

Report into Termination Payments for CEOs and ECOs

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**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

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**PUBLIC ACCOUNTS COMMITTEE**

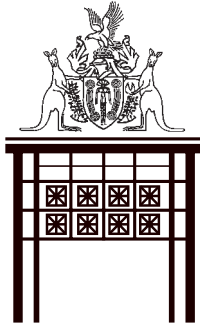
**REPORT**

**TERMINATION PAYMENTS  
FOR  
CEOs AND ECOs**

**REPORT NUMBER 42**

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**FEBRUARY 2004**



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

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**PUBLIC ACCOUNTS COMMITTEE**

**REPORT ON  
TERMINATION PAYMENTS  
FOR CEOs AND ECOs**

**REPORT NUMBER 42**

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**FEBRUARY 2004**



**Department of the Legislative Assembly**

**Public Accounts Committee**

GPO Box 3721  
Darwin NT 0801  
Level 3, Parliament House  
State Square  
Darwin NT 0800

Telephone: (08) 8946 1438  
Facsimile: (08) 8981 6158  
Email: [pac.la@nt.gov.au](mailto:pac.la@nt.gov.au)

**Secretariat**

Mr Terry Hanley  
Secretary

Mrs Mary Elliott  
Administrative Assistant

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## PROFILE OF COMMITTEE MEMBERS

The Members of the Public Accounts Committee at the time of tabling the report were:

**Mr Matthew Bonson, MLA**

Appointed 27 June 2003

Australian Labor Party

Member for Millner. First elected 18 August 2001

Deputy Chairman of Committees

*Other Committees:* Standing Orders; Legal and Constitutional Affairs; Environment and Sustainable Development

**Mr Stephen Dunham, MLA**

Appointed 18 October 2001

Country Liberal Party

Member for Drysdale. First elected 30 August 1997

Shadow Minister for: Business, Industry and Resource Development; Defence Support; Essential Services

*Other Committees:* Environment and Sustainable Development

**Mr Len Kiely, MLA - Chair**

Appointed 16 October 2001

Australian Labor Party

Member for Sanderson. First elected 18 August 2001

Deputy Chairman of Committees

*Other Committees:* Subordinate Legislation and Publications; Legal and Constitutional Affairs; Substance Abuse

**Ms Delia Lawrie, MLA**

Appointed 26 November 2002

Australian Labor Party

Member for Karama. First elected 18 August 2001

Deputy Chairman of Committees, Government Whip

*Other Committees:* House; Subordinate Legislation and Publications (Chair); Environment and Sustainable Development (Chair)

**Dr Richard Lim, MLA**

Appointed 18 October 2001

Country Liberal Party

Member for Greatorex. First elected 4 June 1994

Deputy Leader of the Opposition

Chairman of the Opposition Policy Development Committee

Shadow Minister for: Transport and Infrastructure: Education, Employment and Training: Ethnic Affairs: Central Australia

*Other Committees:* Standing Orders

**Mr Gerry Wood, MLA**

Appointed 16 October 2001

Independent

Member for Nelson. First elected 18 August 2001

Chairman of Committees

*Other Committees:* Substance Abuse; Environment and Sustainable Development

## CHAIRMAN'S FOREWORD



I am pleased to present this report of the Public Accounts Committee.

From 2000 to 2002 the issue of termination payments to CEOs and ECOs featured in the Auditor General's reports.

At the public hearing by the Committee to inquire into this matter, information was provided which indicated that procedural matters addressing the preparation and retention of appropriate documentation has been systematically introduced since the appointment of Mr John Kirwan as Commissioner of Public Employment (OCPE).

It is pleasing to note that with the support of key personnel from the Agency, an accountable paper trail has now been established which should hold the Agency in good stead on the event of future scrutiny of this matter.

On behalf of the Committee I would like to place on record its appreciation to Mr John Kirwan and staff of OCPE, for the provision of extensive briefing papers, which greatly assisted Committee Members throughout the Public Hearing.

The Committee also takes this opportunity to acknowledge the work carried out by the Auditor General in addressing this issue.

I thank the Committee members for the bipartisan approach as they went about their business of addressing the Terms of Reference for this Inquiry.

I commend this Report to the Parliament and the Public of the Northern Territory.

**Len Kiely MLA**  
**Chairman**

## Northern Territory Public Accounts Committee

### Charter

#### Establishment of the Committee

The Northern Territory Public Accounts Committee was first established by temporary Standing Order 21A of the Legislative Assembly on 18 June 1986.

The Committee's status was altered, by way of motion of the Chief Minister on 23 August 1988, from a Sessional Committee to a Standing Committee of the Parliament on a trial basis.

As a Committee of the Assembly, its authority is derived from the *Northern Territory (Self Government) Act* (of the Commonwealth), the *Legislative Assembly (Powers and Privileges) Act* (of the Northern Territory) and Standing Orders.

On 16 October 2001, Standing Orders were amended to allow for the Committee to be comprised of six (6) members, consisting of three (3) Government, two (2) Opposition and one (1) Independent member.

#### Duties of the Committee

...(2) The duties of the Committee under Standing Order 21A are:

- (a) to examine the accounts of the receipts and expenditure of the Northern Territory and each statement and report tabled in the Legislative Assembly, pursuant to the *Financial Management Act* and the *Audit Act*;
  - (b) to report to the Legislative Assembly with such comments as it thinks fit, any items or matters in or arising in connection with those accounts, statements or reports, or in connection with the receipt or disbursement of the moneys to which they relate, to which the Committee is of the opinion that the attention of Parliament should be drawn;
  - (c) to report to the Legislative Assembly any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them or in the method of receipt, control, issue or payment of public moneys;
  - (d) to inquire into and report to the Legislative Assembly on any question in connection with the public accounts of the Northern Territory —
    - (i) which is referred to it by a resolution of the Assembly; or
    - (ii) which is referred to it by the Administrator or a Minister; and
  - (e) to examine the reports of the Auditor-General tabled in the Legislative Assembly with the accounts of an Agency of the Northern Territory, including any documents annexed or appended to those reports, pursuant to the *Audit Act*.
- (3) The Committee shall examine only those accounts of receipts and expenditure of the Northern Territory and reports of the Auditor-General for financial years commencing after 30 June 1986 provided that this shall not prevent the consideration by the Committee of matters included in reports of the Auditor-General for the year ending

30 June 1986 which have or may have a continuing effect on the form of the public accounts, the method of receipt, control issue or payment of public moneys.

- (4) Prior to determining whether to undertake an inquiry into any matter which may have arisen in connection with the public accounts of the Northern Territory, pursuant to paragraphs (2)(a) and (e), with the concurrence of the Committee, the Chairman is empowered to write to the Chief Executive Officer of the relevant agency for a report on the matter.
- (5) The Committee shall take care not to inquire into any matters which are being examined by a Select Committee of the Assembly especially appointed to inquire into such matters and any question arising in connection therewith may be referred to the Assembly for determination.
- (6) The Committee shall elect a Government Member as Chairman.
- (7) The Chairman of the Committee may, from time to time, appoint a member of the Committee to be the Deputy Chairman of the Committee and the Member so appointed shall act as Chairman of the Committee at any time when there is no Chairman or when the Chairman is not present at a meeting of the Committee.
- (8) In the event of an equality of voting, the Chairman, or the Deputy Chairman when acting as Chairman, shall have a casting vote.
- (9) The Committee shall have power to appoint Sub-Committees and to refer to any such Sub-Committee any matter which the Committee is empowered to examine.
- (10) Three Members of the Committee shall constitute a quorum of the Committee and two Members of a Sub-Committee shall constitute a quorum of the Sub-Committee.
- (11) The Committee or any Sub-Committee shall have power to send for persons, papers and records, to adjourn from place to place, to meet and transact business in public or private session and to sit during any adjournment of the Assembly.
- (12) The Committee shall be empowered to print from day to day such papers and evidence as may be ordered by it and, unless otherwise ordered by the Committee, a daily Hansard shall be published of such proceedings of the Committee as take place in public.
- (13) The Committee may proceed to the dispatch of business notwithstanding that all Members have not been appointed and notwithstanding any vacancy.
- (14) The Committee shall report annually and shall have leave to report from time to time and to report its proceedings and evidence taken, and any Member of the Committee shall have power to add a protest or dissent to any Report.
- (15) Unless otherwise ordered by the Committee, all documents received by the Committee during its inquiry shall remain in the custody of the Assembly provided that, on the application of a department or person, any document, if not likely to be further required, may, in the Speaker's discretion be returned to the department or person from whom it was obtained.
- (16) The Committee shall be provided with all necessary staff, facilities and resources and shall be empowered, with the approval of the Speaker, to appoint persons with specialist knowledge for the purposes of the Committee.
- (17) The Committee or a Sub-Committee be empowered to consider the minutes of proceedings, evidence taken and records of similar Committees established in previous Assemblies.

## **INQUIRY INTO TERMINATION PAYMENTS TO CHIEF EXECUTIVE OFFICERS AND EXECUTIVE OFFICERS**

### **TERMS OF REFERENCE**

*as approved by the Committee at its Meeting 21 of 17 October 2002*

#### **Scope of Inquiry**

In relation to the two periods the Public Accounts Committee wishes to examine:

1. The framework covering the process and entitlements for departures from NTPS agencies and how the process has been administered – with particular reference to the process relating to departures initiated by the employer.
2. The total costs brought about by reason of the employer initiating the departures and savings derived from employer initiated departures for each period.
3. Any improvements which are being implemented to the process administered by the Commissioner for Public Employment to address the issues raised by the Auditor-General.

#### **Process of Inquiry**

A public hearing will take place where the Commissioner for Public Employment shall be called to appear and give evidence on the above.

Within the context of 1 – 3 above, it is understood that details associated with individual officers or individual departures will not be provided.

This understanding is based on the Committee's commitment to:

- Respect and adhere to the important and long-standing right of people to privacy and the need to keep the personnel records of Government employee's private and confidential.
- Respect and adhere to Employment Instructions, Employee Records and *NT Public Sector Principles Code of Conduct* which bind all other branches of Government and are designed to protect people's privacy and provide for an efficient and effective public service.

The periods under consideration shall be for the 12 months before and after 28 August 2001 when the new Government took office.

## CONDUCT OF INQUIRY

In his February 2002 report to Parliament, the then Auditor-General, Mr Iain Summers, raised the issue of early termination payments to Chief Executive Officers and Executive Contract Officers.

He stated in his Key Findings:-

- *The 13 November 2001 Agency restructuring removed a number of CEOs from their positions. While the former CEOs were offered continuation of employment at their current contract remuneration terms, those who did wish to cease their employment, received termination payments as if their contracts had been terminated by the Government. There was insufficient documentation prepared to support the decisions to provide those termination payments.<sup>1</sup>*
- *Other payments additional to contract requirements are continuing to occur when employees terminate, also without sufficiently documented reasons.<sup>2</sup>*

In his explanation of conducting the Audit, the Auditor-General said:-

*The objective ... was to examine whether payments to Chief Executive Officers (CEOs) and Executive Contract Officers (ECOs) during the 2000/01 and 2001/02 financial years (up to 31 December 2001), following early termination of their employment, were in accordance with their Contracts of Employment. If not, the audit sought to identify whether variations were assessed as achieving an improved outcome for the public benefit.<sup>3</sup>*

The Auditor-General also made the point that he had conducted a compliance audit two (2) years previously, which had established that:-

*Variations to the standard contract terms for CEOs and ECOs terminating early were observed in each case examined.<sup>4</sup>*

This earlier report also identified a lack of documentation on the files to support variations to contract terms at termination. A suggested remedy to the then Commissioner for Public Employment was to document any discussion involving Executive Contract Officers and to retain the documentation on file for future reference.

The Auditor-General reported that the Commissioner's response to the recommendations contained in the August 2000 report was that:-

*This practice will be observed in the future.<sup>5</sup>*

In the 2002 audit, the Auditor-General examined the personnel files of seven (7) CEOs and seven (7) ECOs with the objective being to:-

- a) consider instances of normal retirement for CEOs and;
- b) consider instances of termination payments to ECOs

In summing up, Mr Summers indicated that:-

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<sup>1</sup> p.36 Auditor-General's Report – February 2002

<sup>2</sup> p.36 Auditor-General's Report – February 2002

<sup>3</sup> p.36 Auditor-General's Report – February 2002

<sup>4</sup> p.32 Auditor-General's Report - August 2000

<sup>5</sup> p.36 Auditor-General's Report – February 2002

*Termination payments and payments additional to contract requirements are being approved and paid without sufficient record of why the payments were made. In particular, there are still no records of whether the variations to the standard termination arrangements were assessed as achieving an improved outcome for the public benefit.*<sup>6</sup>

He gave an example of a termination payment for an ECO that was based on the total employment cost instead of the notional salary as provided by the contract. In this case the notional salary was 65% of the total employment costs. In general terms the audit revealed the ongoing practice of additional payment of benefits in excess of the minimum payment required under executive contracts similar to that reported of August 2000. The additional payments covered study costs, investment and tax advice, payments in lieu of travel and removal expenses.

In a similar vein to the 2000 Report, the audit revealed that there was insufficient documentation on the files to indicate why additional payments had been approved, and this was despite the past assurance by the then Commissioner for Public Employment that steps would be taken to address the Auditor-General's concerns.

The response by the Commissioner, Mr David Hawkes, to the Auditor-General's remarks in his 2002 Report was:-

*It is acknowledged that there is a lack of documentation on the files in regard to the termination payments cited, and this matter will be addressed in the future. However, the lack of documentation does not alter the fact that consideration of the public benefit and government priorities are always an essential factor in such decisions, and in the cases examined, the net outcome was a considerable saving to Government.*<sup>7</sup>

During the Estimates Committee Public Hearings on Thursday 18 September 2002, the Opposition Leader Mr Denis Burke MLA posed the following question to the Leader of Government Business Hon Syd Stirling MLA :-

*Detail individual termination payments to CEOs and executive contract officers who have resigned, retired, been terminated or been made redundant since 28 August last year and how these payments were calculated.*<sup>8</sup>

Mr Stirling maintained that the issue revolved around:-

*...the confidentiality of contracts,<sup>9</sup> ...*

and said he would not be able to provide the information. This question was never accepted as a "Question taken on Notice."

The Chairman of the Committee, Dr Chris Burns MLA, also interjected by advising that:-

*Once again that is a matter for investigation by the Public Accounts Committee...<sup>10</sup>*

At a later point in the Public Hearing, following up an issue raised by the Auditor-General in his August 2002 Report, Mr Burke asked the Leader of Government Business:-

*... how many of the termination payments were calculated on the basis of employer termination rather than being treated as a resignation or non-renewal of a contract, in the terms of CEOs and executive contract officers? We have had people not employed for various reasons at various times. Can we get a list, since you came to government, of how many CEOs and executive contract officers have been terminated and for what reason?<sup>11</sup>*

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<sup>6</sup> p.37 Mr Summers – Auditor-General's Report - February 2002

<sup>7</sup> p.37 Mr Hawkes – Auditor-General's Report – February 2002

<sup>8</sup> p.349.Mr Burke - Transcript of Estimates Committee Public Hearing – 18 September 2002

<sup>9</sup> p.349 Mr Stirling - Transcript of Estimates Committee Public Hearing – 18 September 2002

<sup>10</sup> p.349 Dr Burns - Transcript of Estimates Committee Public Hearing – 18 September 2002

<sup>11</sup> p.350 Mr Burke - Transcript of Estimates Committee Public Hearing – 18 September 2002

Mr Stirling indicated that he would provide the information sought.

*(see Appendix No.1 - Q no 1994)*

Mr Burke's final questions on this issue were:-

*...how much has the Government saved by basing the termination payments on total employment costs instead of the notional salary as reported by the Auditor-General?*

and

*...how many of the departures of CEOs and former executive contract officers were for the public benefit and in line with government priorities?<sup>12</sup> (see Appendix No 2 – Q no.1995)*

During a radio interview on the ABC 8DDD FM morning program on Friday 4 October 2002, Mr Burke again raised the issue of lack of information made available on this matter. In response later in the same program, Mr Stirling made mention of the fact that the Public Accounts Committee would become involved in pursuing the matter and pre-empted that the Committee would be working to specific Terms of Reference.

On 8 October the Public Accounts Committee met and the then Chairman, Dr Chris Burns, tabled a draft Terms of Reference for Members consideration.

**On 17 October 2002, the Committee proceeded to approve the Terms of Reference as tabled at the previous meeting.**

The Terms of Reference (refer page ix) established that the 12 months prior to the election in August 2001 and the 12 months immediately following that date would be the period into which the Committee would inquire.

The scope of the inquiry comprised:-

- 1. The framework covering the process and entitlements for departures from NTPS agencies and how the process has been administered – with particular reference to the process relating to departures initiated by the employer;*
- 2. The total costs brought about by reason of the employer initiating the departures and savings derived from employer initiated departures for each period;*
- 3. Any improvements which are being implemented to the process administered by the Commissioner for Public Employment to address the issues raised by the Auditor-General.*

The Public Hearing to address the Terms of Reference was held on Monday 13 February 2003. Witnesses appearing before the Committee representing the Office of the Commissioner for Public Employment (OCPE) were Mr John Kirwan, Commissioner for Public Employment and Mr Theo Tsikouris, Director of Employee Relations.

The *Public Sector Employment and Management Act* (PSEMA), section 8, deals with the Appointment of the Commissioner:-

- 1. The Administrator shall appoint a person to be the Commissioner for Public Employment.*
- 2. An appointment under subsection (1) shall, as soon as practicable after it is made, be notified in the Gazette.*

Section 12 states:-

*The Commissioner shall be deemed to be the employer of all employees on behalf of the Territory or an Agency.*

Section 13 establishes the functions of the Commissioner with specific reference to:-

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<sup>12</sup> p.350 Mr Burke - Transcript of Estimates Committee Public Hearing – 18 September 2002

- a) *To determine the respective designations and other terms and conditions (including the remuneration) of employment for employees;*
- ...
- c) *to determine practices and procedures relating to the recruitment and appointment of persons as employees, the promotion of employees and the employment, transfer, secondment, redeployment, discipline and termination of employment of employees and any other matters relating to human resource management;*
- ...
- f) *to advise the Minister on, and monitor the implementation of, public employment policies.*

Section 3 “Interpretation” reads:-

*“Executive Contract of Employment” means a contract of service –*

- a) *as the Commissioner;*
- b) *as a Chief Executive Officer; or*
- c) *in relation to duties or a class of duties determined under section 34 (1)(b) as duties or a class of duties which may only be performed for a fixed period, and which is nominated as an Executive Contract of Employment in the contract document.*

Section 34, Temporary and fixed period employment reads:-

- (1) *the Commissioner may from time to time determine the duties or classes of duties in an Agency or the Public Sector generally that:*
  - a) *may be performed on an appointment for a fixed period; or*
  - b) *may only be performed on an appointment for a fixed period.*

To assist the Committee, Mr Kirwan presented each member with an information folder, which had been compiled to specifically address the scope of the inquiry contained within the Terms of Reference.

## SCOPE OF THE INQUIRY

### Issue No.1

***The framework covering the process and entitlements for departures from NTPS agencies and how the process has been administered – with particular reference to the process relating to departures initiated by the employer.***

Prior to considering the issue of process and entitlement in respect of termination, Mr Kirwan briefly outlined the recruitment process within the Northern Territory Public Service.

The appointment and termination process for Chief Executive Officers is contained within sections 19 and 20 of the PSEMA. The conditions of employment for Executive Contract Officers are contained within Determination No. 4 of 2001 (made by the Commissioner) and the support documentation for individuals taking up a contract is contained within the “*Executive Contract Employment in the Northern Territory Public Sector (NTPS) Information Booklet*”, March 2001. (Both documents were within the folder provided by the Commissioner for Public Employment and included in the Appendix section of this report)

In elaborating on the vested authority within the employment process, Mr Kirwan advised the Committee that:-

*Under the Contracts Act the Minister can contract for and on behalf of the Territory and that's the power that's used for Chief Executives. That power is often delegated to myself or the CEO of the Department of the Chief Minister, or the CEO of the Department of Corporate and Information Services and that is based on the case of availability...<sup>13</sup>*

When questioned further on the difference between the employer of a CEO and an ECO, Mr Kirwan advised:-

*CEOs are not my employees under the Public Sector Employment and Management Act. They are employees of the Government and I am delegated on behalf of the Minister to sign those contracts, whereas ECOs are the employees of the NTPS under the Public Sector Employment Management Act.<sup>14</sup>*

Attached to a copy of an Executive Contract of Employment provided in the information folder to Members of the Committee was a schedule detailing the range of positions covered by ECO contracts. The positions included:-

- ECO1 to ECO6,
- Executive Contract Principal 1A to 3
- Executive Teacher 9 Contract; and
- Executive Contract Manager Technical.

Mr Kirwan also advised that there were a number of senior Police Officers as well as senior medical positions that sit within the umbrella of ECO positions.

In addressing the issue of termination of a contract, Mr Kirwan advised that there were only three avenues available: the employee (CEO or ECO) resigning, retiring or direct action by the employer.

With the Terms of Reference for this Inquiry making specific reference to retaining the privacy and confidentiality of an individual's information, Mr Kirwan was questioned on the availability of an

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<sup>13</sup> p.45 Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

<sup>14</sup> p.50 Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

alternate avenue that would allow the Committee to make a value judgment on whether correct termination payments had been made in the past.

Prior to replying to the question, Mr Kirwan reminded Members of the response provided by Minister Stirling to a similar line of questioning during the Public Hearings of the Estimates Committee in September 2002.

**Mr Stirling:** ... You are not getting the information; it's confidential.

**Mr Burke:** I am simply asking you to be consistent. You have all the information readily available.

**Mr Stirling:** You could have put it in writing. We would have told you the answer was confidential. You are not getting the answer.<sup>15</sup>

Mr Kirwan then went on to state:-

*... The heads of power that it comes from is that in respect of the Public Sector Employment Management Act, in respect to ensuring confidentiality of staff records, in respect to the inability of the minister to access that information, and it is quite explicit in respect of the Act in that he has no power to direct me to provide access to that; I have a statutory power under the act to maintain employee records, and it is defined, which is normally delegated to CEOs.*

*It is the Code of Conduct in respect to the principles and Code of Conduct within the Northern Territory Public Sector. It goes to the issue of confidentiality of records and the requirement for us to keep that information confidential. Our Employee Instruction No 10 on employee records is quite explicit in several areas and actually binds the CEOs in respect of Section 7 as it relates to access to records by persons outside the public sector, and it says that as Chief Executive, I shall not release information contained in employees records to people outside the public sector.*

*I would suggest that it is a fundamental issue of separation of power between the bureaucracy and the parliamentary and executive arms of government that it would set a dangerous precedent for members of parliament or executive members such as ministers to access such records. It would set a very dangerous and interesting precedent that I would suggest would have to be resolved in fairly high courts of law because, as I have indicated, if there was a request, I would be duty bound to refuse. I think it is totally inconsistent with the contemporary FOI and privacy legislation. That is, if you were trying to access a third party's information, you require the third party's permission and in this instance, they are all third party and, by definition, they are all people who have left our employment.<sup>16</sup>*

When questioned further on the level of protection afforded to an individual's personal records, Mr Kirwan advised that it was consistent with other Australian jurisdictions and the Westminster System.

In pursuing the matter further, Mr Gerry Wood, the Member for Nelson, spoke on the Committee's visit to the Tasmanian Parliament and in particular:-

*...it was the Premier of Tasmania who actually publicly released ECO ... salaries. He was quite up front and he named people, he named about four people, and he said that if the person asking the question wanted any more information, he would be quite happy to give it. That was the process that we first learnt of when we went on that trip, so it appears that in some places it may be different, or do you think, that the Premier was out of order there?<sup>17</sup>*

In reply, Mr Kirwan made it quite clear that he was not in a position to offer comment on the Premier's disclosure of individuals salaries, but he did provide an overview of where he considered the responsibility lies for consideration of any disclosures.

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<sup>15</sup> p.349 Transcript of Estimates Committee Public Hearing – September 2002

<sup>16</sup>p.52,53 Mr Kirwan Public Hearing – Transcript of Proceedings 13 Feb 2003

<sup>17</sup> p.53 Mr Wood Public Hearing – Transcript of Proceedings 13 Feb 2003

*...What I would say is that the two issues are not the same. The issue of disclosing rates of pay for existing staff in the senior levels of the government is an issue that is a public policy for a government of the day...<sup>18</sup>*

Mr Kirwan then drew to the Committee's attention a Table at pages 96 and 97 of his office's current Annual Report, which set out the number and distribution of ECOs in executive levels ECO1 to ECO6. This recently introduced reporting process also included Senior Police, contract Principals in Education and contract Medical Officers, and he made a point of bringing to the Committee's attention that it is:-

*... consistent with contemporary practice that you will see in the private sector companies and other public sector agencies...<sup>19</sup>*

In further addressing the issue of confidentiality with specific reference to comments in the Auditor-General's Report on Termination Payments, Mr Kirwan stated:-

*... So I think that is different. In this instance, the questions that were being raised were originally of individual officers who have since left the Northern Territory Public Service as to exactly what their entitlements were and exactly what was paid. At this point I repeat the reasons why I think that it is unwise for that level of information to be provided and in fact, in some instances, legally I do not think I could even if requested or subpoenaed to do so.<sup>20</sup>*

The procedures that apply to the termination of a CEO or an ECO are contained within Sections 56 to 59 of the Executive Contract Provisions. Section 56 stipulates that a termination or suspension must be by Notice in Writing from the employer.

Under Section 57, breaches of contract, disciplining issues, bankruptcy and conviction of a criminal offence all constitute valid reasons for termination of a contract. This section also sets out the termination payment entitlements.

Section 58 relates to termination where through either illness, injury or accident, an individual is prevented from discharging in full, his or her duties.

Section 59 sets out the termination payment entitlements after an individual receives notices not incorporated within Sections 57 and 58. The Auditor-General used compliance with this particular section to measure the legality of the payments in his two reports tabled in the Assembly.

In explaining the make up of Section 59, Mr Kirwan stated:-

*We have attached section 59. We explain what is paid in those areas, and that is attached in the section marked Number 1. It explains the two different payments that can be made on redundancy. That is, six months for non-NTPS ECO staff and for NTPS staff that have come into it, it is a maximum of 48 weeks with four to five weeks' payment in lieu of notice.*

*A couple of points I would like to make - there are some variations, although relatively minor. They go to:*

- *relocation costs, which are based on actual cost;*
- *outplacement services, which is one of the initiatives that I have introduced in respect of helping Executive Contract Officers write up resumes, get themselves onto the markets. Again, with a lot of these positions, they are long-serving people and may not have been in the job market recently. As I can attest, every time one ventures into the area, everyone has changed how you apply for jobs and how you write up your CV, so we provide that assistance; and*

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<sup>18</sup> p 53 Mr Kirwan Public Hearing – Transcript of Proceedings 13 Feb 2003

<sup>19</sup> p.54 Mr Kirwan Public Hearing – Transcript of Proceedings – Feb 2003

<sup>20</sup> p.54 Mr Kirwan Public Hearing – Transcript of Proceedings – Feb 2003

- obviously, in respect to retrenchments and redundancies, as we would apply for our own workforce, there is a need for financial and for legal advice to make sure they get their affairs into account and that they can set up their payments appropriately.

*They are not generous, they are basically at cost, although they vary a little bit between people, and certainly, I think they are appropriate, particularly for long serving people, as a number of these are more senior people and it is important that they separate from our service with dignity.*

*I think it is important to say that the process in itself is not dissimilar to what would happen to one of our own NTPS employees outside the executive officer stream. And the payments, again, are not inconsistent with what would normally occur - that is the formula - although the rates are higher, obviously, because these people are attracting normally significantly higher rates, and a number of them have significant service with us.<sup>21</sup>*

A specific issue raised by the Auditor-General included the re-positioning of CEOs within the NTPS after the major restructure of Agencies in November 2001.

As stated at the beginning of this report, his concern was that:-

*...Agency restructuring removed a number of CEOs from their positions. While the former CEOs were offered continuation of employment at their current contract remuneration terms, those who did wish to cease their employment, received termination payments as though their contracts had been terminated by the Government.<sup>22</sup>*

In addressing this issue, Mr Kirwan advised:-

*...The executive contract range is a range where there is ability for the employer to move staff around, and the NTPS, I have to say, to its credit, does that well. We see a number of senior staff both at CEO and other levels have worked across a range of agencies. I would say, from my perspective, that is desirable and a strong point of the NTPS. That has been occurring for quite some years.<sup>23</sup>*

*...most of our contracts are for four years, I probably should have mentioned that – if, in the middle of that contract, say, after two years, there is an amalgamation of agencies or, as I have seen occur in some other jurisdictions, say, a federal funding stream dries up so you end up with amalgamations or agencies being taken over by federal departments or vice versa, and those sorts of things do occur on occasions, the contract is with the employer for four years. There is some flexibility in being an Executive Contract Officer in respect of what duties one can be expected to do, but if there is a significant material change in the work, the employer and the employee would be expected to sit down and talk and work out if there is a suitable, agreeable alternative. If both parties agree to an alternative, such as taking up another senior role in another agency or working somewhere else, that is what occurs.*

*If there is a disagreement, then we would probably come back to the contract in respect to resolving the differences, and the alternatives are fairly clear in the provisions of the executive contract. I do not think it gets to a breach unless there is a disagreement over which way things should progress.<sup>24</sup>*

*... If there is disagreement at the change, that is where the issue comes to a head. Either there is a suitable arrangement made so that the officer goes somewhere else where they may prefer to go, or it would end in a termination with a redundancy.<sup>25</sup>*

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<sup>21</sup> p.49 Mr Kirwan - Public Hearing – Transcript of Proceedings February 2003

<sup>22</sup> p.36 Auditor-General's Report – February 2002

<sup>23</sup> p.56 Mr Kirwan - Public Hearing – Transcript of Proceedings February 2003

<sup>24</sup> p.46 Mr Kirwan – Public Hearing – Transcript of Proceedings February 2003

<sup>25</sup> p.56. Mr Kirwan - Public Hearing - Transcript of Proceedings, February 2003

Members seeking further information of this movement of staff sought clarification of a situation in which a CEO may be removed as head of a particular Agency through a restructuring of Agencies and yet still retains the same salary level.

Mr Kirwan in reply further advised:-

*Yes. I have certainly experienced several situations with changes in government for a range of reasons - either amalgamation of agencies, agencies being abolished because the function has been taken up by federal government or other agencies - and CEOs have found themselves no longer in, say, first tier positions, if I can describe it that way. Again, I have experienced a range of situations where they have been happy to be in second tier positions and then compete for the next vacancy at the first tier, and have often been successful so they have taken a step sideways or backwards from their perspective.*

*I should make it clear, however, that under their contract, they keep their CEO classification and the other things, so there is no regression in salary or conditions for the term of that contract. But in some instances where they have been unhappy with the changes because, again, I would suggest that some of these people, some of my colleagues have been in these positions, and there is a question of pride and dignity and they like running their own shop, putting it in the colloquial. They may not like working for other people. I think there is a whole range of issues. In those instances a redundancy payment may well be the most appropriate solution.<sup>26</sup>*

The Committee then tested the perceived difference between termination and an officer being placed in a position where their only option is to resign. Mr Kirwan in reply stated:-

*It is hypothetical because it has never been tested here, to my knowledge. You start getting into areas that I probably have some discomfort with because you are probably bordering on constructive dismissal and you are probably bordering on potential breaches of contract...*

*... I think in the purest sense, if there is a major change in the role and responsibilities a person is originally contracted for, there could prima facie be a case for breach of contract, but most people understand when they come into the government that situations arise - for example, changes of ministers, changes of governments because of electoral cycles lead to change.<sup>27</sup>*

In following up on the issue of termination, Mr Kirwan advised the Committee that there were approximately 170 voluntary redundancies across the NTPS throughout 2002. He pointed out that the NTPS has a very strong grievance procedure that is quite thorough in its process. There have been occasions where the Office of the Commissioner for Public Employment (OCPE), through the grievance process has over-ridden the employer/agencies. Mr Kirwan was able to convince the Committee that with this level of support available to all officers within the NTPS, the professional status afforded the process of voluntary redundancies is assured. When asked if he would be in a position to consider implementation of any changes to the process, Mr Kirwan replied:-

*...If the question was asked: 'would you recommend changes?', I would say no. I think they are quite sound, and quite thorough.<sup>28</sup>*

Again looking at the difference between redundancy and resignation, Mr Kirwan was aware of the difficulty associated with public perception:

*...I would probably say for public consumption, it is difficult to explain to some people - and this is the point we have with the Auditor-General - has someone resigned or have they been made redundant, because it is actually not a written - it is either an employee-initiated termination or an employer-initiated termination, and then it is a subset. It is not as clean or as clear as what I would probably like for public consumption. But that is the nature of employment contract law.<sup>29</sup>*

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<sup>26</sup> p.56 Mr Kirwan - Public Hearing Transcript of Proceedings February 2003

<sup>27</sup> p.46 Mr Kirwan - Public Hearing - Transcript of Proceedings February 2003

<sup>28</sup> p.66 Mr Kirwan - Public Hearing - Transcript of Proceedings - February 2003

<sup>29</sup> p.66 Mr Kirwan - Public Hearing - Transcript of Proceedings - February 2003

The Committee sought further clarification on a previous comment by Mr Kirwan when he advised that in the Termination Payments process, there were a number of minor variations that were available for officers to take up. In addressing the Committee's concerns, Mr Kirwan stated:-

*We do not do it always. It would be fair to say that some people have their negotiations done by their lawyers, they are more comfortable with that. In some cases there have been outstanding Work Health issues which, in the Territory model, is dealt with by lawyers on both sides. In some areas where the person is looking to move on and is of suitable seniority, financial advice, legal advice is probably prudent in respect to how they organise their own finances for the future, and I think that forms part of us treating someone with dignity and respect so that they do not find themselves caught short in respect of making sure that the package, including how their tax treatment is dealt with and those sorts of things - I would suggest and certainly recommend from my experience and background that is an issue best dealt with by a specialist financial planners, specialist accounts and specialist lawyers rather than people who think they might know. It is a large amount of money generally; it is a life changing situation. There are other issues I think they need to consider then about whether they are moving from the Territory, land assets and other things. In the situations we are talking about which are redundancies, that is it was not our intention when we entered into the contract these people would be made redundant, but for circumstances beyond whoever's control, things have gone this way. Again, I think it is a question of treating people with dignity and respect, and I do not think in that situation they should personally be out of pocket for reasonable legal and financial costs, and the figures generally are reasonable to modest in those situations.<sup>30</sup>*

The Committee accepted Mr Kirwan's explanations as to why it has been necessary to introduce what now appears to be a set of standard variations to the executive contract. In summing up, the Committee expressed the view that the negotiating environment would appear to have moved from that of a negotiation or hostile one towards more of a service to the officer to facilitate how they best take advantage of non-contractual elements.

Mr Kirwan agreed with the Committee's views and offered the following information:

*I think it is a mixture of both. There is a little bit of negotiation because often it will be the lawyer ... For some people it is a pretty stressful time and they prefer to do it through a third party. Again, I actually think that is good because I think that, as with any of these situations, you need a degree of objectivity and I think an independent third party such as an accountant or a lawyer are good for that exercise, they help facilitate an outcome when someone may be quite emotive about what it means because it is a life changing situation potentially.<sup>31</sup>*

It was also pointed out to the Committee that the current process in place ensures a review must be conducted by individual Ministers of all their CEO contracts in respect of the Agencies for which they have responsibility, six months prior to their completion date. A final decision on their renewal must then be formally advised to the contract officer within three months of the completion date.

The Committee also sought advice on the introduction of performance bonuses or performance measures being applied to CEOs, in a similar vein to those operating in Victoria, New South Wales and Queensland.

Mr Kirwan advised that the issue of bonuses being attached to contracts was not under consideration within his office. He was able to inform the Committee that there was a process in place (implemented prior to his appointment) whereby each of the CEOs have a performance agreement with their Minister and one of the predictable factors in that agreement was budgets. In Mr Kirwan's view, as the contract and agreement were separate, but operated in tandem, issues arising out of the performance agreement could impact on any decision relating to a contract renewal.

Flowing from this, the issue of entitlements where a contract was not renewed but merely reached its expiry date, was raised.

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<sup>30</sup> p.67. Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

<sup>31</sup> p.67 Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

**Mr KIRWAN:** *As with contract employment, you would get your entitlements, accrued entitlements, but there is no redundancy. Built into the contract is a loading for lack of permanency, so for people like myself, at the end of the contract if it is not renewed, it is not renewed. And if I have outstanding annual or long service leave, I get those paid out and paid my relocation back to wherever.*<sup>32</sup>

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<sup>32</sup> p.68 Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

## SCOPE OF THE INQUIRY

### Issue No. 2

*The total costs brought about by reason of the employer initiating the departures and savings derived from employer initiated departures for each period.*

**Table A**

Cost of retrenchment for Executive Contract Officers \*\*

Period	*Accrued Leave Entitlements	*Removals	**Retrenchment	Total
1/9/00 to 27/8/01	\$ 490,989.07	\$15,457.25	\$ 940,444.68	\$1,446,891.00
28/8/01 to 31/8/02	\$1,186,432.46	\$61,981.95	\$1,933,099.81	\$3,181,514.22

Note:

- \* Accrued leave and removals are contract entitlements regardless of mode of exit.
- \*\* Does not include superannuation costs

**Table B**

Cost of employment if retrenched Executive Contract Officers had continued until the expiry of their contract.

Period	Cost to Govt if contract continued (A)	Total Retrenchment costs (B)	(A)-(B)=Total Savings to Govt (C)
1/9/00 to 27/8/01	\$2,804,751.97	\$1,446,891.00	\$1,357,860.97
28/8/01 to 31/8/02	\$7,135,239.70	\$3,181,514.22	\$3,953,725.48

### Indirect Savings

While this table shows the direct savings, there are also intangible savings associated with the retrenchment of Executive Contract Officers. These arise from considerations of:

- staff morale – an employee who remains in the workplace when displaced from his/her position is likely to impact on his/her own morale and that of others;
- disgruntlement has the potential to lead to workplace disruption;
- ECOs who stay may be “under-employed,” i.e. without a real job. The ECO can suffer a loss of dignity and self esteem if this is the case. There are also financial on-costs associated with this situation; and
- It is not good human resource management (or even financial management) to leave an employee in a situation of loss of face and self esteem. It is often a better business decision to separate the employee with dignity.

The abovementioned tables and the statements on indirect savings have been taken directly from the information folder provided to all Members of the Committee during the Public Hearing of Thursday 13 February 2003.

The Tables comprise aggregate figures both the two twelve (12) month periods into which the Committee was inquiring.

Mr Kirwan advised that in the first twelve months there were thirteen (13) individuals who left the NTPS while eighteen (18) left in the latter period.

He advised that the figures were consistent with the advice his office had provided at the Estimates Committee Public Hearings along with answers to follow up questions from the Leader of the Opposition (*see appendix nos 1 & 2*)

It should also be noted that because of the various superannuation schemes operating across the Northern Territory Public Service, it was not possible to gather this information for inclusion in the final costings and this has been noted as a foreword to Table A.

Mr Kirwan also cautioned the Committee about attempting to apply any simple averaging exercise as there were a number of extremely long-serving NTPS officers included within the 18 during the period 28 August 2001 – 31 August 2002. He also had concerns at the relatively small data sample of 31 if further statistical processes were to be considered.

After reviewing the two tables, the Committee sought advice on the general make-up of the figures, in particular if consideration had been given to establishing whether:

- a) there were any identifiable replacements;
- b) there were any lower level replacements;
- c) there was any additional work load placed on other officers; and
- d) there were any other factors that should be considered to see if there were real savings

Mr Kirwan advised that the issues raised by the Committee had not been researched and therefore were not factored into the final estimate of savings, but generally he could report that there had been a reduction in the number of contract officers at the CEO level and some growth in the lower level ECO positions.

*.... We have not done that work. Having said that, they were all genuine redundancies so my observation is that they would not have been replaced in a like to like situation. A lot of these are former CEOs, former first and second tier officers whose jobs are not the jobs that they were originally contracted to. Other positions with part of their responsibilities may well have been created. The task of actually going back and checking through those situations would probably be very difficult, although we do accept that probably some discounting where that has occurred, but as far as total like to like situations, that is fairly rare, and again, we checked a number of those to make sure that was the case.<sup>33</sup>*

In discussing the issue of direct costs involved in the Termination Payment process, Mr Kirwan advised the Committee that the process within the Northern Territory was more restrictive than was the experience in other jurisdictions.

**Mr KIRWAN:** *... I would also actually say that in some areas the payments are at the lower end of what the national standards are. Certainly, I come from a jurisdiction where if I was made redundant I would have a statutory entitlement to 12 months rather than six months, and I would also have to say in some of the areas, the processes in the Territory are probably better than some jurisdictions, and I think that is because you still have a centralised system here.<sup>34</sup>*

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<sup>33</sup> p.65. Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

<sup>34</sup> p.66. Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

After further discussion on this issue, the Committee accepted the fact that the issue of providing indicative costing for areas such as the redistribution of responsibility and an additional work load is one in which the data is not available and there are no processes in place to capture this type of information.

Mr Kirwan then addressed the issue of indirect costs in relation to having CEOs in jobs that no longer exist or who were not gainfully employed. He maintained that in considering basic motivation and the impact on the general work force of continual disruption in the CEO and ECO positions, there would be a reasonable expectation that a significant indirect cost would be in the vicinity of an additional 50% to 100%. In his opinion, it was this additional indirect cost that would have had to be considered if resolution of the various Executive Contract positions resulting from the November 2001 restructure had not been achieved.

Mr Kirwan then advised:-

*...We certainly did a search of the literature to see if there is any academic measure of that, and there is not so there is probably a paper waiting to be written somewhere.<sup>35</sup>*

When questioned further on this aspect of indirect costs as it relates to the morale of staff Mr Kirwan stated:-

*...We have learnt over the years that having staff who are strongly dissatisfied or unhappy - and it goes back to the issue of treating staff at whatever level with dignity and respect being important, is consistent with our Code of Conduct, is consistent with contemporary HR and management practices, although I am not someone who is particularly keen on moving to redundancies or severances as an option, but in some instances, I have to say, it is the best option for all concerned, particularly in instances where it has been done voluntarily.<sup>36</sup>*

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<sup>35</sup> p.58 Mr Kirwan - Public Hearing – Transcript of Proceedings - February 2003

<sup>36</sup> p.58 Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

## SCOPE OF INQUIRY

### Issue No. 3

#### ***Any improvements which are being implemented to the process administered by the Commissioner for Public Employment to address the issues raised by the Auditor-General.***

Prior to addressing the issue of improvements, Mr Kirwan took the opportunity to discuss with the Committee the Auditor-General's criticism of the lack of procedures he observed within the OCPE in ensuring appropriate documentation supporting termination payments was on file.

The Auditor-General had previously appeared before the Public Accounts Committee and provided Members with a detailed briefing on his findings contained within the February 2002 Report.

In discussions with the Committee, he expressed an opinion (based on his findings in the Audit Report) that there had been a number of Executive Contract termination payments that appeared not to be in the public interest. The Auditor-General went so far as to advise the Committee that officers were being paid out as retrenchments when in fact they were not and:-

*...it seems to be a very generous use of public funds.<sup>37</sup>*

In addressing the Report tabled in the Assembly, Mr Kirwan made the point that his office did not wholly agree with the conclusions reached by the Auditor-General:-

*... through lack of documentation on the file ... the previous Auditor-General came to that conclusion. That is not a conclusion we shared with them. We agreed there was not the documentation, so we did not argue the point. If you look at the responses from my office at the time, it is an area where we actually did not agree. Our view is that each one of those people who we offered retrenchment, redundancy packages to, were genuine redundancies.<sup>38</sup>*

He explained to the Committee that the perception proffered by the Auditor-General that individuals were offered redundancy packages in lieu of having to resign and thus gained eligibility for a larger termination payment was incorrect. He had personally reviewed all the files within the period under review and was satisfied that they were all genuine and justified a redundancy process. He indicated there were a relatively small number that he felt required further investigation, but a closer inspection revealed that the positions had never been back filled and so they were genuine changes in jobs or circumstances.

*... I think the Auditor-General's criticism, which we think is unfair, was that they perceived that some people ... should have just simply resigned, not been offered the redundancy, and that is where they were critical of the lack of documentation.<sup>39</sup>*

*...Where we agree with the Auditor-General is that we did not document that well enough to convince him. He therefore drew a conclusion, which we think is wrong.<sup>40</sup>*

Mr Kirwan also took the opportunity to advise the Committee there were 170 redundancies within the Northern Territory Public Service throughout 2002, and he could report that each and every one of them was genuine and the required support documentation had been placed on the individual files. He made the point that most people would not be aware of the fact that if the documentation and redundancy payments were not correct, the Government could not attract the preferential tax ruling.

Mr Kirwan did however, raise an issue that was of concern to officers within Northern Territory Treasury whereby they perceived that as the workforce came closer to the retirement age, there were "golden handshakes" being offered. It particularly referred to employees in the

<sup>37</sup> p.15 Transcript of Auditor-General's Deliberative Briefing to PAC Committee 23 April 2002

<sup>38</sup> p.61 Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

<sup>39</sup> p.57 Mr Kirwan - Public Hearing – Transcript of Proceedings– February 2003

<sup>40</sup> p.61 Mr Kirwan - Public Hearing – Transcript of Proceedings– February 2003

Commonwealth Superannuation Scheme who could elect to retire at the age of 54 years and 11 months and, in doing so, become eligible for a sizeable additional top up to their pension.

His office undertook a thorough investigation of the matter to ascertain if there was any trend to justify the suspicion that additional payments were being offered to individuals who had attained the age of 54 years and 11 months, but there was no evidence to support such a claim.

With the perception being voiced and a large proportion of the Northern Territory Public Service workforce moving towards that age group, Mr Kirwan and the Under Treasurer met with the Co-ordination Council of CEOs to alert them to the perceived problem so that there could be no misconception about what would be available in the future.

In addressing Issue No. 3 of the Scope of the Inquiry, Mr Kirwan indicated to the Committee that in his opinion, the exercise of attempting to revisit the documentation for terminations that occurred prior to his appointment would be inappropriate and serve no useful purpose.

*...My view is that because we did not have the documentation right, trying to retrospectively address that would be inappropriate.<sup>41</sup>*

The Committee agreed that the individuals concerned may have left Darwin and the Northern Territory and, in addition, officers within the Commissioner's Office who were responsible for this area may well have moved on.

Mr Kirwan publicly acknowledged that there were shortcomings when it came to the retention of appropriate correspondence on files, but he was confident since taking up the appointment of Commissioner and the issue being brought to his attention that the matter had now been adequately addressed.

*...I am prepared to cough in respect to the shortcomings of the agency in the past, over two audit reports - as has been pointed out, including by my minister and his office - about that not being satisfactory, and our approach is to get the documentation right. Certainly, from July last year on, we would be fairly confident that it is documented and explained and if ever questioned, we would then, because the documentation is good, be able to prove our point in the first instance.<sup>42</sup>*

Mr Kirwan pointed out to the Committee that the information folder he presented at the beginning of the Hearing contained examples of appropriately related correspondence that now appear on individual files.

OCPD has been in contact with the Auditor-General on procedures required and the end result has been the introduction of a system that generates the appropriate paperwork which is further subjected to vigorous testing to ensure the integrity of the process can no longer be compromised:

*...what we have done is put the documentation in place that is now before you, so that there are actually letters on file, where before some of that was not as good as the Auditor-General would like, so for each one of those now there is a process that is generated and my staff are constantly on my back when I meet with people to make sure I get the right letters signed... We have checked that with the Auditor-General. We have spoken to the Auditor-General as to whether he would like us to address this ourselves through other reports, and he is happy for us to do that so it will be part of our risk management and our internal audit process, so we are assured that we put in place standards that are acceptable, and that will be part of our internal audit plan.*

*...so we are addressing it by actually putting in place processes and systems so it does generate the paperwork quite explicitly and they will be on all the files and documented so there can be no question about was someone paid, not paid, and they are all checked by our executive contract staff internally so if there is anything extraordinary or different being asked*

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<sup>41</sup> p.62 Mr Kirwan - Public Hearing – Transcript of Proceedings - February 2003

<sup>42</sup> p.62 Mr Kirwan - Public Hearing – Transcript of Proceedings - February 2003

*for, that is flagged. ... the paperwork is being put on the files which was - the argument from my office ... we went through the process of discussion and agreement with the officers but sometimes those discussions were not documented in notes or put on files. Now the way that we have structured the letters, as you will see, it is quite explicit and I think that is appropriate.*<sup>43</sup>

As a result of the ongoing discussions with the Auditor-General, Mr Kirwan was provided with a copy of a report from the Controller and Auditor-General of New Zealand on severance payments in the Public Sector. By testing the processes that are now in place in the Northern Territory against best practice examples contained in the New Zealand report, Mr Kirwan was able to advise the Committee that the Northern Territory procedures now meet the necessary standards.

*... he sent to us the report from the Controller and Auditor-General of New Zealand on severance payments in the public sector ... It is a good report that has best practice examples of what should be occurring in the open transparency and making sure that the public interest is being looked after in these areas and it is not an inhouse club that is looking after its own...*

*We are looking at this checklist of best practice and we believe we would be consistent with what has been said here.*<sup>44</sup>

Additionally in addressing the issue of uniformity of contractual processes, the CEO of the Tourist Commission, a statutory employer which sits outside the NTPS regime, has agreed that all future contracts and separations will be consistent with the NTPS standards. Mr Kirwan advised that he cannot exercise any right or direction over them, but they have voluntarily agreed to operate in parallel with the ECO guidelines.

*...So in respect to those areas out of the NTPS that have been picked up that were inconsistent, we now have a process we believe whereby consistency will apply. We are working closer with the Auditor-General and we are keeping in touch with what is best practice in the area to ensure that what occurs we can abide by.*<sup>45</sup>

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<sup>43</sup> p.60 Mr Kirwan - Public Hearing – Transcript of Proceedings – February 2003

<sup>44</sup> p.59-60 Mr Kirwan - Public Hearing - Transcript of Proceedings — February 2003

<sup>45</sup> p.60 Mr Kirwan - Public Hearing – Transcript of Proceedings — February 2003

## ADDITIONAL REVIEW BY THE AUDITOR-GENERAL

As the reports tabled in the Assembly in August 2000 and February 2002 were the catalyst for this Inquiry by the Public Accounts Committee, the Chairman wrote to the Auditor-General requesting that he revisit the Office of the Commissioner for Public Employment to determine the effectiveness of the current procedures.

The results of the review were contained in the Auditor-General's October 2003 report tabled in the Assembly on 7 October 2003.

The Key Findings from the report were:-

- *For the majority of separations reviewed, payments to Chief Executive Officers and to Executive Contract Officers, following early termination of their employment, were in accordance with their Contracts of Employment.*
- *While the standard of documentation had improved, instances were still noted of a lack of documentation to explain particular courses of action.*
- *While this audit was focussed on "termination" payments, evidence reviewed suggests that there was a policy and disclosure gap as it relates to setting remuneration rates for inclusion in employment contracts negotiated with CEOs.*
- *Treasurer's Directions should be amended to include disclosure of remuneration of Senior Officers in the notes to financial statements consistent with the International Federation of Accountant's public sector accounting standards.<sup>46</sup>*

It should be noted that although Mr Kirwan had advised the Committee that there were:-

*...some variations, although relatively minor.<sup>47</sup>*

The Auditor-General in addressing the background for the audit made note of the fact that:-

*Early terminations at the employee's initiation require only accrued entitlements to the date of termination to be met.<sup>48</sup>*

While the scope and objective of the report was to:-

*Examine whether payments to CEOs and ECOs after 1 January 2002, following early termination of their employment, were in accordance with their Contracts of Employment, or if not, whether variations were assessed as achieving an improved outcome for the public benefit.<sup>49</sup>*

The Auditor-General's initial finding was that the majority of payments were in accordance with the contracts of employment. In a statement that could possibly be viewed as supporting the Commissioner's view that it was inappropriate and impractical to attempt to chase up correspondence prior to his appointment, the Auditor-General reported:-

*While some issues noted concern the period prior to the appointment of the current Commissioner on 1 July 2002, issues concerning three terminating employees arose during the current Commissioner's tenure. However, processes and negotiations for these three terminations commenced prior to his appointment.<sup>50</sup>*

But the Auditor-General did note:-

*There has been improvement in the standard of documentation filed in support of termination decisions.<sup>51</sup>*

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<sup>46</sup> p.38 Auditor-General's Report – October 2003

<sup>47</sup> p.49 Mr Kirwan, Public Hearing – Transcript of Proceedings – February 2003

<sup>48</sup> p.39 Auditor-General Report – October 2003

<sup>49</sup> p.39 Auditor-General's Report – October 2003

<sup>50</sup> p.39 Auditor-General's Report – October 2003

<sup>51</sup> p.39 Auditor-General's Report – October 2003

While the Auditor-General made mention of the fact that he reviewed a case that was not part of the scope of the original audit, comments flowing from that review are pertinent to the Committee as they relate to matters of evidence provided during the Public Hearing.

The first issue relates to the Commissioner's involvement in the management of CEO contracts. During the Public Hearing, Mr Kirwan advised the Committee:-

*CEOs are not my employees under the Public Sector Employment and Management Act. They are employees of the government, and I am delegated on behalf of the minister to sign those contracts...*

...

*that power for those contracts comes under the contract legislation...<sup>52</sup>*

The Auditor-General, in his report advised:-

*The audit identified that the NT Government has established an Executive Remuneration Review Panel (ERRP) which provides advice to the Commissioner on remuneration rates for CEOs. The ERRP also scrutinises and provides advice on remuneration arrangements for CEOs. However, it only took on the latter function from 15 March 2003.*

*Not involving the ERRP or the Commissioner in remuneration arrangements with CEOs could result in fluctuating remuneration and other conditions of service being entered into and the setting of precedents. This also indicates a possible gap in policy as it relates to remuneration arrangements entered into with CEOs...<sup>53</sup>*

In his recommendation flowing from these statements:-

*Clear policy regarding remuneration arrangements for CEOs be developed and the Commissioner be included in the development and implementation of such policy even though CEOs are not "employees" under the Public Sector Employment and Management Act.<sup>54</sup>*

The Commissioner's reply to this was:-

*The OCPE and ERRP have been operating under general policy guidelines since July 2002 with written procedures, advised to CEOs, since April 2003.<sup>55</sup>*

And a further reply to the issue of the ERRP's terms of reference:-

*Since 1 July 2002, OCPE has resumed a role in managing all executive contracts. Formal procedures for ERRP have been in place since 12 May 2003.<sup>56</sup>*

The Committee is aware that the definition of "employer" as it relates to CEOs has not altered, but with the introduction of the ERRP and the involvement of OCPE during the process of CEO remuneration determination, there has been a further level of accountability introduced to the process.

In his report, the Auditor-General made a detailed statement on disclosure of remuneration arrangements for senior officers:-

*Consistent with Australian Accounting Standards, the financial statements of NT Government entities are not required to disclose remuneration paid to senior officers. However, such disclosure is regarded as best practice and would enhance transparency and accountability.<sup>57</sup>*

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<sup>52</sup> p.50 Mr Kirwan – Public Hearing – Transcript of Proceedings – February 2003

<sup>53</sup> p.40 Auditor-General's Report – October 2003

<sup>54</sup> p.41 Auditor-General's Report – October 2003

<sup>55</sup> p.41 Auditor-General's Report – October 2003

<sup>56</sup> p.41 Auditor-General's Report – October 2003

This statement was followed by the recommendation that:-

*Consideration be given to including in the Treasurer's Directions a requirement that the remuneration of Senior Officers be disclosed in the notes to financial statements consistent with IFAC's public sector accounting standards.<sup>58</sup>*

In reply to this recommendation, Mr Kirwan advised:-

*This is being investigated in conjunction with NT Treasury. Consistent with improvements in financial reporting and as part of the "Working for Outcomes" framework, consideration will be given to appropriate reporting of remuneration details.<sup>59</sup>*

This issue is one on which the Committee has not reached consensus. The information provided by the Auditor-General and the acknowledgment by the Commissioner that consideration is being given to reporting remuneration details is the first positive sign that the matter is being considered and will require further investigation.

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<sup>57</sup> p.41 Auditor-General's Report – October 2003

<sup>58</sup> p.42 Auditor-General's Report – October 2003

<sup>59</sup> p.42 Auditor-General's Report – October 2003

## FINDINGS AND RECOMMENDATIONS

### ISSUE NO. 1

***The framework covering the process and entitlements for departures from NTPS agencies and how the process has been administered – with particular reference to the process relating to departures initiated by the employer.***

The Auditor-General's Reports (2000 and 2002) **dealing with CEO and ECO termination payments and sparsity of documentation were the catalyst for the current Inquiry by the Committee.** This lack of documentation not only impacted on the Auditor-General's ability to check the composition of the final payout figures but also precluded him from being privy to the actual reason for termination of the CEO/ECO at time of departure.

There was uncertainty about whether the process should have been considered resignation, termination or redundancy.

The issue for the Committee to consider was whether it was purely an administrative deficiency, which was permitted to continue with the knowledge of the then Commissioner for Public Employment, or whether there an alternative rationale for withholding the information from individual files.

Evidence gathered focussed on the lack of adherence to standard administrative record keeping processes. The Committee is satisfied that it was this aspect that led to the findings by the Auditor-General.

The previous Commissioner, Mr David Hawkes, agreed with the Auditor-General's findings:-

*It is acknowledged that there is a lack of documentation on the files in regard to the termination payments cited, and this matter will be addressed in the future.<sup>60</sup>*

Mr John Kirwan, the current Commissioner, when commenting on the Auditor-General's October 2003 report, advised:-

*While accepting the document trail was less than perfect in the instances identified, the faults were of detail rather than substance...<sup>61</sup>*

When appearing before the Committee at the Public Hearing on Tuesday 13 February 2003, Mr Kirwan also acknowledged the shortcomings of the paper trail:

*...I am prepared to cough in respect to the shortfallings of the Agency in the past, over two audit reports – as has been pointed out, including by my Minister and his office – about that not being satisfactory, and our approach is to get the documentation right.<sup>62</sup>*

In making this statement, Mr Kirwan did, however, make the point that he could really only take responsibility from the time of his appointment and, in his opinion, the exercise of attempting to revisit terminations prior to that date and reconstruct the paper trail could not be considered appropriate and would not serve any useful purpose:

*My view is that because we did not have the documentation right, trying to retrospectively address that would be inappropriate.<sup>63</sup>*

The Committee agrees with Mr Kirwan on this point.

The status of the termination of individual CEOs and ECOs is one where Mr Kirwan is prepared to acknowledge there is a difference of opinion between his office and the comments made by the Auditor-General. During questioning by the Committee, Mr Kirwan stated:-

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<sup>60</sup> p.37 Mr David Hawkes, Auditor-General's Report – February 2002

<sup>61</sup> p.40 Mr Kirwan – Auditor-General Report – October 2003

<sup>62</sup> p.62 Mr Kirwan – Public Hearing – Transcript of Proceedings – February 2003

<sup>63</sup> p.62 Mr Kirwan – Public Hearing – Transcript of Proceedings – February 2003

*The examples – the Auditor-General, through lack of documentation on the file,...and the previous Auditor-General, came to that conclusion. That is not a conclusion we shared with them...<sup>64</sup>*

Later when the Committee was seeking clarification of the difference between redundancy and resignation:-

*... I think the Auditor-General's criticism, which we think is unfair, was that they perceived that some people were simply – they should have just simply resigned, not been offered the redundancy, and that is where they were critical of the lack of documentation. Certainly, I have been through all of the ones that we have on file which covered the period, and they all seem to me to be quite genuine...<sup>65</sup>*

In appearing before the Committee, Mr Kirwan presented each Member with an information folder, which contained a full resume of the framework from employment through to termination of CEOs and ECOs. Mr Kirwan reminded the Committee that OCPE was responsible for all aspects involving ECOs, but they only maintained a management role over the contractual arrangement of CEOs. He was able to walk Members through the processes as well as provide examples of the documentation he has put in place since he was appointed to the position of Commissioner.

## **RECOMMENDATION 1**

***The Committee acknowledges that the process of recruitment through to expiration of an executive contract as a whole is now well managed by OCPE. The procedures established under the PSEMA Contract legislation, supported by Determinations by the Commissioner are sufficient to ensure the integrity of the process can stand scrutiny. The Committee sees no reason to suggest consideration of any changes to current OCPE practice in this area.***

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<sup>64</sup> p.61 Mr Kirwan – Public Hearing – Transcript of Proceedings – February 2003

<sup>65</sup> p.57 Mr Kirwan – Public Hearing – Transcript of Proceedings – February 2003

## ISSUE NO. 2

***The total costs brought about by reason of the employer initiating the departures and savings derived from employer initiated departures for each period.***

The tables supplied by the Commission provided a clear indication of the direct savings to Government as a result of the termination of a number of CEOs and ECOs **over the period 1 September 2000 to 31 August 2002.**

The quantification of intangible cost savings was an issue on which the Committee sought further and better particulars from Mr Kirwan. While staff morale and basic motivation can be seen to have an impact in the work place, the issues of replacement officers, albeit at lower levels, redistribution of responsibilities and workload throughout Agencies through the departure of senior executives were considered to be significant in determining final costs.

Apart from a general acknowledgment that there had been a reduction in the number of CEOs and some growth at the lower ECO levels, there were no facilities in place that could generate reports on the matters that could be appropriately labelled as indirect costs.

To a specific question on the significance of these various intangible factors in establishing total costs, Mr Kirwan replied:-

*We certainly did a search of the literature to see if there is any academic measure of that, and there is not so there is probably a paper waiting to be written somewhere...<sup>66</sup>*

The Committee accepts that the tables of direct costs provided by the Commissioner are an accurate reflection of the known costs available, excluding a superannuation component. The identification of indirect costs associated with the termination of the CEOs and ECOs would be an extremely difficult exercise and the relevance of this information must be weighed against the resources required to capture it.

## RECOMMENDATION 2

***The Committee recommends no formal procedures be established that attempt to correlate data with intangible costs given present indications that it would not be a viable option.***

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<sup>66</sup> p.58 Mr Kirwan – Public Hearing – Transcript of Proceedings – February 2003

### ISSUE NO. 3

***Any improvements which are being implemented to the process administered by the Commissioner for Public Employment to address the issues raised by the Auditor-General.***

Mr Kirwan was able to demonstrate to the Committee that a system was now in place that generates the appropriate paperwork and which is subject to rigorous testing to ensure the integrity of the process can no longer be compromised:

*...So we are addressing it by actually putting in place processes and systems so it does generate the paperwork quite explicitly and they will be on all the files and documented so there can be no question about was someone paid, not paid, and they are all checked by our executive contract staff internally so if there is anything extraordinary or different being asked for, that is flagged...<sup>67</sup>*

Mr Kirwan pointed out to the Committee that it was very much a collaborative effort of all officers within his Agency in conjunction with the Auditor-General working through the development of procedures and documentation.

Throughout the implementation period, his office has also maintained close contact with the Auditor-General to ensure the standards applied are consistent with the requirements flagged in his Audit reports.

The Auditor-General's Report of October 2003 supports the Commissioner's statement by advising:-

*There has been improvement in the standard of documentation filed in support of termination decisions.<sup>68</sup>*

The Committee is of the opinion that the effort by OCPE to ensure future and best practice procedures are now firmly established in the termination process and the terms of the Inquiry are satisfied.

However, the Committee is concerned that the issues raised by the Auditor-General have been outstanding since his August 2000 Report. The question that still remains unanswered is: if it has been necessary to review all procedures surrounding the termination of CEOs and ECOs resulting in significant changes of process and documentation, why weren't the original concerns of the Auditor-General addressed in this manner? It must also hold true that they should have been formally considered well before Mr Kirwan's appointment on 1 July 2002.

It is the view of the Committee that the current Commissioner for Public Employment was able to demonstrate that he has taken carriage of implementing a process that addresses the Auditor-General's concerns.

The Committee is satisfied that appropriate procedures have now been put in place which ensure adequate documentation is captured, retained and available for scrutiny by the Auditor-General. This includes key staff within OCPE being tasked to provide stringent checking procedures throughout the process.

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<sup>67</sup> p.60 Mr Kirwan – Public Hearing – Transcript of Proceedings – February 2003

<sup>68</sup> p.39 Auditor-General's Report – October 2003

The only recommendation that should now flow from this is that:

### RECOMMENDATION 3.

***The Committee recommends that the Commissioner for Public Employment ensures appropriate mechanisms are maintained to monitor the standard of documentation filed in support of executive contract termination decisions.***

As highlighted in the Auditor-General's Report of October 2003, the establishment of the Executive Remuneration Review Panel (ERRP), which comprises the CEO of the Department of the Chief Minister, the Under Treasurer and the Commissioner for Public Employment, has provided a further degree of accountability in the provision of advice and scrutiny of CEO remuneration arrangements after final negotiations between individuals and Ministers.

While CEOs are not the responsibility of the Commissioner for Public Employment as they are not "employees" under the PSEMA, the Committee fully supports the involvement of OCPE in the management of all executive contracts.

### RECOMMENDATION 4

***The Committee recommends that Government adopt a process whereby individual Ministers consult with the ERRP prior to the recruitment of their respective CEOs.***

The issue of public disclosure of senior officers' remuneration was raised by the Auditor-General and was also the subject of *interrogation* during the Estimates Committee Public Hearing.

The argument by the Auditor-General that such disclosure is a requirement of accounting standards issued by the International Federation of Accountants (IFAC) is a significant issue as it is also consistent with current practice within the private sector as it relates to listed companies.

Throughout Australia, public sector jurisdictions vary in the degree of permitted disclosure. The whole gamut has been considered, from nil disclosure through to partial disclosure, and full disclosure.

The Commissioner for Public Employment in reply to the Auditor-General's recommendation has alluded to the fact that at the officer to officer level, the issue of disclosure of remuneration of senior officers in the notes attached to Agency financial statements is:-

*...being investigated in conjunction with NT Treasury.<sup>69</sup>*

In general the Committee supports some form of disclosure of the remuneration to senior officers, but the issue of whether the information should identify individuals or be limited to a range of executive levels requires further consideration. The diverse range of information available from Australian jurisdictions indicates that there is a divergence of opinion.

### RECOMMENDATION 5.

***The Committee recommends that the ERRP examine the level of disclosure of senior officer remuneration and consider whether the existing arrangements adequately meet the requirements of public policy objectives.***

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<sup>69</sup> p.42 Auditor-General's Report – October 2003

# APPENDICES



## Estimates Committee

Telephone: 8946 1438

Facsimile: 8981 6158

e-mail: pac.la@nt.gov.au

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### SECRETARIAT USE ONLY

**Registration No.:** 1994  
**Responsible Minister:** Employment, Education & Training,  
**Responsible Agency:** Office of Commissioner for Public Employment

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### QUESTION ON NOTICE

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**FROM.** Mr D Burke, MLA **Tel.:**  
**TO:** (Ministerial Portfolio] Office of the Commissioner for Public Employment

How many of the termination payments were calculated on the basis of "employer termination" rather than being treated as a resignation or non-renewal of a contract?

Since you came into Government, could you obtain a list of CEOs and Executive Contract Officers who have been terminated and for which reasons?

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### ANSWER

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**(Output Group and Output to which the Question refers):** Commissioner for Public Employment – Policy Advice

#### Question 1

As explained in Questions 1990 and 1991, separation from the public sector of an ECO can be through employee termination, employer termination, or completion of a contract. Payments for the period were made according to the Executive Contract of Employment.

Executive Contract Officers may resign or retire at any stage of the contract or may not renew their contract.

Termination by the employer may occur where the separation and the terms are discussed and agreed by the ECO and the employer. These are treated as redundancies, in accordance with the terms of section 59 of the contract. These payments are consistent with redundancy payments to other (non contract) public sector employees.

#### Question 2

The information requested by the Leader of the Opposition for a list of Chief Executive Officers and Executive Contract Officers who have ceased employment with the NT Public Sector can not be provided for the following reasons:

- it has not been past custom and practice in the Parliament to release personal details of public sector employees
- the need to keep staff HR information private and confidential
- to be able to provide this information we would need the permission of the employees
- it would be in breach of Employment Instruction 10, Employee Records, made under the Public Sector Employment and Management Act
- it would be in breach of the NT Public Sector Principles and Code of Conduct (Regulations 2, 3 and 4 of the Public Sector Employment and Management Act) • it would be inconsistent with contemporary standards on privacy
- it would set a precedent that Parliament can access the past and present records of NT Public Sector employees and that is not acceptable.

**APPENDIX 2**



Legislative Assembly of the Northern Territory  
**Estimates Committee**

Telephone: 89461438

Facsimile: 8981 6158

e-mail: [pac.la@nt.gov.au](mailto:pac.la@nt.gov.au)

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**SECRETARIAT USE ONLY**

**Registration No.:** 1995  
**Responsible Minister:** Employment, Education & Training  
**Responsible Agency:** Office of Commissioner for Public Employment

---

**QUESTION ON NOTICE**

---

**FROM:** Mr D Burke, MLA

**Tel.:**

**TO:** [Ministerial Portfolio] Office of the Commissioner for Public Employment

In the 12 months since you have been in office, how much has the Government saved by basing termination payments on the total employment cost instead of the notional salary as reported by the Auditor-General?

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**ANSWER**

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[Output Group and Output to which the Question refers: Commissioner for Public Employment -Policy Advice

Determination No. 4 of 2001 - Executive Contract Employment defines The Total Employment Cost of an Executive Contract as the total remuneration specified in the Executive Contract. This is the figure that will be quoted in an advertisement for an Executive Contract Officer.

From this amount, ECOs elect to be paid a salary of at least 65%, and elect to make contributions to superannuation, motor vehicle and private telephone. The contributions to a motor vehicle and a telephone are determined at a rate by the Commissioner.

The Notional Salary is defined as 65% of the Total Employment Cost.

The Notional Salary is used to calculate termination payments to ECOs for accrued recreation leave. This rate, is used to reduce the termination payments by basing it on a predetermined salary component and to encourage ECOs to utilise their recreation leave for the purpose it is given. ECOs get 5 weeks recreation leave per year.

The Total Employment Cost is used to calculate termination payments of accrued Long Service Leave. While many ECOs access their Lon. Service Leave entitlements, this rate is used to encourage ECOs to work through their contract rather than take long periods of leave towards the end of the contract, thus achieving better outcomes for their agency and the public sector as a whole.

Termination payments to ECOs in the NT Public Sector were made in accordance with Notional Salary or Total Employment Cost as specified in Determination No. 4 of 2001 for Executive Contract Employees.

Two terminations outside the NT Public Sector (NT Tourist Commission) were based on Total Employment Cost. These were dealt with directly by the Tourist Commission which has its own Enterprise Agreement. The difference, and cost to Government, was \$41, 074.98.

**AUGUST 2000 REPORT**  
**Auditor-General for the Northern Territory**

**Performance management systems audits**  
**Managing financial services**

**Advisory services - Office of the Commissioner for Public Employment**

**KEY FINDINGS**

- Professional advice on redundancies, early terminations and retrenchments is being provided.
- The top down approach and timeframes in Planning for Growth did not facilitate consultation, development and application by the OCPE of proven organisational change models, nor the ability for the OCPE to vary the end structure.
- There is no comprehensive listing of the productivity measures, quantitative and qualitative, formally taken into account in the Enterprise Bargaining Agreement (EBA) negotiation process, which can be referred to when explaining the additional levels of public monies required to fund the EBA commitments.

**Background**

The Office of the Commissioner for Public Employment has a key role in the provision of human resource management and human resource development consultancy services, assistance and support to agencies within the NTPS.

The objective of this audit was to examine the performance management systems in use by the OCPE to manage effectively the following specific aspects of its role:

1. HRM aspects of early terminations and retrenchments, including Chief Executive Officers and other Executive Contract Officers, and assistance provided to agencies at the separation of employees where redundancy packages are offered
2. Assisting the 1998/99 Planning for Growth strategy of the Government, and with other organisational change strategies when required
3. Conduct of the 1999 Enterprise Bargaining Agreement process.

**Performance management systems audits  
OCPE Advisory Services**

**Audit findings**

**In regard to HRM aspects of early terminations and retrenchments**

In accordance with the Public Sector Employment and Management Act, the Commissioner for Public Employment is the nominee employer of all Northern Territory public sector (NTPS) employees, including Chief Executive Officers (CEOs), and Executive Contract Officers (ECOs).

Professional advice on redundancy and early terminations and retrenchments is being provided by the Office of the Commissioner for Public Employment (OCPE).

For early terminations of Chief Executive Officers (CEOs), interviews are usually conducted by the Chief Minister. For Executive Contract Officers (ECOs), the termination interview is conducted by their CEO. A right of appeal exists for ECOs with the Commissioner for Public Employment, but this has rarely been used.

Variations to the standard contract terms for CEOs and ECOs terminating early were observed in each case examined. All variations appear to be as a result of negotiations involving the Commissioner for Public Employment and the host Agency, and were approved appropriately. However, for the sample of terminations examined, no formal exit interview documentation was generally held on files maintained by the OCPE, and there is little, if any, record of particular discussions retained on the file. The OCPE undertook to complete the documentation for those instances identified by the audit.

For retrenchments of other than CEOs and ECOs, the OCPE is fulfilling the role as a source of advice and information to the case managers in Agencies. The level of understanding in Agencies about retrenchment procedures is supported and enhanced by their interactions with the OCPE. There is the added check that an officer from the OCPE speaks directly with each employee who is to exit through a retrenchment process.

Current efforts should continue to focus on reducing any perception of easy exit via retrenchment. The OCPE has a role in distributing accurate information and advice about this.

The Government's policy that employees exiting via redundancy arrangements are not to be re-employed for two years was not evident in the Redeployment Procedures and Award document. It should be promulgated in an administrative procedures or recruitment handbook.

Detailed calculations of entitlements are the responsibility of the Human Resources Division in the Department of Corporate and Information Services (DCIS). The OCPE has no role in verification of the accuracy of payments. This is the responsibility of DCIS. The sample of retrenchments that were reviewed had accurate calculations of retrenchment entitlements.

**Audit findings (continued)**

**In regard to assisting the 1998/99 Planning for Growth strategy of the Government, and future organisational change strategies.**

The Government announced in April 1998 that it intended to review organisational arrangements within the Northern Territory public sector. The results of that review were announced in October 1998, and required a number of common operational support functions to be transferred from individual Agencies to a new Department of Corporate and Information Services (DCIS).

The announcement identified that the Government sought to achieve greater efficiencies from pooling common resource requirements which support Government service delivery, and from introducing a more competitive environment for service delivery. An estimated 205 less administrative positions were foreseen, with a consequential saving of \$15 million to be reallocated as general funding for Government programs.

The changes had significant impact on personnel in the administrative streams of finance, human resources, and information technology. Fewer of these positions were retained in Government; former workgroups were dismantled and replaced with new and unfamiliar circumstances; career and training opportunities needed to be re-evaluated; and unsettled systems and procedures and controls need to be stabilised.

The change management issues of communication, team building, employee involvement, stabilisation of roles and maintenance of operational focus, required considerable management attention. However, change management techniques are well documented in management literature, and are included in management training support available to middle and senior managers in the Northern Territory public sector.

The role of the OCPE and in particular the Commissioner was one of implementation management. Clearly defined objectives had been established by Government in announcing its strategy to the NTPS. The OCPE had a role to manage employees who were affected by the change, to fine tune change activities, as well as an ongoing role of post implementation reviews.

The devolved management model which prevails in the NTPS as a result of the Public Sector Employment and Management Act impacts on the extent of the OCPE role in supporting significant change management strategies. The key aspects are:

- devolution of operational responsibility and accountability in full for the management of human resource issues to CEOs.
- clear delineation of the respective roles of CEOs and the Commissioner

Traditionally, in any large and rapid organisational change there is an element of inability to cope effectively with change. The resolution or reduction of an inability to cope effectively with change can often be facilitated by well proven Human Resource Development (HRD) intervention techniques at both the organisational and the operational levels.

**Audit findings (continued)**

**Organisational change strategies (continued)**

Again the devolved management framework combined with tight timeframes and the levels of skills expected to be held by CEOs in change management would have made support of this kind less likely to have been sought from the OCPE. In fact, the assistance sought was mostly in the implementation phase.

The top down approach and timeframes in Planning for Growth did not facilitate consultation, development and application by the OCPE of proven organisational change models, such as involvement by the personnel directly involved in, and knowledgeable of, the tasks and systems to be changed, nor an ability for the OCPE to vary the end structure.

However, there is an ongoing role for the OCPE to provide professional HRD advice, support and consultancy to agencies within the NTPS agencies during organisational change phases.

The OCPE has identified its HRD capability as requiring enhancement. At present, through its Learning Centre initiative, the OCPE is developing the capacity to provide professional HRD expertise which will be available to agencies to assist them to achieve more recent initiatives through their capability plans. This is necessary to enhance the capability for professional HRD advice and assistance to support the implementation of the Government's Foundations for the Future strategies.

**In regard to the 1999 Enterprise Bargaining Agreement**

Enterprise Bargaining Agreements (EBAs) are negotiated by the Commissioner for Public Employment with Union representatives, and in direct consultation with NTPS officers, in accordance with the Commonwealth Government's Workplace Relations Act. The principle behind EBA negotiations is that productivity improvements can be shared financially between employees and the employer. While productivity gains in private sector profit seeking entities can be measured with reference to commercial results achieved, productivity improvements in public service delivery entities are less measurable.

In discussing how to measure gains in NTPS productivity, it was highlighted that despite population increases, NTPS personnel numbers are being contained, and the NTPS is providing equal or improved levels of service with fewer resources. However, assessment of the quality of service levels was more intuitive than based on evidence. There was no evidence of benchmarking across other administrations to assess whether other administrations are outperforming the NTPS.

**Audit findings (continued)**

**The 1999 Enterprise Bargaining Agreement (continued)**

In setting wage increment offers, the OCPE viewed success as being achieved through:

- the current level of industrial relations stability;
- market rates not being exceeded;
- no forced losses;
- acceptance of the voluntary redundancy arrangement;
- acceptance of new technology;
- an acceptance of ongoing change generally; and
- all gains remaining within the Government's budget parameters.

Though productivity was explained in these ways, it remains that there is no comprehensive listing of the productivity measures, quantitative and qualitative, formally taken into account in the negotiation process, which can be referred to when explaining the additional levels of public monies required to fund the EBA commitments.

In my November 1999 Report to the Legislative Assembly on the Treasurer's Annual Financial Statement for 1998/99, I included an analysis of the growth trends in personnel costs over a five-year period. This highlighted that wage increases following previous EBA agreements, combined with increases in personnel numbers then occurring particularly in Territory Health Services and the Department of Education, had contributed to increases in annual personnel costs of 10% and 8% in the 1996/97 and 1997/98 years respectively, in years when EBA increments were 4% and 3%.

Although the 4% increase in personnel costs in 1998/99 more closely matched the 3% EBA increment in that year, the trend data illustrates the risks to achievement of the Government's budget if wage increases are not being directly linked to data on personnel productivity levels, and associated forecasts of personnel numbers required, and to more specific instances of efficiencies obtained.

***The Office of the Commissioner for Public Employment has commented:***

*In regard to HRM aspects of early terminations and retrenchments –*

*The OCPE has already agreed to promulgate the 2 year rule in Employment Instruction No. 1 and action to do so is underway.*

*In regard to the Enterprise Bargaining Agreement –*

*The matter of qualitative and quantitative measures of productivity will be addressed in the next round of negotiations although, given the outcomes to date, the value will be demonstrated.*

**Office of the Commissioner of Public Employment**

**Early termination payments to Chief Executive Officers and Executive Contract Officers**

**KEY FINDINGS**

- The 13 November 2001 Agency restructuring removed a number of CEOs from their positions. While the former CEOs were offered continuation of employment at their current contract remuneration terms, those who did wish to cease their employment received termination payments as if their contracts had been terminated by the Government. There was insufficient documentation prepared to support the decisions to provide those termination payments.
- Other payments additional to contract requirements are continuing to occur when employees terminate, also without sufficiently documented reasons.

**Background**

The objective of the audit was to examine whether payments to Chief Executive Officers (CEOs) and Executive Contract Officers (ECOs) during the 2000/01 and 2001/02 financial years (up until 31 December 2001), following early termination of their employment, were in accordance with their Contracts of Employment. If not, the audit sought to identify whether variations were assessed as achieving an improved outcome for the public benefit.

A previous performance management system audit with compliance aspects was conducted in 2000. My August 2000 Report to the Legislative Assembly highlighted that variations to standard contract terms had occurred in each case of early termination examined.

That audit identified that there was insufficient documentation on file to evidence reasons for the variations. At the time, the audit recommended to the Commissioner for Public Employment that:

- all files be assembled in an appropriate manner, and
- in regard to discussions with Executive Contract Officers, notes of content of the discussion should be retained on file for future reference.

The Commissioner's response was that, "*This practice will be observed in future.*"

This current audit examined the personnel files for 7 CEOs and 7 ECOs who separated from NTPS employment during the eighteen month period 1 July 2000 to 31 December 2001. For CEOs, this included instances of normal retirements. The selection criteria for ECOs were limited to instances where termination payments were made.

## **Audit findings**

### ***In summary,***

Termination payments and payments additional to contract requirements are being approved and paid without sufficient record of why the payments were made. In particular, there are still no records of whether the variations to the standard termination arrangements were assessed as achieving an improved outcome for the public benefit.

### ***Specifically,***

#### ***Termination versus resignation***

The 13 November 2001 Agency restructuring removed a number of CEOs from their positions. While the former CEOs were offered continuation of employment at their current contract remuneration terms, those who did wish to cease their employment received termination payments as if their contracts had been terminated by the Government.

Their termination payments were calculated on the basis of an “Employer Termination” under the Government’s contract arrangements, allowing them, based on their pre-contract employment history, to receive up to 48 weeks of their notional salary, and an additional 5 weeks payment in lieu of notice. If these employees had resigned, they would not have been entitled to these payments.

There was insufficient documentation prepared to support the decisions to provide those termination payments. Public announcements by the Government at the time indicated that no employees, other than the Chief Executive Officer of the former Attorney-General’s Department, would be terminated, although it was announced that there were expected to be savings in executive management over time.

#### ***Termination payment not in accord with the contract***

In one instance, a termination payment for a former Executive Contract Officer was approved using total employment cost instead of the notional salary as provided by the contract. The notional salary was 65% of the total employment cost of the departing employee. No reasons for the extra benefit being provided were recorded.

#### ***Additional payments***

The audit observed the continuation of the practice noted in the previous audit, in which employees are offered additional payments or benefits in excess of minimum payments required under their executive contracts. These payments covered such items as study costs, investment and tax advice and payments in lieu of travel and removal expenses. Little or no documentation was found on files to evidence any negotiations between the Commissioner and the employee or the Commissioner’s reasons why additional payments were approved. This is in contrast with the commitment provided at the previous audit that this would be done.

#### ***The Office of the Commissioner for Public Employment has commented:***

*It is acknowledged that there is a lack of documentation on the files in regard to the termination payments cited, and this matter will be addressed in the future. However, the lack of documentation does not alter the fact that consideration of the public benefit and government priorities are always an essential factor in such decisions, and in the cases examined, the net outcome was a considerable saving to Government.*

**OCTOBER 2003 REPORT**  
**Auditor General for the Northern Territory**

**Auditing the Public Account and other accounts**

**Office of the Commissioner for Public Employment**

**Early termination payments to Chief Executive Officers and Executive Contract Officers**

**KEY FINDINGS**

- For the majority of separations reviewed, payments to Chief Executive Officers and to Executive Contract Officers, following early termination of their employment, were in accordance with their Contracts of Employment.
- While the standard of documentation had improved, instances were still noted of a lack of documentation to explain particular courses of action.
- While this audit was focussed on “termination” payments, evidence reviewed suggests that there was a policy and disclosure gap as it relates to setting remuneration rates for inclusion in employment contracts negotiated with CEOs.
- Treasurer’s Directions should be amended to include disclosure of remuneration of Senior Officers in the notes to financial statements consistent with the International Federation of Account’s public sector accounting standards.

**Background**

This is a follow up of a similar audit completed in January 2002 that reviewed terminations during the period 1 July 2000 to 31 December 2001, with the findings included in the February 2002 Report to the Legislative Assembly.

The key finding of the 2002 audit was:

*“For the majority of separations reviewed, payments to Chief Executive Officers and Executive Contract Officers during the 2000/01 and 2001/02 financial years, following early termination of their employment, involved payments in excess of their Contracts of Employment.*

*There is still insufficient documentation identifying why payments in excess of contract terms are being made to early terminating CEOs and other ECOs.”*

The issue was subsequently taken up by the Public Accounts Committee (PAC), which conducted a public hearing with the Commissioner for Public Employment (the Commissioner) to ascertain his response to the issue raised. Prior to finalising their report the PAC asked me to revisit the Office of the Commissioner for Public Employment (OCPE) to ascertain the effectiveness of procedures now in place which address the concerns raised in the February 2002 Report.

**OCTOBER 2003 REPORT**  
**Auditor-General for the Northern Territory**

**Auditing the Public Account and other accounts**  
**OCPE - Early termination payments to CEOs and ECOs**

**Background continued**

This audit specifically looked for an improvement in the documentation preceding separation payments. In this regard it is noted that:

- Section 7 of the Information Booklet on Executive Contract Employment of the Northern Territory Public Sector issued in March 2001 sets out the conditions expected to be included in CEO and ECO contracts.
- CEO and ECO contracts usually identify a payment benefit limit, usually to a maximum of six months of Total Employee Cost, in cases of early employer initiated terminations and retrenchments. This is intended to limit the financial exposure of the Northern Territory Government.
- Early terminations at the employee's initiation require only accrued entitlements to the date of termination to be met.

**Audit objective and scope**

The objective of the audit was to:

- examine whether payments to CEOs and ECOs, after 1 January 2002, following early termination of their employment, were in accordance with their Contracts of Employment, or if not, whether variations were assessed as achieving an improved outcome for the public benefit; and
- follow-up previous audits, in particular recommendations made regarding insufficient documentation on files to support decisions made.

My audit examined eleven terminations (four CEOs and seven ECOs) over the period 1 January 2002 to 30 January 2003.

**Audit findings**

***Opinion***

For the majority of separations reviewed termination payments to CEOs and ECOs, following early termination of their employment, were in accordance with their Contracts of Employment.

***Office of the Commissioner for Public Employment has commented:***

*Agrees with the audit finding.*

While some issues noted concern the period prior to the appointment of the current Commissioner on 1 July 2002, issues concerning three terminating employees arose during the current Commissioner's tenure. However, processes and negotiations for these three terminations commenced prior to his appointment.

There has been improvement in the standard of documentation filed in support of termination decisions.

**Auditing the Public Account and other accounts  
OCPE - Early termination payments to CEOs and ECOs**

**Audit findings continued**

***Documentation could still be improved***

Previous reports by my Office noted instances of a lack of documentation to support decisions made for the NT Government to meet certain costs. While there has been improvement, and in all cases reviewed the payments made were appropriately authorised, this continues to be a finding. For example:

- There was no documentation on file to explain why a departing contract officer was paid four weeks in lieu of notice when the early termination payment was calculated using the ECOs total employment cost and
- There was no advice on file from CEOs of the relevant Agencies for two departing contract officers that these employees were surplus to requirements.

***Office of the Commissioner for Public Employment has commented:***

*While accepting the document trail was less than perfect in the instances identified, the faults were of detail rather than substance. Consistent with your recommendation, an agency checklist is being implemented to ensure that all appropriate documentation is on file before a terminating contract officer's file is closed.*

***Employment contracts negotiated with CEOs***

While not initially part of the scope of this assignment one transaction audited resulted in a review of two separate contracts of employment entered into with one CEO from which it was concluded that a policy gap exists as it relates to remuneration arrangements with CEOs. In this case, non-standard remuneration arrangements had been entered into, but the relevant file was not held by the Commissioner, potentially making him unaware of the arrangements.

The audit identified that the NT Government has established an Executive Remuneration Review Panel (ERRP) which provides advice to the Commissioner on remuneration rates for ECOs. The ERRP also scrutinises and provides advice on remuneration arrangements for CEOs. However, it only took on the latter function from 15 March 2003.

Not involving the ERRP or the Commissioner in remuneration arrangements with CEOs could result in fluctuating remuneration and other conditions of service being entered into and the setting of precedents. This also indicates a possible gap in policy as it relates to remuneration arrangements entered into with CEOs. The new provisions adopted by the ERRP on 15 March 2003 should adequately address this gap.

***Office of the Commissioner for Public Employment has commented:***

*It should be noted that this relates to one case which occurred in January 2002 which, due to the policy at the time, was not handled by OCPE. Since 1 July 2002, OCPE has resumed a role in managing all executive contracts.*

## **Audit findings continued**

### ***Public disclosure of remuneration arrangements with Senior Officers***

Consistent with Australian Accounting Standards, the financial statements of NT Government entities are not required to disclose remuneration paid to senior officers. However, such disclosure is regarded as best practice and would enhance transparency and accountability. It is a requirement of accounting standards issued by the Public Sector Committee of the International Federation of Accountants (IFAC) that annual financial statements disclose remuneration paid to senior officers. IFAC's accounting standards do not currently apply to Australia, although their influence in Australia is likely to become more significant as Australia adopts international accounting standards.

Non-disclosure of remuneration arrangements with Senior Officers is inconsistent with practice in the private sector, as it relates to listed companies, and reduces transparency and accountability.

## **Recommendations**

That:

- A checklist or other completion aide-memoir be used to ensure that all appropriate documentation is on file before a terminating contract officer's file is closed. In particular the reasoning behind decisions to make variations to an Executive Officer's contract conditions should be noted on the file.

### ***Office of the Commissioner for Public Employment has commented:***

*An agency checklist is being implemented to ensure that all appropriate documentation is on file before a terminating contract officer's file is closed.*

- Clear policy regarding remuneration arrangements for CEOs be developed and the Commissioner be included in the development and implementation of such policy even though CEOs are not "employees" under the *Public Sector Employment and Management Act*,

### ***Office of the Commissioner for Public Employment has commented:***

*The OCPE and ERRP have been operating under general policy guidelines since July 2002 with written procedures, advised to CEOs, since April 2003.*

- The ERRP's revised terms of reference, which now includes the review of non-standard remuneration arrangements, be applied in all cases; and

### ***Office of the Commissioner for Public Employment has commented:***

*Since 1 July 2002, OCPE has resumed a role in managing all executive contracts. Formal procedures for ERRP have been in place since 12 May 2003.*

**Auditing the Public Account and other accounts  
OCPE - Early termination payments to CEOs and ECOs**

**Recommendations continued**

- Consideration be given to including in the Treasurer's Directions a requirement that the remuneration of Senior Officers be disclosed in the notes to financial statements consistent with IFAC's public sector accounting standards.

***Office of the Commissioner for Public Employment has commented:***

*This is being investigated in conjunction with NT Treasury. Consistent with improvements in financial reporting and as part of the 'Working for Outcomes' framework, consideration will be given to appropriate reporting of remuneration details.*

**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**PUBLIC ACCOUNTS COMMITTEE**

***Membership***

Mr E McAdam, MLA (Chairman)  
Mr S Dunham, MLA  
Mr L Kiely, MLA  
Ms D Lawrie, MLA  
Dr R Lim, MLA  
Mr G Wood, MLA

***PUBLIC HEARING***

**INQUIRY INTO THE TERMINATION PAYMENTS  
TO EXECUTIVE CONTRACT OFFICERS**

**Tape-Checked Verbatim**

**TRANSCRIPT OF PROCEEDINGS**

**Thursday 13 February 2003**

**OFFICE OF THE COMMISSIONER FOR PUBLIC EMPLOYMENT**

Appearing before the Committee:

**Mr J Kirwan, Commissioner for Public Employment  
Mr T Tsikouris, Director, Employee Relations, OCPE**

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**Mr CHAIRMAN:** First of all, I would like to call the Committee to order and open the public hearing of the Public Accounts Committee, today being the 13<sup>th</sup> February 2003. People will be aware that the Committee operates under the Standing Orders of the Northern Territory Legislative Assembly.

I would particularly like to welcome to these hearings Mr John Kirwan, who is the Commissioner for Public Employment, and Mr Theo Tsikouris, who is the Director of Employee Relations, also from the Office of the Commissioner for Public Employment. People will be aware that both of these gentlemen are appearing for the Committee today as it inquires into the termination payments to chief executive officers and executive officers.

I would now like to read the Terms of Reference for the scope of the inquiry. In relation to the two periods:

*...the Public Accounts Committee wishes to examine the framework covering the processes; the process and entitlement for departure from NT Public Service agencies; how the process has been administered with particular reference to the process relating to the departures initiated by the employer; the total of costs brought about by reason of the employer initiating the departure and savings derived from employer-initiated departures for each period; and any improvements which are being implemented to the process administered by the Commissioner for Public Employment, to address the issues raised by the Auditor-General.*

Other than in exceptional circumstances, witnesses before this committee are not required to take an oath or affirmation. However, I must remind you that evidence that you give to this Committee must be truthful. I now ask for the *Hansard* record that you please state your full name and the capacity in which you appear here today.

**Mr KIRWAN:** John Douglas Kirwan, Commissioner for Public Employment.

**Mr TSIKOURIS:** Theo Tsikouris, Director of Employee Relations.

**Mr CHAIRMAN:** Thank you both very much. Each of the Committee members would have received a folder which essentially are the responses by John, as I understand it. I propose that if you, John, would just like to take us through that in respect of the points you raise. Clearly, if Committee members wish to seek clarification with respect to any of the things which may arise, then please feel free to do so, but I propose to take most of the questions after John's address, but, as I say, please feel free to seek clarification during John's address.

**Dr LIM:** Mr Chairman, this folder was handed out this morning, I assume, and so you are planning to go through that folder?

**Mr CHAIRMAN:** Yes.

**Dr LIM:** Good, okay. May I apologise on behalf of the member for Drysdale, who is caught up with the Fred McCue show and will be here as soon as he can.

**Mr KIRWAN:** Thank you, Mr Chairman. I thought, when we received the inquiry from the Public Accounts Committee, it would be better for us to table documentation in the form we have, and we will walk our way through it. It was better, we thought, than handing up 10 or 15 exhibits as we went through the process. It is also, hopefully, our intention into the exercise, particularly for those who do not have an NTPS background, that the process of how we terminate for redundancies, executive contract and CEOs, will become clearer. That is the purpose of the exercise. If we have not been clear on any of those or I fall into jargon or areas like that, please do not hesitate to ask questions.

It is a question of law and contract law and so it is not necessarily the easiest of some of the documentation we work through, I appreciate. As I have said to others, when I was going through the appointment process, it took me several goes to get clear what is the arrangement in the Territory as well. It is not because it is overly complex, but it is a little bit different in some areas and, coming from outside, I appreciate that.

I would just like to acknowledge that we have with us, also from my office, Brian Mappas and Erica Sauzier. Our intention would be that if there are questions raised, particularly of detail, while this hearing is here, my preference would be that we find the information and get back, so we will try and do that as well so that we give you as complete answers as possible in this process.

The folder, if I can just explain how we have done it: we have divided it up into the three questions or the three areas of inquiry, and what we have attempted to do in each area is provide answers as we would understand the questions - I do not profess to necessarily have got it totally right - and examples of documentation which go to the questions, but also so that people can have a working knowledge of what we do.

If it is okay with you, Mr Chairman, I will start with number one.

**Mr CHAIRMAN:** Certainly.

**Mr KIRWAN:** The first question goes to the process and the entitlement, how it is administered, just bringing to the Public Accounts Committee's attention that Executive Contract employment in the NTPS is defined under the *Public Sector Employment and Management Act*. There are slight variations for some positions where the Administrator, for positions like myself, was involved in the appointment, or the minister is for CEOs; but generally it is the same condition of employment for Executive Contract Officers and CEOs.

The Commissioner, being myself, but in this instance, my predecessor has determined the conditions of employment for Executive Contract Officers, and those are included in Determination No 4 of 2001. It is important to know - and in the folder in the inside cover we have an information booklet. This goes to all prospective Executive Contract Officers who get to the stage of negotiations. Although not what we'd call freely available in that it is not sitting at the front in our publications stand, it is handed out to CEOs and Executive Contract Officers relatively freely, so it is not a confidential document but it is not a public, public document. This actually explains to people coming into our service, before they sign their contract, what are the contracts and conditions of employment.

Under the *Contracts Act*, the Minister can contract for and on behalf of the Territory and that is the power that is used for chief executives. That power is often delegated to myself or the CEO of the Department of the Chief Minister of the CEO of DCIS, and that is based on the case of availability. If I am not available, one of the other two would be the one to sign.

**Dr LIM:** Mr Chairman, can I just ask a question? The booklet enclosed - oh! This one?

**Mr KIRWAN:** The issue, I think, where we come to quite clearly is the most critical area, which is how the contract can be terminated. The process is either by termination by the Executive Contract Officer, and I will use that word generically also in respect to CEO, so we are not confusing that. And that includes resignation or retirement. I suppose the best example of that is my predecessor who had decided to retire, and simply gave his notice and then left.

In respect of termination by the employer, this is the area where there can be some confusion. There is a range of areas under the executive contract provisions in the Determination as to how Executive Contract Officers can be terminated by the employer. There is only one of two ways. That is, by the employee resigning or retiring or by the employer.

The documentation here - and we have attached sections of the Determination so that we can draw specifically to it. Sections 55 to 61 of the executive contract actually outlines what process can be undertaken. What we have then is on the executive contract completion - resignation or retirement - what the entitlements are under point one on page two. The termination could be there for cause or incapacity and, we explained there, misconduct, physical incapacity, those sorts of issues. Under sections 56 and 59, termination of contract, it is outlined in point three from A through to I, what occurs.

I do not propose to read those out to the Committee. but it actually outlines the process that starts with the chief executive officers or minister, depending if a chief executive officer is involved, speaking to the Executive Contract Officer and saying the position is no longer is required, or the change of circumstances, and what then occurs. I bring the Committee's attention to the loop of my office and my position and that situation where they then have a situation where they would then speak to me, and that provides yet another loop or another fail safe in that situation as to whether that is a valid redundancy or a valid way of dealing with the issue.

**Mr WOOD:** Mr Chairman, are we allowed ask questions as we go along?

**Mr CHAIRMAN:** I am reasonably flexible in that respect, but this is a fairly lengthy document.

**Mr WOOD:** I was only worried that by the time we got through it, we might have forgotten what we were going to ask.

**Mr CHAIRMAN:** What I am saying is if you are wanting to seek clarification, I will be flexible in terms of ...

**Mr WOOD:** It relates to what was just being spoken about.

**Mr CHAIRMAN:** Yes, go ahead.

**Mr WOOD:** The issue of whether a person has been offered another job, and this relates to amalgamation of departments, as a breach of contract. In other words, if the person was CEO of a department, and the department got amalgamated, and they were offered another job, but obviously it was not the CEO because the department was now a bigger department, is there anything in this section here that gives that person grounds to say: 'Well, according to some sub-section here, my contract is not valid'?

**Mr KIRWAN:** Not in this process, but generally in the contract - and most of our contracts are for four years, I probably should have mentioned that - if, in the middle of that contract, say, after two years, there is an amalgamation of agencies or, as I have seen occur in some other jurisdictions, say, a federal funding stream dries up so you end up with amalgamations or agencies being taken over by federal departments or *vice versa*, and those sorts of things do occur on occasions, the contract is with the employer for four years. There is some flexibility in being an Executive Contract Officer in respect of what duties one can be expected to do, but if there is a significant material change in the work, the employer and the employee would be expected to sit down and talk and work out if there is a suitable, agreeable alternative. If both parties agree to an alternative, such as taking up another senior role in another agency or working somewhere else, that is what occurs.

If there is a disagreement, then we would probably come back to the contract in respect to resolving the differences, and the alternatives are fairly clear in the provisions of the executive contract. I do not think it gets to a breach unless there is a disagreement over which way things should progress. I would have to say the Territory, I think, has been very successful over the years in not having disagreements with their executive contract staff.

**Mr WOOD:** I mean, there is a reference, in some of the documents we've had, to a particular person who, I think, might have been offered a job, but did not want to take up that job. Would that person have the right to say: 'Well, my contract is...'

**Mr KIRWAN:** They would have a right to negotiate with their employer to say: 'The alternative you are proposing is not satisfactory', and if the employer agrees they would negotiate to probably then move to termination.

**Mr WOOD:** I am probably being unclear, but still, could the government say: 'I'm sorry, you have to stay there', and then the only option is resignation.

**Mr KIRWAN:** It is hypothetical because it has never been tested here, to my knowledge. You start getting into areas that I probably have some discomfort with because you are probably bordering on constructive dismissal and you are probably bordering on potential breaches of contract. I would have to say neither have been tested in my experience here, and neither, generally, are they at these levels across government and, to a greater extent, private sector in Australia.

I think in the purest sense, if there is a major change in the role and responsibilities a person is originally contracted for, there could *prima facie* be a case for breach of contract, but most people understand when they come into the government that governments are - for example, changes of ministers, changes of governments because of electoral cycles lead to change.

**Mr WOOD:** Yes. The reason I have raised it is because when we spoke to the Auditor-General back on 8 October, he said in terms of an executive contract, once you sign an executive contract the government owns you; it can put you wherever it wants. Would you say that was true?

**Mr KIRWAN:** No. No, I think that you have to read that consistent with, for example, our Code of Conduct and Principles, the ethical behaviour of how we treat our staff, the principles under the *Public Sector Employment Management Act*. You could not arbitrarily or capriciously, in my view, move someone from one area to another area within the Territory, but there are powers in the Act for compulsory transfer in respect to other staff.

Executive staff can be moved around at level, but I do not believe you could do it arbitrarily or capriciously, and if an officer felt - a CEO or an ECO - that that is the way they were being treated, again - I am not a lawyer, so I err on the side of caution in getting into probably the answer in this area because it is hypothetical and therefore potentially dangerous - but if you treated someone arbitrarily or capriciously, I would suggest it would be determined in a court of law and, if done badly, probably in favour of the person who is being treated that way.

**Dr LIM:** Mr Chairman, this relates to the question I, which is probably what Gerry was asking. You talk about the four year contract, an ECO contract is four years. Mid-way through a contract, circumstances change and the person is no longer required or whatever, but that person does not want to resign or retire from their position. According to item I, you can get a maximum termination payment of up to six months. What happens to the rest of the term? I mean, you say: 'I am not leaving; I have got another two years to go in my contract, I am going to work it out'. What happens there?

**Mr KIRWAN:** Through you, Mr Chairman, to the member for Greatorex: two things. The contracts are up to four years, so they can be less, again just so we are clear. The provisions of the contract that ECOs and CEOs sign - there is a provision that the contract can be terminated, and there are two payments that are made potentially. If you are a former NTPS employee, there is the NTPS provisions which we have outlined there, which is the two weeks of service up to a maximum of 48 plus the four or five weeks depending upon how old you are, I think it is. Or, for someone like myself who is relatively new in the crew from outside, it is six months capped. And that is the only compensation.

That is not unusual, a capping. In other states, other public sector jurisdictions, it is often capped legislatively although often capped to a year, not six months, which is more in line with the general NTPS provision. In the private sector, you see a range of different arrangements. Some are if the contract is terminated, the rest of the contract is paid out, so if you are six months into a contract, you get three and a half years' pay. That is not unusual in the private sector. I think the best example we would probably know is football coaches who, for various reasons, get half way through and then get paid out. They are a very volatile environment; they would be very unwise normally to accept advice to have a contract that is anything other than that. But in our instance, people come into the NTPS, and that is why in that booklet it is quite clear and explicit that for the new starters, in particular, it is a six month payment maximum. So even if you have three years of your contract to go, the maximum payment if you are new and under those provisions is six months plus your entitlements.

**Dr LIM:** Would that apply to the Auditor-General as well?

**Mr KIRWAN:** No. My understanding of the Auditor-General is that he is a statutory appointment for seven years. Without going into it, that is about at my level of understanding of the Auditor-General's appointment because obviously, one, we were appointed at the same time, but, two, we would probably not be involved in that process because my memory is he is your employee. I think if there are issues in respect to such statutory positions as that, I think they are covered in his legislation, and I must admit I am not conversant with that. Statutory appointments like that often have different arrangements.

**Mr WOOD:** Can the government write up a contract with an employee outside of this?

**Mr KIRWAN:** Through the chair to the member for Nelson: the first question is, if I understand your question, the government being the employer, which is me, as the statutory employer, I suppose I could vary my own Determination but I would have to do this. That is, if there is a variation to this, we actually have to do a Determination to give us a head of power. So all of our executive contracts are on the model that is before you, and I am certainly unaware of any variations. In fact, several have attempted variations in the negotiation phase, and I have to say my staff and the staff of some of the agencies have been very good, in my view, in making sure that there is no variation to it.

A little bit of history that might be helpful is that when the executive contract model was put in place some 10 or so years ago, a number of conditions were rolled into it. So we have been very loathe to actually seeing it breaking down like that for a range of reasons. We do all of the executive contracts on behalf of the ministers with the CEOs, so all of them are standard to the best of my knowledge, and there are no variations in respect to what the Determination is.

There is one that has come through since I have been involved, and that is someone who is over 50 years of age and was seeking a slightly greater amount to be able to put in to superannuation because the person did not have as much super - had moved around jobs and was not fully superannuated. That is consistent with the Australian Taxation Office rulings on superannuation for people of that age. That was a minor variation, but the total employment cost did not change; it was simply a case of how they mixed it.

**Mr WOOD:** What I was trying to get at is can the government just go out and deal with some bloke and write their own contract and say: 'We would like you to work for us for this' or does the Act require the government to do that purely within the guidelines shown here.

**Mr KIRWAN:** Probably a bit of clarification. If they are an NTPS employee, the answer is no. If they are - and the areas outside of my domain are sworn police officers, and I think the answer there would be no. The other area is the Tourism Commission. We now have an agreement with the Tourism Commission and that they will be consistent with ours, so the answer would be no. The only area I would probably then be unclear on is direct employees of ministers and parliamentary staff. In that area, I am unaware of what occurred. But broadly, I think, I am unaware of any major variations, and certainly in the areas I have responsibility for, the answer would be broadly no.

**Mr WOOD:** So ECOs have to be consistent with...

**Mr KIRWAN:** Consistent with the information before you.

**Mr WOOD:** If you are not ECOs...

**A member:** CEOs or ECOs?

**Mr WOOD:** Well, ECOs...

**Mr DUNHAM:** Yes, Executive Contract Officers.

**Mr WOOD:** Yes, they have to be employed under this...

**Mr KIRWAN:** Yes.

**Mr WOOD:** That is all right, just so I can get an understanding that you can not go off and do something else. Yes.

**Mr DUNHAM:** My question was about appointments to ministers' offices, press officers, ministerial officers and the like. Those contracts come to you and they are rarely outside of the norm?

**Mr KIRWAN:** Through the chair to the member for Drysdale, no. We have nothing to do with them so we cannot comment.

**Mr DUNHAM:** Right, okay. And what about - there has been a recent report into health that talked about hospital clinical employment contracts and made some recommendations. Do they come to you?

**Mr KIELY:** Can I seek a point of clarification here? I thought we were looking at this: the periods of contracts and terminations from August 2000 to August 2002. It is outside the terms of the inquiry to be looking at appointments. We are not here to talk about appointments. We are here to talk about ...

**Mr DUNHAM:** I am merely trying to ascertain his sphere of influence. We already know that the Tourism Commission was out and is now in. I am asking now whether the Office of the Commissioner for Public

Employment has anything to do with the contracts for people appointed to ministers' offices and also people who work in the health system, particularly Royal Darwin and other hospitals.

**Ms LAWRIE:** Within the scope of up to August 2002 - for clarification.

**Mr DUNHAM:** Whatever. Who cares? I am just asking if it is part of his deal.

**Mr KIRWAN:** Through you Mr Chairman, to the member for Drysdale: we do deal with those positions, and from memory, in round figures, there are about 20 that are covered by executive contracts. We have recently had the exchanges with the Department of Health because I, at one stage, chose not to sign and agree to some that they had requested until we did an audit of what was being paid for those 20 or so in that area.

They are different, however. That is, in respect to the medical officers, particularly the senior medical officers. Much of those Determinations, although the contractual provisions, are similar, the actual rates of pay go to the market rates required to attract senior specialists which, again, makes it not necessarily inconsistent with what happens in other states and territories.

**Mr DUNHAM:** I agree with it, by the way, Mr Chairman. I am merely asking if they had come across your desk.

**Mr KIRWAN:** Yes. It might be worth indicating that the executive contract positions go from EO, which become ECO1s to 6; contract teachers at level ET5; a small number of senior police officers; and about 18 or 20 of the senior medical positions. That is broadly the scope of executive contract positions within the NTPS.

**Mr CHAIRMAN:** Do you wish to continue, John?

**Mr KIRWAN:** Thank you, Mr Chairman. At point 3, sub-points A through to I explain the process. We have attached section 59. We explain what is paid in those areas, and that is attached in the section marked Number 1. It explains the two different payments that can be made on redundancy. That is, six months for non-NTPS ECO staff and for NTPS staff that have come into it, it is a maximum of 48 weeks with four to five weeks' payment in lieu of notice.

A couple of points I would like to make - there are some variations, although relatively minor. They go to:

- relocation costs, which are based on actual cost;
- outplacement services, which is one of the initiatives that I have introduced in respect of helping Executive Contract Officers write up resumes, get themselves onto the markets. Again, with a lot of these positions, they are long-serving people and may not have been in the job market recently. As I can attest, every time one ventures into the area, everyone has changed how you apply for jobs and how you write up your CV, so we provide that assistance; and
- obviously, in respect to retrenchments and redundancies, as we would apply for our own workforce, there is a need for financial and for legal advice to make sure they get their affairs into account and that they can set up their payments appropriately.

They are not generous, they are basically at cost, although they vary a little bit between people, and certainly, I think they are appropriate, particularly for long serving people, as a number of these are more senior people and it is important that they separate from our service with dignity.

I think it is important to say that the process in itself is not dissimilar to what would happen to one of our own NTPS employees outside the executive officer stream. And the payments, again, are not inconsistent with what would normally occur - that is the formula - although the rates are higher, obviously, because these people are attracting normally significantly higher rates, and a number of them have significant service with us.

The attachments in Section One are as indicated. You have a copy of the contract and the Determination. As Mr Tsikouris has identified to me, Schedule One actually does give you a copy of written documentation of which officers are included in executive contract range. So that is quite explicit.

**Dr LIM:** That is Determination 4 of 2001 in Schedule One?

**Mr KIRWAN:** That is correct, member for Greatorex.

**Dr LIM:** Thank you.

**Mr WOOD:** This is your first yellow item in there?

**Mr KIRWAN:** Yes.

**Mr WOOD:** Is that covering - it starts of with the heading. The first page just says Executive Contract – sorry, through you, Mr Chairman - Executive Contract of Employment for Chief Executive Officers. That is the first page. And the other side is for Executive Contract Officers. Is that how it - are we talking CEOs or ECOs, or both?

**Dr LIM:** Both.

**Mr KIRWAN:** Both are there because it applies to both, but you will see all that changes is the cover page. The terms of the contract and the Determination 4 of 2001 is what also applies to them.

**Mr WOOD:** In simple terms, what would be the difference between a CEO and an ECO?

**Mr KIRWAN:** Who the employer is.

**Mr DUNHAM:** There is only one CEO for a department, but he might have 50 ECOs under him.

**Mr WOOD:** Yes, right.

**Mr KIRWAN:** CEOs are not my employees under the *Public Sector Employment and Management Act*. They are employees of the government, and I am delegated on behalf of the minister to sign those contracts. ECOs are employees of the NTPS under the *Public Sector Employment and Management Act*. At the first part you see that power for those contracts comes under the contract legislation for CEOs. For ECOs, it comes under the *Public Sector Employment and Management Act*.

**Mr TSIKOURIS:** Just by way of clarification, Mr Chairman, the page that you are referring to, member for Nelson, has unfortunately been photocopied back to back. They should be two stand-alone pages. So it is a cover page that would accompany the Determination in the contract, depending on whether you were an ECO or a CEO. So that is really the only material difference in the documentation. It is just unfortunate it has been copied back to back, if that clarifies it.

**Mr KIELY:** When we talk about ECOs and CEOs, are the CEOs in a certain range, like from an ECO3, 4 or 5, or are they a stand-alone...

**Mr KIRWAN:** Through you, Mr Chairman, for the member for Sanderson: the CEO range can be drawn - they are all drawn from the one salary range which is ECO1 through to ECO6. There is not a separate salary range. My hesitancy is that because of the agency amalgamation, I am just trying to think of where the lower penetration of CEOs would be. With the larger agencies, most are at the 6; smaller agencies and others, but there are not too many smaller agencies as such now, but as I remember, prior to the machinery of government reforms under the change of government, there were CEOs at the lower end of those ranges. So you could have CEOs on the same rates as say, deputies, in some of the larger departments but they all come from that ECO, EO range, one to six.

**Mr KIELY:** So just depending on the size of the agency, you might have a CEO who is paid at the - and were just – so you might have a CEO paid at the ECO3 level; for a smaller agency as a CEO with all the powers that go to a CEO, and then in a larger agency it might be an ECO4 or an ECO5, but with the same sort of range of powers.

**Mr KIRWAN:** Yes, except that I think – well, my understanding would be that most of the agency CEOs would now be 6. Some smaller may be - yes.

**Dr LIM:** So, this schedule is fairly standard across the board. Just referring to this:

*Employment contracts for clinicians across the Northern Territory health system currently exhibit [inaudible] their ability. They lack any sound, consistent basis.*

So I wonder where that comment has come from, if they are all looking at this document.

**Mr KIELY:** What are we looking at?

**Mr CHAIRMAN:** He is looking at the end of Health.

**Dr LIM:** It is about ECOs.

**Mr KIELY:** Once again, I go to the terms of reference. I mean, you are bringing in the Health Review into...

**Dr LIM:** No, no, I am not talking about the Health Review; I am talking about a comment made by a review that talks about our public service.

**Mr KIELY:** Yes, but that is outside the terms of reference. I just feel that we are going to keep on dragging these red herrings into what we are looking at now. I mean, we are talking about the contracts. We have gone over the contracts, saying these are the ECO contracts. You are bringing in the Health Review and what is stated in there, but I do not think that is pertinent to the business that we are ...

**Dr LIM:** ECOs in the Health department are no different from any other ECO. That is what I am saying it seems to me that if this is a document that goes across the board to all ECOs, there is obviously one department that has been identified as lacking any sound, consistent basis. I mean, how does that happen?

**Ms LAWRIE:** Through the chair, I reiterate that the question from the member for Greatorex is clearly outside the scope of this inquiry and I would suggest we actually work today within the scope of the inquiry.

**Mr CHAIR:** What I propose to do is to allow Dr Lim to ask the question, but I remind Dr Lim and others that from there on in, I am more than happy to allow a certain amount of flexibility, but members are aware of what the terms of reference relate to, and I intend to go down that track. But for the time being, Dr Lim, go ahead and ask the question.

**Mr KIRWAN:** Through you, Mr Chairman, to the member for Greatorex: what I can advise is that we, as others, received notice of the Health Review report yesterday. We have not done a detailed review from the office's response to it. What I can say from my understanding, which may or may not be the right understanding at this stage, is that there are variations in how some of the doctors are paid. We would find some medical specialists being paid differential rates but are still equivalent specialists. I would have to say from my background, for employee specialists, I find that strange. I am used to a model supported by the AMA that all specialists are paid the same, particularly, so that that does not provide advantage to procedural specialists over some of the other specialists, such as gerontology or oncology areas. That is what I think is alluded to, but I do not think I can comment on that. Certainly, we would be happy in other processes, either other Public Accounts Committee or the Estimates process, to explore those. I probably would ask for some time, however, for my staff.

**Dr LIM:** Okay. Could you take that question on notice and...

**Mr CHAIRMAN:** Well, I mean, it is up to you.

**Ms LAWRIE:** Put a Question on Notice.

**Dr LIM:** If the Commissioner is not able to answer it now, I respect that...

**Mr CHAIRMAN:** With respect, Dr Lim, the Commissioner did not say that he was not prepared to answer it. He said that he would need more time. Now, what I am suggesting to you...

**Dr LIM:** Yes, it is the same thing. If I can finish what I started to say...

**Mr CHAIRMAN:** No, you can't. Just hold on a sec. I said before I am more than prepared to allow a degree of flexibility in regards to this but I have reminded you that we will try and we will confine the questions

or your clarifications in respect of the terms of reference. So, John, would you like to continue with your presentation?

**Mr KIRWAN:** Thank you, Mr Chairman. The next attachment we have is we have actually specifically pulled out the completion of contract, termination or suspension of contract provisions. It repeats what you have already have, but I thought it was easier for members of the Public Accounts Committee so you have actually these provisions because these are the - this is the legislative head of power that goes to the issue of the Determination provisions that underpin, I think, your interest.

Attachment - this is a series of letters that this goes, particularly in respect to your third point, but I thought I would table these. These are the letters that would be exchanged between the executive contract officer and myself, that go to their termination from the NTPS. And this goes to one of the points in the Auditor-General's report about lack of documentation. These are now in place. Again, not dissimilar to what would happen for an NTPS employee themselves, but you see a process where it is outlined quite explicitly what the terms and conditions are, and what payments will be made. Again, as per the outline of the process, once that is signed and agreed, we would send that information to the DCIS Executive Service Unit and they would then promote the payments, arrange for the payments to be made.

**Mr WOOD:** Can I just ask a question on this?

**Mr CHAIRMAN:** As long as it is relevant.

**Mr WOOD:** Yes, I hope so. There has been a debate about whether a person's right to privacy covers making public a person's salary. Where do you find that? Is it in some other act? And does it cover the right of, say, a Public Accounts Committee to ask those questions? Is there anything here, say, when you write a letter to the person saying these are your conditions ...

**Ms LAWRIE:** 'Private and Confidential' up the top.

**Mr WOOD:** Pardon? The reason I ask is I think, to some extent, for the Public Accounts Committee, when we have to deal with this question of whether there have been payments over and above, is there something that says that this Public Accounts Committee has not got the right to see what that employee was paid?

**Mr KIELY:** If we go back to the process of inquiry, I think you will find it all written down there, Gerry, and we had this out in a deliberative session.

**Mr DUNHAM:** It is a different question. He is merely asking if it is available through other means, or is it necessary for us to do it through a formal PAC mechanism. That is all he is asking.

**Dr LIM:** And I think we should let the Commissioner answer the question rather than us trying to answer questions on behalf of the Commissioner, which we are not.

**Mr CHAIRMAN:** Would you like to respond, John?

**Mr KIRWAN:** Yes, thank you, Mr Chairman. In response to the member for Nelson, it was made clear in response to questions, I think, on behalf, on Minister Stirling in respect to the Leader of the Opposition, but also in respect of informal discussions I have had with a number of members of the Public Accounts Committee about concern I would have if we were asked for individual, identifiable information. The heads of power that it comes from is that in respect of the *Public Sector Employment Management Act*, in respect to ensuring confidentiality of staff records, in respect to the inability of the minister to access that information, and it is quite explicit in respect of the Act in that he has no power to direct me to provide access to that; I have a statutory power under the act to maintain employee records, and it is defined, which is normally delegated to CEOs.

It is the Code of Conduct in respect to the principles and Code of Conduct within the Northern Territory Public Sector. It goes to the issue of confidentiality of records and the requirement for us to keep that information confidential. Our Employee Instruction No 10 on employee records is quite explicit in several areas and actually binds the CEOs in respect of Section 7 of that, access to records by persons outside the public sector, and it says that as Chief Executive, I shall not release information contained in employees records to people outside the public sector.

I would suggest that it is a fundamental issue of separation of power between the bureaucracy and the parliamentary and executive arms of government that it would set a dangerous precedent for members of parliament or executive members such as ministers to access such records. It would set a very dangerous and interesting precedent that I would suggest would have to be resolved in fairly high courts of law because, as I have indicated, if there was a request, I would be duty bound to refuse. I think it is totally inconsistent with the contemporary FOI and privacy legislation. That is, if you were trying to access a third party's information, you require the third party's permission and in this instance, they are all third party and, by definition, they are all people who have left our employment.

One other issue: with a couple of these people, not all of them, there were outstanding Work Health and other legal matters and they are bound by legal agreements, some of which my office was involved in, some of which my office was given as a result of agreement between lawyers, which are bound by confidentiality provisions in the settlement of those issues, again, predominantly, in a couple of those cases, Work Health matters.

Finally, I would say if the Public Accounts Committee, which I think has every right to know whether the tax payer's money is being spent well, that is, I would dutifully respectfully, say, is an issue that the Auditor-General is in place to interrogate on your behalf, and if you are not confident that is being done well, I would suggest that his audit regime and scale should actually be directed to his attention, and I am more than happy for that to occur.

**Ms LAWRIE:** Through the chair, the comments in relation to confidentiality existing in the Northern Territory and in this jurisdiction, Commissioner, I would ask whether that is consistent with every other jurisdiction in Australia.

**Mr KIRWAN:** Yes, and consistent with the Westminster system.

**Mr WOOD:** Through the chair, on our trip to Tasmania where we followed the Estimates Committee process, it was the Premier of Tasmania who actually publicly released ECO, I imagine they were, salaries. He was quite up front, and he named people, he named about four people, and he said that if the person asking the question wanted any more information, he would be quite happy to give it. That was the process that we first learnt of when we went on that trip, so it appears that in some places it may be different, or do you think, that the Premier was out of order there?

**Mr KIELY:** What sort of question is that, Gerry? He cannot comment on that.

**Ms LAWRIE:** Mr Chairman, I object to that question.

**Mr CHAIRMAN:** Can we have some order, please, and stop acting like yahoos.

**Mr DUNHAM:** Are you acting like a yahoo?

**Mr CHAIRMAN:** Well, Stephen, you have just come, so...

**Ms LAWRIE:** Mr Chairman, I object to that question. He is asking the Commissioner for Public Employment to reflect on another jurisdiction.

**Mr CHAIRMAN:** Absolutely. If you'd like to continue ...

**Mr WOOD:** Mr Chairman, the Commissioner said that it applied in all jurisdictions. We went to Tasmania and we saw the Premier quote the names and the salaries of those people. I just thought that maybe there might be some variations in some jurisdictions.

**Mr CHAIRMAN:** John, do you want to comment on that?

**Mr KIRWAN:** Through, Mr Chairman, to the member for Nelson, I agree totally with the member for Karama. I have no intention to comment on whether Premier Bacon can or cannot do whatever he wants in his jurisdiction. It would be totally inappropriate.

What I would say is that the two issues are not the same. The issue of disclosing rates of pay for existing staff in the senior levels of the government is an issue that is a public policy for a government of the day. For members' interest - because I am sure you are all diligent readers of my annual report - I draw your attention to pages 96 and 97 where we have actually introduced a table, and I just read the quick preface to it:

*The following table is a new introduction to show not only the number and distribution of Executive Contract Officers in executive bands ECO1 to ECO6, but also senior police, contract principals in education, and contract specialist medical officers.*

So this year we actually put in the span of executive contract staff. This was following discussion with the Auditor-General where, consistent with contemporary practice that you will see in private sector companies and other public sector agencies, the banding of where our senior staff are has actually been put there without them being individually identifiable. It does not take too much to work out probably where some of them are, but that information, as a matter of good public administration, is provided but is not individually identifiable.

So I think that is different. In this instance, the questions that were being raised were originally of individual officers who have since left the NTPS as to exactly what their entitlements were and exactly what was paid. At that point I repeat the reasons why I think that is unwise for that level of information to be provided and in fact, in some instances, legally I do not think I could even if requested or subpoenaed to do so.

**Mr CHAIRMAN:** John, do you wish to continue?

**Mr DUNHAM:** I have a question on that line.

**Mr CHAIRMAN:** Is it relevant?

**Mr DUNHAM:** Yes. For the record, we would support that position. I mean, I am not seeking to divulge those, and I think that as the alternative government, we would probably adhere to that process where there would be some protections, both legally, policy and in other ways, to keep those matters confidential.

I was impressed when you read out the catalogue of prohibitions that disallowed the publication of that data. The question I have for you is: what if it is divulged? Is that a matter for you to pursue remedial action, or are there some sanctions there to prohibit it? In the circumstance where there has been a hostile separation from the public service and they choose to divulge that, do you pursue that as a matter of course, or is it more in the letter of the law, rather than in action?

**Mr KIRWAN:** Through you, Mr Chairman, without going into specific instances, although I have a suspicion of the instance, I would like to draw the distinction that if it were an NTPS employee who did that – for example, one of my staff or one of the salaried staff involved – they would be in breach of the Code and we would go through a disciplinary process. If they were in another process, such as parliament, although I suspect that all the honourable gentlemen and women would not do such things; that is a process obviously for your Privileges and other Committee I suggest, whatever the arrangement is in the NT parliament. So ...

**Mr DUNHAM:** But, surely, the politician would only get access through either the ex-employee who signed the contract or your staff. Surely, it relies on that being divulged from within your staff area or external.

**Mr KIRWAN:** Through you, Mr Chairman, to the member for Drysdale: if there was any evidence of that being the case, we would take action. As with a lot of these instances, getting evidence is the issue. Certainly, it has not occurred since I have been Commissioner. and the process is quite confidential in respect to the process. It is between the Executive Contract Officer and myself. The CEO would often know, a minister may or may not know, depending on who the officer is. It is then just the staff in my office, which is a very small number, and staff in DCIS, which is a very small number, who would know the final details.

**Mr DUNHAM:** Could I bring to your attention the Chief Minister has divulged details of one Peter Murphy's contract on exit in parliament?

**Mr KIELY:** Where is that?

**Mr DUNHAM:** It is in the *Parliamentary Record*.

**Mr KIELY:** Well, show us the record. I do not recall that.

**Mr DUNHAM:** I am able to provide it for you. The Chief Minister has divulged details of the exit of one Peter Murphy, who was an Executive Contract Officer. Given that she is prohibited from getting that information, I can only assume that she has either obtained it from Peter Murphy, which is most unlikely, or from officers from within your area. Could I ask that you pursue that external to this particular inquiry, and that we will follow it up with formal correspondence at a later time?

**Mr KIELY:** No, that is not appropriate.

**Ms LAWRIE:** Where is that within the scope of this inquiry?

**Mr DUNHAM:** He has described for us the prohibitions on accessing information and the fact that it offends various laws, policies and whatever else ...

**Mr KIELY:** Well, there are other avenues.

**Mr DUNHAM:** Pardon?

**Mr KIELY:** There are other avenues for that. I mean, I don't think it is appropriate of you to ask ...

**Mr DUNHAM:** Well, I was not aware that the Chief Minister had so offended these laws.

**Mr KIELY:** Well, I am not aware that she has, either.

**Ms LAWRIE:** And there is a distinction between, clearly enunciated, between ...

**Mr DUNHAM:** I will tell you what I will do: I will obtain that now by leaving the room and obtaining the *Hansard* record.

**Mr CHAIRMAN:** Can I just have some order here? That question is out of order, Steve. If you want to take it up, you take it up in another place. That is what I am suggesting. So, John, would you like to continue?

**Dr LIM:** Mr Chairman, may I just debate that for a second. Looking at the scope of the inquiry in the front of our folders, it covers the period 12 months before and up to 28 August 2001. Surely, this question relates specifically to that period and is about ECO contracts, which is what we are talking about. So why is this question out of order?

**Mr CHAIRMAN:** What I am suggesting is that if the member for Drysdale wishes to take up the matter, he can do so, but not in this forum. He can take it up through any other means that he wishes.

**Mr DUNHAM:** On what basis, Mr Chairman? On what basis do you make that assumption?

**Mr CHAIRMAN:** Well, I am relying on the terms of reference.

**Dr LIM:** Yes, which is what I have just pointed out to you.

**Mr CHAIRMAN:** Okay. I do not think that the member for Drysdale can specifically ask the Commissioner to take it up.

**Dr LIM:** That is what a hearing is about.

**Mr CHAIRMAN:** If he wishes to do so, he can do that through other avenues.

**Ms LAWRIE:** And I question ...

**Dr LIM:** Hang on a minute! I dissent from your ruling there. I think that is wrong.

**Ms LAWRIE:** I question the ...

**Dr DUNHAM:** No, there is a formal dissent, a motion, on the Table. We dissent from his ruling. This has to be resolved.

**Mr KIELY:** It will have to go to the Speaker, then.

**Mr DUNHAM:** All right. Let's call an adjournment.

**Mr KIELY:** This can go to the Speaker. We can keep going, can't we?

**Mr CHAIRMAN:** Yes. Do you want to continue, John?

**Mr KIRWAN:** Thank you, Mr Chairman. What is left in Section One is the Executive Contract Employment, section 59 is an extract from the documentation you already have in whole as to what is paid. I thought I would also include in there for voluntary retrenchments for NTPS staff other than Executive Contract Officers so people can actually see that there is some equity and consistency in how we work. That's ...

**Mr WOOD:** Through the chair, just on that point: the CEOs, when they are terminated, again, as distinct from the ECO, can a CEO be moved to another job and claim that as also not in keeping with his contract? Is there ...

**Mr KIRWAN:** Through you, Mr Chairman, to the member for Nelson: yes. The executive contract range is a range where there is ability for the employer to move staff around, and the NTPS, I have to say, to its credit, does that well. We see a number of senior staff both at CEO and other levels have worked across a range of agencies. I would say, from my perspective, that is desirable and a strong point of the NTPS. That has been occurring for quite some years. If there is disagreement at the change, that is where the issue comes to a head. Either there is a suitable arrangement made so that the officer goes somewhere else where they may prefer to go, or it would end in a termination with a redundancy.

**Mr WOOD:** So, just to clarify, if a person was a CEO and then they were moved and did not have the name CEO but still had the same salary, they could use that as an argument that their contract had been changed? Not necessarily a CEO going from one department to another department as a CEO, but a CEO who has been moved sideways, you might say, and lost the title 'CEO'.

**Mr KIRWAN:** Yes. I have certainly experienced several situations with changes in government for a range of reasons - either amalgamation of agencies, agencies being abolished because the function has been taken up by federal government or other agencies - and CEOs have found themselves no longer in, say, first tier positions, if I can describe it that way. Again, I have experienced a range of situations where they have been happy to be in second tier positions and then compete for the next vacancy at the first tier, and have often been successful so they have taken a step sideways or backwards from their perspective.

I should make it clear, however, that under their contract, they keep their CEO classification and the other things, so there is no regression in salary or conditions for the term of that contract. But in some instances where they have been unhappy with the changes because, again, I would suggest that some of these people, some of my colleagues have been in these positions, and there is a question of pride and dignity and they like running their own shop, putting it in the colloquial. They may not like working for other people. I think there is a whole range of issues. In those instances a redundancy payment may well be the most appropriate solution. It may not be the optimal one because I think, from their perspective, they would often prefer to stay running their own ship the way it was. But ...

**Mr WOOD:** That is a redundancy. That is where the government says: 'Well, it would be nice of you to go' - no, not 'nice of you to go'. They could say: 'Look, we see you are unhappy. Perhaps we can negotiate'.

**Mr KIRWAN:** To the best of my knowledge and certainly what I have observed since I have been here, the process generally is the first attempt is to find them other employment. That is, very rarely is it a case of 'We've changed and here's the door; here's your hat'. It is really a case of: 'Look, would you like other employment? What can we do?' And there are a couple of options that have been explored and there are a couple of instances where people have worked in other agencies to see whether it fits. Sometimes it fits; sometimes it doesn't;

sometimes they try other agencies, and sometimes they say: 'Well, no, it is not really working, I will chance myself on the broader market and I'm off'.

**Mr WOOD:** That is a resignation but if ...

**Mr KIRWAN:** No, if the job has been abolished, even if we tried to redeploy or retrain them, it would still be a redundancy.

**Mr WOOD:** I just want to be clear on it because some of this debate revolves around that.

**Mr KIRWAN:** And that was the purpose of the first point. I think the Auditor-General's criticism, which we think is unfair, was that they perceived that some people were simply - they should have just simply resigned, not been offered the redundancy, and that is where they were critical of the lack of documentation. Certainly, I have been through all of the ones that we have on file which cover the period, and they all seem to me to be quite genuine. There were changes of agency, changes of jobs, jobs abolished; a couple that I thought might have been a little close to the line, I checked back. The positions had not been back filled. So I think they are all evidence of where there were genuine changes in jobs or circumstances to justify a redundancy.

I have to say we treat that pretty seriously for a range of reasons, particularly in respect to the concessional tax treatment for redundancies, valid redundancies, they have to be. We would not chance our arm on those to do other than that. Again, I say that process is not dissimilar to what we would do for other NTPS staff.

**Mr WOOD:** Yes.

**Mr KIRWAN:** Just finishing off Section One, as I said, there are provisions there for both staff and employees. So hopefully, in Section One, what we have addressed is the term of reference from the Public Accounts Committee that outlines the framework covering the process and entitlements and how we administer how people are separated from us in respect of redundancies. There is probably a bit more information than you asked for. It is not my intention to overwhelm you, but I think it gives you the whole picture, with me extracting out the bits that specifically apply to the terms of reference.

Happy to move to Item 2, if that is okay, Mr Chairman.

**Ms LAWRIE:** Mr Chairman, I think the more we move through, the more clarification occurs for members unaware of contractual and normal jurisdictional procedures.

**Mr KIELY:** So we now move on to the total costs brought about.

**Mr KIRWAN:** Mr Chairman, what we have here is the aggregate figures, not the individual identifiable figures - coming back to our earlier questions - for the two periods, the 12 months before and the 12 months after the date that we have been given.

*Just in respect to the two figures, what I would add to that is in the period up to 27 August 2001, there were 13 people involved who were leaving the NTPS and in the 12 months after, there were 18. I would caution any simple averaging approach. One is because the numbers are higher, obviously by five. Within the group captured in the second period, if I can describe it as that, there are a number of quite long-serving public sector staff which is another reason why I have got some hesitancy about individual identifiable data for such a small data sample. Again, I would also say that these numbers are quite small and my small amount of epidemiology and health statistics background tells me that small data samples should always be treated with some degree of suspicion.*

*We have provided two tables. I should also bring the Committee's attention to one of the figures that is not there because it is not possible for us to know that information, and that is if there are any superannuation payments because of various schemes that operate across the NTPS. That is consistent with the advice we provided in the Estimates process and the follow up questions to the Opposition Leader, Mr Burke. Table B provides the savings in the public interest - again, an issue of criticism of the Auditor-General's report. This is how they were calculated. The figures are consistent with the figures the government has been using which we have been providing. It takes the total cost paid out to the 13 and 18 respective NTPS employees and then what the total cost would be had their contracts gone through to completion, and the savings are in that third column, which are not insignificant.*

**Mr WOOD:** I understand how you have worked out the savings to government. Have you been - maybe I am on the wrong path, but if you are looking at savings to government: were there any replacements, of course, for those positions? Two, was there a filling, you might say, lower down in the ranks, to cover some of that? Do you look any further than just whether a person was replaced at that level later on? For instance, was there more work required of other people, and they had to do more overtime? Are there other factors that have to come into play to see whether there are true savings?

**Mr KIRWAN:** Through you, Mr Chairman, to the member for Nelson: no, that work has not been done, one because it would probably be more difficult, although on the figures that I have seen in respect to the ECO range, there are certainly far fewer CEOs, but there has been some growth in the lower levels of the ECO ranks, so I think there is a degree of some substitution. In respect of the workloads, I could not comment, and I am not too sure we could ever capture that data.

This is just the straight, quantitative approach to what was used by the government and is a fairly standard approach in respect to this issue. I would however add, as I have made some comments in respect to indirect costs, the cost of having senior executive officers who are in jobs that are no longer there – or, in other jurisdictions, they would call them ‘the departure lounge’ - is not insignificant to the agency. Going back to basic motivation theory and others, having people who are underemployed but are still paid generous amounts has a significant impact on the general workforce and those they are working with, so I think there is clearly an indirect cost that is probably anything close to 50 or 100% again as well. We certainly did a search of the literature to see if there is any academic measure of that, and there is not so there is probably a paper waiting to be written somewhere.

Those are the costs that have been used in respect to the two periods for the savings, but I accept the member for Nelson’s question that if one wanted to go back further, you could actually then trace back as to whether there has been, in the reorganisation of the agencies, some substitution and where has some of the work gone. I think you could discount that figure somewhat, but I would say that you would still have to consider some of the indirect costs of keeping some of those officers on.

**Dr LIM:** Mr Chairman, in terms of ...

**Ms LAWRIE:** Just a question, through the Chair, or clarification on that: in terms of the costs, you were alluding, I daresay, to costs of morale of staff within the public service and that is very much a weighty consideration on costs in the public sector.

**Mr KIRWAN:** Through you, Mr Chairman, yes, absolutely. We have learnt over the years that having staff who are strongly dissatisfied or unhappy - and it goes back to the issue of treating staff at whatever level with dignity and respect being important, is consistent with our Code of Conduct, is consistent with contemporary HR and management practices, although I am not someone who is particularly keen on moving to redundancies or severances as an option, but in some instances, I have to say, it is the best option for all concerned, particularly in instances where it has been done voluntarily.

**Ms LAWRIE:** Thank you.

**Dr LIM:** Mr Chairman, I ask the Commissioner in terms of ‘the departure lounge’, we talk about retirements - I assume that is a voluntary thing when somebody chooses to retire - redundancies. If one is placed in ‘the departure lounge’, could it be seen as a forced redundancy? That is, look, I am sitting here, I am staring at a blank wall with a computer and a desk with no paper and given special projects every so often, time for me to go. Is that a forced redundancy? I mean, how do you define that?

**Mr KIELY:** Constructive dismissal.

**Dr LIM:** Whatever you want to call it.

**Mr KIRWAN:** Through you, Mr Chairman, no, that is not a forced redundancy. Forced redundancy is when you are basically given the cheque and shown the door, and that is not the way that we operate currently and generally is not the way I think most large employers operate in Australia today unless there has been, say, a major financial crash of some sort in the private sector. Even the private sector does not operate in those ways nowadays.

I think where someone is underemployed and placed in special projects, which is not my understanding at the moment - my understanding is we have a very small redeployment pool in the NTPS. Again, I would have to say one of the pleasant surprises I got was, given the amount of changes the NTPS went through, the agencies had actually taken significant responsibility to actually manage their surplus staff well. So we actually have a small number of redeployees in that situation and, at the executive level, my understanding is there may only be one or two people who are still acting, but in substantive jobs, but not necessarily in a job they would seek to have. But that is working its way through the system. The numbers, given the size of the NTPS and given the amount of change you have been through, is quite surprisingly small.

**Dr LIM:** So would you ...

**Ms LAWRIE:** Just a question through the Chair ...

**Dr LIM:** No, let me finish my question, if I may. So what you are saying is that all redundancies are voluntary redundancies, that there is no workplace manipulation to the extent that the employee says: 'Look, I'd best go because, really, there is nothing here for me and I am losing face; I am being useless and I am being put in the corner'? I mean, that is still voluntary redundancy if you ask me. Is that how you define it?

**Mr KIRWAN:** Though you, Mr Chairman, in the last calendar year, and in the Annual Report we tabled in parliament, I think there were 170 voluntary redundancies, across the NTPS. I am really not placed in such a way to say that none of those had some encouragement in the way you have outlined those. I would like to think not. We have a very strong grievance process in the NTPS which I would say is also used and, on occasions, my office, through the grievance process, overrides employers, not as much as the unions would like us to, but we certainly do if we think there has been unfair or capricious treatment.

But they are all, in the legal sense of the word, voluntary. The letters that the staff get are the same as we have tabled here today. We make the offer, they sign the offer freely, and we then put it into effect. Whether there is something that occurs before - I am unaware. In the eight or so months I have been here, none of those instances have been brought to my attention and, as I say, the NTPS has a very good grievance process that is quite thorough, and it is used. As I said, on occasions grievances are upheld against agencies.

**Ms LAWRIE:** In the context of the biggest single restructuring of the public sector in the Northern Territory, that is 37 agencies down to 19, would the number of executive departures be seen as unusual?

**Mr KIRWAN:** Through the chair, my only reference is in respect to my 10 years in the West Australian public sector and the 15 or so years around the West Australian public sector before that. I would say that in numbers terms, they are actually quite small. I think that if you look at the two periods of time, reference 13 to 18, 13 being in the last year of the term of the previous government and 18 being the first term of a new government with big changes, I think statistically you would look at those and find they are not a significant difference, and again probably surprisingly low. I would have probably expected more in those areas.

**Ms LAWRIE:** Thank you.

**Mr CHAIRMAN:** Are there any other questions? Would you like to continue on, John?

**Mr KIRWAN:** In respect to the third point, which is the one that certainly - I think the other stuff has been factual and is for your information to then make an assessment on. Point three in the scope in respect to improvements and processes is certainly the one that interests me the most. I am quite happy to defend my office and my predecessors.

I am more interested, I have to say, in making sure the systems are right and that hopefully in my time as Commissioner, I do not appear in any more of these on any more of these issues because we have got it right. I probably will regret having said that ...

**Mr Dunham:** I think you're doing pretty well, actually.

**Mr KIRWAN:** It's a bit like 'no child will live in poverty' but, at the risk of being adventurous what we have attached here is the Auditor-General's report back to my office capturing my office's comments. While we accepted some of the criticisms, we thought that the Auditor-General's comments were wrong in a couple of

areas, but in respect to the issue of more documentation on the files, and explanations, we accept those. The letters we tabled earlier are an indication that each of those files now have those letters on them and it is a quite clear process as to what has occurred and what payments will be made.

We are also working closer with the Auditor-General's office and have had several discussions with him about this area to make sure that some of the changes we are making are to his satisfaction. An example of the closer working relationship as part of that, he sent to us the report from the Controller and Auditor-General of New Zealand on severance payments in the public sector. We used this as an opportunity to review it. They call the payments we are talking about 'golden handshakes', probably a bit more press sensitive than what I would like, but go particularly to the public interest of severance payments. It is a good report that has best practice examples of what should be occurring in the open transparency and making sure that the public interest is being looked after in these areas and it is not an inhouse club that is looking after its own.

We are looking at this checklist of best practice and we believe we would be consistent with what has been said here. In respect to two of the examples that we used in the previous Auditor-General's report, both in the Tourism Commission, in discussions with the Tourism Commission Chief Executive Officer and discussions with Minister Stirling, the Minister for Public Employment, we have agreed, and so have Tourism, that in the future all of their contracts and separations will be consistent with NTPS standards excepting that they are a separate statutory employer so I can not exercise any right or direction over them, and neither should I in that situation. They have agreed quite voluntarily and since then their staff have been in close contact with Theo and his staff to ensure that what they do is consistent because there were two variations that were picked at the Auditor-General which were not in the NTPS generally, but were done because of Tourism staff acting in what they thought was the right way, but had they referenced us it would have been a different situation.

So in respect to those areas out of the NTPS that have been picked up that were inconsistent, we now have a process we believe whereby consistency will apply. We are working closer with the Auditor-General and we are keeping in touch with what is best practice in the area to ensure that what occurs we can abide by.

**Mr KIELY:** Through the chair, in the August 2000 report, the Auditor-General picked up the lack of documentation, then in the February 2002 he made much the same comment. Now, the response back in August 2000 was that it was acknowledged that there was a lack of documentation and that would be addressed. However some 14 months, 16 months on, the issue was still there. You have advised you are addressing it now. What mechanisms do you have in place to report back to Auditor-General or to us that it is resolved to the Auditor-General's satisfaction?

**Mr KIRWAN:** Through you, Mr Chairman, what we have done is put the documentation in place that is now before you, so that there are actually the letters on file, where before some of that was not as good as the Auditor-General would like, so for each one of those now there is a process that is generated and my staff are constantly on my back when I meet with people to make sure I get the right letters signed, not the wrong letters signed and get copies before I give people originals, etcetera, so we are doing that now. We have checked that with the Auditor-General. We have spoken to the Auditor-General as to whether he would like us to address this ourselves through other reports, and he is happy for us to do that so it will be part of our risk management and our internal audit process, so we are assured that we put in place standards that are acceptable, and that will be part of our internal audit plan. Again, I think it will be part of - we are due for an internal audit in the first six months of this year. I have not spoken to the Auditor-General about that - sorry Auditor-General's review - I assume it will be one of the areas he will address when he comes to our area.

So we are addressing it by actually putting in place processes and systems so it does generate the paperwork quite explicitly and they will be on all the files and documented so there can be no question about was someone paid, not paid, and they are all checked by our executive contract staff internally so if there is anything extraordinary or different being asked for, that is flagged, and not agreed, the paperwork is being put on the files which was - the argument from my office was that the process, we went through the process of discussion and agreement with the officers but sometimes those discussions were not documented in notes or put on files. Now the way that we have structured the letters, as you will see, it is quite explicit and I think that is appropriate. We will address it through our own internal audit processes which will look at this area, and I assume - not that I can speak on behalf of the Auditor-General - that in his cyclical report review, which my area is coming up for this year, they will look at that as well.

**Mr KIELY:** Thank you.

**Mr DUNHAM:** When you talked about discussing with the Auditor-General the specifics of the case, he spoke to us in evidence and he said that he was dissatisfied because people were being paid out as if they were retrenchments when in fact they were not, and he went on to use 'it seems a very generous use of public funds'. Have you been able to ascertain whether it was just those two cases you talked about or whether it was more widespread than this?

**Mr KIRWAN:** Through Mr Chairman, member for Drysdale, that is an area where we would differ with the Auditor General.

**Mr DUNHAM:** Right.

**Mr KIRWAN:** The examples - the Auditor-General, through lack of documentation on the file, has come, the previous Auditor-General, came to that conclusion. That is not a conclusion we shared with them. We agreed there was not the documentation, so we did not argue the point. If you look at the responses from my office at the time, it is an area where we actually did not agree. Our view is that each one of those people who we offered retrenchment, redundancy packages to, were genuine redundancies.

Again, as I said earlier, it is not something we do lightly. Of the 170 in the public sector last year, each one of them was genuine and each one was documented as such. They have to be so to attract the preferential tax ruling, and it is not an area that we go into lightly. Where we agree with the Auditor-General is that we did not document that well enough to convince him. He therefore drew a conclusion which we think is wrong. As an aside, and at the risk of opening the agenda further, it is an issue that our own Treasury people have raised with us and they have a concern in that they perceive there to be people as they are getting to retiring age that there were 'golden handshakes' basically being offered. I think the 'golden handshakes' is the New Zealand terminology.

Again, we went through both the figures to check to see if there was any trend line to justify that there was more being offered to people who were 54 and 11, in that those who are captured in that Commonwealth Super Scheme situation, and there was no evidence for it, but there was a suspicion of it. In fact, the Under Treasurer and myself have raised it at the Coordination Council of CEOs to make sure that there is no risk, because there is a fairly large hump of people in that age group starting to move through the NTPS, that there is no artificial construction of such arrangements.

**Mr DUNHAM:** Anecdotally, we hear it also. Would that data be available to the Committee? Stripped and anonymous, but the data of exits on those various age cohorts because it is certainly something that is talked about often enough.

**Mr KIRWAN:** I think so. My only concern is that we are at the moment having a bit of a purge on the data integrity of our HR systems, particularly in respect to other issues like Aboriginality and others. So as long as the data has integrity - I am just been advised by some of our people that on occasions, the data is there but it is not quite the level of integrity, having in previous roles having had to explain to ministers why we have 99 year old staff. I would prefer to give data with integrity rather than have to explain 99 year old staff.

**Mr DUNHAM:** Okay.

**Mr KIRWAN:** So, if the data is ...

**Mr DUNHAM:** I would be happy if you put a caution on it. It is really just a statistical device.

**Mr KIRWAN:** It is an important issue because your comments confirm the concerns Treasury raised with us, but when we looked at the information that was not case. We would have to caution against that, because I think that would be inappropriate albeit some people think that is the way it is. There does seem to be a public perception or a view that there is a bit of a 'mates rates' situation. That is not something that we would at all encourage. In fact, we would probably try and do the reverse. I am aware of one CEO where someone was actually close to retiring age, had indicated they were. Their job was probably marginal as to being redundant, and I know the CEO simply said: 'You are going to go anyway, mate, so I am not going to spend my money on you.' So that is the reverse of that issue.

**Mr DUNHAM:** Just one more. It is on a similar theme to my colleague, Mr Kiely. Have you been able to convince the new Auditor-General about this divergence of opinion where he believes it was generous use of taxpayers money, but it was because he was unable to fully peruse the documentation, is the new Auditor-General satisfied that his predecessor was wrong, essentially?

**Ms LAWRIE:** Surely that is a question to the new Auditor-General.

**Mr DUNHAM:** Well, they must have been communication on this issue.

**Mr KIRWAN:** I cannot speak on behalf of Mr Mike Blake. I can say that we do have regular discussions because there is a range of areas we have in common interests in respect to his area of audit and some of my areas of statutory responsibility in others. I actually have not attempted to convince him.

My view is that because we did not have the documentation right, trying to retrospectively address that would be inappropriate. I am prepared to cough in respect to the shortcomings of the agency in the past, over two audit reports - as has been pointed out, including by my minister and his office - about that not being satisfactory, and our approach is to get the documentation right. Certainly, from July last year on, we would be fairly confident that it is documented and explained and if ever questioned, we would then, because the documentation is good, be able to prove our point in the first instance.

**Ms LAWRIE:** Just a point of clarification. So, Commissioner, what you are actually pointing at is that we are now, from July of last year, adhering to better governance, good governance, than what had occurred in the past.

**Mr KIRWAN:** Through you, Mr Chairman, what I am actually saying is my office had put in place the changes, actually following the comments which go back to the letter that is attached, which does pre-date 21 February which was some four months or so before I started. What I am doing is taking responsibility from the time I have been in the job. I am not getting into any situations of when governments have or have not been in power.

**Mr Dunham:** You've compromised him, Delia.

**Mr WOOD:** Just a clarification on one of the key findings from the Auditor-General's report. He had included in his findings the statement that said:

*While the former CEOs were offered continuation of employment at their current contract remuneration terms, those who did wish to cease their employment received termination payments as if their contracts had been terminated by the government.*

He goes on to mention about lack of documentation, but he has made a statement that gives you the impression that that is exactly what happened. Are you saying that is not true?

**Mr KIRWAN:** Through you, Mr Chairman, to the member for Nelson: no, it is true and it is perfectly appropriate.

**Mr WOOD:** That is all right. The second one is about - are we able to know how many people received redundancy as against people who resigned when we relate to these people - I think the Auditor-General mentioned seven CEOs and seven ECOs? Are we able to document who resigned and who received a redundancy out of that? And I am referring to that because there were some issues later on that were debated in parliament. I think Dr Freeland's and Mr Bartholomew's jobs were raised as whether they were offered alternative jobs or whether they received - whether they resigned or whether received redundancy. So are we able to see how people's jobs finished, whether they resigned ...

**Dr LIM:** How they departed.

**Mr WOOD:** Yes, how they departed. Yes, that is right, yes.

**Mr KIRWAN:** Through you, Mr Chairman, to the member for Nelson: I think there are two parts to the question: one is in respect to the sample size from the Auditor-General about the seven as to how they are categorised. I think that is something we can discuss with the Auditor-General as to whether they were all

terminations. I think they were all terminations and redundancies, but I would need to check the report and, given that it is his report, I am always hesitant to interpret another agencies data.

In respect to the second part of your question in respect to any CEO or ECO who leaves the NTPS as to the grounds on which they leave, I think that falls into the confidentiality of the records. I would have to say in respect to the ones I have observed, most of the comments both by the ministers and the individuals at the time, in parliament, out of parliament, in the advice to their staff and others probably provides that information, but I do not think it is explicit to say whether someone is simply resigning or whether someone has been made redundant in an employer-initiated model. I think it would be - I would be hesitant to provide that information. I think that at the point in time it occurs, that is an issue of discussion between the CEO and the minister, although I get involved in the process once that discussion has occurred as per the process we have already outlined. In respect of executive contract officers, we get involved and it does not become part of the public record normally.

**Mr CHAIRMAN:** I suggest that this might be an appropriate time to take a rest, to take a small break whilst the Public Accounts Committee goes into a deliberative session to address the issue of the dissent. So what I propose to do is perhaps say 20 minutes, if we could adjourn for 20 minutes while we do that, we will try and conclude it as quickly as we possibly can.

The Committee suspended at 1022 hours.

The Committee resumed at 1053 hours.

**Mr CHAIRMAN:** Thank you for allowing us the opportunity to deliberate. What we have decided to do is to allow, at least I think it was Stephen to ask a question.

**Mr DUNHAM:** Prior to doing that, Mr Chairman, I would like to make it absolutely clear that the divulging of details relating to Mr Peter Murphy was done by the Minister for Employment, Education and Training and occurred on 6 March 2002. On the record of transcript it will show that my recollection was it was the Chief Minister. I am quite happy to put on record that my recollection was wrong and that it was the Deputy Chief Minister, Mr Sydney Stirling.

The questions really relate mostly in the first part to the status of Mr Murphy as an ECO contracted person, and his status therefore as a person who was employed within the broad realm of the Northern Territory Public Service and therefore, I assume, had to adhere to the conditions of his contract, his termination had to be computed in terms of that. His records were held within your office, I would have assumed, and that matters relating to the normal termination that people would have gone through your agency. Can you confirm that that is the case?

**Mr KIELY:** I thought it was whether he was an NTPS employee, I thought that is what you were asking.

**Ms LAWRIE:** Yes, was he a member of an NTPS agency was the question.

**Mr DUNHAM:** I thought you were not going to ask it.

**Mr CHAIRMAN:** Would you like to respond to that, Mr Kirwan, whether he was in fact a member of the NTPS?

**Mr KIRWAN:** Through you, Mr Chairman, again, it pre-dates my time. My understanding of the discussion is that he was not NTPS employee, but I am prepared to check and get back to the Committee on that. My understanding is that he was a ministerial staff person. That being the case, the agencies within the government that would be involved with any severance arrangements or packaging would not have been directly involved.

**Dr LIM:** So that applies to every person working upstairs on the fifth floor now?

**Mr KIELY:** No, that is the question.

**Dr LIM:** I am not asking about Mr Murphy, I am asking the Commissioner about does that reflect on the employment status of everybody working on the fifth floor at the moment.

**Ms LAWRIE:** Just on the issue of that question, Mr Chairman, it is outside ...

**Dr LIM:** The Chairman is not ruling me out. I mean, it is not up to you

**Ms LAWRIE:** It is outside the scope of the terms of this inquiry. Clearly, that question is outside the scope of the terms agreed on by the Public Accounts Committee for this inquiry.

**Mr CHAIRMAN:** I would suggest that it is the case, as well, so ...

**Dr LIM:** The government wants to gag ...

**Mr DUNHAM:** Okay. Well, here's a further question.

**Mr CHAIRMAN:** It is not a matter of gagging. It's a matter of deliberations that we have just been through.

**Mr DUNHAM:** Okay.

**Mr KIELY:** You go into deliberations and then you come out ...

**Mr DUNHAM:** I have a further question: the Deputy Chief Minister announced new arrangements, so I assume that it is the case now that these arrangements are in place. He described them: that there is a standard redundancy provision in contracts of ministerial staff which allow for two weeks pay for each year of service. There is no way the Chief Minister of the day can manufacture a payout arrangement and that I assume it will be in exactly the same standard as contracts for other public servants. Is that is what is happening now?

**Mr KIRWAN:** Through you, Mr Chairman, I actually can not comment on that. No, we have not been involved in those.

**Mr DUNHAM:** Right. Okay.

**Mr CHAIRMAN:** Are there any other questions?

**Mr DUNHAM:** Can I ask who is responsible for the security, confidentiality, safe-keeping and data management into Mr Murphy's records?

**Mr KIELY:** No.

**Mr DUNHAM:** Well, it is not him.

**Mr KIELY:** He is not a member of the NTPS; it's outside the scope of this.

**Mr DUNHAM:** All I am asking is it the CEO of the Chief Minister's department?

**Mr KIELY:** It is outside the scope of this. I mean, we agreed. We went into deliberation, Steve. Now, look, in good faith, let us stick to it, eh?

**Mr DUNHAM:** I am asking the person who knows the machinery of government as to who is responsible.

**Mr KIELY:** Well, I ask that [inaudible].

**Mr CHAIRMAN:** I would suggest, Commissioner, that you do not have to answer that question because we went into deliberative session, we agreed on certain conditions and I rule that question out. Would you like to continue your presentation?

**Mr DUNHAM:** Are there any other questions?

**Mr KIRWAN:** Thank you, Mr Chairman. Through the - what we have attempted to do is provide documentation and answers to questions that are raised on the scope of the inquiry and the three points, and with giving the Public Accounts Committee and this public hearing copies of those. We are also aware that they have now become public documents. We are happy to answer any questions generally on the information we have provided.

**Mr DUNHAM:** I was actually returning to where we were before we went into recess, and that is this computation you have here that sets out cost of retrenchment and it nets out the cost of employment. I suggest that there is another cost that has to go in there. Some retrenchments, we understand, like Dr Freeland where he was retrenched and nobody was appointed that job, that computation does in fact have mathematical validity. But in cases where people were retrenched and they were replaced by another officer, obviously that new salary has to come into it.

So, the Auditor-General pointed that out when he gave evidence to us and he said that they were totally unfunded and they were a significant issue for government in terms of - I can quote from him:

*I think this area of executive contracts, the fact that they have now set a precedent is something you should really watch for*

that is us...

*I have said these retrenchment costs have really blown through the roof. They were all unbudgeted costs, super [inaudible] costs blow out every year.*

So, on your computations here, it would seem to be a sound management device except that it does not factor in retrenched officers who have been replaced. Would that be correct?

**Mr KIRWAN:** Though you, Mr Chairman, a similar question as the member for Nelson: we accept that if there is a substitution at a point in time, then probably the amount saved as total savings to government probably could be diminished. We have not done that work. Having said that, they were all genuine redundancies so my observation is that they would not have been replaced in a like to like situation. A lot of these are former CEOs, former first and second tier officers whose jobs are not the jobs that they were originally contracted to. Other positions with part of their responsibilities may well have been created. The task of actually going back and checking through those situations would probably be very difficult, although we do accept that probably some discounting where that has occurred, but as far as total like to like situations, that is fairly rare, and again, we checked a number of those to make sure that was the case.

**Mr DUNHAM:** Mm hm.

**Mr WOOD:** I realise the member for Karama said certain things are outside your scope, but could I just ask who looks after those areas outside your scope?

**Mr CHAIRMAN:** Can you be a bit more specific?

**Mr WOOD:** Well, if someone works for the government but is not within an NTPS agency, who is the person ...

**Mr Kiely:** Harvey Norman.

**Mr KIRWAN:** Through you, Mr Chairman, to the member for Nelson: the NTPS covers almost everyone with exception of sworn police officers and the Tourism Commission. They are the two bigger areas. The Tourism Commission has its own board, but my memory is in both instances DCIS provides still the services for those agencies. But for me as the statutory employer under the Act, I am not the employer of those areas. The parliamentary staff again have a different arrangement in respect to the Speaker and the members of parliament themselves. They are the big areas. I think there are one or two quite small areas from memory.

**Dr LIM:** So are you suggesting, then, that you cover almost all employees within the government public system except for tourism and senior police. You have input, then, or significant input into terms of

employment for everybody else including staffers and all of that, that are political appointments as have been described?

**Mr KIRWAN:** The answer is for all of those that are Northern Territory public sector employees, that is the 19-odd agencies, the core public sector agencies, all of those areas are covered by my Act and my regulations and determinations. Tourism has a separate board, but they have agreed to consistency with our approach, and sworn police officers, not just senior police officers, they come under the *Police Act* and, as is appropriate, are sworn police officers are under the control of the Commissioner for Police. Parliamentary staff, both in respect to ministerial staff and electoral staff, I would have to say that I probably am not the right person to ask because I have not been involved with them since I have been here and it is not my area of responsibility. My understanding it is a responsibility that is shared between ministers and the Speaker and the individual members of parliament, and there is a range of arrangements that seem to apply there.

**Dr LIM:** So the Office of the Commissioner of Public Service does not have any input into the salary scales, structure and all that of these staff that you just mentioned?

**Mr KIRWAN:** I am aware on occasions we have discussions with the Speaker and some of her staff, but we have no determining powers. We are often used as advisors on those questions, but we do not carry any responsibility for determining - but again, I think we do provide on occasions an advisory service, and that is broadly because of our responsibility, as we are the central repository of industrial relations and human resource policy type advice across the government.

**Dr LIM:** And those salary scales that are being used on this are commensurate or if not identical with the NTPS salary scale?

**Mr KIRWAN:** I actually do not know. I am unaware, in the eight or nine months I have been here, of anything that says one way or the other. I am actually aware that in some instances, because of discussions with the Speaker, there is some question about cleaning staff and others whether they are or are not award covered and all sorts of other arrangements, but it is not an area I have any knowledge that I would have any confidence commenting on.

**Ms LAWRIE:** A question through the Chair, back within the terms of reference and the scope of this inquiry, the question is for the 12 months before and after 28 August 2001, were the methods applied to cease the contracts in line with national practice?

**Mr KIRWAN:** Yes, I would say that the Territory conditions are good in system. I would suggest that the Auditor-General picked up some omissions in processing and paperwork which we have accepted and, as I think I have provided evidence today, have now addressed. I would also actually say that in some areas the payments are at the lower end of what the national standards are. Certainly, I come from a jurisdiction where if I was made redundant I would have a statutory entitlement to 12 months rather than six months, and I would also have to say in some of the areas, the processes in the Territory are probably better than some jurisdictions, and I think that is because you still have a centralised system here.

In other states and territories, because a lot of these matters, particularly at the Executive Contract Officer level, what other states might call senior executive service levels, a lot of those are now the responsibilities of the individual CEOs, not a central agency such as mine, and therefore you have inconsistencies across agencies in some of the other states and territories because there is no longer a central approach.

Generally, I think for the two 12 month periods, the systems and processes have been common, they have not changed, and I think the systems and processes are actually quite good. If the question was asked: 'would you recommend changes?', I would say no. I think they are quite sound, and quite thorough. I would probably say for public consumption, it is difficult to explain to some people - and this is the point we have with the Auditor-General - has someone resigned or have they been made redundant, because it is actually not a written - it is either an employee-initiated termination or an employer-initiated termination, and then it is a subset. It is not as clean or as clear as what I would probably like for public consumption. But that is the nature of employment contract law.

**Ms LAWRIE:** And that is where you have tightened up in terms of your written documentation.

**Mr KIRWAN:** Yes, so that we have a clear documentation so that it is clear what process and entitlements someone have. I would have to say, taking up on the comment from the member for Drysdale, I inherited a situation where I think the public perception is that there is a mates rates deal around, and I have to say it has been tried on with me since I have been here. People have said: 'yeah, I know that is what the documentations say, but, you know...' wink, nod 'I want more'. I have said: 'Not from me, mate' and I went so far as to ringing my predecessor and saying: 'People are making these comments, Mr Hawkes. I am not questioning what I have been told by my staff, but I just want to check with you that the records do not show that and is this the case?'. He confirmed that. He said there is a view that people get other deals. I can only put that down to probably some people wanting to say that they got a better deal because that suits them when they are having a farewell drink or something like that. I can assure you that is not the case, but I think the public perception is different.

**Ms LAWRIE:** Thank you.

**Mr DUNHAM:** Can you tell us the purpose of provision of legal advice to people leaving? If it is so devoid of the capacity for negotiation, and if it is so standardised that there is not much latitude there, I cannot see why we are inviting lawyers to come in as advocates on issues like this.

**Mr KIRWAN:** We do not do it always. It would be fair to say that some people have their negotiations done by their lawyers, they are more comfortable with that. In some cases there have been outstanding Work Health issues which, in the Territory model, is dealt with by lawyers on both sides. In some areas where the person is looking to move on and is of suitable seniority, financial advice, legal advice is probably prudent in respect to how they organise their own finances for the future, and I think that forms part of us treating someone with dignity and respect so that they do not find themselves caught short in respect of making sure that the package, including how their tax treatment is dealt with and those sorts of things - I would suggest and certainly recommend from my experience and background that is an issue best dealt with by a specialist financial planners, specialist accounts and specialist lawyers rather than people who think they might know.

It is a large amount of money generally; it is a life changing situation. There are other issues I think they need to consider then about whether they are moving from the Territory, land assets and other things. In the situations we are talking about which are redundancies, that is it was not our intention when we entered into the contract these people would be made redundant, but for circumstances beyond whomever's control, things have gone this way. Again, I think it is a question of treating people with dignity and respect, and I do not think in that situation they should personally be out of pocket for reasonable legal and financial costs, and the figures generally are [inaudible] to modest in those situations.

**Mr DUNHAM:** So you would say they are not engaged for negotiation purposes; it is more to configure your own affairs to your best advantage pretty much? So it is not a thing where they are negotiating in a hostile environment with the government, it is more a service to the departing person so that they can take best advantages of some of those things that are non-contractual, like property sales, superannuation and whatever.

**Mr KIRWAN:** I think it is a mixture of both. There is a little bit of negotiation because often it will be the lawyer - in one instance since I have been here the lawyer and the person involved came to see me and other [inaudible] just the lawyer. For some people it is a pretty stressful time and they prefer to do it through a third party. Again, I actually think that is good because I think that, as with any of these situations, you need a degree of objectivity and I think an independent third party such as an accountant or a lawyer are good for that exercise, they help facilitate an outcome when someone may be quite emotive about what it means because it is a life changing situation potentially.

**Mr DUNHAM:** Okay.

**Mr KIELY:** I have no more questions.

**Mr CHAIRMAN:** Are there any other questions? Richard?

**Mr DUNHAM:** In other jurisdictions there are performance bonuses attaching to contracts. Can you tell us if that's under consideration as a policy issue?

**Mr KIRWAN:** Not in my office, but I cannot profess to speak on behalf of either Chief Ministers or in respect of the political area. The two jurisdictions that I am aware of that use them are Victoria and the Commonwealth ...

**Mr DUNHAM:** And Queensland

**Mr KIRWAN:** Well, I haven't looked at that, but the two schemes I have looked at closely are those two schemes. I think that they are not as popular as they once were for a range of reasons. Having said that, there is some attraction in my mind to retention bonuses, because I think good senior staff are worth keeping, rather than productivity bonuses which I think are a bit more problematic, and in some areas have been put in place because it is a good way of avoiding either tribunal type areas that set determinations. The advantage of the Territory is there is a bit more flexibility with my determining powers in respect of those things. I also think that - but it is not on the agenda, as I know. If it was, the one area that probably has some interest from my office is the issue of retention.

**Mr DUNHAM:** We would agree with you.

**Mr KIRWAN:** I think there is always a temptation when someone comes into the fourth year of their four year contract, we either bring forward the discussion that it will be renewed and, particularly in some of those areas, if you are looking for major reform where they are doing the hard yards, there is probably something there as well.

**Mr DUNHAM:** On the other side of that coin, the Chief Minister talked about some conditions on CEOs in terms of delivering budgets, for instance, that sort of stuff. Would they feature in contracts or would they be more this negotiation thing closer to the termination of your contract?

**Mr KIRWAN:** Through you, Mr Chairman, two things occur in that instance. One is there is a decision in respect to CEOs that ministers have to start considering six months out from the end of the contract, and three months out there has to be a decision advised to the contract officer as to whether the contract will be renewed or not.

Although I have not been involved with many of those yet, what I understand, and certainly what we are advising about a number that are coming up is that the decision obviously has to be made between the employer, whomever the employer is - for an Executive Contract Officer it is the CEO - whether there has been satisfactory performance. So I think - and one of the attractions of contract employment is that you can bring those things to a head. In respect of CEOs, what was put in place before I started was between the CEO of Chief Minister's and the Acting Commissioner for Public Employment is a requirement that each of the CEOs with their ministers have a performance agreement and certainly budgets are one those areas. I would have to say that I am one that has not entered into one with my minister yet. I have taken the opportunity to delay that until I got my head around my roles and responsibilities, but I have recently started negotiations.

**Mr DUNHAM:** So it is a separate but tandem agreement? You have your contract and you have a ...

**Mr KIRWAN:** Performance agreement.

**Mr DUNHAM:** Right. Okay.

**Mr KIRWAN:** And one would expect that if you get adverse performance agreements that one should not be surprised at the end of one's contract it is not renewed.

**Mr DUNHAM:** I was interested because Alan [inaudible] as the incoming CEO for Health and obviously in the language he is using, it is not the style of your contract that you have given us here. He is talking about some strong parameters around him and I do not disagree with that, I was just wondering how you were going to particularise that in a contract or have a nexus between that performance document sitting here and the contract document sitting here. But it sounds like it is happening.

**Mr WOOD:** Just for information, if a person has a contract and basically the contract is finished and the government does not want to renew it, it just runs out, is there any - is that it? There are no payments, is that the end of it?

**Mr KIRWAN:** Through you, Mr Chairman, the answer is yes.

**Ms LAWRIE:** That is what contracts are.

**Mr WOOD:** That's right. I just wanted to make sure.

**Mr KIELY:** You are not looking for a golden handshake, are you, at the end of this?

**Mr KIRWAN:** As with contract employment, you would get your entitlements, accrued entitlements, but there is no redundancy. Built into the contract is a loading for lack of permanency, so for people like myself, at the end of the contract if it is not renewed, it is not renewed. And if I have outstanding annual or long service leave, I get those paid out and paid my relocation back to wherever.

**Dr LIM:** We don't get that. We get four years and that's it.

**Mr CHAIRMAN:** Are there any other questions? If there are not, John on behalf of the Public Accounts Committee, thank you very much for your time this morning. You have been most informative, and I think you have been pretty straight, and I think it is noted that certainly there have been some improvements in respect of some of the processes. So thank you very much for your time.

**Mr DUNHAM:** Hawskie wasn't straight up?

**Mr CHAIRMAN:** I am not suggesting that at all. I mean, I didn't know Mr Hawkes and I'm not suggesting that he is not straight.

Also to Theo, thank you very much for your input, and obviously also to Erica and Brian who have been sitting in as well, thank you very much for your time this morning.

That essentially completes the hearing into the matter before us. So, thank you all very much for your time.

**Mr KIRWAN:** Thank you, Mr Chairman.

**Mr CHAIRMAN:** We will go into deliberative session for a short period if that is fine with the rest of the Committee. So thank you very much.

The Committee adjourned at 1117 hours.

**INFORMATION FOLDER**

**INQUIRY**

**INTO**

**TERMINATION PAYMENTS**

**FOR**

**EXECUTIVE CONTRACT OFFICERS**

Office of the Commissioner for Public Employment