proposal by the Audit Office.  
6  
7 Q. No, I was referring to the Canberra proposal,  
8 Mr Wojcik, and the answer remains that you are not aware  
9 of any proposal for a rent-free period in Canberra?  
10 A. No.  
11  
12 Q. Is it correct that both the Sydney and Brisbane  
13 proposals included rent-free periods?  
14 A. The Brisbane one certainly did.  
15  
16 Q. Do you believe on that basis that the note at the  
17 side of the page on the document that you were taken to  
18 yesterday, which refers to a two-year rent-free period,  
19 was a reference to the Brisbane proposal?  
20 A. Yes.  
21  
22 Q. Do you have the bundle with your statement in it that  
23 you had yesterday? The document I want is CH94.003.0352,  
24 if you could open that up at tab 8.  
25 A. Yes.  
26  
27 Q. I will also refer you to the pages of handwritten  
28 notes, DOFA.086.0176-0178. You can either have the  
29 originals or you can look at the pages which are in the  
30 other folder that you have in front of you.  
31 A. 086 to --  
32  
33 Q. 086, which is the last tab in that bundle, and then  
34 it's the last three pages behind - in other words, the  
35 last three pages in the whole bundle?  
36 A. The last three. Mr Turner's notes, yes.  
37  
38 Q. We were considering at the close of business  
39 yesterday that those notes may have been made at a meeting  
40 between yourself, Mr Turner and Mr Joyce, and presumably  
41 Ms Kalis as well, before the meeting with the Audit  
42 Office, or they may have been made during the meeting with  
43 the Audit Office?  
44 A. Yes.  
45  
46 Q. At this stage you simply can't say which would have  
47 been the case?

1 A. Well, I'm not sure of that - how Mr Turner took notes  
2 during meetings, but it could well be that he actually  
3 took those notes at the meeting with the Audit Office.  
4

5 Q. Looking at D0FA.086.0176, that says:  
6

7 *EW*  
8 *Syd, Bris, Canberra.*  
9

10 Presumably Sydney, Brisbane, Canberra. The typed notes  
11 suggested:  
12

13 *Mr Wojcik opened the meeting by suggesting*  
14 *that we consider the Sydney and Brisbane*  
15 *proposals before looking at the Canberra*  
16 *matter.*  
17

18 That suggests that the handwritten notes were actually  
19 taken during the meeting?

20 A. Yes.  
21

22 Q. Having made that comment, the handwritten note then  
23 says:  
24

25 *Op.*  
26

27 Presumably "opening":  
28

29 *Comments.*  
30

31 A. Yes.  
32

33 Q. The typed version says:  
34

35 *First, some comments were provided on the*  
36 *current markets and the tactics that real*  
37 *estate agents are taking to gain business:*  
38

39 A. Yes.  
40

41 Q. The bullet points on the typewritten document, to  
42 some extent, reflect the points noted on the handwritten  
43 page?  
44

44 A. Yes.  
45

46 Q. They are not identical, particularly because the word  
47 "deflator" appears as the second item under "Opening

1 Comments", whereas the deflator is only mentioned in the  
2 paragraph following the bullet points in the typewritten  
3 note?

4 A. Well, yes, that's right.

5

6 Q. So looking at both together, and doing the best you  
7 can from your recollection, it is correct, isn't it, that  
8 you opened the meeting with the Audit Office - that was  
9 Mr Morison and Mr Campbell - by suggesting that the  
10 meeting should deal with the Sydney and Brisbane proposals  
11 first?

12 A. Yes, because they were, in theory, much easier to  
13 deal with.

14

15 Q. But you then proceeded to give a run-down on the  
16 property market?

17 A. Yes.

18

19 Q. And it is notable - and if you wish to review this  
20 issue, this question, you can look at the WTNP proposal  
21 which is behind tab 6 in your statement - that both the  
22 Sydney and Brisbane proposals include incentives, both  
23 rent-free periods and free fitout?

24 A. Yes.

25

26 Q. So, in those circumstances, you accept that it is  
27 possible that the ANAO officers understood your general  
28 remarks being applicable to Sydney and Brisbane and not  
29 Canberra?

30 A. Well, it could be that they did, but I think I was  
31 making more general remarks. It might be that the markets  
32 in the States - might have been a little bit different  
33 than the ACT, but I was trying to give them a fairly full  
34 understanding of what I understood about the things to  
35 look out for.

36

37 Q. You also understood that insofar as the Audit Office  
38 was considering a proposal in the ACT it had the  
39 Australian Property Group acting on its behalf in that  
40 respect?

41 A. Yes.

42

43 Q. And you would not have described the Australian  
44 Property Group as a real estate agent in this context,  
45 would you?

46 A. Well, I think I might have. I'm not sure. They were  
47 basically providing advice to a client.

1  
2 Q. But they were not engaging in tactics to gain  
3 business?  
4 A. No, but they could well have an agenda.  
5  
6 Q. I understand you say that, Mr Wojcik, but the fact is  
7 that the tactics you were referring to in the course of  
8 this meeting did not relate to any agenda the APG might  
9 have had?  
10 A. Yes, that's correct.  
11  
12 Q. So that, again, there is a basis upon which it might  
13 be anticipated that the Audit Office might have understood  
14 you to be talking about Brisbane and Sydney rather than  
15 Canberra, in your general comments?  
16 A. I guess that could be correct.  
17  
18 Q. Do you suggest that you said anything in the course  
19 of this meeting to indicate to the Audit Office  
20 representatives that they needed to be particularly  
21 careful in relation to their Canberra proposal?  
22 A. Actually, there is one thing I should say. I was  
23 looking through some of those papers I was given yesterday  
24 and they included a draft works TNP proposal by the Audit  
25 Office, which mentioned that the rates of increase for  
26 Section 22 were assumed to be constant, as if there were  
27 no fixed escalator - although at that stage of the  
28 proposal nothing had been firmed up. So I'm not sure in  
29 the context of things whether - how much that plays into  
30 the understanding at that time.  
31  
32 Q. Well, can I take you just on that point to tab 6 to  
33 your statement, which is the WTNP proposal, final version.  
34 Does your statement have numbered tabs? It is  
35 CH94.002.0002.  
36 A. Yes, I have that.  
37  
38 Q. That is the WTNP final submission, and I take you to  
39 the fifth page of that, which is CH94.002.0006, the "Cost  
40 Comparison Over 10 Years Stay in Medibank and Other  
41 Canberra Locations vs Move to Section 22".  
42 A. Yes.  
43  
44 Q. I draw your attention to the note at the bottom.  
45 A. Yes.  
46  
47 Q. That is the comment that you noticed in the draft

1 submission, which is repeated in the final submission?  
2 A. Yes. There might be an extra sentence in there, I am  
3 not too sure.

4  
5 Q. There is a the proposition that:

6  
7 *Rent and outgoings are assumed to remain*  
8 *constant over the 10 years in both options,*  
9 *unless otherwise indicated.*

10  
11 That was a point that you were referring to?

12 A. Yes.

13  
14 Q. That assumption was something that you understood was  
15 related to the fact that this was a cost comparison and  
16 not an attempt to assess the actual cost at that 10 years?

17 A. It was Audit's presentation of how much it cost under  
18 the existing and how much it would cost under the new  
19 arrangements.

20  
21 Q. So the fact that no increase in rent is posited over  
22 that 10 years reflects the fact that an assumption has  
23 been made, not that rent won't increase, but that the rent  
24 would increase at the same rate in both locations, doesn't  
25 it?

26 A. Yes.

27  
28 Q. Because if we're making a comparison of the rent  
29 increases at the same rate, then the comparison will be  
30 reliable even if no assumptions are made in relation to  
31 increase at all?

32 A. This is where I have to make sure my opening remarks  
33 in that meeting of 25 June are noted, whereas they might  
34 be - have been seen to be more specifically to Sydney and  
35 Brisbane, given that I was saying all these things. I  
36 mean, if the Audit Office was entering into a lease which  
37 did have these particular features, they should be  
38 watching out for these features. I wouldn't understand  
39 why they wouldn't look out for these things in a lease  
40 that they would sign up for.

41  
42 Q. Returning to the note of the 25 June meeting, that's  
43 CH94.003.0352, the matters that you are referring to as  
44 being matters that the Audit Office needed to watch out  
45 for were:

46  
47 \* *the fact that lease contracts needed*

1           *close scrutiny as some involved escalating*  
2           *rent in later years - some rents may be*  
3           *tied to "market rates" on review, some are*  
4           *"subject to negotiation" or some are*  
5           *subject to growth in future years.*

6           *...*  
7           *\* fixed rates of increases may be*  
8           *dangerous*  
9           *\* the wording of rent reviews needs to be*  
10          *watched.*

11  
12         A.    Yes.

13  
14         Q.    Those are the three points?

15         A.    Yes.

16  
17         Q.    How much time do you think you will have spent  
18         addressing each of those points?

19         A.    I can't say.

20  
21         Q.    Did those points have any special emphasis in the  
22         presentation that you were making, or were they just  
23         points that were made along with other points in the  
24         course of that presentation?

25         A.    Well, there were particular things I wanted to get  
26         across to the Audit Office to be on the look-out for in  
27         entering into new lease arrangements.

28  
29         Q.    As far as you were concerned, in the course of that  
30         presentation, each of those bullet points was as important  
31         as each of the others?

32         A.    I guess so.

33  
34         Q.    This introductory comment was quite lengthy, was it?

35         A.    It's a little bit difficult to recall, but it was  
36         probably lengthy, yes.

37  
38         Q.    Was it yourself or Mr Joyce that addressed these  
39         issues?

40         A.    Well, I think I most likely would have, although I'm  
41         not 100 per cent sure on that.

42  
43         Q.    That would have been because you would have been the  
44         senior officer there?

45         A.    Yes.

46  
47         Q.    Mr Joyce was at Mr Turner's level, wasn't he?

1 A. Yes.  
2  
3 Q. Do you remember who Libby Kalis was?  
4 A. Yes, she worked for me and Mr Turner.  
5  
6 Q. This is the only document on which her name appears,  
7 is it, but she probably had only very little other  
8 involvement with Centenary House or the resource agreement  
9 negotiation with the Audit Office?  
10 A. She would have been helping out Mr Turner in  
11 preparing documents and maybe even attending some meetings  
12 which I didn't attend.  
13  
14 Q. I see.  
15 A. So I'm not sure.  
16  
17 Q. So Ms Kalis reported to Mr Turner, did she?  
18 A. Yes.  
19  
20 Q. Your introduction covered a range of topics?  
21 A. Yes.  
22  
23 Q. And did not focus on any one topic in particular?  
24 A. Well, there were a whole range of things. That's all  
25 I can say.  
26  
27 Q. Again, it's a long time ago, but did you have any  
28 perception of how your comments were being received by the  
29 Audit Office representatives, Mr Morison and Mr Campbell,  
30 during the course of that presentation?  
31 A. I'm not sure, but I guess if we were telling the  
32 Audit Office that one of their proposals wasn't likely to  
33 go ahead because we had some difficulties with it, of  
34 course that would not be well-received by the Audit  
35 Office.  
36  
37 Q. I'm focusing at this stage on your comments in  
38 relation to current markets and real estate agents'  
39 tactics. Do you have any recollection of the apparent  
40 reception that your comments were receiving from the Audit  
41 Office?  
42 A. Well, I guess they might have just been trying to  
43 take it all in.  
44  
45 Q. As far as you can recall, were they taking any notes?  
46 A. I can't recall whether they did or not.  
47

1 Q. Can I take you to paragraph 22 of your statement.  
2 A. Yes.  
3  
4 Q. You say:  
5  
6 *I expressly mentioned that in the future*  
7 *rental costs would increase only by the*  
8 *fixed deflator by which all running costs*  
9 *(POE) budgets would be increased.*  
10  
11 A. Yes.  
12  
13 Q. That is reflected in the first sentence under the  
14 bullet points on page 0352 of the note of the 25 June  
15 meeting?  
16 A. Yes.  
17  
18 Q. Did you say to the Audit Office representatives that  
19 the deflator which would be applied would be an  
20 Australia-wide deflator?  
21 A. I can't be sure of the exact words I used, but there  
22 was no suggestion that there would be an ACT-specific  
23 deflator, if that's what you are meaning.  
24  
25 Q. Did you give any indication to the Audit Office  
26 representatives of the likely figure - that is, what the  
27 deflator might be in future years?  
28 A. I can't recall, but I would have thought that the  
29 expectations would have been for a deflator on the  
30 reasonably low side because the deflator at that time, I  
31 think, was being linked to the current government final  
32 consumption expenditure, which would have been a fairly  
33 low figure at that point in time - something in the in  
34 order of, if I can say from memory here, 2 or 3 per cent,  
35 I guess, but I can't be sure on that.  
36  
37 Q. I might be able to give you some assistance there.  
38 Sorry, I thought we may have had an indication of what it  
39 was previously, but I can't put my finger on it. It is  
40 your recollection, is it, that the CGFCE deflator had been  
41 well below 9 per cent?  
42 A. Yes.  
43  
44 Q. In 1991?  
45 A. Yes.  
46  
47 Q. Did you say anything to the Audit Office

1 representatives to suggest that the deflator would be of  
2 the same size as the CGFCE deflator, or of similar size?

3 A. I'm not sure, but I think - I'm not even sure whether  
4 I used the term "running costs index", but I think I would  
5 have given the general presumption that it would be  
6 something along those lines.

7  
8 Q. Did the Audit Office representatives ask you any  
9 questions in relation to any of the presentation that you  
10 made at the opening of the meeting on 25 June 1991?

11 A. There would have been a few questions, I'm sure, but  
12 I can't recall the nature of those questions. There was  
13 some follow-up to the meeting in subsequent days, and  
14 subsequent correspondence - further details on some of the  
15 proposals and that sort of stuff, which showed that there  
16 was obviously something that the Audit Office were going  
17 to get back to us on and we were going to get back to them  
18 on.

19  
20 Q. The material you just referred to is that appearing  
21 behind tabs 9 and 10 to your statement, is it?

22 A. Yes.

23  
24 Q. None of that reflects any of the discussion or the  
25 presentation that you made at the commencement of the  
26 meeting, does it?

27 A. No, they were adjusting the figures, so - with the  
28 change of figures, if we had not liked what they were  
29 presenting or how they were presenting it, or wanted it  
30 presented a different way, or clarification of the  
31 figures, that should have been provided in the subsequent  
32 documentation. I'm not sure there was anything with  
33 Section 22 that --

34  
35 Q. What they provided in relation to Section 22 was some  
36 adjusted figures allowing for vacation of Medibank House  
37 accommodation in December 1992. The occupation of Section  
38 22 Barton at that time dead rent of six months and  
39 Medibank House and Tasman House and dead rent for six  
40 months at Section 22 for finalising fitout and cabling,  
41 and those were the matters that were incorporated into the  
42 proposal by that correspondence, isn't it? I refer you to  
43 CH94.0 --

44 A. I'd have to go through the details of what they  
45 provided initially and what the changes were and look at  
46 them side by side, but, yes, I guess so.

47

1 Q. That number was CH94.007.0140. Could you look at  
2 paragraphs 24 and 25 of your statement. You say you  
3 informed the ANAO officers that because the ANAO was  
4 proposing to enter into a precommitment lease, the WTNP  
5 process was not appropriate and the proposal should  
6 proceed through the new policy process. Firstly, taking  
7 that paragraph, 24, you said:

8  
9 *...because the ANAO was proposing to enter*  
10 *into a pre-commitment lease...*  
11

12 Was that something you had become aware of independently  
13 of what you were told at this meeting, or were you told  
14 that by the ANAO officers at this meeting, or was it a  
15 presumption you made, I suppose you'd say, a third  
16 alternative?

17 A. I'm not sure if the original - their documentation  
18 suggested that, a precommitment lease or something like a  
19 precommitment lease, but we were certainly making the  
20 point, if it was a precommitment lease that they were  
21 entering into, then it wouldn't be works technical new  
22 policy. I think the proposition was a precommitment  
23 lease, but --  
24

25 Q. Do you say you understood prior to this meeting that  
26 it was to be a precommitment lease, whether it was because  
27 of what you had been told, or that you assumed that to be  
28 the case, given that it was to be a purpose-built  
29 building?

30 A. If I could look at the - I need to find their  
31 submission once again.  
32

33 Q. That is tab 6 to your statement, CH94.002.0002.

34 A. Yes, that has the hallmarks of a precommitment lease.  
35

36 Q. In other words, simply because the ANAO wanted to  
37 commit to the building significantly in advance of it  
38 being built --

39 A. Yes.  
40

41 Q. -- the assumption you would have drawn, whether you  
42 had been told that or not, was that that would involve a  
43 precommitment lease?

44 A. Yes.  
45

46 Q. In paragraph 25 of your statement, you have said you  
47 understood that a precommitment lease would be structured

1 so that the rental stream over the first seven to 10 years  
2 would repay the construction costs and interest, and you  
3 say you had been informed of that by the property area,  
4 that's D&G within the Department of Finance?  
5 A. Yes.  
6  
7 Q. Presumably that was Mr Joyce, was it?  
8 A. Yes.  
9  
10 Q. Did you give consideration at that time to what  
11 impact that fact or circumstance would have on the likely  
12 levels of rents to be paid by the ANAO under that lease?  
13 A. I don't think so.  
14  
15 Q. Interest rates at that time were about 10 per cent,  
16 weren't they - or more?  
17 A. Well, from some of the papers I've been reading about  
18 long-term bond rates and whatever, I guess the suggestions  
19 were around about that rate, yes.  
20  
21 Q. Well, the long-term bond rate utilised in the  
22 resource agreement, which was some six months later, or  
23 nine months later, was over 10 per cent - 10.7, I think?  
24 A. 10.07, I'm not sure.  
25  
26 Q. Yes, 10.07. So interest rates were about 10 per cent  
27 at that level, at that time.  
28 A. Yes.  
29  
30 Q. The anticipation was that construction costs and  
31 interest would be recovered from rentals over seven to  
32 10 years?  
33 A. Well, that was our view of the possible arrangement.  
34  
35 Q. Wouldn't that require a rent, an annual rent, over  
36 the period of that lease that would equate to not only  
37 10 per cent of the construction cost each year in order to  
38 pay for the construction, but also an additional  
39 10 per cent to pay for the interest, subject to some  
40 amortisation over that period, but would it not involve a  
41 rental which would reflect something over between 10 and  
42 20 per cent of the value of the construction every year?  
43 A. Well, I would have had to receive advice from either  
44 the property area, in the Defence and Government Division  
45 on that, to exactly work out those calculations. But what  
46 you are saying may well be correct.  
47

1 Q. I suppose what I'm asking you is is that the sort of  
2 calculation that you undertook or considered at that time?

3 A. No, because I think at that time, if we were saying  
4 that - it's not a works technical new policy, the proposal  
5 is out of play. So it doesn't matter any more.  
6

7 Q. I see.

8 A. If it's a precommitment lease it's not works  
9 technical new policy, therefore we don't have to consider  
10 it any further.  
11

12 Q. What you are saying is - and this is what appears in  
13 the first sentence under "Canberra" on page  
14 CH94.003.0353 - that is the minute of the meeting of  
15 25 June. The issue:

16  
17 *...would be one that would need to proceed*  
18 *through the New Policy process; this was*  
19 *based on the presumption that the building*  
20 *would be built with the intention of the*  
21 *owner recovering the building costs, by way*  
22 *of the rentals, in the first few years, eg*  
23 *7-10 years. The ANAO would enter into a*  
24 *precommitment lease...*  
25

26 That is what you say was the discussion which led to  
27 you --

28 A. Yes.  
29

30 Q. In other words, you informed the Audit Office that it  
31 would have to be a new policy proposal?

32 A. Yes.  
33

34 Q. On that basis, you say you didn't consider further  
35 what was the significance of the fact that it would be a  
36 precommitment lease in relation to the rentals?

37 A. That's correct.  
38

39 Q. But you did give further consideration to the rentals  
40 which the ANAO had assumed, didn't you?

41 A. Yes.  
42

43 Q. Were you aware of the consideration of other  
44 precommitment arrangements at that time for other  
45 government or Commonwealth departments or  
46 instrumentalities?

47 A. I don't know if I was aware of any specific ones. I

1 guess I was responsible for a number of agencies, so it  
2 might well be that they had things going on.  
3  
4 Q. Can I take you to a document in the other folder that  
5 you have there, behind the second tab. The document is  
6 DOFA.087.0055.  
7 A. 087?  
8  
9 Q. 0055.  
10 A. Yes.  
11  
12 Q. That is a document that has been placed on the  
13 Department of Finance --  
14 A. That's September 1991.  
15  
16 Q. Yes. That --  
17 A. So, you are talking about --  
18  
19 Q. That is a document that post-dated this meeting?  
20 A. Yes.  
21  
22 Q. I see. So you say as at the time of this meeting in  
23 June you may not have been aware of this sort of proposal,  
24 but you did become aware of other proposals at least by  
25 September 1991?  
26 A. Well, at least by September 1991, yes. We would have  
27 been actually discussing a lot of issues with our property  
28 people in Defence and Government, so they would have been  
29 giving us details on what the lease arrangements had been  
30 entered into, what the general rates of increase were, and  
31 that sort of thing, I guess, so --  
32  
33 Q. In relation to precommitment leases?  
34 A. Not that I'm specifically aware of, until this -  
35 maybe this one here, I don't know.  
36  
37 Q. This particular letter bears your name at the top?  
38 A. Yes.  
39  
40 Q. In Mr Pearson's handwriting?  
41 A. Yes.  
42  
43 Q. It appears that he's referred this letter to you?  
44 A. Yes.  
45  
46 Q. And would it be you or Mr Turner that placed it on  
47 the file in which it is now found?

1 A. I can't be sure of that. It could have been either  
2 one of us.  
3  
4 Q. The first page before that, under that tab, is  
5 page DOFA.087.0001, the file number is RMS/9101796/02,  
6 which is part 2 of the file 91/1796 headed "Accommodation  
7 Arrangements Australian National Audit Office, Financial  
8 and Administrative Estimates Section".  
9 A. 087.00-what?  
10  
11 Q. 0001. It is on the screen.  
12 A. You are talking about the front cover, are you?  
13  
14 Q. Yes, the front cover of the file.  
15 A. Yes.  
16  
17 Q. I just wanted you to see that so that I could confirm  
18 with you that this file was a file explicitly relating to  
19 the Audit Office?  
20 A. Yes.  
21  
22 Q. So the fact that a letter relating to an  
23 accommodation proposal for the Australian Taxation Office  
24 is found on that file indicates that someone in your  
25 section of the Department of Finance considered that  
26 Taxation Office proposal had some relevance to the Audit  
27 Office proposal?  
28 A. Yes.  
29  
30 Q. That relevance, I suggest, is that you understood  
31 that the Audit Office was proposing to enter into a  
32 precommitment lease?  
33 A. Well, that's what they had been talking about, yes -  
34 or proposing, yes.  
35  
36 Q. What you understood from this letter was that there  
37 was an attitude within the Department of Finance to the  
38 effect that precommitment leases were not necessarily a  
39 good and efficient use of Commonwealth money at that time?  
40 A. I think there's some background to that, and context,  
41 so it's probably best to place that in context, I guess.  
42  
43 Q. What context do you say that is?  
44 A. I read some papers last night, which I can't recall  
45 where they were from, but I think it was talking about  
46 things which happen in the States, and --  
47

1 Q. You mean the Australian States?  
2 A. Yes. And just the competition. Why put up another  
3 building in a location which has got heaps of  
4 accommodation, basically, I think. So that's the question  
5 behind a precommitment lease, if there is already a - you  
6 know, a suitable building which is going to become vacant,  
7 why wouldn't you move into that rather than build a new  
8 building, at great expense and leave some other perfectly  
9 suitable building vacant.  
10  
11 THE COMMISSIONER: Q. You are not looking at this from  
12 some town-planning point of view: you mean if there is a  
13 lot of other free accommodation available, then there  
14 shouldn't be these projects being put up?  
15 A. Yes.  
16  
17 Q. Was it your belief that there was a lot of other  
18 accommodation available in the Parliamentary Triangle?  
19 A. I was just making a general comment about  
20 precommitment leases, and my understanding about  
21 precommitment leases is that if precommitment leases lead  
22 to more buildings being built and more buildings being  
23 vacant, then --  
24  
25 Q. But you are not applying it to the circumstances as  
26 they existed at that time, are you?  
27 A. I guess there's a general presumption about  
28 precommitment leases, that's all I'm trying to --  
29  
30 Q. I'm still not sure that I understand what it is you  
31 are getting at. Do you tell everybody who wants to enter  
32 a precommitment lease this, or do you look to see what the  
33 circumstances are in the particular case before you give  
34 that warning?  
35 A. Well, I guess you have to look at the circumstances  
36 in each particular case, because different locations would  
37 be different.  
38  
39 Q. Had you looked at the circumstances of this  
40 particular case?  
41 A. By "this case" you are referring to?  
42  
43 Q. The Audit Office's desire to enter into a  
44 precommitment lease?  
45 A. Yes.  
46  
47 Q. What were the circumstances as you saw them? Were

1 you looking at the Parliamentary Triangle or were you  
2 looking at Woden and all the other places around Canberra?  
3 A. Well, I guess our view at the time was that there was  
4 no particular reason why the Audit Office needed to be  
5 located in or near the Parliamentary Triangle.  
6  
7 Q. Well, that's the first point, yes. The second point:  
8 did you look to see what was available in Woden where they  
9 had been, or Civic or anything like that?  
10 A. We had made inquiries of our property, people who  
11 were the experts in this matter, from Defence and  
12 Government Division, about what other areas might be  
13 available, or might be coming on line, so what the  
14 possibilities were - whether they have to move in this  
15 particular location or not, if there are other locations  
16 available which were also suitable.  
17  
18 THE COMMISSIONER: I'm sorry to have intruded. I will  
19 leave those two alternatives to you, Mr Robertson.  
20  
21 MR ROBERTSON: Q. First of all, Mr Wojcik, you say that  
22 the experts in this matter were from the Defence and  
23 Government Division. Who are you referring to in that  
24 respect?  
25 A. Well, I guess I'm referring to Ian Joyce, Brian  
26 Cooney and those people.  
27  
28 Q. Did you understand them to have any expertise in  
29 property beyond the fact that they worked in the section  
30 of the Department of Finance responsible for property?  
31 A. Well, because they dealt with the Department of  
32 Administrative Services and they oversighted, in previous  
33 times, I guess, and even then, quite a number of leases,  
34 they had more familiarity with quite a number of leases  
35 and lease variations and all the different options that  
36 come with those lease variations.  
37  
38 Q. So when you say they were experts, you say they were  
39 experts but by reason of familiarity with this sort of  
40 matter, not by reason of any particular qualifications --  
41 A. Yes.  
42  
43 Q. -- they may have had?  
44 A. Yes.  
45  
46 Q. As far as other available locations were concerned,  
47 the only one that the Department of Finance was referred

1 to was the possibility of staying at Medibank House, was  
2 it?  
3 A. Oh, I'm not sure if that was the only one, but it was  
4 the main one.  
5  
6 Q. Well, were you aware of the possibility of moving to  
7 the Sir Keith Campbell centre at Woden?  
8 A. I think that was mentioned in discussions at some  
9 point in time, yes.  
10  
11 Q. Did you or anyone else in the Department of Finance,  
12 to your knowledge, make inquiries in relation to the  
13 availability of those options?  
14 A. Well, I would have thought that at that time, I  
15 guess, we might have made inquiries of our people in  
16 Defence and Government Division, if they knew as to any  
17 other locations which were coming on stream or which would  
18 be available and suitable as alternatives.  
19  
20 Q. Do you recall any other alternatives beyond Medibank  
21 House or Sir Keith Campbell, from discussions with the  
22 Audit Office?  
23 A. I know from reading papers that York Park was at one  
24 stage, but I don't know whether it was early enough on  
25 stream to be a real consideration or option. But all  
26 these things go down to timing, when the move has to take  
27 place, when does the organisation have to move out by -  
28 you know, certainly out of a particular location, and can  
29 they be accommodated in other locations. I understand  
30 that - I think the papers might refer to Tasman House  
31 having a 10-year lease. I'm not sure how many square  
32 metres they had in Tasman House, but that could have been  
33 a problem for them.  
34  
35 Q. Well, if that's important to you, you may be able to  
36 work that out from the - the rent at Tasman House was said  
37 to be \$6.8m, that's over 10 years, so that's \$680,000 a  
38 year.  
39 A. I guess, I mean, you have to look at the proposition  
40 that if they are accommodated in two or three different  
41 locations, what are the benefits of locating all of them  
42 in one location, given that they've got these commitments  
43 elsewhere. That's all I was trying to --  
44  
45 Q. I understand that.  
46 A. -- say.  
47

1 Q. Mr Wojcik, it is the case, isn't it, that there was  
2 no explicit warning given to the Audit Office in relation  
3 to any particular risks with a precommitment lease?

4 A. Well, I guess from those early discussions, the  
5 precommitment lease process would have dictated a new  
6 policy process, so as I was saying before, I think if  
7 works technical new policy was ruled out as a vehicle for  
8 progressing this issue, then they'd have to move to a new  
9 policy proposal.

10  
11 Q. Well, in fact, I should say, obviously, you say you  
12 gave warnings in relation to a number of aspects relating  
13 to leases at the commencement of the meeting.

14 A. Yes.

15  
16 Q. What I'm suggesting to you is that you did not give  
17 any specific warnings relating to specific issues arising  
18 with precommitment leases, and your answer was that you  
19 did not think that was necessary because it was going to  
20 have to go forward as a new policy proposal - in other  
21 words, a full Cabinet submission?

22 A. Well, yes, I think that's right.

23  
24 Q. In fact, it did not go forward as a new policy  
25 proposal; the proposal proceeded by means of what one  
26 might call the anticipatory use of the new procedures  
27 under the property operating expenses into running costs  
28 proposal, didn't it?

29 A. Yes.

30  
31 Q. And in that process there was no Cabinet submission?

32 A. No, there was no Cabinet submission, I don't think.

33  
34 Q. So that the risks inherent, or the concerns the  
35 Department of Finance might have held in relation to  
36 precommitment leases not having been conveyed to the Audit  
37 Office at the 25 June meeting because it was thought the  
38 matter would have to go ahead as a new policy proposal,  
39 were not subsequently communicated to the Audit Office  
40 when the proposal to proceed by way of resource agreement  
41 came into effect?

42 A. I think in the resource agreement proposal the onus  
43 would be on the Audit Office to see whether they could  
44 afford the costs of going that way.

45  
46 Q. We may come to that, Mr Wojcik. Before leaving the  
47 meeting of 25 June, in relation to the prospect that a

1 precommitment lease would require a repayment of the  
2 construction costs and interest over seven to 10 years,  
3 was the proposition that in those circumstances the  
4 building should revert to the Commonwealth raised at the  
5 meeting, as far as you can recall?  
6 A. No, I can't recall.  
7  
8 Q. I want to show you one of those handwritten notes,  
9 and that is DOFA.088.0052. You are welcome to look at the  
10 original, if you wish, but it is in that folder you have  
11 there behind the first tab.  
12 A. I have got something on the screen here.  
13  
14 Q. I think you should be shown the original, because  
15 these handwritten notes at the top just do not emerge on  
16 the copy. That's exhibit 82, I think. Do you have that  
17 page open?  
18 A. Yes.  
19  
20 Q. You can see pencil notes at the top include  
21 "precommitment lease?" And next to that, "Yes".  
22 A. Yes, I can see that.  
23  
24 Q. Then the pen notes say:  
25  
26 *ACT*  
27 *Correct forum is NP.*  
28  
29 Which you agreed is "new policy".  
30 A. Yes.  
31  
32 Q. Then it says:  
33  
34 *As:*  
35 *\* substantial cost for C/W/Building should*  
36 *revert to C/W*  
37  
38 A. Yes, I can see that.  
39  
40 Q.  
41 *\* sensitive issues*  
42 *Subject to JCPA report etc*  
43 *Govt's response*  
44 *[Therefore] should be considered by Govt.*  
45  
46 A. Yes.  
47

1 Q. The proposition that this proposal should involve a  
2 substantial cost for the Commonwealth and that therefore  
3 the building should revert to the Commonwealth appears to  
4 have been noted on Mr Turner's handwritten notes, does it  
5 not?  
6 A. That's what's written there, yes, in Mr Turner's  
7 writing. I just - well, they were dot points and/or  
8 questions to be resolved.  
9  
10 Q. There is no reference to that in the typed version of  
11 the meeting, which is tab 8 to your statement.  
12 A. No, no, I don't think so.  
13  
14 Q. Do you, again, with all your difficulties of  
15 recollection involved in coming to it 13 years later,  
16 believe that that issue, the possibility that the building  
17 should revert to the Commonwealth, was addressed at the  
18 meeting on 25 June 1991?  
19 A. I can't be sure. I think maybe - I don't know  
20 whether we just made the statement that that precommitment  
21 lease has got this higher - well, higher costs involved,  
22 but I can't be sure.  
23  
24 Q. You received a copy of this note from Mr Turner when  
25 he'd written it - this is the typewritten note  
26 CH94.003.0352.  
27 A. Yes.  
28  
29 Q. You made some notes on it to supplement from your own  
30 recollection of what was discussed at the meeting?  
31 A. Yes, or just clarifying Mr Turner's words.  
32  
33 Q. Did you consider whether a copy of that note should  
34 be provided to the Audit Office?  
35 A. I don't think so. There were a number of things to  
36 come out of the discussion with Audit, some of which were  
37 going to be followed up. So long as they were going to be  
38 followed up --  
39  
40 Q. You considered this a fairly important meeting,  
41 didn't you?  
42 A. Well, I guess it was one in a - well, it was one in a  
43 series of meetings and/or discussions and exchanges of  
44 correspondence on this issue, but I think it was the first  
45 major meeting.  
46  
47 Q. You were conveying a number of important propositions

1 to the Audit Office, weren't you?  
2 A. Yes, we'd also, as I understand it, as I recollect,  
3 as well, be conveying those impressions over the phone in  
4 telephone discussions as well, I would imagine.  
5  
6 Q. Do you suggest that you conveyed the matters relating  
7 to current markets and tactics that real estate agents are  
8 taking over the telephone, in other telephone  
9 conversations?  
10 A. I'm not sure of the details, but I think we would  
11 have mentioned a few things. It's hard to recall specific  
12 details.  
13  
14 Q. Had you considered that there was a risk that the  
15 Audit Office would enter into a lease, including terms  
16 such as those against which you were warning, would you  
17 not have thought it appropriate to provide a written copy  
18 of your warnings to the Audit Office?  
19 A. Yes, if I thought they were going to do something  
20 which was contrary to what I'd been telling them at the  
21 meeting.  
22  
23 Q. Did you, at that meeting, ask the Audit Office  
24 representatives anything about the terms of the lease that  
25 they were proposing to enter into beyond rent?  
26 A. Well, we may well have queried them about any of  
27 those escalation clauses or anything in the lease - about  
28 the terms of the lease. We certainly had concerns about  
29 some of their assumptions in the costings, so we were  
30 querying their assumptions, and we did that over not just  
31 in this particular meeting, but many times, I think --  
32  
33 Q. Yes.  
34 A. -- in the course of events.  
35  
36 Q. Your queries in relation to the assumptions related  
37 to the proposition that you believed that the Audit Office  
38 was assuming initial rents at Barton that were lower than  
39 you thought they should be?  
40 A. Yes.  
41  
42 Q. Those assumptions did not relate to rent increases  
43 over the subsequent years, did they?  
44 A. No - well, not specifically. We were - I think we'd  
45 asked them to provide us with figures of what the likely  
46 rentals were, and I don't think we got any further than  
47 the Audit Office saying that the rents were the same at

1 Woden, or a refurbished Woden, or something similar to  
2 that. Whereas we had a different view.  
3  
4 Q. You received further figures from the Audit Office on  
5 27 and 28 June that we've referred to this morning. The  
6 28 June document is CH94.007.0140. That's tab 10 to your  
7 statement.  
8 A. Yes.  
9  
10 Q. You also received information from Mr Joyce in  
11 relation to the NCPA office in Barton and the rent being  
12 paid under that since a rent review in March 1991.  
13 A. Yes. At least Mr Turner did, anyway.  
14  
15 Q. Thirdly, you received a copy of a document from  
16 Ms Obst of the APG. Do you recall that document?  
17 A. Is there a number for it?  
18  
19 Q. I am not sure whether it is annexed.  
20 A. I think I read something in the papers that I was  
21 provided with yesterday, last night, where Ms Obst had  
22 written something.  
23  
24 Q. Could ANAO.010.0163 be brought up, please. Do you  
25 see that letter? I think you correctly recalled that  
26 there may be a copy of that in the Department of Finance  
27 files. As far as you are aware, that was a document that  
28 you saw in or about early July 1991?  
29 A. Is there another - I'm just trying to see if I have  
30 got any handwriting on it.  
31  
32 Q. This is a copy from the Audit Office file. I will  
33 try and pick it up from the Department of Finance files.  
34 A. If I didn't see the document, I think I understood  
35 what the outcome of that document was - the 7 to  
36 8 per cent, or the 8 per cent referred to there. I think  
37 it is most likely that I did see it. Most of the  
38 documents I see I actually scribble on somewhere.  
39  
40 Q. Can you go to the second-last tab in your file,  
41 exhibit 69, DOFA.085.0269.  
42 A. I have definitely seen this document, yes.  
43  
44 Q. Would that be your handwriting?  
45 A. I think so, in the right-hand margin.  
46  
47 Q. That is:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

*Not reliable source!!!*

A. Yes, I think I wrote that.

Q. What did you mean when you suggested that - I think that's referring to Dominic Collins, is it?

A. Yes.

Q. Why did you suggest that Dominic Collins was not a reliable source?

A. Maybe the point - I probably had a few dealings with Dominic Collins, but I guess he was always putting forward the agency's point of view, which I didn't necessarily always believe was the only view.

Q. In relation to --

A. So I guess that was my concern.

Q. -- rental levels, did you consider that Mr Collins' views were likely to be affected by his interest in having the Audit Office moved to Barton?

A. Well, I'm not - I guess that's a possibility, yes, but I think it's a more general comment.

Q. Can I ask you to look at the next page. Is any of that your handwriting?

A. It's hard to read the one on the first page here, so I don't know. It's hard to read the stuff in the margins. The writing on the right-hand side is certainly not mine, and below is certainly not mine, but on the left-hand side it might well be mine. It says something about comparison there, which I wasn't quite sure about there, the 7 to 8 per cent increase, which I was never sure of.

Q. Unfortunately the only copy of that which has been produced by the Department of Finance is a photocopy of that document, and the words that have been cut off are cut off on the original, or a copy that we've been provided with. Is it likely that what you are suggesting there is:

*Depends what being compared.*

A. Yes, I think so. I think so.

Q. Is it correct to say that, having received this

1 letter, you spoke further to the D&G Division?  
2 A. Well, I would have been speaking to the Defence and  
3 Government Division on a number of occasions, and as would  
4 have Wayne Turner - so whether one or both of us covered  
5 this issue, I'm not sure of.  
6  
7 Q. But it appears from your notes that you were somewhat  
8 sceptical about the conclusions expressed in this letter?  
9 A. Well, I think I had, by that point in time, received  
10 some advice from Defence and Government, but one of the  
11 starting rents in the Barton area was at least \$20 higher  
12 than what the Audit Office had been quoting.  
13  
14 Q. That's the \$340 per square metre for NCPA referred to  
15 on that other document?  
16 A. Yes.  
17  
18 Q. What you did with this other information was to  
19 incorporate it all into your spreadsheets, wasn't it?  
20 A. Yes.  
21  
22 Q. I take you to tab 11 to your statement, which is  
23 ANA0.019.0089, from the Audit Office files, but I refer to  
24 that because it's a nice clean copy of it.  
25 A. Is there a tab for that?  
26  
27 Q. It is tab 11.  
28 A. Yes.  
29  
30 Q. There are three spreadsheets attached there.  
31 A. Yes.  
32  
33 Q. Attachment A says:  
34  
35 *Finance Assumptions.*  
36  
37 That includes as the starting rent at Section 22 \$340 per  
38 square metre.  
39 A. Yes.  
40  
41 Q. That reflects the figure that Mr Joyce gave you?  
42 A. Yes.  
43  
44 Q. As far as rent at Medibank is concerned, you took the  
45 figures given to you by the Audit Office - that is, \$275  
46 per square metre, then \$320 per square metre?  
47 A. Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. And those figures are also incorporated in the next schedule, which is APG assumptions?

A. Yes.

Q. That is, the Medibank and other existing rent lease rentals were the same as in the Finance assumptions, but the assumed rent for Section 22 was the \$315 a square metre referred to for the AMA building in the letter to which I have just taken you. Do you need to see that again?

A. Yes, I guess this is where things get potentially confusing when you are looking at current and Section 22.

Q. Yes. Well, just looking at the APG assumptions, Section 22, the starting rent is \$315 a square metre.

A. Sorry, I'm looking at a document which says \$320, but I --

Q. Are you looking at attachment B?

A. \$315, sorry, I was looking in the wrong place. Yes.

Q. That, I suggest to you, comes from the APG letter of 8 July 1991, which is DOFA.085.0269, which refers to rents.

A. Yes, most likely, yes.

Q. In that letter it is said:

*A brand new building in Barton is the AMA Building. Rental was set at \$315 per square metre effective from 1 May 1991.*

A. Yes.

Q. I'm not at this stage dealing with the increase, just with the basic submissions.

A. Yes.

Q. For the ANAO assumptions, there is incorporated rent at current, and rent at \$320 per square metre for Section 22.

A. Yes.

Q. The source of that information was the Audit Office WTNP proposal as supplemented by correspondence on 27 and 28 June 1991?

1 A. Yes, that's my understanding.  
2  
3 Q. Now, in attachment A - that is, the Finance  
4 assumptions - you have assumed an increase in rent both at  
5 Medibank House and at Section 22 for 1993/1994?  
6 A. Yes.  
7  
8 Q. That assumed increase at Medibank House was based  
9 upon the fact that ANAO, on advice from the APG, had  
10 suggested that the rent at Woden would increase by that  
11 amount in 1993/1994?  
12 A. Yes, that is my understanding.  
13  
14 Q. And you understood that that increase had been  
15 predicted on the basis that if the Audit Office stayed at  
16 Medibank House, Medibank House would be refurbished and  
17 the rent would increase to reflect that refurbishment?  
18 A. Yes, that is my understanding.  
19  
20 Q. Then what you did in the Finance assumptions and the  
21 APG assumptions spreadsheets was apply a similar rate of  
22 increase in rent to Section 22?  
23 A. Yes.  
24  
25 Q. That is, because you had been told that by reason of  
26 a refurbishment rent would increase at Medibank House in  
27 1993/1994, by about 16 per cent, you increased the  
28 anticipated rents at Barton by about 16 per cent at the  
29 same time?  
30 A. Yes, because I thought - well, we thought there would  
31 always be a differential between Woden and Barton.  
32  
33 Q. Do you accept that there is no reason in logic why  
34 rent in Barton should increase by the same proportion at  
35 the same time as rent increases in Woden by reason of a  
36 refurbishment?  
37 A. Can you ask that question again, sorry?  
38  
39 Q. The rent increase that you have assumed in Woden  
40 related to the fact that the prior rent was for a run-down  
41 building and the new increased rent was for a refurbished  
42 building?  
43 A. Yes.  
44  
45 Q. So that 16 per cent increase did not reflect a market  
46 change, but a change in the condition of the building  
47 itself?

1 A. Yes, and I think --

2

3 Q. Do you accept there is no reason in logic to apply  
4 that increase to the Section 22 proposal at the same time?

5 A. But I think also the years would be different as  
6 well, so I think you have to remember that the - I was  
7 just trying to figure it out now, actually. It's all a  
8 bit difficult. But maybe with one or two more years there  
9 would be that differential in Barton.

10

11 Q. The years in which you have assumed that increase  
12 were the same for both Medibank and Section 22 Barton?

13 A. Although to keep the differentials, I guess. We  
14 didn't know what the rents in Barton would be, but we made  
15 the assumptions that they would be more costly than Woden.  
16 We made this assumption for our calculations for this  
17 attachment, that they would - they could be up to that  
18 magnitude.

19

20 Q. But you didn't explain to the Audit Office the  
21 justification or what you thought was the justification  
22 for that increase, did you?

23 A. I think we always told them there would be  
24 differentials between Woden and Barton, and we thought the  
25 Barton market would probably increase at a rate greater  
26 than Woden - I think we had told them that.

27

28 Q. The APG letter merely said there would be an  
29 8 per cent differential; it did not say that that  
30 differential would itself increase?

31 A. I guess that's what that letter from APG says.

32

33 Q. Do you accept that it may have been understandable  
34 that the Audit Office accepted that advice from APG and  
35 did not anticipate an increase in differential between  
36 Barton and Woden?

37 A. Well, one could see how they could accept that  
38 advice, yes.

39

40 Q. In paragraph 34 of your statement you say:

41

42 *The implicit assumption was made that*  
43 *subsequent increases [beyond 1993 to 1994]*  
44 *would be in line with the (property index)*  
45 *deflator, in respect of which the ANAO*  
46 *would receive budget supplementation*  
47 *consistent with the guidelines.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

A. Yes.

Q. What basis did you have for making that assumption?

A. It might well go to the initial works TNP proposal that they gave us, and subsequent discussions and queries about what the rental rates might be.

Q. I think you have agreed with me that the only implicit assumption in the works technical new policy proposal of 11 June 1991 was that the rents at Woden and Barton would increase at the same rate?

A. I'm not sure what you are getting at.

Q. Well, I think you agreed with me that when doing a comparison, the important thing was to identify whether the differential was to change, rather than the two rent rates were to increase?

A. Yes, and Audit's figures had showed that the - well, there was no difference, I guess.

Q. Audit's figures assumed that both would increase together?

A. Yes.

Q. It did not indicate any assumption that rent would increase in line with the deflator?

A. Well, I think the deflator was something that was going to supplement all property operating expense budgets as an Australia-wide figure, so whether increases in the ACT were higher or lower than that deflator, I'm not sure.

Q. Isn't it correct to say that in preparing these spreadsheets and providing them to the Audit Office, you were simply leaving out of the equation any rental increases beyond that initial increase in 1993/1994 that you sought to make to keep the differentials between Barton and Medibank House within your assumptions?

A. We didn't know what the rental rates in the outer years were, so we had nothing to go on. So if we assume that, say, the rental rates would increase in line with the general market rate, the deflator, whatever you like to call it, there would be no reason to make any other changes, I guess. I'm not sure.

Q. Well, in making a comparison, if you assume that the rents increased at the same rate, then the actual rate of

1 increase doesn't affect the calculation, does it?  
2 A. Only to the extent that the starting rates are  
3 different.  
4  
5 Q. So --  
6 A. So subsequent years don't really count, that's right  
7 if that's what we are saying.  
8  
9 Q. Isn't it the case that in constructing these  
10 spreadsheets you simply assumed away the question of what  
11 future rates of increase would be and only operated on the  
12 basis that because the rates of increase in Woden and  
13 Barton would be the same you didn't need to incorporate  
14 any assumptions in that respect?  
15 A. We didn't have the advice from the Audit Office about  
16 what its rates were in future years. I don't think they  
17 even knew at that point in time, anyway, so I guess we  
18 could have made any assumptions.  
19  
20 Q. The proposition is you believe you had no information  
21 to go on?  
22 A. Yes.  
23  
24 Q. So you left it out of the equation?  
25 A. Yes.  
26  
27 Q. You worked on the basis that because the rent rates  
28 could be assumed to increase at the same rate, you didn't  
29 need to incorporate assumption?  
30 A. That's right.  
31  
32 Q. If you had believed that the rates would increase at  
33 differential rates you would have had to make some  
34 assumption?  
35 A. Absolutely.  
36  
37 Q. So, at the end of the day, it is correct, isn't it,  
38 that the spreadsheets that you provided to the secretary  
39 of the Department of Finance and to the Audit Office do  
40 not make or incorporate any assumptions about future rate  
41 of rent increase?  
42 A. That's correct.  
43  
44 Q. In some respects your attachment A, which is the  
45 Finance assumptions, does not reflect what you understood  
46 were the likely rental movements in Barton?  
47 A. Well, it was just one scenario. There were two other

1 scenarios being put to us at that point in time by the  
2 calculations on attachment B and on attachment C, so I  
3 guess we could have added a fourth or fifth one with rates  
4 of increase above a certain amount. I'm not sure, but --

5

6 Q. Yes.

7 A. The point would have been that there was a difference  
8 between attachment A and attachment C, and even attachment  
9 A and attachment B, and even between attachment B and  
10 attachment C. So there was an order of magnitude thing, I  
11 guess. Once you start factoring in different things for  
12 attachment A, then obviously the bottom line will blow out  
13 even more.

14

15 Q. It is the case that there are at least two respects  
16 in which your own beliefs at that time are not reflected  
17 in attachment A. The first one I want to suggest is that  
18 you believed at that time that in fact market rentals in  
19 Barton in 1993, 1994, would probably be well in excess of  
20 \$400 a square metre?

21 A. I think in excess of \$400 a square metre.

22

23 Q. Could I refer you to CH94.003.0355, which is the  
24 second-last page of the 25 June minute appearing behind  
25 tab 8 of your statement.

26 A. Which page?

27

28 Q. CH94.003.0355.

29 A. I see.

30

31 Q. On that page you have made the note:

32

33 *(When reviewed to market rates is scheduled*  
34 *- the \$400 would probably be on the "low"*  
35 *side).*

36

37 A. Yes.

38

39 Q. That indicates, first of all, that you assumed that  
40 the lease to be entered into by the Audit Office would  
41 include a review to market rate?

42 A. Yes.

43

44 Q. Probably two years after commencement?

45 A. Yes.

46

47 Q. And, secondly, that you thought that the \$395 that

1 you included in attachment A would be on the low side, in  
2 fact, the rent was likely to be much higher?

3 A. Well, I thought it would be higher.  
4

5 Q. The other expectation you had in 1991 was that market  
6 rents would rise rapidly in Barton, in fact more rapidly  
7 than elsewhere?

8 A. Would rise more rapidly than elsewhere, yes.  
9

10 Q. That was not an assumption incorporated in the  
11 spreadsheets, but it was your view at that time?

12 A. The starting point was the main thing, I guess.  
13

14 THE COMMISSIONER: Would that be a convenient time?  
15

16 MR ROBERTSON: That's a convenient time.  
17

18 **SHORT ADJOURNMENT**  
19

20 MR ROBERTSON: Q. Mr Wojcik, before the adjournment I  
21 was suggesting to you that there were at least two  
22 respects in which the spreadsheets attached to the minute  
23 to the secretary of 7 August 1991 did not reflect your own  
24 views in relation to what was likely to happen in Barton.  
25 The first was that you anticipated rents would be in  
26 excess of the \$395 that you have incorporated in the  
27 Finance assumptions, attachment A; the second is that you  
28 expected that market rents would rise rapidly in Barton,  
29 in fact more rapidly than elsewhere. I want to show you  
30 another document in that folder that you have as  
31 exhibit 69. The document is DOFA.086.0027. Do you have  
32 that?

33 A. Not in front of me at the moment.  
34

35 Q. It is the last tab in the folder and the first page  
36 after the cover sheet in that tab.

37 A. Sorry?  
38

39 Q. The last cardboard tab in that folder. That's a  
40 press clipping; do you have that?

41 A. Yes.  
42

43 Q. It reads:  
44

45 *Canberra office market set for change:*  
46 *Report.*  
47

1 A. Yes. It doesn't have a date on it.

2

3 Q. Can I draw your attention to the advertisements at  
4 the bottom on the right-hand side. One refers to 25 July  
5 and the other refers to 31 July as being the dates for  
6 auctions. Do you see those?

7 A. Now that you have - yes, 25 July and 31 July, yes.

8

9 Q. Mr Pearson has sent it to you with a note:

10

11

*Eddy,*

12

*Interesting in light of ANAO WTNP.*

13

14

A. Yes.

15

16

Q. That would suggest it is 1991 and prior to the end of  
17 July 1991?

17

18

A. Yes.

19

20

Q. I will just draw your attention to the second-last  
21 paragraph which commences:

21

22

23

*In the immediate future rental growth in  
24 the prime space is expected to be 8-9 per  
25 cent; for average space closer to the CPI  
26 and older buildings can expect no growth at  
27 all.*

24

25

26

27

28

29

A. Yes.

30

31

Q. Would you have noted that at the time?

32

33

A. I guess I would have read this and it might have  
34 entered into my thinking, yes.

34

35

Q. Can I now ask you to look at CH94.010.0068. I just  
36 wanted to show you the front page. Do you recognise that  
37 document as the minute to the secretary of 7 August?

36

37

38

A. Yes.

39

40

Q. On the second bullet point on that page, on page  
41 0069, the minute indicates to the secretary that an Audit  
42 Office assumption was that:

41

42

43

44

*\* rent in Barton will increase at the same  
45 rate as Woden over the next 10 years (we  
46 consider this is unlikely, with Barton  
47 likely to increase at a higher rate.)*

45

46

47

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

A. Yes.

Q. That reflected your views at the time?

A. Well, we were thinking that, yes.

Q. Did you not, in 1991, recognise that the spreadsheets that you provided to the Audit Office were likely to convey to the Audit Office the proposition that the deflator would reflect market increases in Barton?

A. No.

Q. Do you accept that those spreadsheets were at least as likely to convey that proposition as any other proposition?

A. No, they were designed to show a range of different scenarios, and one scenario was based on Finance assumptions - they are listed there. They could always tell us if we were wrong, over the top - or the APG ones or their own. So we never knew what the future of interest rates would be. We weren't involved in negotiations or discussions with APG about any of these things. We were only pointing out to Audit, "we think it is likely - more likely to be ours than yours or the other person's." So whatever rate you put in, I mean, it was just really pointing out there was a difference. They should actually read by implication, get to the bottom of it all and work it on the out for themselves. They are the ones that at the end of the day have to be responsible.

Q. The spreadsheets don't seek to take account of any future rental increases other than assuming that they'd be constant in both Woden and Barton?

A. Well, I think we make the qualification in that - under those bullet points about our costing assumptions assumed. So --

Q. In any event, at the end of the day, the Department of Finance indicated to the Audit Office that it was prepared to proceed to a resource agreement on the basis that the Audit Office assumptions were correct?

A. Well, that the Audit Office could afford it and they knew what they were getting into.

Q. No, that the Audit Office assumptions were correct, or, if incorrect, the Audit Office would wear the

1 consequences?

2 A. Yes.

3

4 Q. Can I take you back to tab 8 to your statement.

5 That's the minute of the meeting of 25 June,

6 CH94.003.0352. I want to take you to the comment at the

7 bottom of page 0353. That is to this effect:

8

9 *Also it was thought that any proposed move*

10 *by Commonwealth agencies into new buildings*

11 *and/or buildings in the area of the*

12 *Parliament would be preferred to be*

13 *considered by the Government;*

14

15 Then it says:

16

17 *the ANAO situation was discussed in the*

18 *Sheridan review - the Government's response*

19 *was that there was no compelling reasons*

20 *why the ANAO should be located in the*

21 *Parliamentary area.*

22

23 Now, first of all, do you recall the Sheridan review?

24 A. Not as clearly as I would like.

25

26 Q. It is exhibit 37. The Sheridan review was a review

27 by the South Australian Auditor-General, which built upon

28 the JCPA report number 296. Does that accord with your

29 recollection?

30 A. Yes, that was my understanding.

31

32 Q. The Sheridan review - tell me if you wish to look at

33 it to confirm this - barely touches upon, if it deals with

34 at all, the question of the Audit Office's accommodation?

35 A. Look, I'm not sure whether there should have been a

36 reference to the Sheridan review down there.

37

38 Q. It should have been the JCPA report number 296?

39 A. I would have thought so, but I can't be 100 per cent

40 sure what was said. Obviously that's what was written,

41 but it seems a little bit out of context.

42

43 Q. The Sheridan review might have been said, but it

44 wasn't intended, is perhaps more accurate?

45 A. There might have been a couple of things said. If

46 Sheridan was mentioned, it was mentioned after the JCPA.

47 I'm just trying to remember here. If I did say the JCPA

1 report, we might have also thrown in that the Sheridan  
2 report didn't say anything either. So it might have  
3 reflected that the Sheridan review didn't say anything,  
4 but the main comment would have been the JCPA. I think  
5 that's how it might have happened, but I can't be sure.

6  
7 THE COMMISSIONER: Q. Had you read the Sheridan report?

8 A. Yes, I think so.

9  
10 Q. It didn't deal with the location where the Audit  
11 Office should be at all?

12 A. No, I think it dealt with resources for the Audit  
13 Office, and I don't think accommodation was mentioned in  
14 that as being a problem. So in saying that, it didn't  
15 give any further weight to what the JCPA report said,  
16 either, if the ANAO were relying on that.

17  
18 MR ROBERTSON: Q. The JCPA report was the source of the  
19 recommendation that the Audit Office move to the  
20 Parliamentary Triangle?

21 A. Yes.

22  
23 Q. And the government's response to the JCPA report,  
24 insofar as it made that recommendation, was that it noted  
25 the recommendation and it should proceed through normal  
26 channels?

27 A. Yes.

28  
29 Q. So the proposition here that "the Government's  
30 response was that there was no compelling reasons why the  
31 ANAO should be located in the Parliamentary area", again,  
32 doesn't reflect the government's response, does it?

33 A. I think it's trying to say that the government's  
34 response wasn't saying it should move into the  
35 Parliamentary Triangle.

36  
37 Q. Are you suggesting that that is a paraphrase of what  
38 the government's response was?

39 A. Words to that effect, yes.

40  
41 Q. In other words, the government said it will go  
42 through the normal channels?

43 A. Yes.

44  
45 Q. In other words, "You have to justify it; we're not  
46 convinced there are compelling reasons"?

47 A. Yes.

1  
2 Q. You don't seek to suggest that there was any  
3 government response other than the one that says to  
4 proceed through normal channels?  
5 A. No. This is just a - a note to file. I guess there  
6 is some licence there in how things are exactly said. I  
7 don't know if it's exactly said in accordance, exactly  
8 word-for-word verbatim what the government's response was,  
9 or the general thrust in what the government's response  
10 was, rather than the actual text of that response.  
11  
12 Q. Another possibility is that it's a reference to the  
13 Cabinet submission from the Minister of Finance?  
14 A. Yes.  
15  
16 Q. Is that equally a possibility, or do you think it  
17 more likely it is simply a paraphrase of the government's  
18 response?  
19 A. I can't be sure.  
20  
21 THE COMMISSIONER: Q. It would be a rather cynical view  
22 of a government's response, wouldn't it?  
23 A. Yes.  
24  
25 Q. Does that suggest more than that it was perhaps  
26 something to do with the submission from the Department of  
27 Finance?  
28 A. Oh, it's - obviously our interpretation.  
29  
30 MR ROBERTSON: Q. That interpretation, if it was an  
31 interpretation, would have been founded upon what The  
32 Department of Finance had prepared by way of submission to  
33 Cabinet in that respect?  
34 A. Well, I would have thought it would be consistent,  
35 yes.  
36  
37 Q. Can I now take you to a document which is  
38 CH94.002.0025.  
39 A. Which folder?  
40  
41 Q. I don't think you have it in front of you. It will  
42 come up on the screen.  
43 A. This is the works TNP one?  
44  
45 Q. I think what you have, if you look at it on the  
46 screen, is a file note prepared by Mr Morison of the Audit  
47 Office. It is not your document. Have you seen that

1 before?  
2 A. Well, only in the papers that I might have been  
3 given. I can't be sure, but I have seen it recently, I  
4 think, in the papers I was given.  
5  
6 Q. It is possible, firstly, that you saw it in 1994 when  
7 you were preparing the Department of Finance submission to  
8 the Morling Inquiry? Perhaps I will put that another way.  
9 Possibly you saw it in 1994 in the course of the Morling  
10 Inquiry?  
11 A. Well, I don't know if it's on one of the Department  
12 of Finance files. If it's on one of the Department of  
13 Finance files, then I have seen it, most likely.  
14  
15 Q. Insofar as it is produced through the Morling Inquiry  
16 it appears to come from an Audit Office file?  
17 A. Yes.  
18  
19 Q. What I'd ask you to do is read it, Mr Wojcik.  
20 A. Yes.  
21  
22 Q. That file note suggests that you and Mr Morison had a  
23 telephone conversation on 15 July 1991 or thereabouts.  
24 A. On --  
25  
26 Q. Perhaps I should lead you into it. The first  
27 paragraph suggests that Mr Morison and Mr Pearson had a  
28 telephone conversation.  
29 A. It is less clear I think, when he spoke to me.  
30  
31 Q. The third paragraph suggests that there were further  
32 discussions in which Mr Morison conveyed to you the ANAO's  
33 latest position.  
34 A. My reading of it is that after he spoke to Mr Pearson  
35 he spoke to his acting deputy and then after he spoke to  
36 his acting deputy he spoke to me, so I'm not sure if that  
37 has to be on the same day, 15 July.  
38  
39 Q. That's why I said "or thereabouts"?  
40 A. Okay, I missed that, sorry.  
41  
42 Q. Do you have any recollection of any such telephone  
43 conversation?  
44 A. Not specifically, but --  
45  
46 Q. You wouldn't doubt that such a conversation would  
47 have taken place?

1 A. Well, the general thrust of that, yes. Certainly  
2 Mr Pearson would have conveyed something to me.  
3  
4 Q. And what I'm suggesting is that you conveyed to  
5 Mr Morison the proposition that the Department of  
6 Finance's concern with the ANAO's proposal to move to  
7 Barton was not fitout, but dead rent?  
8 A. Well, that was a concern.  
9  
10 Q. By "dead rent", I mean - and I take it you meant -  
11 rent that was to be paid for the remainder of leases over  
12 premises which would be vacated by the Audit Office?  
13 A. Well, ongoing leases which would be left vacant, yes.  
14  
15 Q. That also suggests that you did not convey to  
16 Mr Morison any concern over future rent increases?  
17 A. Well, I think he's already covered that in the  
18 discussion he had with Mr Pearson about, "Under the  
19 resource agreement we would be funded at a fixed amount  
20 per year adjusted for price movements." So, Mr Pearson  
21 would have covered that ground. I can't say whether I  
22 would have gone over that same ground again. Sometimes I  
23 would have.  
24  
25 Q. Do you believe Mr Pearson would have told you what  
26 Mr Morison had said to him, or he'd said to Mr Morison?  
27 A. I would think so.  
28  
29 Q. I want to take you forward a few months to 16 January  
30 1992. I think you mentioned yesterday that, having  
31 reviewed the documents that were recently produced from  
32 the Department of Finance, you now believe you did attend  
33 the meeting with Mr Meert and others on 16 January?  
34 A. I think my memory was a little faulty because of the  
35 specific nature of the question, I guess, before. Whether  
36 it was a specific meeting on that subject - because the  
37 meeting was on quite a number of - a very wide range of  
38 subjects, as that file note says, it is difficult for me  
39 to remember having a meeting just on one small element of  
40 that meeting.  
41  
42 Q. I should take you to the typewritten minute of that  
43 meeting, which is DOFA.087.0027, behind the second tab in  
44 that bundle in the folder.  
45 A. The second tab.  
46  
47 Q. The second tab in the Department of Finance files,

1 folder exhibit 69, is the one with the yellow flag on it.  
2 A. Okay.  
3  
4 Q. I'm talking about the cardboard tabs. Perhaps it  
5 would be best if I approached. The document I'm showing  
6 you is DOFA.087.0027. That is a minute that bears your  
7 handwriting?  
8 A. I have got comments on the side, yes, and Mr Pearson  
9 has got some writing there as well and --  
10  
11 Q. It looks like everyone had a turn at it.  
12 A. Well, there are at least a couple of writers there.  
13  
14 Q. That note indicates that there was "a discussion at a  
15 meeting held at DoF with officers of the ANAO re  
16 Additional Estimates for 1991-92"?  
17 A. Yes.  
18  
19 Q. In fact, the meeting, according to the second  
20 paragraph, was not in fact intended to deal with  
21 accommodation at all?  
22 A. That's right. That's why I could not recall that.  
23  
24 Q. But, according to the third to sixth paragraphs there  
25 was a discussion of accommodation - Mr Cooney attended to  
26 provide some concerns?  
27 A. Yes.  
28  
29 Q. And the minute indicates that the article from the  
30 Canberra Times was produced and comments were sought from  
31 the Audit Office?  
32 A. Yes.  
33  
34 Q. If I could just take you forward in the folder a few  
35 pages to DOFA.087.0033. That's a Post-It note attached to  
36 the next page, which is a copy of the article.  
37 A. Yes.  
38  
39 Q. It is addressed to Mr Pearson, but has been passed to  
40 you, by the look of it:  
41  
42 *I presume this comes as no surprise to you.*  
43 *AEM claims that they have still not been*  
44 *approached by APG (ANAO's real estate*  
45 *agent) seeking AEM approval.*  
46  
47 A. Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. What did you understand Mr Cooney was suggesting by the proposition that the article, presumably, "comes as no surprise to you"?

A. We'd already seen it on the 16th, I think.

Q. So why would Mr Cooney send another copy of the article when he'd attended a meeting with you on the 16th?

A. He was - it might be in reference to the second dot point.

Q. To the second?

A. Dot point, "AEM claim that they have still not been approached by APG". That might have been mentioned in the discussions, I don't know.

Q. You have written a note on the side:

*Wayne, ATF please EW 20 January.*

A. Yes, "Attach to file".

Q. Yes, does that suggest that --

A. We'd already seen the article in the paper.

Q. So as far as you are aware that post-dated the meeting?

A. Mr Cooney did provide us with a copy, as is on the previous page to that - DOFA.087.0032 - with his handwritten comments. He provided that to me directly, as I recall.

Q. There seem to be three copies consecutively in the file.

A. There is a clean copy, one without any scribbling on it, and one with Brian's notations saying he met with Mr Pearson and Mr Meert.

Q. Returning to the typed minute, paragraph 3 indicates that:

*Mr Cooney attended to provide his concerns on the progress of the Section 22 matter.*

*The article...was produced and comments were sought...Mr Meert advised ANAO had not made any agreements and that ANAO are only*

1           *interested to the benefits to the*  
2           *Commonwealth on their relocation and not on*  
3           *any benefits to Lend Lease.*

4  
5           This is 087.0027.

6           A.    Yes.

7  
8           Q.    Your comment next to those words is:

9  
10           *ANAO had asked APG if all the rules were*  
11           *met; John Meert also mentioned that it was*  
12           *up to builder to decide on what concessions*  
13           *they could or would do for the owner, but*  
14           *he also stressed the separate identities of*  
15           *the parties involved.*

16  
17           Have I got that translated correctly?

18           A.    Yes.

19  
20           Q.    You have "builder/owner", and then slashed out the  
21           word "owner". Does that have any significance or is that  
22           just an error you made?

23           A.    I don't think there is any significance in there.

24  
25           Q.    Is that a note that you made at about the time of the  
26           meeting, or when the minute was prepared - which seems to  
27           have been about 17 January, given that you have passed it  
28           to Mr Pearson on 17 January?

29           A.    I would imagine I made it on the 17th.

30  
31           Q.    Does it reflect your recollection of matters  
32           discussed at the meeting, which you were adding to  
33           supplement the minute?

34           A.    Some of the matters, yes. A lot of the matters.

35  
36           Q.    Then Mr Cooney raised the issue that the:

37  
38           *AEM had to vet the proposal but at that*  
39           *stage they knew nothing of it.*

40  
41           A.    The Post-It note suggested that APG hadn't informed  
42           AEM, or whatever.

43  
44           Q.    There seem to be three places where that is  
45           indicated. I'm suggesting that seems to be a fairly  
46           common ground at that stage, that AEM hadn't been told?

47           A.    That was a concern at the Defence and Government

1 Division, yes.

2

3 Q.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

Division, yes.

Q.

*J M advised that the APG is providing a service to the ANAO and he is displeased that AEM is not aware of the situation and therefore concerned with the quality of service being provided.*

That was Mr Meert concerned with the quality of service being provided?

A. Yes.

Q. The minute then said:

*He also said that the newspaper article was Politicising by the Liberals and means nothing...*

Do you recall Mr Meert saying anything like that?

A. Those words or words to that effect, yes.

Q. The minute then goes on to discuss funding requirements and savings. It says:

*- DAS will be providing a Ministerial or Press Release on the matter.*

Is that a matter that you would have been interested in at that stage?

A. I would have been interested to read what they wrote.

Q. Do you recall whether a Ministerial press release was ever provided to you?

A. I am not sure of that, but if DAS were doing it, it would be - the administrative services --

Q. I suppose that's the question --

A. -- were receiving that document. I don't know if we would be given a copy of that as a matter of course, whether Brian Cooney's people would be given a copy of that as a matter of course. Certainly they would get a copy of the press release and we could access that press release, but I'm not sure about the Ministerial advising --

Q. Just to summarise what you have just said, you are

1 not sure whether a ministerial - presumably a minute to  
2 the Minister, prepared by the Department of Administrative  
3 Services for the benefit of the Minister for  
4 Administrative Services - would have been provided to the  
5 Department of Finance?  
6 A. No.  
7  
8 Q. You are not sure?  
9 A. I'm not sure.  
10  
11 Q. If you had been provided, presumably, it would have  
12 been placed in the file with these documents?  
13 A. Mr Cooney or someone in his area may have received -  
14 if it was provided, it would have been provided to  
15 Mr Cooney and his people, and it would have been up to  
16 them whether they provided it to us, I guess. Yes, it  
17 should be in this file, if it was.  
18  
19 Q. The suggestion in the article is that the lease terms  
20 and conditions were a rort - that is, that they gave  
21 incredibly generous conditions to the landlords. Did you  
22 seek, in this meeting, 16 January, or otherwise, to  
23 identify what the supposedly incredibly generous  
24 conditions were?  
25 A. I'm sure we did, but I'm not sure whether - there  
26 might have been two meetings on this particular day, but  
27 I'm not sure about that, because I can't recollect these  
28 things clearly now. I'm sure we asked that question -  
29 whether it was over the phone or in discussions - because  
30 we needed an answer to it.  
31  
32 Q. Did you come away from this meeting satisfied that  
33 there was nothing to be concerned about?  
34 A. We were satisfied that we knew what ANAO's response  
35 was.  
36  
37 Q. Which was, as far as you can recall?  
38 A. It was none of our business.  
39  
40 Q. Those words, "None of our business", is your  
41 interpretation of what Mr Meert said to you?  
42 A. Yes, I guess. I'm not sure whether he would have  
43 used those words exactly, but words to that effect. He  
44 was really telling us that, you know, it didn't concern  
45 us. That's what Mr Cooney's note reflects.  
46  
47 Q. As an officer of the Department of Finance you

1 accepted that as being an appropriate response?  
2 A. I'm sure I wouldn't have been very happy with it, but  
3 I think we all had different roles to play here. At the  
4 end of the day, if they were doing all the negotiating, I  
5 guess, and didn't want us to be involved, they kept us out  
6 of it, it was really up to the ANAO, whether they could  
7 afford the accommodation they were seeking or not, and  
8 meet the terms of any resource agreement they were  
9 entering into with the Department of Finance at that point  
10 in time, so --  
11  
12 Q. Did you or any other Department of Finance officer,  
13 to your knowledge, ask for a copy of a document showing  
14 the terms of the lease?  
15 A. I'm sure we asked on numerous occasions what the  
16 terms of the lease were, and we never had any satisfaction  
17 in that regard about finding out what those terms were.  
18  
19 Q. Moving on, can you go to the document DOFA.087.0021,  
20 which is a few pages earlier in that bundle. It's  
21 actually the second page in that tab. That's a note for  
22 file of a further meeting held on 28 January 1992. You  
23 were again present at that meeting?  
24 A. By the looks of it, yes.  
25  
26 Q. At this stage, it appears from the first paragraph  
27 under the heading "Accommodation", that the ANAO's  
28 proposal may have been held up somewhat by the Australian  
29 Estate Management?  
30 A. I'm not sure who it was held up by, but it says there  
31 in - "DAS consideration".  
32  
33 Q. It was in the hands of the Department of  
34 Administrative Services secretary, but it seems that the  
35 Department of Administrative Services would be using ANAO  
36 as leverage to get the York Park development off the  
37 ground?  
38 A. Yes.  
39  
40 Q. The paragraph above that indicates that:  
41  
42 *The ANAO officers tendered...an issues*  
43 *paper on the Section 22...*  
44  
45 That document appears to commence at 0024, if I can draw  
46 your attention to that, please?  
47 A. Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Just going over to 0025, under (D), the question is:  
*What Period Should the Borrowing be for?*

This, just to remind you, is a document prepared by Mr Morison, as appears from the following page. It says:

*It would seem prudent to tie the ANAO's pattern of repayments to the associated benefit stream. Given that we are likely to be leasing any accommodation for 10 years, the borrowing should be over 10 years.*

A. Yes.

Q. Someone has written next to that:  
*Or 20??*

Do you see that?

A. Yes.

Q. Do you know whose handwriting that is?

A. It looks like Wayne Turner's.

Q. Did you have any understanding of the period for which the ANAO was proposing to enter into a lease?

A. I'm not sure whether I knew it was 10 years or 15 years, or - I can't be sure.

Q. You now know it was 15 years, but you are not sure whether you knew at that time?

A. Well, this is a document to say it was 15 years, I'm --

Q. Can you offer any explanation as to why Mr Turner should have suggested it might have been 20?

A. Well, maybe we did know something about - I don't know if we did know something about the terms of the lease. It might have been 10 plus 5 plus 5, I don't know. Or maybe he's just saying maybe it should be over 20 years because they are likely to be there for 20 years.

Q. Your note on the other side is:



1 they are the ones that have to be sure that they are happy  
2 with what's being done, that they could afford what's  
3 being proposed.

4

5 Q. Did you make any statement to that effect to Mr Meert  
6 and Mr Morison in the course of that meeting?

7 A. I think - there's a whole lot of correspondence that  
8 touches on this issue, and in discussions we would have -  
9 it has been mentioned a few times as well, including that  
10 note for file of 25 June, I think. So --

11

12 Q. The question was did you, in the course of this  
13 meeting on 28 January, say anything to the effect of your  
14 handwritten note on the right-hand side of 0026, to  
15 Mr Meert and or Mr Morison?

16 A. I think it likely we did mention that to the Audit  
17 Office, yes.

18

19 Q. You believed you indicated to the Audit Office that  
20 the APG could not be relied upon?

21 A. I don't know whether we would have just reiterated  
22 what we said previously about the APG just being like, you  
23 know, a real estate agent or someone doing, you know, a  
24 project-type thing for a fee for service, so --

25

26 Q. The note of the meeting does not make any reference  
27 to any discussion of that aspect of the issues paper, or  
28 your note?

29 A. It is a relatively short note on accommodation, I  
30 think, because there are a other issues discussed.

31

32 Q. Nevertheless, there is a specific note made of the  
33 matter canvassed in the last paragraph of the issues  
34 paper. I will take you to that. That is:

35

36 *As an aside, it is also noted that*  
37 *Department of Finance included the*  
38 *Australian Estate Manager in its list of*  
39 *bodies which must be approach regarding the*  
40 *move. It is understood that this is not a*  
41 *current requirement; it is a recommendation*  
42 *in the Minister for Finance's Cabinet's*  
43 *Submission.*

44

45 Mr Turner's note is:

46

47 *By existing Cab Dec!!*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Isn't it?

A. Yes.

Q. Your note is:

*And anyway we have asked them to include!*

A. Yes.

Q. On the note of the meeting, the note said:

*Bob Morison's issue paper also mentioned that the requirement to get the Estate Manager's agreement for accommodation proposals in the ACT was not current but a recommendation in a Cabinet Submission;*

Mr Pearson advised that the:

*Requirement existed in a previous CD --*

that being Cabinet decision; is that right?

A. Which?

Q. 0022.

A. I can't see that on 0022.

Q. About the middle of the page.

A. Here we are, sorry. That's Alan Pearson advising them.

Q. Your note is:

*Nevertheless it was a requirement we said had to be met!*

A. Yes.

Q. Which is another way of putting the comment you'd made on the issues paper:

*And anyway we have asked them to include!*

A. Yes.

Q. Is that something that you believed was said to

1 Mr Meert on that occasion?

2 A. Well, we had asked him on previous occasions. I  
3 don't know - there are some things we might have had to  
4 repeat over and over again, but I don't know if that's one  
5 of them in particular. But I think it is already covered  
6 by what Allan Pearson has already said there anyway. So  
7 it's saying the same thing, I think.

8

9 Q. I suppose there are two propositions I wish to put to  
10 you in relation to that paragraph. The first is that the  
11 fact that that note is included in the minute of the  
12 meeting would suggest, would it not, that your note about  
13 APG really seeking the business does not reflect something  
14 that was said at the meeting because what appears under  
15 (E) on page 0202 is minuted - that would suggest, by  
16 inference, that the other matter would not have been  
17 mentioned?

18 A. As I was saying before, I think we mentioned it on a  
19 few occasions previously, so whether we mentioned it  
20 again, I don't know.

21

22 Q. Your note suggests, does it not, that as far as you  
23 were concerned it was sufficient for the Audit Office to  
24 be required to approach the AEM that the Department of  
25 Finance had asked the Audit Office to approach AEM?

26 A. Well, we said that was one of the things you had to  
27 do in completing the process.

28

29 Q. What I'm putting to you is that your note suggests  
30 that, as far as you were concerned, the mere fact that the  
31 Department of Finance had asked for it was sufficient to  
32 justify a requirement that the ANAO do ask for it - I  
33 should say sufficient to impose a requirement on the ANAO  
34 to ask for it?

35 A. I'm not sure now. Looking at Allan Pearson's comment  
36 and the fact that there's reference there to an existing  
37 Cabinet decision requiring them to do it, that would  
38 supercede our requirements anyway, or be added to our  
39 requirements.

40

41 Q. You found it appropriate to add the proposition that  
42 it was a requirement you said had to be met?

43 A. Well, I guess from my point of view I'm not sure why  
44 they were including that in their issues paper anyway.

45

46 Q. Well, can I suggest it was because at that time they  
47 were having some difficulty with the Australian Estate

1 Management giving that approval?

2 A. What was that again, sorry?

3

4 Q. Can I suggest that the reason that is mentioned there  
5 is because at that time they were having some difficulty  
6 with obtaining the estate manager's approval?

7 A. Well, that could be the case. I don't know.

8

9 THE COMMISSIONER: Q. I think they had actually  
10 rejected it, hadn't they - the AEM - and then reconsidered  
11 it?

12

13 MR ROBERTSON: One has to look carefully at the  
14 chronology. It may have been about that time.

15

16 Q. Did you see any correspondence from the Australian  
17 Estate Manager in relation to this proposal?

18 A. I can't be sure. It would only be correspondence  
19 which had been passed on by Brian Cooney or his people.  
20 If it was, it should be on the files, so I'd have to check  
21 the files to see whether I've actually seen it - or to  
22 recall whether I'd actually seen it.

23

24 MR ROBERTSON: Commissioner, the letter from Australian  
25 Estate Management is dated 28 January 1991. Those are all  
26 the questions I have for Mr Wojcik.

27

28 **<EXAMINATION BY MR SACKAR:**

29

30 MR SACKAR: Q. Mr Wojcik, can I take you, please,  
31 first, to a document - I will ask for it to be called up  
32 on the screen - CH94.012.0054. Mr Wojcik, it may be that  
33 this doesn't help you in one sense, but can I just invite  
34 you to assume that this was part of a much lengthier  
35 submission created, it seems, in October of 1990, by the  
36 Department of Finance. The title of the discussion paper  
37 was "Incorporation of Property Operating Expenses Into  
38 Running Costs - A Discussion Paper - Department of  
39 Finance". Before I ask you about any part of that page,  
40 were you in the Department of Finance in 1990?

41 A. Yes.

42

43 Q. Do you have any recollection of participating in the  
44 preparation of such a paper?

45 A. Well, I'm not sure of the context of this paper, but  
46 it seems like it is prepared from a completely different  
47 area from mine.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. When you say "completely different", you mean an area in which, for example, Mr Ian Joyce worked?

A. Well, that would be the - yes. That would be the logical area, yes.

Q. Mr Ian Joyce was in what role, as best you can recall, in the years 1990, 1991 and 1992 - he May have had different roles in those years, but --

A. He was a - it's hard to remember the titles of these positions, and whatever, but Brian Cooney was the director of a section there and I think Ian Joyce, from memory, would have been an assistant director. But --

THE COMMISSIONER: Q. There were two people called Mr Joyce, we have been told.

A. Sorry?

Q. There were two people called Mr Joyce.

A. Yes, which - are we talking about Ian Joyce?

MR SACKAR: I think there were two yesterday mentioned. One was Michael and one was Ian.

THE COMMISSIONER: Michael Joyce was the senior of the two.

THE WITNESS: Michael Joyce was a branch head at one point in time, in the area that had responsibility for this, but I'm not sure of the time frame. Ian Joyce worked in that branch, but for Brian Cooney. Brian Cooney, or his people, someone in that branch, would have been responsible for some of this document, as probably were the people in General Expenditure Division, but I can't be sure of that. There would have been some crossover between those two divisions as the major owners of those sorts of subjects, I guess.

MR SACKAR: Q. In fairness to you, though, you don't believe that certainly you, and probably not your section, were involved in the preparation or compilation of materials in such a paper?

A. There might have been a common practice, I guess, in those days - probably still is, actually - for various people at different levels. I'm not one hundred per cent sure of this, but they might have seen a draft of this document, and they might have commented on the draft. So

1 it might have been shown to a few senior officers and they  
2 might have commented on the draft. So in terms of  
3 commenting on the draft, maybe that's how some people saw  
4 the document. I can't recall whether I might have seen a  
5 draft version of this document.  
6

7 Q. Mr Ian Joyce was a person working, I think as you put  
8 it a moment ago, to at least Mr Cooney.

9 A. Yes.

10

11 Q. Mr Ian Joyce was the person who accompanied you, with  
12 others, to the meeting with ANAO on 25 June, wasn't he?

13 A. Yes.

14

15 Q. I'm so sorry, did you say yes?

16 A. Yes.

17

18 Q. Mr Ian Joyce was a person, do we take it - I will  
19 come to it in a moment in a little more detail - with whom  
20 it is likely you had discussions prior to meeting with  
21 ANAO to understand what his views were about the property  
22 market in Canberra?

23 A. Yes.

24

25 Q. Because he was a person whose views on that matter  
26 you believed, in 1991, you most likely relied upon in  
27 terms of some of the things you ultimately said to the  
28 ANAO at the meeting of the 25th?

29 A. Yes.

30

31 Q. Now, wherever he got his information from, perhaps  
32 you were not privy, but he was a person who, do we take  
33 it, in 1991, had you wished to know something about the  
34 Canberra property market, he was at least one of the  
35 people in the Department of finance you may well have  
36 adverted to?

37 A. Yes. Ian Joyce, or Brian Cooney.

38

39 Q. All right, or Brian Cooney. And as far as you  
40 believed it, at least, Mr Joyce was either a person who  
41 had some expertise or at least some access to information  
42 in relation to property matters?

43 A. Yes.

44

45 Q. I won't ask you any more about this document, but may  
46 I now take you to the diary note of 25 June, and for your  
47 benefit perhaps the hard copy might be the easiest way to

1 deal with it. It is tab 8 to your statement; otherwise  
2 CH94.003.0352.

3

4 THE COMMISSIONER: Before you embark upon that,  
5 Mr Sackar, do you mind if I ask the witness something  
6 about Mr Ian Joyce?

7

8 MR SACKAR: I was about to myself, but --

9

10 THE COMMISSIONER: I thought you had gone away from it.  
11 I mean about his whereabouts. You proceed. I'm sure it  
12 is a mystery to everyone in the Royal Commission office.

13

14 MR SACKAR: Q. Perhaps the short way home is can you  
15 recall the last time you spoke to or had contact with Ian  
16 Joyce?

17 A. I think I was asked that yesterday. I think I said I  
18 can't recall when the last time I saw him was.

19

20 Q. In 1991, did you have any social contact with  
21 Mr Joyce or was it merely a professional --

22 A. Professional.

23

24 Q. All right. Did you know, in 1991, where he lived in  
25 Canberra, or Queanbeyan or wherever he may have lived?

26 A. Well, I couldn't tell you now where he lived - might  
27 have lived in 1991, but - I'm not sure. I might have  
28 known he lived in either Tuggeranong or Woden or  
29 Belconnen, I don't know.

30

31 THE COMMISSIONER: Q. He's not with the Department now?

32 A. I can't recall now.

33

34 MR SACKAR: Q. Just one step at a time. You left the  
35 Department in 1999?

36 A. Yes.

37

38 Q. Was he in the Department, as far as you can recall,  
39 in 1999 when you left?

40 A. I don't think he was.

41

42 Q. Can you recall when, prior to 1999, you believe you  
43 had your last contact with him?

44 A. There was a lot of upheaval in the Department of  
45 Finance from - probably from 1998 onwards, I guess, with a  
46 lot of people leaving the organisation in 1998. A few  
47 left in 1997.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

THE COMMISSIONER: Q. That's when the government reduced the number of public servants generally, is that what you mean?

A. Oh, there was more of a movement in Finance, actually, at the time, so - more specifically than the public service at large, but there were a lot of people that left Finance in either 1997 or 1998, from my recollection.

MR SACKAR: Q. Left the employ of government, or went to other departments?

A. No, left the Department of Finance to work in other departments.

Q. All right.

A. I can't recall whether Mr Joyce was - Mr Ian Joyce was one of those or not.

Q. Let me ask you this question, perhaps it's the last one I can ask you about him: at any time, whether it be 1991 or otherwise, and perhaps in relation to your own age - I won't ask how old you are - did you have any idea of how old Mr Joyce was or was likely to be in 1991?

A. All I recollect was that he was a few years younger than me.

Q. A few years younger than you?

A. Yes.

Q. Thank you. Let me then ask you to come to the note at tab 8. Can I just ask the operator to bring up on to the screen DOFA.088.0052. I think Mr Robertson has already asked you some questions about this note that's on the screen, and suggested to you that it is Mr Turner's note of the meeting.

A. Yes.

Q. If we can keep that on the screen, do I take it that you do have a hard copy of the diary note of 25 June 1991 with you?

A. If I can find 0052?

Q. Your own copy of Mr Turner's typescript of the diary note of 25 June 1991. Do you have a hard copy, either in the file in your hands or as tab 8 to your statement? Do you have a folder there which has your statement at the

1 front of it?  
2 A. Yes.  
3  
4 Q. If you go to tab 8 in that folder, you will find a  
5 hard copy of this diary note?  
6 A. When you say "hard copy" --  
7  
8 Q. The note that is on the screen is Mr Turner's  
9 handwriting okay?  
10 A. Yes.  
11  
12 Q. At tab 8, behind your statement in the folder,  
13 hopefully, you will find the typescript of the note of at  
14 least that portion of the meeting of 25 June 1991. Do you  
15 have that?  
16 A. I have got the note - I'm not sure I understand what  
17 you are asking. I have got the note for file of the  
18 meeting of 25 June 1991.  
19  
20 Q. That's what I am asking you for, and at the top, just  
21 so that we have got the right document, it should be at  
22 tab 8 in the annexures to your statement before Mr Hunt.  
23 A. CH94.003.0352.  
24  
25 Q. That's it. What's on the screen is, as Mr Robertson  
26 has suggested, some handwritten notes of Mr Turner  
27 apparently taken at the meeting. What you have got in  
28 front of you at tab 8 is the typescript that was prepared  
29 by Mr Turner for distribution? Could I ask you what you  
30 are doing, Mr Wojcik?  
31 A. I'm trying to read what's on that note on the screen.  
32  
33 Q. I'm sorry. I do apologise. That is not an easy  
34 task.  
35  
36 MR SACKAR: Perhaps I can ask Mr Robertson, do we have  
37 the original?  
38  
39 THE COMMISSIONER: If you want him to use the original --  
40  
41 THE WITNESS: I have got the original now with the  
42 pencil in the top.  
43  
44 MR SACKAR: Q. I think probably in due course we can  
45 assume we will get better copies of it. For the moment,  
46 can I just take you, please, to the typescript behind  
47 tab 8. Would you have open in front of you the original

1 of Mr Turner's note, and the document commencing in  
2 typescript at tab 8 - all right?

3 A. Yes.

4

5 Q. At the top of the note - the typescript, that is -  
6 the number of people who were present and the identity of  
7 those persons is mentioned, including Mr Joyce?

8 A. Yes.

9

10 Q. Presumably you commenced by saying:

11

12 *First, some comments were provided on the*  
13 *current markets.*

14

15 You wouldn't have said it that way, but may we take it  
16 that you opened the discussion by providing what is  
17 described in the note, in typescript, as comments on the  
18 current markets?

19 A. Yes.

20

21 Q. And the tactics that real estate agents are taking to  
22 gain business?

23 A. Yes.

24

25 Q. And there are a number of points made against bullet  
26 points?

27 A. Yes.

28

29 Q. These were things which you regarded were current  
30 market issues which may well arise in the context of the  
31 ANAO's consideration of the terms and conditions of the  
32 lease they might be prepared to enter?

33 A. For any lease that they might be prepared to enter.

34

35 Q. Well, any lease, but certainly in June 1991 you  
36 appreciated that they were, seemingly, intent upon moving  
37 into Barton, unless you could persuade them to the  
38 contrary?

39 A. There would be a process to go through for the move  
40 to Barton.

41

42 Q. Whatever the process involved, your intention was to  
43 give them what you believed was a realistic appraisal of  
44 the marketplace, both in terms of the expected rentals  
45 that they might face if they went to Barton, but also the  
46 types of terms and conditions they might be expected to  
47 contemplate entering into such an arrangement?

1 A. Things to watch out for, yes.

2

3 Q. Things to watch out for. One of the things that you  
4 raised with them was the second bullet point:

5

6 \* *the fact that lease contracts needed*  
7 *close scrutiny as some involve escalating*  
8 *rent in later years - some rents may be*  
9 *tied to "market rates" on review, some are*  
10 *"subject to negotiation" or are subject to*  
11 *growth in future years;*

12

13 Then your penultimate bullet point:

14

15 \* *fixed rates of increases may be*  
16 *dangerous;*

17

18 A. Yes.

19

20 Q. Had it been either your experience or had information  
21 in relation to those matters been passed on to you by  
22 Mr Joyce that the Commonwealth had been asked, prior to  
23 the June of 1991, to your knowledge, or his, in certain  
24 circumstances to enter lease arrangements which involved  
25 escalation clauses?

26 A. Well, I would have had a number of discussions with  
27 Mr Joyce and/or Mr Cooney, or the property advice area  
28 more generally, about things to watch out for, so I would  
29 have included those things in discussions.

30

31 Q. Do we take it the reason you mentioned them in the  
32 first place was not that you just plucked them out of the  
33 air as interesting topics, but as terms and conditions  
34 which may well be, or you were telling them were, part of  
35 current market conditions?

36 A. As part of current market conditions, yes.

37

38 Q. What you were saying to them, in effect, was, "Look,  
39 if you are going to consider the terms of any lease  
40 arrangement, we think we should bring to your attention  
41 what currently some landlords, or developers, are asking  
42 for in relation to the development of buildings" - for  
43 example, "Some people are asking for lease arrangements  
44 which have fixed escalators; they may be dangerous if you  
45 don't carefully consider them"?

46 A. Yes.

47

1 Q. Is that fair?  
2 A. Yes.  
3  
4 Q. I'm not suggesting that you remember now, naturally,  
5 precisely what you said, or perhaps even generally what  
6 you said, but may we take it that these matters were  
7 picked out after consultation, mostly likely with  
8 Mr Joyce, as examples of some not uncommon and current  
9 market conditions that ANAO might face?  
10  
11 MR ROBERTSON: I object, if it is suggested that  
12 Mr Wojcik had any particular knowledge of the market  
13 conditions.  
14  
15 MR SACKAR: I never said that. The question does not  
16 suggest that.  
17  
18 THE COMMISSIONER: I didn't think it did.  
19  
20 MR ROBERTSON: The question went a little bit beyond the  
21 earlier question.  
22  
23 MR SACKAR: Even if it did, I'm entitled to test it.  
24  
25 THE COMMISSIONER: "These matters were picked out...as  
26 examples of some uncommon current market conditions".  
27  
28 MR SACKAR: Read the whole sentence. I'm happy to put it  
29 again.  
30  
31 MR ROBERTSON: It still suggests, Commissioner, that they  
32 were examples of actual market conditions.  
33  
34 MR SACKAR: But I'm going to suggest that, and why should  
35 I not be entitled to, if it's the fact - or investigate  
36 the possibility?  
37  
38 THE COMMISSIONER: I'm sorry, I read "not uncommon and  
39 current market conditions" as meaning actual market  
40 conditions.  
41  
42 MR ROBERTSON: Yes. The proposition is that Mr Wojcik  
43 hasn't indicated that he has the knowledge of the market.  
44  
45 MR SACKAR: I'm not suggesting that. You do notice the  
46 words "after consultation with Mr Joyce".  
47

1 THE COMMISSIONER: But "after consultation with Mr Joyce"  
2 suggests that he then obtained some knowledge.

3  
4 MR SACKAR: My problem is why can't I ask the question?  
5 If he had the knowledge, he had it; if he didn't, he  
6 didn't. I have set that up in a number of questions. I  
7 will go back and do it again.

8  
9 Q. Mr Wojcik, do we take it that in 1991 you would not  
10 have had the faintest idea what terms and conditions might  
11 be involved in leases in relation to Commonwealth  
12 property - or, did you have some idea from your  
13 experience?

14 A. I wasn't negotiating any leases for the Commonwealth.

15  
16 Q. Did I ask you that?

17 A. No, but in my answer - I wouldn't know all the  
18 details, but --

19  
20 Q. I didn't ask you that either.

21 A. But I would be aware of some of the things being - or  
22 things that might have been proposed.

23  
24 Q. Yes.

25 A. Being proposed, but not that I knew that they were  
26 accepted.

27  
28 Q. Mr Wojcik, let's do it one step at a time, if  
29 possible. First of all, your very role at the Department  
30 of Finance from time to time prior to the middle of 1991,  
31 brought you into contact, did it not, in general terms,  
32 with some terms and conditions of leases which the  
33 Commonwealth was being entered into because you, by the  
34 very nature of your role, had to make assessments from  
35 time to time, broadly, about what the cost of these  
36 arrangements might be?

37 A. Yes, we used to make assessments of various proposals  
38 put forward by agencies on accommodation and other issues.

39  
40 Q. Indeed, leaving ANAO to one side, had some agencies,  
41 to your experience, been quite explicit about some of the  
42 arrangements that they were intending to enter, or telling  
43 you they were thinking of entering?

44 A. I'm not too sure I can recall any of those details.

45  
46 Q. Let me bring you to one point of detail. By June of  
47 1991, you were aware, were you not, that the Australian

1 Tax Office was contemplating all over Australia, in  
2 various locations, entering into precommitment leases, or  
3 precommitment arrangements for the construction of  
4 buildings for its use?  
5 A. I was most likely aware.  
6  
7 Q. Well --  
8 A. I'd have to check diaries. I haven't got any diaries  
9 to check.  
10  
11 Q. Don't worry about diaries. I'm going to take you to  
12 a letter that Mr Robertson briefly took you to a while  
13 ago - perhaps we will go to it immediately before the  
14 break so I can get you to start thinking about what you  
15 mostly did know about in 1991. DOFA.087.0055 is the  
16 letter. Part of your activities at the Department of  
17 Finance naturally involved, didn't it, you trying to make  
18 yourself, or keep yourself, abreast of what the market  
19 conditions or the current market conditions were, at least  
20 in broad terms, in order to get an idea of the costing of  
21 various agencies' budgets?  
22 A. In broad terms, yes.  
23  
24 Q. And it was not completely unusual, in your experience  
25 as at mid-1991, for the Commonwealth to enter leases up to  
26 10 years or more, was it?  
27 A. I can't say I have got an understanding of how many  
28 years they might commit to, and it would be different for  
29 different agencies and different in different locations.  
30  
31 Q. That may be, but in 1991, however different it may  
32 be, it was not an uncommon experience for government to  
33 enter long-term leases upon the expectation they were  
34 going to be in existence for some time to come?  
35 A. Well, I think if you are equating the Taxation  
36 Office, I'm not sure if the modernisation decision had  
37 been made then.  
38  
39 Q. Assume that it had.  
40 A. I assume that it had, so they had a Cabinet agreement  
41 to go ahead with this particular strategy --  
42  
43 Q. Let's explore that --  
44 A. -- or at least, I think, from memory.  
45  
46 MR SACKAR: Let's explore that at 2 o'clock.  
47

1 THE COMMISSIONER: We will resume at 2 o'clock.

2

3 **LUNCHEON ADJOURNMENT**

4

5 **UPON RESUMPTION:**

6

7 MR SACKAR: Q. Mr Wojcik, I was asking you some  
8 questions about long-term leases, and I had called up on  
9 the screen for you a copy of a letter which, as you will  
10 see, is on Department of Finance letterhead. The contact  
11 officer was said to be Mr Cooney. What you don't see on  
12 that screen, but I think Mr Robertson showed it to you  
13 this morning, is that your name appears at the top in  
14 handwriting. If you can scroll down, you will just see,  
15 at the very top of the document, your name.

16

17

18 Q. Perhaps I should ask first whose writing is that; do  
19 you recognise it?

20

21

22 Q. Was this document, do you believe, circulated to you  
23 as a matter of distribution, as it were, or was it a  
24 matter which it is likely you were particularly interested  
25 in, or concerned about?

26

27 A. We oversighted the estimates in the Australian  
28 Taxation Office, so in that capacity I guess we would have  
29 received that document, or a copy of that document.

30

31 Q. Mr Robertson got from you this morning that it was  
32 put on to the ANAO file. But let me just take you through  
33 the letter. I presume when you got letters like this you  
34 read them?

35

36

37 Q. Forgive me for asking, but Mr Pearson was your  
38 superior?

39

40

41 Q. Was he also the superior of Mr Cooney?

42

43

44 A. No, he worked in a different area.  
45 Q. Have you had an opportunity to read this letter  
46 through prior to being taken to it this morning by  
47 Mr Robertson?

46

47

1 Q. What about last night? Did you look at it last  
2 night?

3 A. I think I would have looked at it last night, yes.  
4

5 Q. Let's take a moment to look at it again. It starts  
6 by saying:  
7

8 *On behalf of the Australian Taxation*  
9 *Office, you sought our views on a proposal*  
10 *to enter into a precommitment lease*  
11 *financed by Barclays Bank.*  
12

13 You will see the next paragraph deals with operational, as  
14 opposed to finance leases. The next paragraph:  
15

16 *As to the overall accommodation strategy*  
17 *proposed by your client (ATO), we*  
18 *understand that in the very near future*  
19 *APG, acting on of behalf of ATO, proposes*  
20 *to invite expressions of interest to offer*  
21 *precommitment leases in Sydney (Penrith and*  
22 *Hurstville) and Wollongong...*  
23

24 Do you see that?

25 A. Yes.  
26

27 Q. Although you don't probably have any recollection of  
28 it now, refreshing your recollection from that paragraph  
29 now, but putting yourself back, hopefully, into 1991, it  
30 was fairly clear, wasn't it, that tax was involved in a  
31 fairly aggressive and extensive expansion program which  
32 seemed to involve consideration of a number of  
33 precommitted leases?

34 A. As part of their modernisation processes they were  
35 given funding for improved accommodation standards.  
36

37 Q. Well, the way they were doing it, as far as you  
38 understand it, though, was to enter into a number of  
39 precommitments for the purposes of the construction --

40 A. Purpose-built buildings, yes.  
41

42 Q. Of purpose-built buildings, yes. And not only in  
43 Tasmania, but in the suburbs of Sydney, in Melbourne,  
44 Queensland, Western Australia and so on?

45 A. Yes, that's what that note says.  
46

47 Q. Do you recall that Tax had been discussing matters

1 with Barclays bank, in what was called, perhaps somewhere  
2 in this letter, the "Barclays package" - that's in the  
3 paragraph that I have invited you to look at, which is the  
4 third paragraph.  
5 A. Well, at the time I think I had only been vaguely  
6 aware of that.  
7  
8 Q. Mr Wojcik, vaguely aware of it - at the time you  
9 wouldn't have been vaguely aware of it; you would have  
10 been in it up to your neck, wouldn't you?  
11 A. In the discussions and negotiations on the lease?  
12  
13 Q. No, as to informing yourself as to precisely what Tax  
14 was doing in conjunction with Mr Cooney, in order to  
15 assist him?  
16 A. I understood they were - they were changing all their  
17 accommodation requirements right across Australia.  
18  
19 Q. Did you --  
20 A. So it involved a massive amount.  
21  
22 Q. Did you care one way or the other?  
23 A. Well, yes, I did.  
24  
25 Q. Why?  
26 A. Because it was - I'm not sure if it - at this point  
27 in time, I think, there was still a - the property  
28 resource group needs to be done at some point in the  
29 future where all the accommodation issues for an agency  
30 would be settled which would become part of a property  
31 resource agreement. The property resource agreement had a  
32 few aspects to it. And as part of all the things that go  
33 into the mix of that property resource agreement this  
34 would be one of those things. Their funding, as I  
35 understand it, and from memory, would have been approved  
36 by Cabinet in the decision on the modernisation funding,  
37 which included accommodation. So they had funding  
38 approved for - I don't know, a - as many thousands of  
39 square metres as they needed.  
40  
41 Q. So you didn't care one way or the other?  
42 A. The funding was already decided at some point in  
43 time.  
44  
45 Q. So you didn't care one way or the other, did you?  
46 A. I wouldn't put it that way.  
47

1 Q. It would be absurd to suggest, wouldn't it, that the  
2 Department of Finance, whose advice apparently was sought,  
3 did not care about what was going on in relation to --  
4 A. It --  
5  
6 Q. Just let me finish the sentence, please - in relation  
7 to what appears to be a fairly extensive program of  
8 purpose-built buildings around Australia, which would  
9 involve, would you not agree, large expenditure on the  
10 part of the Commonwealth?  
11 A. Yes.  
12  
13 Q. And part of your - that is, Department of Finance's -  
14 interests, whatever the protocol, perhaps, might be, was  
15 to keep yourself at least abreast, whether approved  
16 funding or otherwise, but to keep yourself abreast of  
17 precisely what the Commonwealth was spending its money  
18 on --  
19 A. Yes.  
20  
21 Q. -- correct?  
22 A. Yes.  
23  
24 Q. And, again, it wouldn't simply have been a passing  
25 interest, but whether or not it was funded by Cabinet  
26 approval or not, it would be information, or the detail of  
27 this information would be something which Department of  
28 Finance, whether asked for advice or not, would probably  
29 be interested in knowing?  
30 A. Yes.  
31  
32 Q. On this occasion, however, this wasn't just a passing  
33 interest, apparently, it was, the taxation office or the  
34 manager of the State branch of the Australian Property  
35 Group in Hobart, who had asked the Department of Finance  
36 in relation to a particular Barclays financing proposal,  
37 in Hobart, which involved a precommitment. Do you see  
38 that? It is the first paragraph.  
39 A. Yes.  
40  
41 Q. The question was, or, rather, the person who wrote  
42 back, which, if you can assume for the moment was  
43 Mr Cooney, on behalf, it seems, of a Mr Thorn - it would  
44 appear at the time, would it not, that whether you knew  
45 about it before or not, once you at least got this letter  
46 in the September, I suggest, of about 1991 - that's the  
47 date the letter went, the 4th - it would have apprised you

1 of how extensive the taxation building program was,  
2 wouldn't it?  
3 A. Yes. But I --  
4  
5 Q. I am sorry?  
6 A. I think I would have been probably aware of their  
7 proposals, or the totality of the proposals rather than  
8 the specifics of the proposals.  
9  
10 Q. Leave aside specifics. It is likely, though, isn't  
11 it, that in broad terms you were aware that Tax, at least,  
12 appeared to believe they had the green light to contract  
13 with a number of individuals, with or without Barclays'  
14 assistance, in a precommitment lease context, for the  
15 purposes of construction of purpose-built buildings?  
16 A. In terms of - there are a few processes to go  
17 through, I guess, in all those.  
18  
19 Q. No, would you please answer the question, Mr Wojcik.  
20 I am not asking you about processes.  
21 A. Well, I'm --  
22  
23 Q. I'm asking you about - no, just let me finish. I'm  
24 asking you about your state of knowledge, not processes.  
25 It is clear, isn't it, that even if you didn't know  
26 before, although you suggest you probably did know, Tax  
27 was engaged in undertaking an extensive building program  
28 in conjunction with its modernisation program?  
29 A. Yes.  
30  
31 Q. Which involved precommitments to various developers  
32 or the likely precommitments?  
33 A. Well, this certainly brought it to my attention.  
34  
35 Q. Well, you believed you knew about it before?  
36 A. Well, I - I knew about the totality of the funding,  
37 which was provided. Now, that funding could - doesn't  
38 have to necessarily involve all the new accommodation. I  
39 mean, they could have gone to existing accommodation.  
40  
41 Q. But you appreciated, did you not --  
42 A. But we --  
43  
44 Q. -- that the arrangements which were being undertaken  
45 did not involve routinely a reversion of ownership to the  
46 Commonwealth, didn't you?  
47 A. Yes, I think that would have been my understanding.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. And you also had knowledge, prior to this letter, I suggest, that many of the leases involved terms of at least 10 years, and some of them, if not many of them, had escalation clauses?

A. I wouldn't have been aware of any of the escalation clauses.

Q. I didn't suggest you might have been aware of the actual percentages?

A. No, well, I - I'm not even sure I would have been aware of the escalation clauses on those leases.

Q. Well, was it not a matter of any interest to you at all what Tax was actually doing as a matter of detail?

A. They had bulk funding for accommodation.

Q. I asked you the question, Mr Wojcik, was it of no interest to you as a matter of detail what the arrangements were that Tax was entering or proposing to enter?

A. It depended on the particular arrangement, is what I'm trying to say.

Q. I see. You may or may not have been interested in particular arrangements?

A. That's correct.

Q. Well, let's read through this letter a little more:

*That precommitment strategy raises policy issues that are the subject of correspondence between the Secretary of this Department and the Commissioner of Taxation.*

I am reading now from the last paragraph on the page?

A. That's right.

Q.

*Dr Keating asked for a review of the strategy given the current state of the property market. At present long-term leases (and possibly purchases) can be negotiated on very favourable terms. This reflects the high vacancy rates.*

1           *Precommitment leases not only do not*  
2           *attract the incentives that are currently*  
3           *available but could be perceived by the*  
4           *public to exacerbate the vacancy situation.*

5  
6           And then, just stopping there for a moment, Dr Keating,  
7           just remind me, in September of 1991, was what in the  
8           department?

9           A.    He would have been the secretary of the department.

10  
11          Q.    And what was happening was there were policy  
12          considerations within the Department of Finance which the  
13          Department of Finance presumably expressed views about -  
14          namely, as a policy matter whether there should be  
15          pre-commitments?

16          A.    Yes, it was the responsibility of the Defence and  
17          Government Division for those policy issues.

18  
19          Q.    Mr Wojcik, whether it was the responsibility of  
20          another division of your department, it was a matter that  
21          Mr Pearson, at least, brought to your attention?

22          A.    Yes.

23  
24          Q.    Not because you were idly curious, but because, as a  
25          matter of policy, it was a matter which you were  
26          intimately involved in with Mr Cooney in considering,  
27          weren't you?

28          A.    I can't say I particularly considered the details of  
29          this proposal, if that's what you are inferring.

30  
31          Q.    You would have put it to one side and never read it?  
32          It is a bit silly, isn't it? You would have read it  
33          carefully?

34          A.    I would have read it, but what I'm saying is the  
35          arrangements of particular circumstances would be - would  
36          indicate whether I should be more involved or less  
37          involved.

38  
39          Q.    But you --

40          A.    So, I mean, if there was a policy reason for me  
41          to - our policy area had problems with what was being  
42          proposed, then they would make that well-known.

43  
44          Q.    All right.

45          A.    But there was nothing - if there was already a policy  
46          in place, I mean they either - the agency that I'm dealing  
47          with can either afford it or it can't. If there is not a

1 policy in place, what is the Commonwealth policy? That  
2 has to be determined or dictated by that Division.  
3  
4 Q. It is likely, is it, that you might have even  
5 prepared this letter for Mr Cooney to sign?  
6 A. Highly unlikely.  
7  
8 Q. Highly unlikely. You worked to Mr Cooney?  
9 A. Mr Cooney worked in a different division and I didn't  
10 have a responsibility for the specific nature of the  
11 queries being raised. He was actually --  
12  
13 Q. Well, let's --  
14 A. I assume he is responding to a request from this  
15 person in the APG in Hobart.  
16  
17 Q. That's what seems to be the case from the letter,  
18 doesn't it?  
19 A. I assume. Yes, that's right.  
20  
21 Q. That the APG --  
22 A. It's not something --  
23  
24 Q. Just let me finish.  
25  
26 THE COMMISSIONER: Mr Wojcik, we will get along more  
27 quickly if you wait for the question to finish.  
28  
29 MR SACKAR: Q. It would seem as a matter of fairness,  
30 Mr Wojcik, that within the department, and certainly  
31 brought to your attention, at the latest on 4 September  
32 1991, was the fact that the accommodation strategy was  
33 being undertaken by Tax in a number of areas all round  
34 Australia?  
35 A. Yes.  
36  
37 Q. And Finance didn't like it, because, amongst other  
38 things, it seemed to offend the policy held within Finance  
39 that there should generally speaking not be  
40 precommitments, didn't it?  
41 A. Well, that would have been one of a number of issues,  
42 yes.  
43  
44 Q. A number of issues. All right. Over the page:  
45  
46 *Recently, Sir William Cole criticised*  
47 *Commonwealth agencies for spending too much*

1                    *on accommodation rather than "making do".*

2

3                    Do you see that?

4                    A.    Yes.

5

6                    Q.    A little further down the page, in fact, the last  
7 paragraph:

8

9                    *The proposed lease also has many clauses*  
10 *that we believe are not in the tenant's*  
11 *interests.*

12

13                    And then it goes on to give some examples of those. Do  
14 you see that?

15                    A.    Yes.

16

17                    Q.    It says:

18

19                    *It seems to us that the liabilities of*  
20 *ownership but not the benefits rest with*  
21 *the tenant under the Barclays' scheme.*

22

23                    A.    Yes.

24

25                    Q.    That brings back to your mind, I suggest, that you  
26 were aware, prior to September 1991 when you received that  
27 letter, that Tax had been given, from a funding point of  
28 view, substantial funding and had been given, as it were,  
29 the tick to create space for itself around Australia as  
30 part of this modernisation approach.

31                    A.    Yes.

32

33                    Q.    If I can now bring you back to the letter that I have  
34 been asking you to look at, and if I can have the operator  
35 call up on the screen again the diary note of Mr Turner of  
36 the meeting of the 25th. It is DOFA.088.0052. You might  
37 feel more comfortable with the original?

38                    A.    Yes, I have it in front of me.

39

40                    Q.    Coming back to the typed note, Mr Wojcik, that is,  
41 behind your tab 8 in your statement --

42                    A.    Yes.

43

44                    Q.    -- it is clear, is it not, that as a matter of  
45 concept, at least, you were able to give, as possibly one  
46 of the current terms that might be sought to be imposed on  
47 the Commonwealth, a fixed rate of increase in the lease by

1 way of a fixed escalator?  
2 A. Can you ask that again, please?  
3  
4 Q. Yes. It is clear, is it not, from the first page of  
5 the typescript of the note, that you were aware - either  
6 yourself or from what perhaps Mr Joyce told you - that a  
7 current market term or condition which might be sought to  
8 be imposed in such a lease was a fixed rate of escalation?  
9 A. Yes.  
10  
11 Q. It is undoubted, is it not, that either you would  
12 have known that yourself at the time, from your own  
13 experience, or you would have gleaned that information  
14 from Mr Joyce?  
15 A. Yes.  
16  
17 Q. Were you aware, personally, of leases that were being  
18 negotiated on behalf, let's say, of the Tax Office, or any  
19 other government department - DSS, for example or  
20 DEET - in 1991, that is, prior to the end of 1991, that  
21 involved fixed escalators?  
22 A. I can't recall. It is difficult, I guess. It is  
23 hard to recall being aware of exact terms of leases,  
24 because those are documents which we wouldn't necessarily  
25 see. We would know the --  
26  
27 Q. This is not an exact term of a lease in one sense, is  
28 it - it is a concept. The notion of inviting the  
29 Commonwealth to enter a lease, whatever the percentages  
30 may be, for a term, a long-term, let's say 10 years or  
31 more, with a fixed escalator would raise issues of policy;  
32 it wouldn't just be a term of a lease as such, would it?  
33 A. That's correct.  
34  
35 Q. It seems that you thought that the possibility, at  
36 least, that a fixed escalator might be the kind of  
37 arrangement that was put to the ANAO is the reason why you  
38 raised it as something to look out for?  
39 A. Yes.  
40  
41 Q. And, as I said, if I may go back to the question I  
42 posed, do you have any recollection now, even in general  
43 terms, of the Commonwealth having entered leases which had  
44 fixed rates of escalation in leases with terms of 10 years  
45 or more?  
46 A. When you say "fixed rates of escalation" --  
47

1 Q. Yes.  
2 A. -- I can't recall being aware of any leases with  
3 fixed rates of escalation over 10 years - any specific  
4 leases. It may be - I don't know, at that time, exactly  
5 what the taxation office had entered into, but there may  
6 be some examples around of that.  
7  
8 Q. All right --  
9 A. It is hard for me to recall back.  
10  
11 Q. Were you aware, if I may ask you, of a Department of  
12 Social Security lease in Corrimal entered into in 1987 for  
13 a 10-year term with a fixed escalators?  
14 A. No, not unless it was provided to us by Brian Cooney  
15 or Ian Joyce's people, or someone in that division  
16 responsible, an example of a lease that is either not the  
17 model to follow or something like that, but, no, I  
18 wouldn't be aware of that particular lease, I wouldn't  
19 think.  
20  
21 Q. Well, in any event, it seems, does it not, that by  
22 reason of the fact that you have raised it as one, at  
23 least, possible term, that you and Mr Joyce must have  
24 discussed things that you would raise for the ANAO's  
25 consideration?  
26 A. Yes.  
27  
28 Q. And you were concerned to warn them about certain  
29 terms and conditions that might be proposed?  
30 A. Yes.  
31  
32 Q. And it must be that what you were warning them about  
33 was something you thought, as a matter of practical  
34 reality, could actually happen as opposed to a theory?  
35 A. Yes.  
36  
37 Q. And although you can't remember it now, it would seem  
38 highly likely, wouldn't it, that each of the items which  
39 are comprised in the bullet points on the first page are  
40 matters that you would have discussed with Mr Joyce before  
41 you went to the meeting - before you actually raised them?  
42 A. Yes.  
43  
44 Q. On the diary note that is on the screen - that is,  
45 Mr Turner's diary note - you will see the first bullet  
46 point seems to read:  
47

1           \* substantial cost for C/W/Building should  
2           revert to C/W.

3  
4           A.    That's what he seems to have recorded, yes, I agree.

5  
6           Q.    That would seem to accord that at least during the  
7           course of this meeting, if you didn't know before, you  
8           appreciated that the ANAO was considering entering into a  
9           long-term lease which involved a precommitment aspect to  
10          it, and no reversion?

11          A.    Well, that's what the works TN policy proposal of the  
12          Audit Office suggested, yes.

13  
14          Q.    Well, it is recorded, in any event, as part of the  
15          discussion, if you go to page 2 of the typescript. It  
16          would seem to have been in your mind at the meeting,  
17          because of the sentence under the heading "Canberra":

18  
19                *The ANAO officers were advised...*

20  
21          Et cetera:

22  
23                *...this was based on the presumption that*  
24                *the building would be built with the*  
25                *intention of the owner recovering the*  
26                *building costs by way of the rentals in the*  
27                *first few years, eg 7-10 years. The ANAO*  
28                *would enter into a precommitment lease.*

29  
30          A.    Yes.

31  
32          Q.    So were you being told, apparently quite explicitly,  
33          that there was to be a precommitment, a long-term lease,  
34          and no attention had been paid to the question of  
35          reversion.

36          A.    Well, the proposition was that this was a works  
37          technical new policy submission --

38  
39          Q.    Look, leave the technical policy submission to one  
40          side. I'm trying to deal with what you were told at the  
41          meeting, not whether it conformed with a policy or not.  
42          Just as a matter of fact, it seems, does it not, that  
43          either you knew before you went to the meeting or you were  
44          told at the meeting that the ANAO was proposing to enter  
45          into a precommitment?

46          A.    Yes.

47

1 Q. And you must have known, I suggest at the meeting,  
2 that it was going to be a long-term lease?

3 A. Well, I imagine so, yes.

4

5 Q. You must have had some information, would you agree,  
6 to presume that the owner intended to recover the building  
7 costs by way of rentals in the first seven to 10 years?

8 A. That would have been the result of my discussions  
9 with Ian Joyce and/or Brian Cooney at that point in time  
10 or before the meeting.

11

12 Q. So, one or other of them, you believe, probably said,  
13 "Look, this is probably going to be a precommitment" -  
14 ANAO tell you that anyway - "It is highly likely that it  
15 is going to be structured in a way that the owner of the  
16 building will recover the costs by way of rentals in seven  
17 to 10 years"?

18 A. Yes, hence the note of the need to go to new policy.

19

20 Q. Where is that, I am sorry?

21 A. Well:

22

23 *The ANAO officers were advised that the*  
24 *issue of the proposed move...would be one*  
25 *that would need to proceed through the New*  
26 *Policy process.*

27

28 That's under "Canberra".

29

30 Q. Yes, I understand where that is. Leave that to one  
31 side. Whatever you were telling them to do in terms of  
32 protocol, it seems that you were being told at the  
33 meeting, or at least you assumed and were not told to the  
34 contrary at the meeting, that this was to be a long-term  
35 lease, at least seven to 10 years, perhaps, with a level  
36 of rentals that would involve the financial structure  
37 enabling the owner to recoup the building costs?

38 A. Well, that was the end of it, yes.

39

40 Q. And a precommitment was something which operated how,  
41 as you understood it, in 1991?

42 A. Well, before a builder would actually go out there  
43 and put up a building, they would actually get a  
44 commitment from the prospective tenant about the tenancy:  
45 the terms of the tenancy - how many years, I guess - and  
46 whatever details there were for rent and fitout and  
47 outgoings and all those kinds of things.

1  
2 Q. And you regarded, or at least it seems, does it not,  
3 that Mr Joyce must have said something to you to enable  
4 you to think that that was not an uncommon or an unusual  
5 arrangement?  
6 A. Well, that was just the feature of a precommitment  
7 lease.  
8  
9 Q. No, but if he had told you, or you believed it was an  
10 unusual thing to happen, we may assume that some of you  
11 would have made a note about it, surely? Wouldn't you  
12 have said to Audit, "Oh, heavens, Audit, that's very  
13 unusual"?  
14 A. That's why it would go to new policy.  
15  
16 Q. That's just putting it off to someone else's  
17 responsibility?  
18 A. It means we haven't got the authority as officers  
19 within the Department of Finance to agree to that  
20 commitment. We need ministerial approval.  
21  
22 Q. But you had no power, either, do we take it, to  
23 prevent Audit from doing it if they wished?  
24 A. Well, Audit would be perhaps in breach of some  
25 Finance regulations and --  
26  
27 Q. Well, did you address those at the time, in your  
28 mind, to see whether, from the Department of Finance's  
29 point of view, what Audit might have been doing was in  
30 breach?  
31 A. In our - in the original - in the original inquiry  
32 into Centenary House --  
33  
34 Q. Mr Wojcik, please --  
35 A. Sorry.  
36  
37 Q. -- did you believe, at the time, that you gave  
38 consideration to whether a precommitment in a long-term  
39 context was in breach of some financial regulations over  
40 which the Department of Finance had provenance?  
41 A. Well, at the time they hadn't signed anything, I  
42 guess, so --  
43  
44 Q. I didn't ask you that either.  
45 A. So they wouldn't be in breach, so that question  
46 wouldn't arise.  
47

1 Q. But they were telling you ANAO would enter into a  
2 precommitment lease. Now, it doesn't seem, in the course  
3 of this typescript, that it occurred to you to say, or to  
4 anyone else in say to Audit, "Well, you had better be  
5 careful, because that might breach regulations governed by  
6 the Department of Finance". It doesn't seem to have  
7 arisen, does it, in the conversation?  
8 A. No, we told them that. If they wanted to go ahead  
9 with what they were proposing they would have to get their  
10 Minister to sponsor a proposal before Cabinet, because it  
11 was beyond our authority to do so.  
12  
13 Q. I see. We will come to the resource agreement  
14 shortly. Did you care one way or the other what the  
15 precise terms and conditions of the lease were?  
16 A. Well, I think I have mentioned before, and it is - I  
17 think it has been mentioned in correspondence, we did try  
18 to find out details of the lease.  
19  
20 Q. That's --  
21 A. Because we were trying to work out the affordability  
22 of it all.  
23  
24 Q. That's from Mr Meert, was it?  
25 A. Well, from our contacts at the Australian National  
26 Audit Office.  
27  
28 Q. When you say "your contacts", does that mean that you  
29 tried to make contact with persons other than Mr Meert to  
30 get to the bottom of what the terms and conditions were?  
31 A. Well, it would have been either me making contact  
32 with Mr Morison or Allan Pearson making contact with  
33 Mr Meert, or something along those lines, or Wayne Turner  
34 making contact --  
35  
36 Q. But the impression you told Mr Robertson you or  
37 perhaps others had gained was that it was none of your  
38 business?  
39 A. Well, that was from the meeting in January 1992.  
40  
41 Q. Did you believe it was none of your business?  
42 A. I think technically they were right, but --  
43  
44 Q. Well, technically, the terms and conditions were none  
45 of your business; is that what you are saying?  
46 A. Well, as long as they could meet those terms and  
47 conditions within their funding envelope, which is what

1 they would be saying they could do when they signed up any  
2 lease agreement.  
3  
4 Q. But why bother meeting with them in the June, if all  
5 you really needed to know was that they were certain, or  
6 confident they could meet their financial obligations?  
7 A. They were wanting to borrow funds to fit out and  
8 occupy those new premises, which they didn't have in  
9 their current appropriations.  
10  
11 Q. Why were they technically correct to tell you to mind  
12 your own business, do you think?  
13 A. Well, if they could afford the terms of the lease.  
14  
15 Q. But why were they technically correct? Are you  
16 saying that if they had decided that they could afford the  
17 lease within the terms of whatever protocols or policies  
18 governed them, you could wipe your hands of having to be  
19 concerned with the terms and, indeed, your  
20 responsibilities then ended?  
21 A. If they could afford the terms of the lease from  
22 within their budget allocations and it didn't offend the  
23 property principles applying at that point in time in  
24 terms of APG, AEM and the DAS responsibilities, I guess --  
25  
26 Q. Then it was off your tape?  
27 A. -- for accommodation within the ACT.  
28  
29 Q. Then it was off your tape?  
30 A. Well, that's right, there were other hurdles that  
31 they had to clear anyway.  
32  
33 Q. But it was a matter for them, as far as you were  
34 concerned?  
35 A. Well, there were other issues that had to be dealt  
36 with.  
37  
38 Q. Did it ever occur to you to ask either the AV0 or the  
39 APG what the terms might be?  
40 A. I think we did have discussions with our counterparts  
41 in the Defence and Government division about trying to get  
42 those details.  
43  
44 Q. What does that mean - Mr Joyce?  
45 A. Mr Joyce or Mr Cooney, but I can't recall the  
46 outcomes, except to say we never got the details, so we  
47 never were able to.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Can I take you, please, to the third page of the typescript of Mr Turner's notes? It seems that you were given some detail at the meeting - that is of the term of the lease, at least in broad terms - because the top paragraph on that page says:

*ANAO clarified the position with the Section 22 proposal; the ALP and ACTU were arranging...*

*Et cetera:*

*...likely to reside in the accommodation for a long period.*

Et cetera; do you see that?

A. Yes.

Q. And the assumed rentals which ANAO used were provided by APG but seemed on the low side for this location, and they were asked to examine them?

A. Yes.

Q. It says:

*If the rent reviews were to be based on the existing market rates, then the rental could skyrocket as property rental rates around the area are high compared to Medibank House...*

In your statement you accept that you probably did use the word "skyrocket"?

A. Yes.

Q. And although that is a fairly colourful term, it was no doubt used to try to impress upon Audit that your information suggested that rentals in the Barton area could rise substantially?

A. Yes.

Q. At that stage, again, you would, would you, be relying upon Mr Joyce and his appreciation of the market?

A. Yes.

Q. Now, in fairness to the Audit Office, you made the

1 comment of rents "skyrocketing" - that is:

2  
3 *If the rent reviews were to be based on*  
4 *existing market rates, the rental could*  
5 *skyrocket.*  
6

7 Now, you were making that comment in the context of being  
8 told that Audit was going to enter a long-term lease?

9 A. Their proposal was to enter into a long-term lease,  
10 yes.

11  
12 Q. But my point is this: the whole context in which  
13 this discussion was taking place, in which you and you  
14 knew APG, on the other hand, were trying to give a  
15 prognostication as to likely rentals in Barton, as opposed  
16 to Woden, the whole context was in order to look not just  
17 for the next few weeks, few months or even 12 months, but  
18 you were discussing the future of Audit's budgetary  
19 constraints or concerns in the context of you believing  
20 that this was likely to be a long-term commitment?

21 A. Yes.

22  
23 Q. And what you were trying to convey to them is that  
24 given your information and that of Mr Joyce, over the long  
25 term you believed that rents could easily skyrocket in the  
26 Barton area?

27 A. Yes.

28  
29 Q. And that what you were trying to tell them, in order  
30 to give them some reality check before they committed  
31 themselves to Barton, was that in the long-term you and  
32 Mr Joyce were trying to convey to them that in the long  
33 term you believed, on the basis of what had happened in  
34 the past, Barton was likely to be a long-term and  
35 expensive area for Audit to rent in, weren't you?

36 A. More expensive than Woden.

37  
38 Q. And expensive, whether more expensive or not, but  
39 that it was going to be a long-term commitment with likely  
40 increases upwards. That's the message you were trying to  
41 convey, wasn't it?

42 A. Yes.

43  
44 Q. So far as the Canberra market was concerned, did you  
45 believe at the time you would have had any particular  
46 knowledge of it, or would it have been something that you  
47 would have been entirely reliant on Mr Joyce for?

1 A. I would have gained my knowledge from discussions  
2 with Ian Joyce or Brian Cooney and asking questions about  
3 what are the comparable rates for, you know, similar  
4 leases in the area, new leases in the area, et cetera,  
5 et cetera, asking the same questions about Woden and  
6 elsewhere as well.

7

8 Q. Although you were not privy to the precise detail of  
9 the Department of Finance submission I showed you before  
10 lunch - the 1990 document - you certainly would have been  
11 aware in 1991, I suggest, that in 1990 the Department of  
12 Finance had put a carefully considered and researched  
13 submission on the question of property operating expenses  
14 of the likes that I showed you this morning, in October of  
15 1990; would you agree?

16 A. Yes.

17

18 Q. And for that purpose, you would accept that Mr Joyce  
19 and/or others in the D&G section of the department would  
20 have had to analyse the Canberra property market for the  
21 purposes of addressing the question by way of paper,  
22 discussion paper, as to what should be the future in  
23 relation to property operating expenses. You would accept  
24 that?

25 A. Yes, I would understand that to be the case.

26

27 Q. What seems to have happened is that after 25 June  
28 1991 - and we glean that by reason of the fact that in the  
29 memorandum, in the last couple of pages of it, it is  
30 fairly clear that there was ongoing dialogue between at  
31 least Mr Joyce and perhaps yourself, and people from  
32 Audit, as you received some further information about  
33 likely increases; would you agree?

34 A. Yes.

35

36 Q. Because part of the memorandum deals with events or  
37 information that probably wasn't procured until 27 June  
38 1991, and on the penultimate page it is fairly clear that  
39 even as late as 2 July Mr Joyce seems to have still been  
40 collecting data for the purposes of putting the  
41 fundamental proposition that Barton was going to be more  
42 expensive than Woden?

43 A. Yes.

44

45 Q. The handwriting on the penultimate page of this  
46 typescript is whose writing?

47 A. After "for 1993/1994", do you mean?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Yes.

A. Yes, that's mine.

Q. You have written:

*(When review to market rates is  
scheduled --*

have you crossed out the next word?

A. Oh --

Q.

*the \$400 would probably be [something]  
"low" side.*

A. "On the" low side.

Q. Now, one of the propositions that you were seeking to try to persuade Audit about was that on the question of predicting the likely rental increases in Woden, or in Barton, they should be very careful to check what APG had told them because you and your people believed that their estimations were underplaying, deliberately or otherwise doesn't matter, but certainly had underplayed what were likely to be the magnitude of increases in Barton and in Woden?

A. Yes, I think that was the purpose of our sending a copy of those attachments A, B and C to them.

Q. I understand that, but if you go, now, to the written note on the screen, Mr Turner seems to have written:

*Costs of leases seem unreasonable  
compared...*

And then, underneath or above that:

*too low to be reliable.*

A. Yes.

Q. Perhaps I should read down:

*Woden for other parts of Barton etc,  
ie unrealistic to assume constant rents!!*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

A. Yes.

Q. You thought the prospect of rents remaining stable - that is, at one level - in Barton, or, for that matter, even in Woden, was totally unrealistic, given the nature of the market, and from what you had heard from Mr Joyce?

A. Well, I don't think anything remains constant --

Q. Well, but --

A. -- for too long a time.

Q. But, notwithstanding that, what Mr Joyce was telling you was that in his opinion - and he persuaded you to this effect - what APG was saying was unreliable because it was on the low side and it tended to be a bit unrealistic in terms of giving Audit a proper appreciation of their long-term budgetary needs?

A. We thought the costs would be higher than what --

Q. Is that another way of saying yes, you agree, that both you and Mr Joyce formed the view that what APG had given to Audit was unreliable because it tended to be too low and, therefore, unrealistic in terms of the likely long-term budgetary needs of Audit, and was not a proper guide?

A. Well, I guess they had a view and we had a view. They were different.

Q. No, no, if I may say so, that is not an answer to the question. Yes, it seems that both of you had a view, but is it fair that you thought you were trying - you didn't think you were trying; you were trying to persuade them, with the benefit of Mr Joyce's presence, who no doubt, may I invite you to agree, you probably would have introduced as the person relevantly in the Department of Finance who had the requisite knowledge or expertise of the property market?

A. Yes.

Q. And you would have put his credentials, as it were, formally or perhaps quite informally, in order to have Audit sit up and listen to the message or messages that you were trying to convey to them, one of which was that your assessment was that theirs, and APG's assessment of future commitments, was on the low side?

A. Yes.

1  
2 Q. Could I have the document DOFA.087.0043 brought up,  
3 please. Perhaps I will show you the first page of this  
4 document first. Do you have it in hard copy? Have you  
5 found it?  
6 A. Yes, I have found it.  
7  
8 Q. It is probably better for you that you look at the  
9 hard copy. Could I have the first page brought up first.  
10 The handwriting, at least in the heavy ink towards the  
11 lower half of the page, is that of Mr Pearson; would you  
12 agree?  
13 A. Yes.  
14  
15 Q. Can you identify the other handwriting on the page?  
16 A. Well, I have written in the left-hand side margin.  
17  
18 Q. And it says:  
19  
20 *Reflects --*  
21  
22 A. "Earlier correspondence".  
23  
24 Q.  
25 *Earlier correspondence.*  
26  
27 A. "Along the lines" --  
28  
29 Q. And that is your handwriting below that again, is it?  
30 A. Yes.  
31  
32 Q. And forgive me if you have been asked this before,  
33 but what does that read?  
34 A.  
35  
36 *In absence of any substantial disagreement.*  
37  
38 Q. And over in the right-hand side, the "13%" and the  
39 "8%" - is that yours?  
40 A. Possibly, or probably. Probably.  
41  
42 Q. What about the figures \$622,000, which has been  
43 inserted after the dollars sign in that sentence directly  
44 to the left of those figures 8 and 13 per cent - would  
45 that be yours as well?  
46 A. I can't be sure of that.  
47

1 Q. And the writing up the top is Mr Cooney, is it, or  
2 Mr Pearson:  
3  
4 *Brian Cooney...*  
5  
6 Et cetera - whose writing is that?  
7 A. That's my writing, I passed this copy to Brian  
8 Cooney, or passed a copy of this, it seems, to Brian  
9 Cooney for comment.  
10  
11 Q. I am so sorry, it seems --  
12 A. It seems I passed a copy of this draft to Mr Cooney  
13 for comment as well as to Allan Pearson and Ian McPhee.  
14  
15 Q. Would you be kind enough, then, to go to the second  
16 page of the document, if the operator would go to 0043?  
17 A. Yes.  
18  
19 Q. The handwriting at the top is Mr Pearson again; would  
20 you agree?  
21 A. Yes.  
22  
23 Q. Would you agree that the substantial amount of  
24 handwriting at the bottom commencing:  
25  
26 *The ANAO agrees that...*  
27  
28 Is Mr Pearson's?  
29 A. Yes.  
30  
31 Q. It is your writing, is it not, where the dashes have  
32 been left and where the words "market rate" appear?  
33 A. It looks like my writing, "market rate", yes.  
34  
35 Q. Was that your idea, to insert the words "market rate"  
36 into the draft of the resource agreement?  
37 A. Well, I can see at the top of the page Allan Pearson  
38 has already inserted "market rates", so I guess it is sort  
39 of hard to work out whether it was his idea or my idea,  
40 from looking at this document the way it is.  
41  
42 THE COMMISSIONER: Q. Where is Mr Pearson? Perhaps you  
43 might --  
44  
45 MR SACKAR: Q. Where is Mr Pearson, Mr Wojcik?  
46 A. The last I heard, I think he was overseas, I'm not  
47 sure doing what.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

THE COMMISSIONER: Q. Do you mean permanently living overseas?

A. That's my - no - oh, I guess so. I don't know. He works - he used to work on particular projects overseas. Now, the duration of which could be anything from three to six months or longer, so whether it was just on a particular project for a short period and coming back, I don't - I wouldn't know.

Q. Is he still with the Australian public service?

A. No, he left a long time ago.

MR SACKAR: Q. Your state of mind, if Mr Hunt accepts it, Mr Wojcik, is that at the date of these musings on this draft, you had told Audit that the deflator protocol was, as it were, in the wings, and was, so far as its introduction was concerned - as far as you believed it - imminent; is that fair?

A. I guess it might depend how you define "imminent".

Q. Well, soon to be introduced?

A. In the not too distant future, yes.

Q. In the not too distant future. Wouldn't it have been fairer, from the Department of Finance's point of view, if they seriously believed that the deflator's introduction was soon - wouldn't it have been fairer in the resource agreement to have inserted, "Lease costs increase above at a rate greater than the deflator. To be introduced soon"? Now, that's fairly inelegant, but what would have been the problem, if you seriously believed that the deflator's introduction was soon, in making an explicit reference to it in this resource agreement to make Audit understand that it was going to be subject to a deflator? What would have been wrong with that?

A. I guess looking at any document, and the details of it, you can always, perhaps, write it better --

Q. No, no, it is not a question of hindsight.

A. -- more explicit.

Q. If you say, as you did to Mr Robertson, that you believed back in 1991 that you discussed the deflator with Audit, and believed that its introduction was imminent, why wouldn't you just make the costs, insofar as they increased, as "subject to the deflator (to be introduced)"

1 or something to that order?  
2 A. There are a number of drafts of this document.  
3  
4 Q. I am not interested in that. I am asking you in no  
5 draft of this document, nor in its final form, may I  
6 suggest to you, was there any reference to a deflator -  
7 would you agree with that - as being the yardstick against  
8 which costs may or may not be able to be recouped?  
9 A. But you're saying this - there is no reference here  
10 to a document which may have had that in it.  
11  
12 Q. Well, this is likely to be your handwriting, you have  
13 said, in what was a draft version of the resource  
14 agreement; would you agree?  
15 A. That particular copy, yes.  
16  
17 Q. And obviously in this particular copy, at this  
18 particular point in time, it didn't occur to you, I take  
19 it, as a matter of transparency, or even fairness to  
20 Audit, to simply make any increases subject to the  
21 deflator, did it?  
22 A. Well, it may well be that we were using the term  
23 "market rate", as the same as the deflator.  
24  
25 Q. Oh, really? What, did market rates, at the time, as  
26 far as you were concerned --  
27 A. Well --  
28  
29 Q. No, just let me finish the sentence. You have  
30 suggested this. Are you seriously suggesting that at the  
31 time, vernacular suggested that the term "market rates"  
32 was synonymous with the "deflator", are you?  
33 A. I'm not sure if I'm totally suggesting that. I think  
34 the deflator had been talked about, being an  
35 Australia-wide index.  
36  
37 Q. Well, why not just put it in, "The deflator as  
38 defined", or "The deflator as to be defined", if that's  
39 what you were truly - and, if I may say, as a matter of  
40 fairness, as far as Audit was concerned - trying to convey  
41 to them? Wouldn't it have been a simple device?  
42 A. Well, it certainly would have been clearer.  
43  
44 Q. Not only clearer, but it would have left, or would  
45 have removed, arguably, any room for discussion, or  
46 debate, because Audit would have to, as it were, put up or  
47 shut up; in other words, it would have to agree to some

1 form of index as yet to be determined, some time into the  
2 future, but, you believed, according to your evidence,  
3 soon?  
4 A. Sorry?  
5  
6 Q. Do you want me to repeat that?  
7 A. Yes.  
8  
9 Q. If you believed that the deflator was going to be  
10 introduced soon, it was a very simple device in the  
11 drafting of this agreement to make the increases subject  
12 to it?  
13 A. Well, I guess would have included it, but I think we  
14 had already spoken about it in I think quite a few  
15 discussions.  
16  
17 Q. But if you had spoken about it, it wouldn't have been  
18 a matter of mystery; it might have been difficult to  
19 define precisely what the percentage was going to be, but  
20 wouldn't it remove any possible debate between you and  
21 Audit if both of you agreed that there would be a  
22 deflator - as you say you explained to them - it might be  
23 2 per cent or 3 per cent, you didn't know, but everyone  
24 was going to be subjected to it, and so should they?  
25 A. I think I saw an earlier note today of Mr Bob Morison  
26 with a conversation he had with Mr Pearson where it was  
27 acknowledged what that deflator was all about.  
28  
29 Q. I didn't ask you that, did I? We are talking about  
30 the document that I thought, if Audit signed, they could  
31 be held responsible for their own budgetary constraints  
32 for the future. You could have been much more explicit in  
33 this resource agreement, couldn't you?  
34 A. Well, we could have better defined "market rates".  
35  
36 Q. Not only "market rates", you could have used a term  
37 which was not likely to be ambiguous. You could have used  
38 a term like "deflator", couldn't you, with ease? There  
39 was nothing preventing you from putting that term in the  
40 resource agreement, was there?  
41 A. Well, only subject to the discussions between us and  
42 the Audit Office about the words used in the agreement,  
43 because both sides had to agree.  
44  
45 Q. That's all very interesting, Mr Wojcik, but this was  
46 to be the subject of a formal agreement signed by persons  
47 from the Audit Office solemnly with someone from the

1 Department of Finance. You weren't trying to be cute  
2 about this, were you, as far as Audit was concerned?  
3 A. No.  
4  
5 Q. You weren't trying to trick them to say --  
6 A. No.  
7  
8 Q. -- "You are the authors of your own misfortune,  
9 Mr Taylor, if you don't know what you are doing"? You  
10 weren't trying to do that, were you?  
11 A. Not in any way.  
12  
13 Q. There was no agenda in the Department of Finance to  
14 embarrass the Audit Office in the future, was there?  
15 A. No. No. No.  
16  
17 Q. Why didn't you just put "deflator" in the agreement  
18 and make it abundantly plain that they were to be bound by  
19 an index yet to be determined, but soon?  
20 A. I will have to repeat myself again, I guess.  
21  
22 Q. It was the most obvious thing to do, wasn't it? If  
23 you were trying to be explicit and transparent; it was the  
24 most obvious thing to do?  
25 A. Lots of words are used. Once you have used them and  
26 you look back, you find out you could have perhaps used a  
27 different word.  
28  
29 Q. But "deflator" had a particular meaning, you say, at  
30 the time. It didn't mean market rates, did it, commonly?  
31 A. It meant the --  
32  
33 Q. It meant an index, didn't it?  
34 A. I think, though, I also saw a document which had  
35 reference to ABS.  
36  
37 Q. Don't worry about documents you may have seen. At  
38 the time the concept of deflator was being worked through,  
39 but you say you explained to Audit that it meant some form  
40 of index which would have general application; correct?  
41 A. Yes.  
42  
43 Q. You say that you made it abundantly plain to them,  
44 and you say you believed they understood that they were  
45 going to be bound by this in terms of signing this  
46 resource agreement?  
47 A. Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Well, why not use it as a term? It was the most obvious term to use and would remove any debate at all, except it would leave uncertain one aspect only, whether it was one, two, or three per cent; would you agree?

A. Yes, it would have been better to use the actual terminology.

Q. Would you agree with me that it would have been fairer to Audit as well?

A. I'm not sure we were unfair in using "market rates".

Q. Would you agree it would have been fairer because you would have been entirely transparent and you would have removed areas for future debate; would you agree?

A. In hindsight there would be less reason for argument about what "market rates" means.

MR SACKAR: Thank you.

MR BEECH-JONES: I have no questions, Commissioner.

**<EXAMINATION BY ROBERTSON:**

MR ROBERTSON: Q. Could I take you to document ANA0.019.0926, if that could be brought up on the screen. I apologise to Mr Sackar, I hope it doesn't cause any problems, this is something I should have raised earlier. It arises out of some questions the Commissioner asked you yesterday, Mr Wojcik. Do you recall there was a discussion about resource agreements and property resource agreements, or am I getting my wires crossed and it may have been another witness - in fact I think it was probably Mr McPhee. I will withdraw that question.

This is a letter, if you look at the second page, which is signed by yourself, and I will ask you to read it and ask the operator to go to the second page when you are ready.

A. Yes. The next page, please. Yes.

Q. This is a letter signed by yourself on 13 February 1996?

A. Yes.

Q. It relates to arrangements being negotiated between the Department of Finance and the Audit Office after the

1 Morling report?  
2 A. Yes.  
3  
4 Q. It reflects a decision that had been made within the  
5 government, whether by Finance or at a higher level, that  
6 the budget would fund any rental shortfall for Centenary  
7 House?  
8 A. Yes. That's what it says.  
9  
10 Q. The letter indicates that there was an agreement  
11 between the Department of Finance and the ANAO to the  
12 effect that a property resource agreement would not be  
13 entered into between the ANAO and Finance?  
14 A. Yes.  
15  
16 Q. A property resource agreement was the formal  
17 agreement that, under the new arrangements of  
18 incorporation of property operating expenses into running  
19 costs, was to be entered into between the Department of  
20 Finance and each agency relating to the payment of their  
21 property costs under a global appropriation going forward,  
22 wasn't it?  
23 A. Yes, I think.  
24  
25 Q. Probably fairly inelegantly and inaccurate, but in a  
26 general sense correct?  
27 A. In a general sense, yes.  
28  
29 Q. The proposal, as far as the ANAO was concerned in  
30 1996, was that there would be a memorandum of  
31 understanding?  
32 A. Yes.  
33  
34 Q. And as far as you are aware, as you can recall at  
35 this stage, was a memorandum of understanding executed?  
36 A. Oh, I think so.  
37  
38 Q. And not a property resource agreement?  
39 A. Once again, I think so.  
40  
41 MR ROBERTSON: Those are the only further questions.  
42  
43 THE COMMISSIONER: Mr Sackar, do you want to deal with  
44 that?  
45  
46 MR SACKAR: No, thank you.  
47

1 THE COMMISSIONER: Thank you, Mr Wojcik. You can return  
2 to your endeavours, but if we need you we will give you  
3 notice. I hope that won't happen. Thank you very much  
4 for coming along.

5  
6 THE WITNESS: Thank you, Commissioner.  
7

8 **<THE WITNESS WITHDREW**

9  
10 MR SACKAR: Before Mr Foster recommences with the next  
11 witness, could I tender two leases? One of them is  
12 between Celestial Pty Limited and the Commonwealth of  
13 Australia. The date of the lease is December 1993, but I  
14 will make some comments about it later. It is in relation  
15 to a building in Adelaide, the Adelaide Tax Office.  
16

17 **EXHIBIT #83 LEASE BETWEEN CELESTIAL PTY LIMITED AND THE**  
18 **COMMONWEALTH OF AUSTRALIA, DATED 00/12/1993,**  
19 **BARCODED EXH.083.0001**  
20

21 MR SACKAR: The second document is a lease entered into  
22 in 1987 for 10 years in relation to the Commonwealth of  
23 Australia in Corrimal for the Department of Social  
24 Security. I won't delay you now by referring to the terms  
25 of it. There is a memorandum which should go with the  
26 lease and we will undertake to try to acquire a copy of  
27 it.  
28

29 THE COMMISSIONER: That can be added later. The current  
30 document can be exhibit 84.  
31

32 **EXHIBIT #84 LEASE BETWEEN THE COMMONWEALTH OF AUSTRALIA**  
33 **AND THE DEPARTMENT OF SOCIAL SECURITY IN CORRIMAL,**  
34 **BARCODED EXH.084.0001**  
35

36 MR SACKAR: I think Mr Foster has copies of these, but I  
37 hand up additional copies.  
38

39 MR FOSTER: I believe we have.  
40

41 Commissioner, while some tenders like that are being  
42 made, could I tender a few documents?  
43

44 THE COMMISSIONER: Yes.  
45

46 MR FOSTER: I have a statement of Fay Lynette  
47 Robinson-Obst of 23 August 2004. I think that has been

1 served. I don't think we have had it tendered yet. I  
2 tender it now.

3  
4 **EXHIBIT #85 STATEMENT OF FAY LYNETTE ROBINSON-OBST, DATED**  
5 **23/8/2004, BARCODED WITS.016.0001 AND DOCUMENTS REFERRED**  
6 **TO IN STATEMENT**

7  
8 THE COMMISSIONER: Is it necessary for her to be called?

9  
10 MR SACKAR: No. If it is the statement we have  
11 previously seen, which I believe it is --

12  
13 MR FOSTER: 23 August.

14  
15 MR SACKAR: We indicated, and I think Mr Beech-Jones did  
16 also, that we didn't require her.

17  
18 THE COMMISSIONER: Thank you.

19  
20 MR FOSTER: May I also tender the death certificate of  
21 Mr Divett. It is more accurately described as an extract  
22 of a death certificate.

23  
24 **EXHIBIT #86 EXTRACT OF DEATH CERTIFICATE OF ROSS STEPHEN**  
25 **DIVETT, DATED 1/5/2001, BARCODED EXH.086.0001**

26  
27 MR FOSTER: I also tender an extract of the death  
28 certificate of Mr Fenwick.

29  
30 **EXHIBIT #87 EXTRACT OF DEATH CERTIFICATE OF**  
31 **GRAHAM CHARLES FENWICK, DATED 19/5/2003, BARCODED**  
32 **EXH.087.0001**

33  
34 MR FOSTER: I tender historical company extract of John  
35 Curtin House Limited, which I have mentioned on a few  
36 occasions and I did wish to tender. It is as at July this  
37 year.

38  
39 THE COMMISSIONER: Have you seen this?

40  
41 MR SACKAR: I'm certain I have.

42  
43 **EXHIBIT #88 ASIC HISTORICAL COMPANY EXTRACT FOR JOHN**  
44 **CURTIN HOUSE LIMITED, CAN008515222, BARCODED COMM.002.000**

45  
46 MR FOSTER: I call Mr Ireland.

47

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

<ROBERT WILLIAM IRELAND, affirmed: [3.07pm]

<EXAMINATION BY MR FOSTER:

MR FOSTER: Q. Is your full name Robert William Ireland?

A. Yes, it is.

Q. Do you presently live at 3 McClaughry Place, Gowrie, in the Australian Capital Territory?

A. That's correct.

Q. You are currently a senior asset manager with UPS?

A. That's right.

Q. Mr Ireland, at various stages you have worked in the APG and its predecessors?

A. That's correct, yes.

Q. Have you signed a statement for this inquiry dated 13 August 2004?

A. Yes.

Q. Could I show you that statement. Is that the statement you signed?

A. Yes.

Q. Are the matters stated in that document true?

A. Yes.

MR FOSTER: I tender that statement.

THE COMMISSIONER: Together with any documents?

MR FOSTER: Yes, together with all documents referred to in the statement.

**EXHIBIT #89 STATEMENT OF ROBERT IRELAND DATED 13/8/2004, BARCODED WITS.089.0001 AND DOCUMENTS REFERRED TO IN STATEMENT**

MR FOSTER: Q. Do you have a copy of that statement?

A. No, I don't.

1  
2 Q. I will have one shown to you. I will also hand up a  
3 folder to you that has within it the documents referred to  
4 in the statement. I will be taking you to other  
5 documents.  
6 A. Okay.  
7  
8 Q. You were in team 1 at the end of 1990, were you?  
9 A. That's correct. Yes.  
10  
11 Q. And what was your function at that time?  
12 A. I was a property manager responsible for looking  
13 after a number of policy departments within the  
14 Commonwealth, examples are the Treasury, Department of  
15 Finance and a few others.  
16  
17 Q. When you say that, you mean you were responsible for  
18 looking after their accommodation needs as required?  
19 A. That's right, yes.  
20  
21 Q. Were you of equal rank to Dominic Collins within  
22 team 1?  
23 A. No, Dominic Collins was the team leader, for want of  
24 a better term. I was probably two levels below him.  
25  
26 Q. How many people were there in team 1 at that time?  
27 A. There would have been about 12.  
28  
29 Q. Were the others, apart from Mr Collins, performing  
30 functions similar to yours?  
31 A. Yes, they were.  
32  
33 Q. And was the position really a question of sharing the  
34 work around amongst the team members, as it arose?  
35 A. We were primarily responsible for the agencies that  
36 we had been assigned. If there was ever just an  
37 incredible amount of workload for any one person, in  
38 certain circumstances, yes, that would get transferred  
39 around.  
40  
41 Q. And within team 1 were particular agencies assigned  
42 to particular team members?  
43 A. That's right, yes.  
44  
45 Q. And to whom was the ANAO assigned as at late 1990?  
46 A. From recollection, I think it was to a chap by the  
47 name of Paul Taylor.

1  
2 Q. Was he actually in the office working in late 1990?  
3 A. Yes.  
4  
5 Q. Did he, to your knowledge, have much to do with this  
6 transaction with which we are presently concerned, in late  
7 1990, or indeed in 1991?  
8 A. I don't think he did, no.  
9  
10 Q. Was there a reason for that?  
11 A. None that I'm aware of.  
12  
13 Q. You say in paragraph 7 of your statement used for  
14 this inquiry that the APG received 14 expressions of  
15 interest to the advertisements that had been placed at the  
16 end of October; do you see that?  
17 A. Yes.  
18  
19 Q. Had you been responsible for generating those  
20 advertisements - that is, the ones calling for the  
21 expressions of interest?  
22 A. Yes, I was.  
23  
24 Q. And had Mr Collins asked you to do that?  
25 A. Yes.  
26  
27 Q. Had there been a team discussion involving you and  
28 him and others before those advertisements were placed, in  
29 which the Commonwealth agencies in respect of whom  
30 accommodation was being sought by reason of those  
31 advertisements were identified?  
32 A. I don't recall the team meeting.  
33  
34 Q. Were you made aware of the likely candidates for  
35 accommodation should appropriate answers come forward to  
36 the advertisements placed at the end of October?  
37 A. The initial focus from my perspective was to find  
38 accommodation for the Industry Commission.  
39  
40 Q. Was that one of your, if I can call them, clients?  
41 A. Indirectly, yes.  
42  
43 Q. What do you mean, "indirectly"?  
44 A. Sorry, they fell in underneath the portfolio of  
45 Finance, so, yes, it was one of mine.  
46  
47 Q. You say in paragraph 6 of your statement that at the

1 time those expressions of interest were called for you did  
2 not know of ANAO's interest in renting in Barton; do you  
3 see that?  
4 A. Yes.  
5  
6 Q. When did you find out about ANAO's interest in  
7 renting in Barton?  
8 A. It would have been after the responses came back  
9 from - sorry, in response to the advertisement.  
10  
11 Q. How did you find out?  
12 A. Mr Collins advised me that the ANAO was looking for  
13 accommodation.  
14  
15 Q. Were you involved in preparing a report that was  
16 given to them towards the end of November 1990?  
17 A. I can't recall.  
18  
19 Q. Were you aware at the time that Mr Collins was having  
20 direct contact with representatives of the ANAO in  
21 November about the prospect of taking up space in Barton?  
22 A. I can't give an answer to the question, simply  
23 because of the timing - I just have no recollection of  
24 what was happening in November 1990.  
25  
26 Q. Well --  
27 A. But Mr Collins was certainly in contact with the ANAO  
28 as team leader.  
29  
30 Q. At some stage?  
31 A. At various stages throughout the process.  
32  
33 Q. You say in paragraph 8 that you knew Mrs Morris?  
34 A. That's correct.  
35  
36 Q. Were you aware that she had been in charge of the  
37 property directorate?  
38 A. Yes, when I first started with the Commonwealth  
39 proper, Mrs Morris was director of the property  
40 directorate, and that was in about 1983.  
41  
42 Q. Did you have dealings with her on any regular basis  
43 during the time that she was occupying that position?  
44 A. No.  
45  
46 Q. Did you see her from time to time?  
47 A. Yes

1  
2 Q. Did you know, at the time you placed the expressions  
3 of interest ad for the Barton/Parkes/Forrest area, that  
4 Mrs Morris had already approached Mr Divett concerning the  
5 prospect of constructing a building on Section 22 Barton,  
6 in which a Commonwealth tenant would take up space?  
7 A. No.  
8  
9 Q. No-one had told you that?  
10 A. No.  
11  
12 Q. You say in paragraph 11 of your statement that the  
13 first you knew of the Lend Lease proposal to construct the  
14 building which subsequently became Centenary House was  
15 when Lend Lease's response for the calls for expressions  
16 of interest were sent to you; do you see that?  
17 A. Yes.  
18  
19 Q. When you say "sent" to you, did it come via  
20 Mr Collins?  
21 A. I don't know. I don't know.  
22  
23 Q. Were you the person charged with the responsibility  
24 of collating the responses to the expressions of interest  
25 and putting them in a form that could be presented for  
26 discussion within team 1?  
27 A. Yes.  
28  
29 Q. Did you in fact do that?  
30 A. Yes.  
31  
32 Q. Was it, as it were, known within your group that the  
33 responses to the expressions of interest should be given  
34 to you?  
35 A. Yes.  
36  
37 Q. Did you know, at the time those responses were coming  
38 in, that Mr Collins had spoken with Mrs Morris about the  
39 way in which she should respond to the advertisement?  
40 A. No.  
41  
42 Q. Did you know at that time that he was speaking with  
43 her at all?  
44 A. I - I don't - no, I don't think - I don't think I did  
45 know that he was speaking to her.  
46  
47 Q. At that time were you operating in any capacity as

1 his assistant in relation to this particular matter - that  
2 is, the dealing with the advertisements and the responses  
3 to the advertisements by way of expressions of interest?  
4 A. That was certainly my role, yes.  
5  
6 Q. Is it fair to say that in connection with that matter  
7 you were, in effect, acting under his direction?  
8 A. Yes.  
9  
10 Q. I don't want to take you right through these  
11 responses. You recall there were several?  
12 A. Yes.  
13  
14 Q. Could there be brought up on to the screen the  
15 document FREE.001.0154? And then there are subsequent  
16 pages, Mr Ireland. Would you be good enough, when you  
17 have had the chance to read the first page, to indicate to  
18 the operator on your left and she will move the pages  
19 through the document. There are two following pages,  
20 pages 155 and 156. Have you had a chance to look at that?  
21 A. Yes.  
22  
23 Q. Was that document given to you in around about the  
24 middle of November 1990?  
25 A. It could have been, yes.  
26  
27 Q. Perhaps I can have brought up on the screen the prior  
28 page, FREE.001.0153. That's a fax cover sheet which  
29 suggests that it was sent to you by Mrs Morris on  
30 15 November. Would you accept that that's what happened?  
31 A. Yes.  
32  
33 Q. Had you had any involvement with her at all on this  
34 matter prior to receiving this fax?  
35 A. No.  
36  
37 Q. Did you treat this communication as what one might  
38 call the run-of-the-mill response to the expressions of  
39 interest advertisements?  
40 A. Yes.  
41  
42 Q. Had Mr Collins told you that Lend Lease were in any  
43 special position at this time in relation to those  
44 expressions of interest?  
45 A. No.  
46  
47 Q. Had he indicated to you, prior to receipt of this

1 fax, that he had in mind perhaps looking at this site at  
2 Section 22 for the Industry Commission?  
3 A. Before receiving the fax?  
4  
5 Q. Yes.  
6 A. No.  
7  
8 Q. Did you say "no"?  
9 A. I said, "No", sorry.  
10  
11 Q. You can't just nod, you have to say something. When  
12 the fax came in, did he then tell you that he had in mind  
13 reserving this site for the industry commission?  
14 A. Yes.  
15  
16 Q. And was this the fact - that the position changed  
17 quite quickly after 15 November on that point?  
18 A. The fact that - who the potential tenant was going to  
19 be?  
20  
21 Q. Yes.  
22 A. As I recall, there was at least two meetings with the  
23 Industry Commission that followed - explained the  
24 proposal. It was following on from these meetings that  
25 Mr Collins made the decision that perhaps the Industry  
26 Commission weren't the better tenant and perhaps it should  
27 be offered to the Audit Office.  
28  
29 Q. And did he explain to you what his reasoning was or  
30 what reasons he had in mind when he did come to that  
31 position?  
32 A. Again, from memory, it was to do with the fact that  
33 the Industry Commission weren't able to make a hard and  
34 fast decision to go ahead with the proposal.  
35  
36 Q. Did he give you to understand that he was looking for  
37 a tenant that would commit to going ahead with Section 22?  
38 A. Not - he indicated that because of the size of the  
39 Section 22 building, that it lent itself to an  
40 organisation such as the Industry Commission or, in later  
41 circumstances, the Audit Office, and that, for that  
42 reason, it should be pursued.  
43  
44 Q. Can you just have a look at document CH94.003.0161.  
45 I would ask you to have a look at the pages which go  
46 through to 0175. Have you had a chance to look at that?  
47 A. Yes.

1  
2 Q. Did you prepare that document for Mr Collins?  
3 A. No.  
4  
5 Q. Did you have any input into any part of it in terms  
6 of did you provide the information in that form or some  
7 other form which you recognise as being information  
8 provided by you?  
9 A. The only one I clearly recognise as information  
10 provided by me was the map with the locations on it.  
11  
12 Q. And, in particular, it was not you, was it, who  
13 prepared the table which showed who had responded and  
14 provided details of what their proposals were?  
15 A. It is likely that was me, yes.  
16  
17 Q. That as well? I will just have it brought up so that  
18 we are not at any cross-purposes. It is CH94.003.0166.  
19 Did you prepare that table?  
20 A. Possibly.  
21  
22 Q. Well, you were the person who was actually collating  
23 and gathering this material, weren't you?  
24 A. Yes.  
25  
26 Q. Mr Collins wasn't the sort of person who prepared  
27 tables like this, was he?  
28 A. On the balance of probabilities I probably did that,  
29 yes.  
30  
31 Q. And Mr Collins wasn't the sort of person who would  
32 prepare a table like this, was he?  
33 A. No.  
34  
35 Q. Do you notice that the Lend Lease/ALP/Section 22  
36 proposal is not on the table; do you see that?  
37 A. Yes.  
38  
39 Q. When you prepared the table, was it in fact on the  
40 table?  
41 A. I think so.  
42  
43 Q. There are other tables, you can take it from me, or  
44 other versions of this where it appears as item 14. So,  
45 what I am asking you is when you prepared the table did  
46 you make reference as item 14 to that particular proposal?  
47 A. I think so, yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Were you responsible for cutting it off the table that's in this document?

A. I don't know.

Q. Well, did you receive any instructions from Mr Collins not to include it in the table that was to go in the document that he proposed to give to the Audit Office at this time?

A. I don't think so.

Q. Were you aware, when he first made a written report to the Audit Office, that he was not proposing to inform them of the Lend Lease Section 22 proposal?

A. No, I wasn't aware.

Q. Did he tell you that he was keeping that for the Industry Commission at that point?

A. That was certainly the intention at the time, yes.

Q. But is this your evidence: at that time he didn't go on and tell you, "And I won't tell the Audit Office about it"?

A. Yes.

Q. I just want to get clear: before the Section 22 Lend Lease proposal was raised with the Audit Office, were you instructed that it was not to be revealed to the Audit Office because it was reserved for the Industry Commission, or did Mr Collins say something to that effect to you? Or were you unaware of that?

A. I think I was unaware of that.

Q. Could I just have brought up on the screen your third statement that was given to Mr Morling, which is dated 22 July 1994, the first page of which is barcoded CH94.005.0196. I think regrettably it doesn't appear to be in hard form in that bundle I gave you. Nonetheless, have you had a chance to look at this in recent times?

A. No.

Q. It is a few pages, so would you just have a quick look at it? I want to ask you about paragraph 6. Read as far as you need to satisfy yourself that you can answer a question about paragraph 6. Do you see in paragraph 6 of that statement you have said in the second sentence:

1           *Although Mr Collins had prime*  
2           *responsibility for negotiations concerning*  
3           *the lease of the new ALP building at that*  
4           *time --*

5  
6           And then you have something in brackets:

7  
8           *... I recollect that initial advice to ANAO*  
9           *that the ALP building was available was*  
10          *conveyed verbally by Mr Collins during a*  
11          *tour of inspection of Barton accommodation*  
12          *alternatives and that at this time he also*  
13          *gave to ANAO a revised list of*  
14          *accommodation options which now included*  
15          *the ALP/Lend Lease Ltd proposal.*

16  
17          Do you see that?

18          A.    Yes.

19  
20          Q.    Sitting in the witness box now, do you recollect that  
21          occasion when inspections took place?

22          A.    No.

23  
24          Q.    Do you recollect anything about it at all?

25          A.    I wasn't involved with the tour of inspection with  
26          the ANAO.

27  
28          Q.    I see. So, what is written in paragraph 6 is based  
29          upon what Mr Collins told you, is it?

30          A.    Correct, yes.

31  
32          Q.    And so you were weren't personally involved in the  
33          inspection?

34          A.    No.

35  
36          Q.    You weren't personally involved in what occurred at  
37          the inspection?

38          A.    No.

39  
40          Q.    You were not aware, in the sense that you were not  
41          present at any occasion where the existence of this  
42          Section 22 proposal was first revealed to the Audit  
43          Office?

44          A.    No.

45  
46          Q.    This is all coming back via Mr Collins; is that  
47          right?

1 A. Yes.  
2  
3 Q. May we take it that up to that point in time you had  
4 had no face-to-face contact with any Audit Office  
5 personnel in respect of this matter?  
6 A. I don't recall any contact with Audit prior to that  
7 point.  
8  
9 Q. And had you not had any face-to-face contact with  
10 Mrs Morris in respect of the matter?  
11 A. It depends when we had the meetings on the - went  
12 through the accommodation standards book, but --  
13  
14 Q. I think that was in January?  
15 A. In - well, in that case --  
16  
17 Q. Or even later. I realise the timing is difficult at  
18 this stage.  
19 A. Yes.  
20  
21 Q. But, if you would accept from me for the moment that  
22 it would appear that the existence of the Section 22 Lend  
23 Lease proposal was revealed to the Audit Office at the end  
24 of November 1990 --  
25 A. Mmm-hmm.  
26  
27 Q. -- what I am asking you is this: had you, by that  
28 stage, had any face-to-face contact with Mrs Morris in  
29 respect of this matter?  
30 A. I certainly don't think so.  
31  
32 Q. You say in paragraph 6 that I just took you to that:  
33  
34 *Mr Collins had prime responsibility for the*  
35 *negotiations...*  
36  
37 Are you able to assist us as to why that was in  
38 contradistinction, for example, of Mr Taylor dealing with  
39 the matter?  
40 A. I think Mr Collins just took pride in the fact that  
41 he wanted to be the primary contact person for these  
42 responses, with some of the hierarchy of the Audit Office  
43 and any of the other agencies that were looking for  
44 accommodation at the time.  
45  
46 Q. You used the expression "took pride in the fact".  
47 What are you driving at by using that expression?

1 A. It was - I guess Mr Collins' personality that he  
2 wanted to be the focal point for major developments such  
3 as these.  
4  
5 Q. Wanted to be the front man on behalf of the APG?  
6 A. Yes.  
7  
8 Q. Wanted to be rubbing shoulders with important people?  
9 A. Not necessarily so. I think it is just trying to  
10 take as much confusion out of the process as possible by  
11 just having a single point of contact each time.  
12  
13 Q. I see. Did he tell you early in the piece - and I'm  
14 talking about by late November 1990 - that the owner of  
15 the development that was in mind was a company associated  
16 with the Australian Labor Party?  
17 A. Again, the timing is difficult, but I think he may  
18 have, yes.  
19  
20 Q. You certainly did come to learn that by early 1991,  
21 did you not?  
22 A. Correct, yes.  
23  
24 Q. Did you think that that was a matter of sensitivity,  
25 when you came to learn that?  
26 A. I think the fact that we had responses from both the  
27 ALP and - well, indirectly the ALP and the Liberal Party  
28 took that sensitivity out of it, I suppose, and the  
29 Commonwealth had done deals previously with - in John  
30 McEwan House, with the National Party previously as well.  
31  
32 Q. I wanted to ask you about that. Could I just break  
33 off and do that?  
34 A. Yes.  
35  
36 Q. Had you personally been involved in any transactions  
37 where the Commonwealth took up accommodation in John  
38 McEwan House?  
39 A. Subsequent to all this, yes.  
40  
41 Q. But prior to this?  
42 A. But prior to this, no.  
43  
44 Q. Subsequent to this, have you?  
45 A. Yes.  
46  
47 Q. Could you just tell us briefly which agency took up

1 accommodation and in what year?  
2 A. It was when I was working with the Department of  
3 Communications, IT and the Arts and our department took up  
4 a small area in it in 1998.  
5  
6 Q. Had you actually, in your capacity as what I might  
7 call a tenant's rep working at the APG, been involved in  
8 any agency taking up accommodation in John McEwan House?  
9 A. No.  
10  
11 Q. Had you heard, as it were, on the grapevine, prior to  
12 the end of 1990, that some Commonwealth agencies had taken  
13 up space in John McEwan House?  
14 A. Yes, I think so, yes.  
15  
16 Q. Is it also fair to express your understanding of the  
17 circumstances involving Menzies House, that that was  
18 exclusively occupied by the Liberal Party itself?  
19 A. Yes.  
20  
21 Q. Is it also fair to express your understanding in  
22 relation to any property that the Democrats might have  
23 owned or had a chance of owning, that they never actually  
24 rented anything out to the Commonwealth?  
25 A. That was my understanding, yes.  
26  
27 Q. I think in one of your statements in '94 you  
28 suggested the Democrats might have rented out property to  
29 the Commonwealth, but that's not your understanding, is  
30 it?  
31 A. I have - I can think of no examples where they have  
32 done it.  
33  
34 THE COMMISSIONER: Mr Sackar, you were going to produce,  
35 as I understand it, at some stage, those Commonwealth  
36 tenants who have been in John Curtin House; is that on the  
37 way?  
38  
39 MR SACKAR: Yes, I gather so. My understanding is we  
40 are, and we I think we had one or more leases in relation  
41 to John McEwan House - Department of Foreign Affairs, I  
42 think, were also in there as well.  
43  
44 THE COMMISSIONER: Your instructing solicitor offered us  
45 that assistance at some early stage of the proceedings. I  
46 hope it is still in mind.  
47

1 MR SACKAR: It is. Absent the power of compulsion, there  
2 is a limit to how far we can go, though.  
3  
4 THE COMMISSIONER: I agree.  
5  
6 MR SACKAR: Yes, we are attending to it and I would hope  
7 in the near future we will make inquiries. If I can tell  
8 you tomorrow, I shall.  
9  
10 THE COMMISSIONER: Thank you.  
11  
12 MR FOSTER: Q. It is fair to say up until 1992 or 1993  
13 the only examples that can be thought of as political  
14 parties renting space to the Commonwealth would be, first  
15 of all, John McEwan House, perhaps, although you don't  
16 have personal knowledge of it, and John Curtin House?  
17 A. That's correct, yes.  
18  
19 Q. Going back to the point that led me on to that, when  
20 you learned that the Labor Party was likely to be the  
21 landlord, did you have any concern about that fact at all?  
22 A. I don't believe so, no.  
23  
24 Q. Did it influence anything you did subsequently?  
25 A. No.  
26  
27 Q. Are you sure?  
28 A. Yes.  
29  
30 Q. Did you think that others may take the view that the  
31 fact that the company that was to be the landlord was  
32 associated with the ALP was a matter of sensitivity?  
33 A. No more so than any other commercial arrangement that  
34 we were doing at the time.  
35  
36 Q. Did Mr Collins give you to understand that he was of  
37 the view the matter was sensitive, when he first informed  
38 you about the prospect of this project going ahead?  
39 A. Not politically sensitive, no, just commercially  
40 sensitive, like any other deal.  
41  
42 Q. Well, just to try to clear up what you are saying  
43 there, Mr Collins did not give you to understand that the  
44 fact - the mere fact, if I can call it that - that the  
45 landlord was a political party, being the ALP, was a  
46 matter of sensitivity as far as he was concerned?  
47 A. No, I don't recall any discussion like that.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. After you had collated the responses to the advertisements, you issued a number of letters to the respondents, inviting them, in effect, to fill out the Commonwealth's questionnaire?

A. That's right, yes.

Q. And the questionnaire was directed to obtaining information from the respondents that would satisfy you that they could build a building that would meet Commonwealth standards; is that a fair way of putting it?

A. That's a very fair way of putting it.

Q. And you sent out - and I will take you to them if you wish - a whole series of letters to each of the persons who had expressed an interest in the advertisements that had been placed, didn't you?

A. That's right, yes.

Q. And it looks from the documents we have that they were sent out on or about 11 January 1991; does that accord with your recollection or would you like to see one by way of example?

A. Oh, no, I'm sure you are correct in that.

Q. What you were suggesting in that correspondence was that they should complete the questionnaire and return it to you by close of business on 1 February 1991?

A. Yes.

Q. Now, between the time when you put together the table and collated the information and the time when you sent out those letters, did you have any involvement with this project, either by talking to Mr Collins about it or anyone else about it?

A. We may have had ad hoc discussions about any one of the proposals. I don't recall any specific instance where we did sit down and talk about, you know, individual items.

Q. Did you proceed to send out those questionnaires, as it were, in the ordinary course, or did you receive a specific instruction from Mr Collins to do so?

A. I'm certain Mr Collins asked me to send out the request to each of the developers.

Q. Did you know that before that time - that is, before

1 you sent out those letters - Mrs Morris had sent to Mr Hoy  
2 a proposal which involved an arrangement whereby the  
3 Commonwealth would take on the entirety of the tenancy  
4 risk on this Lend Lease project at Section 22?  
5 A. No.  
6  
7 Q. You know I am talking about what has colloquially  
8 been called the heads of agreement?  
9 A. Yes.  
10  
11 Q. You have had a look at that documentation, have you?  
12 A. I have heard about it subsequently, yes.  
13  
14 Q. But is this the position: before you sent out your  
15 questionnaire letters on or about 11 January, you had not  
16 been made aware of her approach to the APG with that kind  
17 of proposal?  
18 A. No.  
19  
20 Q. And may we take it from that you obviously hadn't  
21 seen any documentation called, "Heads of agreement", or of  
22 that style --  
23 A. No.  
24  
25 Q. -- embodying such a proposal?  
26 A. No, I didn't.  
27  
28 Q. And so when it came to sending out the questionnaire  
29 letters, you sent one to Mrs Morris in the ordinary  
30 course; is that what happened?  
31 A. That's correct, yes.  
32  
33 Q. Could I have on the screen document LEND.007.0130?  
34 Is that the questionnaire-type letter you sent to  
35 Mrs Morris?  
36 A. Yes.  
37  
38 Q. May we take it that by the time that letter was sent  
39 out you were certainly well aware of this proposal - that  
40 is, the Section 22 proposal?  
41 A. Yes.  
42  
43 Q. And were you also well aware of Mr Collins'  
44 preference to allocate it to the Audit Office?  
45 A. I'm not sure when Mr Collins' decision to change it  
46 from the Industry Commission to the Audit Office was made.  
47

1 Q. Well --

2 A. So I can't give you a definite answer on that  
3 question.

4

5 Q. I think your earlier statement, whether it was your  
6 own knowledge or based upon what he told you, in  
7 paragraph 5 at CH94.005.0196 - if that could be brought  
8 up - you say:

9

10 *In late November 1990 the Industry*  
11 *Commission dropped out of contention for*  
12 *any imminent move to the Barton area...*

13

14 A. Yes.

15

16 Q. Then in paragraph 6, the first sentence says:

17

18 *Once the Industry Commission's interest in*  
19 *the Barton relocation had been judged by*  
20 *APG to have lapsed, the ALP project was*  
21 *then offered to ANAO.*

22

23 A. Yes.

24

25 Q. So may we take it that whether you knew it  
26 personally, your belief at the time you signed this  
27 document was that that had happened by the end of  
28 November?

29 A. Yes; that's correct.

30

31 Q. And if that is right, then by the time you sent out  
32 your questionnaire letters you knew of those matters?

33 A. Yes.

34

35 Q. By the way, this statement in '94 that I have taken  
36 you to a couple of times, how did that come to be prepared  
37 and who was involved in its preparation?

38 A. I think that was done with Arthur Gallery and whoever  
39 was assisting him at the time.

40

41 Q. Who is he, or who was he at the time?

42 A. Was he, yes. He was one of the people assisting the  
43 previous inquiry from the Department of Admin Services  
44 side of things.

45

46 Q. Well, he was employed in the Department of  
47 Administrative Services?

1 A. Yes.  
2  
3 Q. He was not a lawyer?  
4 A. I don't think so.  
5  
6 Q. But he was assisting you to put together this  
7 statement that I have --  
8 A. I think so, yeah. I have a very vague recollection,  
9 I'm sorry.  
10  
11 Q. That's all right. At the time you were content for  
12 that to occur - that is, to receive assistance in that  
13 way?  
14 A. Yes.  
15  
16 Q. Are you aware that at the time that the APG was, I  
17 think, still within the DAS, was it not?  
18 A. Yes. Yes.  
19  
20 Q. Were you still employed in '94, in the APG? I don't  
21 think you were, were you?  
22 A. No, I wasn't.  
23  
24 Q. Did you, yourself, actually speak to representatives  
25 of the Industry Commission about the Section 22 proposal?  
26 A. As I said before, I attended at - I'm pretty sure it  
27 was two meetings with Mr Collins, and there was some  
28 higher level people from the Industry Commission at those  
29 meetings.  
30  
31 Q. Can you recall what they were told about the Section  
32 22 proposal, in your presence?  
33 A. I don't have a very good recollection of the meetings  
34 at all, just that they occurred.  
35  
36 Q. And that you were present?  
37 A. Yes.  
38  
39 Q. But Mr Collins was also there; is that right?  
40 A. Yes.  
41  
42 Q. And is it fair to say that in that circumstance he,  
43 in effect, did most of the talking --  
44 A. Yes.  
45  
46 Q. -- on behalf of the APG?  
47 A. Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

Q. Do you see in paragraph 16 of your current statement, that's the 2004 statement, you say that after you received responses to your 11 January 1991 letter you held meetings with the proponents on 2 April and 3 April 1991. You said:

*In those meetings I canvassed the responses to the questionnaires and raised any areas of concern or uncertainty arising out of the questionnaires.*

Do you see that?

A. Yes.

Q. Do you have any recollection of yourself attending any meetings with Mr Collins and Mrs Morris in the period between 11 January 1991 and 2 and 3 April 1991?

A. My only recollection of having meetings with Mrs Morris was on either 2 or 3 April.

Q. Right. At the time - that is, between 11 January and 2 and 3 April - would you have been surprised to hear that Mr Collins had had at least one meeting with her in which terms of a proposed lease were discussed for the Section 22 proposal?

A. No, I wouldn't have been surprised at all.

Q. Would it not be rather inconsistent with the solemn process you were undertaking of fixing meetings to discuss proposals with the developers?

A. Possibly, yes, I would say so, yes.

Q. But, nonetheless, something that wouldn't have surprised you at the time; is that right?

A. No.

Q. And is that because Mr Collins may well have been progressing one or more of these proposals without reference to you?

A. Yes, correct.

Q. And, if he was doing that, that wouldn't have surprised you either?

A. No, not at all.

Q. Was he a bit of a lone operator at times?

1 A. You could describe him that way.  
2  
3 Q. I hesitate to use the word "maverick", but was he  
4 someone who regarded himself as more than capable of  
5 taking steps in matters without reference to other people  
6 within the APG?  
7 A. That's a reasonable assessment, yes.  
8  
9 Q. Did you know, for example, that there had been a  
10 meeting on 19 March 1991 with Mrs Morris, Mr Collins and  
11 other Lend Lease people?  
12 A. I wasn't aware of it, no.  
13  
14 Q. You didn't attend that meeting?  
15 A. No.  
16  
17 Q. Did Mr Collins report to you, in the second half of  
18 March and before you had these meetings in early April, of  
19 any discussions he had held with Mrs Morris in about the  
20 middle of March concerning prospective terms of a lease  
21 for the Section 22 proposal?  
22 A. He may have, but I have got no recollection of him  
23 telling me those things.  
24  
25 Q. Could I just take you to your document styled  
26 "Meeting Register for Developers". It is CH94.001.0315.  
27 Did you compile that some time towards the end of March of  
28 1991?  
29 A. Yes.  
30  
31 Q. Did you then write to each of the developers involved  
32 in order to organise for them to attend at the times  
33 indicated on this document?  
34 A. Yes.  
35  
36 Q. Was there any reason why Mrs Morris was put in at 4pm  
37 on the second day - in other words, the last cab off the  
38 rank?  
39 A. No reason.  
40  
41 Q. Were you told to do that?  
42 A. No.  
43  
44 Q. It is just the way it turned out?  
45 A. Exactly.  
46  
47 MR FOSTER: Is that a convenient time, Commissioner? I

1 think we would prefer to proceed with Mr Ireland first  
2 thing in the morning and then Mr Jeffress when we conclude  
3 Mr Ireland, if that is not inconvenient to others.  
4  
5 THE COMMISSIONER: Are we likely to finish with  
6 Mr Jeffress tomorrow? I feel guilty that we have had him  
7 in for so long.  
8  
9 MR FOSTER: We will finish them both tomorrow.  
10  
11 THE COMMISSIONER: I notice that Mr Sackar is nodding, so  
12 that's good.  
13  
14 MR SACKAR: He is out of my hands just for the moment -  
15 that is, Mr Jeffress.  
16  
17 MR BEECH-JONES: Could I just indicate, Commissioner, I  
18 won't be here immediately. I have something else. I will  
19 endeavour to be here as soon as possible. I am assuming  
20 Mr Foster will go to around lunchtime with Mr Ireland.  
21  
22 MR FOSTER: That's what I expect, but not much longer  
23 than that. I have a few questions for Mr Jeffress and I  
24 thought that may take a little while, but not too long.  
25  
26 MR BEECH-JONES: Mr Foster is in reply with Mr Jeffress,  
27 so I'm not sure --  
28  
29 MR FOSTER: There is no such thing, really; I am having  
30 another go.  
31  
32 THE COMMISSIONER: That may lead to reopening. At any  
33 rate, we will see what happens in the morning.  
34  
35 MR FOSTER: In seriousness, Commissioner, I think that  
36 can be done.  
37  
38 THE COMMISSIONER: Very well, 10 o'clock tomorrow  
39 morning.  
40  
41 **AT 4PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY,**  
42 **15 SEPTEMBER 2004 AT 10AM**  
43  
44  
45  
46  
47