

**EVIDENCE TAKEN BEFORE**

**GENERAL PURPOSE STANDING COMMITTEE NO. 3**

**INQUIRY INTO CONTRACT OF EMPLOYMENT OF  
COMMISSIONER OF POLICE**

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**At Sydney on Monday, 17 April 2000**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

The Hon. Helen Sham-Ho (Chair)

The Hon. R. D. Dyer  
The Hon. J. Hatzistergos  
The Hon. J. H. Jobling  
The Hon. J. R. Johnson  
Ms Lee Rhiannon  
The Hon. J. M. Samios

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**CHAIR:** I welcome the media and members of the public to this hearing of General Purpose Standing Committee No. 3 in its inquiry into a contract of employment of the Commissioner of Police.

Members of the media are advised that under Standing Order No. 252 of the Legislative Council evidence given before the Committee and any documents presented to the Committee that have not been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person.

Copies of guidelines governing broadcasts of proceedings are available from the table by the door. I welcome our first witness, Mr Ian Knight, our Crown Solicitor.

**IAN VICTOR KNIGHT**, Crown Solicitor for New South Wales, of Level 7, 60-70 Elizabeth Street, Sydney, sworn and examined:

**CHAIR:** In what capacity do you appear before the Committee?

**Mr KNIGHT:** I have been summonsed here in my capacity as Crown Solicitor.

**CHAIR:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Mr KNIGHT:** I did.

**CHAIR:** Are you conversant with the terms of reference of this inquiry?

**Mr KNIGHT:** I am

**CHAIR:** If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee would be willing to accede to your request and resolve into confidential session, but I should warn you that the Parliament may override that decision at any time and may make your evidence public. Mr Knight, have you an opening statement?

**Mr KNIGHT:** No, I have no statement to make.

**CHAIR:** No statement to make to this inquiry?

**Mr KNIGHT:** No.

**CHAIR:** Mr Knight, I want to ask you about your advice on 11 November 1999. Would it be correct to say that problems you identified in your advice to the Auditor-General of 11 November 1999 have been rectified by the execution of a deed of variation of release and a deed of agreement by the Minister and the Commissioner on 14 March 2000?

**Mr KNIGHT:** I am not aware, Chair, whether the agreements that I drafted have actually been executed but I did forward two deeds on 10 February for execution. Those deeds would have, hopefully, removed any doubt relating to the validity of the payments, but I cannot say whether they have actually been executed.

**CHAIR:** We have a letter from the Minister saying that the variation of the deed has been executed.

**Mr KNIGHT:** I accept that.

**CHAIR:** The agreement and the deed. Your advice, to my mind, of 11 November was somewhat tentative about the validity of clause 6 in the contract. Do you stand by your view of 11 November that clause 6 is valid?

**Mr KNIGHT:** My preferred view was that it was valid. I felt that it was not caught by section 46(1). It was neither remuneration nor a benefit such as to be beyond power. I did not find it an easy matter, but my preferred view was that it was simply a pre-estimate of damages for failure to give an agreed amount of notice and, therefore, even though it was a significant amount, I did not think it was precluded by the exhaustive provisions or exhaustive entitlement in 46.

**CHAIR:** So do you believe, then, there are any outstanding legal problems for the contract?

**Mr KNIGHT:** Well, in terms of clause 6 and clause 22, I do not believe there are on the views I prefer, and I concede it is open to doubt, but on the view that I prefer I think that the initial problem with clause 22 should, hopefully, have been solved, and the payment made in a valid way pursuant to 46(4). As to other matters in the contract, I really have not been asked to advise on other matters in the contract.

**CHAIR:** Of course, it was solved by a separate contract, like the deed?

**Mr KNIGHT:** Yes.

**CHAIR:** I would like to ask you about that.

**Mr KNIGHT:** And could I say in relation to that that there is no absolute certainty as to the meaning of section 46(4), but, again, the view I took and the view that my predecessor took was that that enabled the Crown to agree outside a contract of employment to provide remuneration or benefits by agreement.

**CHAIR:** That is a question I would like to ask you. For the purpose of simplifying the contract process and improving scrutiny of public sector employment conditions for both the police commissioner and other New South Wales senior executive service officers in general, would it not make more sense for all aspects relating to employment to be contained in one single contract?

**Mr KNIGHT:** I guess that is a matter of policy, to some extent, but for convenience as a lawyer, it would be more convenient if all of the entitlements were in one document so that one knew at any point in time that this was the document that covered all of the entitlements. I guess minds may differ on whether there should be the ability to agree in another contract, and it would depend how accessible that other contract was as to whether that was desirable.

**CHAIR:** I understand that the Salaried and Other Officers Remuneration Tribunal [SOORT] --

**Mr KNIGHT:** Could I just say, Chair - I am sorry to interrupt - that I think there may be some merit in having the ability by some means to provide in exceptional cases for additional entitlements. Now, whether they should be in the main contract of employment or in some separate contract with the Crown, I guess does not really matter in terms of law, but I guess in terms of policy and for public scrutiny and so forth, there may be different issues.

**CHAIR:** But the difficulty of auditing a common contract in one place?

**Mr KNIGHT:** From an audit point of view I guess it would be much more convenient and more appropriate to have it all in one document.

**CHAIR:** I understand that SOORT had no role in the signing of the deeds amending the contract, the deeds I referred to earlier.

**Mr KNIGHT:** SOORT had no role.

**CHAIR:** In your view, then, does the signing of an additional contract undermine the SOORT process?

**Mr KNIGHT:** No, because these were not things that SOORT could determine. This was an agreement between the Crown permitted, on the view that I and my predecessor prefer, on the basis that the Crown was free to make a contract in relation to benefits of this type, which are not employment benefits within the meaning of section 46. These are benefits, not employment benefits. There is a distinction between the two. They are not necessarily the same.

**CHAIR:** In that case, would this require a broadening of the role of SOORT in terms of the benefit that SOORT could determine? Alternatively, would it be appropriate for legislation to prescribe the type of arrangement that can be covered in secondary contracts? This is exactly what you are saying, that we want to broaden it.

**Mr KNIGHT:** Provided that SOORT is aware of the payment that is made so that it can take that into account in determining the remuneration package for the Commissioner of Police, for example, then I am not sure that it matters so much and I am not sure that SOORT needs to necessarily determine this additional benefit. I understand in the determination that was made that SOORT did have regard to the clause 22 end of contract sum in determining the remuneration package. Now, I am not sure how that affected it.

**CHAIR:** But that was irrelevant.

**Mr KNIGHT:** Sorry?

**CHAIR:** Clause 22 is invalid.

**Mr KNIGHT:** Oh, yes, but if it were elsewhere validly in another contract and SOORT had regard to it, that should allay some concerns as to whether the remuneration package is appropriate.

**CHAIR:** But in this instance?

**Mr KNIGHT:** In this case, no, I agree.

**CHAIR:** In this instance SOORT did not?

**Mr KNIGHT:** Well, I think SOORT did have regard to the amount of money in clause 22, thinking that perhaps it was valid, so it did have regard to the sum in determining the remuneration package. Now, I do not know what effect that had on its calculations, but it says it had regard to it.

**CHAIR:** In that case, what changes would need to be made to the current legislation to effect such changes in that regard?

**Mr KNIGHT:** I think section 46 needs to be amended to make clear what the entitlements are of an executive officer in the Police Service, and those provisions also apply to the Commissioner. It is difficult to tell at the moment whether those entitlements are meant to be exhaustive or whether they are simply just entitlements and whether one is free to have any other entitlement one can find, so that needs to be clarified, and section 46(4) needs to be clarified so that we know precisely what types of other remuneration and benefits may be paid by some other lawful means. I concede that there are a number of views possible as to what section 46(4) means.

**CHAIR:** That was in your advice to the Auditor-General?

**Mr KNIGHT:** Yes.

**CHAIR:** The last question, which is very quick. The Premier issued a memorandum, No. 2000-5 stating that no additional inclusion in the contractual arrangement for CES and SES officers relating to remuneration or benefits may be entered into by a separate contract without the approval of the Director-General of the Premier's Department. What is the legal status of this memorandum? Would it be a valid additional contract entered into between Ministers and CEOs and CES and SES officers and are there appropriate safeguards to prevent the proliferation of secondary contracts?

**Mr KNIGHT:** The position would be exactly the same as with the Police Service. The Public Sector Management Act provisions which apply to SES and CEO officers are in exactly the same terms so that it is possible by a separate contract to agree to pay remuneration and benefits. Exactly the same would apply if all of the arguments are correct. So in law, such a contract could be entered into by the Crown with an SES or CEO officer to provide remuneration and benefits additional to that monetary remuneration and employment benefits in their contract.

Presumably in law there are no constraints on what would be included in such a contract but, again, I assume it would be for the exceptional case where some particular circumstance relating to the officer warranted it.

**CHAIR:** You have not answered my question about the legal status of this memorandum. How binding is it?

**Mr KNIGHT:** Well, it is a direction by the Premier, which would be binding upon all public servants, and it would appear to me to state the law correctly.

**The Hon. J. H. JOBLING:** Mr Knight, prior to 8 February 1999 could you tell me was your office requested to provide advice in relation to the proposed contract of employment between the Minister for Police and the Commissioner of Police?

**Mr KNIGHT:** My office provided no advice on the contract. I was approached to give advice about the reappointment of the Commissioner and neither I nor my office had any role in negotiating or drafting or preparing the contract.

**The Hon. J. H. JOBLING:** When I refer to you, of course, I take it that includes your office as well.

**Mr KNIGHT:** I can say to the Committee that no other officer apart from myself had essentially any involvement in the matters relating to the Commissioner of Police.

**The Hon. J. H. JOBLING:** With that in mind, then, when was your office first requested to provide any advice in relation to the contract of employment between the Minister for Police and the Commissioner of Police on that particular document dated 8 February?

**Mr KNIGHT:** In terms of providing advice about its terms it would have been instructions from the Auditor-General.

**The Hon. J. H. JOBLING:** That relates, I presume, to a letter to you from perhaps Mr Mitchell, the Deputy Auditor-General?

**Mr KNIGHT:** I should say there was earlier contact from the Auditor-General's office. I raised some problems because I had given advice to the Police Service about the production of the contract for FOI purposes and I told the Auditor-General that I had some problem with providing him with advice given that I had acted for the Police Service in relation to an FOI matter, and I gave him the choice that he could lay his case either before the Attorney General or myself but doing so in the knowledge that I had acted in an unrelated matter for the Police Service, and he chose to lay it before me, so the contact might have been by telephone a week or two before the first written instructions from the Audit Office.

**The Hon. J. H. JOBLING:** In his letter to you of October, Mr Mitchell comes back, and I quote from his letter:

I think it is appropriate that I refer the matter of validity of clauses 2 and 6 of the Commissioner's contract to you for an advising rather than to the Attorney General, notwithstanding your previous advice to the Government.

**Mr KNIGHT:** Yes. Section 33 of the Public Finance and Audit Act permits the Auditor-General to lay a case either before the Attorney General or the Crown Solicitor, and the practice has been normally that it goes to the Crown Solicitor to provide the opinion. The only dilemma I had was that I had acted for the Police Service on an FOI matter relating to the contract.

**The Hon. J. H. JOBLING:** Following from that, Mr Knight, would you tell the Committee, then, what concerns did you have when you actually did review the contract of employment between the Minister for Police and the Commissioner of Police?

**Mr KNIGHT:** Certainly I had concerns about both clauses 6 and 22 which were the two questions that were asked of me. In the advice I gave him, I go through the arguments for and against, and raise the doubts and express the preferred views.

**The Hon. J. H. JOBLING:** You did that to him in writing, I take it?

**Mr KNIGHT:** Yes, and I think that is in his report.

**The Hon. J. H. JOBLING:** Yes. Coming back to clause 6 that you referred to, would it be fair to say that, and would you agree, clause 6 relating to damages remains unchanged in that while the Minister must give the Commissioner a year's notice, there is no obligation on the Commissioner to give any notice at all?

**Mr KNIGHT:** That is correct.

**The Hon. J. H. JOBLING:** I see. Why did you not have any concern about that?

**Mr KNIGHT:** I guess it is a matter for the Crown, the terms that they are prepared to agree with the Commissioner. My advice was to the Auditor-General in terms of the validity of clauses 6 and 22. As to the appropriateness, well that is essentially not a matter for me in giving legal advice.

**The Hon. J. H. JOBLING:** You did not feel you had a duty to advise the Crown, the Minister, in this regard?

**Mr KNIGHT:** My advice had not been sought from the Crown in relation to the matter.

**The Hon. J. H. JOBLING:** Could I ask you then, do the latest documents signed demonstrate, perhaps, that last year's attempt to appoint the Commissioner for five years from, and the date is important, 8 February 1999, was legally misconceived and that any further appointment could not commence until the end of his current contract on 29 August 2001?

**Mr KNIGHT:** The Committee should appreciate that the Commissioner was only reappointed for about two and a half years to commence in August 2001. He was reappointed in advance. The reappointment will begin when his current term expires on 30 August 2001, and then he will begin his term of reappointment which will be roughly two and a half years, taking him to 16 February 2004.

**The Hon. J. H. JOBLING:** If that is so, Mr Knight, why would there have needed to be a special clause in the deed of variation and release under item (i), which is "This deed now witnesses that", and it says:

- (3) the period of appointment to this position is the period commencing immediately after the expiration of the Commissioner's current term on 29 August 2001 and ending on 16 February 2004.

If what you put to me is that originally that was the only way it could be, why did you then have to put that clause in the deed of variation and release?

**Mr KNIGHT:** To make it clear, the contract originally was incorrectly framed in terms of the periods and the Committee has to understand that the contract does two things. It governs the balance of his present contract, roughly two years, and it also governs the reappointment from 2001 to 2004 and when I saw the contract, I needed to make it clear in this variation that that was the effect that it was supposed to be having.

**The Hon. J. H. JOBLING:** What you have said to me is that the contract was incorrectly framed.

**Mr KNIGHT:** It was inaccurate.

**The Hon. J. H. JOBLING:** In other words, the contract was wrong?

**Mr KNIGHT:** It was wrong, yes.

**The Hon. R. D. DYER:** Mr Knight, the deed of agreement and the deed of variation and release were both executed, according to the copy I am looking at, on 14 March 2000, those documents being agreements in the case of the deed of agreement between the Crown on the one hand and Mr Ryan on the other, and in the case of the deed of variation and release between Mr Whelan on the one hand and Mr Ryan on the other.

Would you agree with me, flowing from something the Chair was putting to you initially, that no particular consequence flows from the fact that those documents are comprised in separate agreements and that it was a matter of drafting convenience that they were prepared in that fashion?

**Mr KNIGHT:** Not just drafting convenience. The end of contract sum, to be valid in my view, had to be an entitlement otherwise than in the contract of employment and it, therefore, had to be in a separate agreement, so it was not just as a matter of drafting convenience. The end of contract sum originally in clause 22 of the contract of employment has to be agreed to in a separate agreement with the Crown and the opportunity was taken, as I have said, to clarify other matters.

**The Hon. J. HATZISTERGOS:** That is because of 46(4) is it?

**Mr KNIGHT:** Yes, and the key words there are "entitled otherwise", and that otherwise means otherwise than in the contract of employment.

**The Hon. J. HATZISTERGOS:** So, what you say is that section 46(4) envisages you may have entitlements other than employment entitlements and that is how you would regard this particular agreement in clause 22?

**Mr KNIGHT:** Yes, a wide variety of benefits or remuneration can be in a separate agreement.

**The Hon. J. HATZISTERGOS:** There is nothing sinister in having a separate agreement, is there?

**Mr KNIGHT:** Well, in principle there is nothing sinister about it. It may be that you want to keep a pure system here where people know the remuneration package is set out comprising monetary remuneration and employment benefits as strictly defined, and you have another contractual system for any additional matters which are considered appropriate in a particular case.

I guess it only becomes sinister if there is secrecy or some intention never to disclose what is in the second one, but in principle I see nothing wrong with it. It may be inconvenient. It may be not as convenient for auditing purposes, but in principle it is just another contract.

**The Hon. J. HATZISTERGOS:** I was interested in your views about the form of section 46 and section 46(4). I am curious as to what any reform to those provisions might add?

**Mr KNIGHT:** I would like 46(1) to say definitively whether these are exhaustive entitlements or not, these are the only entitlements one has. The problem is that when you draft a provision which says so and so is entitled to A, you do not know whether that means they are entitled to A and nothing else or they are entitled to A and anything else that they may be entitled to. You need to specify, in effect, whether it is an exhaustive entitlement or not.

**The Hon. J. HATZISTERGOS:** Does section 46(4) not indicate --

**Mr KNIGHT:** It does it by implication. The point about exclusiveness, it does it by implication. It says nothing in 46(1) affects a remuneration or benefit in a separate or in an otherwise lawful way. So you are left to imply, 46(1) must be exhaustive as to all remuneration and all benefits because they are saving some in 46(4).

So that encourages you to think that 46(1) sets out exhaustively the remuneration and benefits of an executive officer, and those are monetary remuneration and employment benefits which together total the remuneration package. But then you go to 46(4) and what is saved is any remuneration or any

benefit which is otherwise agreed to in law. So it is just unsatisfactory to try to work out, and I can understand why people may be somewhat confused as to what the precise regime is.

**The Hon. R. D. DYER:** Mr Knight, if there are any unusual features of the employment contract between the Crown and Mr Ryan, would that in your view be explicable on the ground that the Government regards Mr Ryan as a particularly valuable officer it wishes to retain?

**Mr KNIGHT:** Well, I do not think it would be appropriate for me to express a view about what the Government thought when it was negotiating this contract. What I can say is that I can envisage that there would be exceptional circumstances and, presumably, one of those which applied to Mr Ryan was the fact that he was from Great Britain and was setting up his life here in Australia and so both the Government had its concerns, I assume, in relation to retaining his services, he for his part, presumably, had to have some certainty and some satisfaction that his position, having moved to Australia, was adequately protected. But what the actual considerations were I do not know.

**Ms LEE RHIANNON:** You spoke earlier about how the contract was wrong. When you become aware that there is a problem with a contract, that is wrong in some way, what I am interested in you elaborating on is both in terms of rectifying that contract that you had before you but also how the system that you work within learns the lessons, so how the bureaucracy takes on board why have we got a problem here and ensures that it does not happen again. If you could walk us through the particular and the general, I would appreciate it.

**Mr KNIGHT:** I think sometimes the previous Auditor-General felt that in some ways I am the watchdog for the Government whereas essentially that is not my role. My role is as solicitor to the Crown, and I act on instructions when I receive matters and provide advice accordingly.

I would have been aware of the contract when advising in relation to the freedom of information issue when the media was trying to obtain access to the contract, but my role on that occasion was to respond to the FOI situation. It was certainly not part of my instructions to trawl through the contract to see if there was something wrong with it and then advise someone in government.

The only other occasion was when the Auditor-General approached me with a set of instructions under section 33 of the Public Finance and Audit Act and he, in accordance with that section, lay the case before me. I must answer that case according to section 33 but only that case, and his question was framed in terms of clause 6 and clause 22.

So the system should have worked when my advice was given to the Auditor-General. The Auditor-General puts his report to the Parliament and that way the matters come to attention. Now, they may come to attention too slowly for your purposes, but I do not think it is appropriate for the Crown Solicitor to take it upon himself to vet all documents that he sees and raise matters outside of his instructions. If they are germane to the present instructions, I would raise them or if there was clearly some matter that was obviously or manifestly an error I would raise it, but essentially that is not the role of the solicitor to the Crown.

Now, if the Crown chooses not to engage me to draft the contract, well that is a matter for the Crown and I respect that. They are free to choose to refer it to me or not, and I do not draw any inference from the fact that they did not refer it to me. Many of the contracts would be prepared, I imagine, throughout government that I do not see.

**Ms LEE RHIANNON:** When you spoke earlier, you said in answer to one of the first questions that you had not found it an easy matter in working on this. I was wondering if, again, could

you make any suggestion so it can be an easier matter. Was it that the information was not clear, that the guidelines for you are not clear, that you did not have enough information? I was wondering if you could elaborate.

**Mr KNIGHT:** No, it was essentially the way the sections are constructed. Section 46 is not an easy section and I think it could be worded in a way which makes clearer for all of us precisely the entitlements. I can see that even section 46(4) there is room to argue that that does not entitle remuneration and benefits of a wide ranging nature. It is possible to have a different view, and my task certainly would have been easier if 46 were more precise.

**The Hon. J. M. SAMIOS:** Mr Knight, you mentioned before that you really did not feel an obligation or a need to look at the lack of notice to be given by the Commissioner on his departure. There is no provision in the agreement.

**Mr KNIGHT:** No, but there is no provision in any SES CEO contract that I am aware of to give notice.

**The Hon. J. M. SAMIOS:** In any?

**Mr KNIGHT:** Apart from the general law of so many weeks, presumably, but I do not think that is adhered to, or apart from the ability of the Crown perhaps not to accept a resignation, but technically the Crown does not refuse to accept a resignation.

**The Hon. J. M. SAMIOS:** But this particular agreement might be seen to be different from the normal SES agreement in terms of perhaps the amount of money involved?

**Mr KNIGHT:** Those who drafted it may have had it in mind that the end of payment incentive was all the protection they needed, that they did not need to insist upon notice prior to the expiration, leaving prior to the expiration of the term, that the end of contract sum would be the incentive, but as to what was in the minds of people I do not know.

**The Hon. J. M. SAMIOS:** Would you not have thought that the position of the Commissioner was a pivotal one in the administration of law and order in this State and that there would have been a need for a provision for notice prior to his departure, bearing in mind what might be a difficulty in having him replaced immediately?

**Mr KNIGHT:** I certainly agree it is a pivotal position. There is no question of that but, as I say, there are no contractual provisions that I am aware of ordinarily, even in many pivotal positions, which require some considerable period of notice before resignation. That is normally left to the Crown to decide whether it will accept the resignation, but that is more a technicality or a formality nowadays.

Normally, people will give the normal period of notice, whether it is a fortnight's or a month's notice, and the resignation would be accepted. I agree with you that perhaps it would be desirable to require some period of notice beforehand, but I suspect that those doing the negotiations felt that the incentive, the payment, was sufficient protection.

**The Hon. J. H. JOBLING:** Are you aware, Mr Knight, of a letter of 23 December 1998 from the Commissioner to the Minister for Police in which he in his second paragraph indicates:

I wish to renegotiate a contract for a further five years commencing on 1 January or 1 February 1999. The main terms of the present contract and benefits, a copy of which is attached, would remain.

Are you aware of that?

**Mr KNIGHT:** I am not aware of that letter.

**The Hon. J. H. JOBLING:** In view of the letter of that date - and I was, as I say, quoting from that paragraph - would it not be then of utmost importance to all persons, whether it is the Commissioner or not, in view of a release dated 20 July 1999 from the Commissioner's own office:

**Commissioner Ryan**  
**Re: Job of London Metropolitan Police Commissioner**

A spokesman for the Police Commissioner has confirmed Mr. Ryan has been included on the short list for the job of Commissioner of Police for London and that Mr. Ryan has been interviewed for the position.

In other words, he wished his contract to run for five years from 1 January or 1 February 1999 and on 20 July 1999 had applied for the position of London Metropolitan Police Commissioner. He then had that clause that enabled him to leave without notice. Does that not place the Government and the people of New South Wales in a bad position?

**Mr KNIGHT:** Not being involved in the negotiations, I do not know what those in December 1999 knew about what happened in July. All I can say is that I assume that they thought they were addressing that by the incentive payment, that that would be sufficient.

**The Hon. J. H. JOBLING:** But they did surely address it by that. Mr Ryan, or whoever was a commissioner at the time, not particularly the existing person, would stand to be able to claim that by resigning without notice, whereas the Government would be obliged to pay?

**Mr KNIGHT:** But if he resigned before completing his term he could not claim the end of contract.

**The Hon. J. H. JOBLING:** He only had to complete a period of time, not the full term, as I recall, he was eligible for.

**Mr KNIGHT:** No, he must complete the whole contract period. He must go from 8 February to 16 February 2004.

**The Hon. J. R. JOHNSON:** Nobody from the Governor-General to the Prime Minister to anybody else, including members of Parliament is compelled to give notice.

**CHAIR:** Could I just ask that the Hon. J. R. Johnson ask some questions, please.

**The Hon. J. R. JOHNSON:** I just have.

**CHAIR:** I thought you were making a comment.

**The Hon. J. R. JOHNSON:** Well, I made a comment.

**Mr KNIGHT:** May I just clarify that. My understanding is that the end of contract sum is only payable in the event that Mr Ryan completes the whole of that period from 1999 to 2004, and I drafted

the documentation on that basis. He does not get a penny of that end of contract sum if he does not complete all of that five years.

**The Hon. J. M. SAMIOS:** What advice did you give to the Government about the draft contract prior to 8 February 1999? What documents were before you to advise on?

**Mr KNIGHT:** I gave no advice about the draft contract. I advised on Mr Ryan's first contract but I gave no advice about this contract. I gave advice about his reappointment but nothing to do with the contract governing that reappointment.

**The Hon. J. M. SAMIOS:** Well, in light of your latest advice, what advice did you have difficulties with and how can you be sure that your latest advice is correct? We are particularly aware of Senior Counsel's advice, contrary to yours, that clause 6, relating to damages, is invalid. How can you be sure that this is not the case?

**Mr KNIGHT:** Well, in a situation where there is doubt, one goes through the arguments for and against and, at the end of the day, expresses a preference for the better view as it occurs to oneself, but I concede no great authority to myself.

In the advice I gave the Auditor-General, my view was that the better view was that clause 6 was valid. I said, in any event, it would be open to the Crown by separate contract under section 46(4) to contract in the same terms, but I agree with your questions. There is no certainty. I expressed the view that I felt was the better view.

**The Hon. R. D. DYER:** I just want to ask one question. You said a while ago in response to Mr Samios that some form of notice might have been desirable in regard to the Commissioner's employment contract. Am I correct in assuming, following some earlier evidence you gave, that, by extension, that comment would relate to SES contracts in general?

**Mr KNIGHT:** I guess that is so. It is unusual. It is not normally the case that you would require an employee to provide some particular length of notice other than would normally be anticipated, particularly when the Crown has the right to refuse or accept a resignation.

Now, Mr Ryan's resignation, as I understand it, could not be accepted where he was suspected of some serious wrongdoing. There is a provision that he does not vacate his office if he tenders a resignation and there are circumstances of serious wrongdoing surrounding him. He cannot resign in those circumstances; he must await due process in those circumstances. So it would be very unusual to have some provision requiring the employee to give a period of notice.

When you take into account the fact that Mr Ryan could not unilaterally leave where there was any serious question concerning his conduct and as there is an incentive payment which would be one year's salary at the year at which his contract ends, in those circumstances you would not ordinarily, I do not think, put in a notice provision.

**The Hon. J. M. SAMIOS:** But if he were to receive a higher offer from some place overseas, as it were, he could, under this arrangement, simply accept it and leave?

**Mr KNIGHT:** Yes.

**The Hon. J. M. SAMIOS:** And his position, we said earlier, was different from that of a normal SES position?

**Mr KNIGHT:** Well, if there were no circumstances surrounding him, he could resign. He would not get his end of contract sum. He would not, of course, get any of the clause 6 early termination sum, but when you employ someone from Great Britain and you take the view that they are necessary for the reform process, then maybe this is indispensable; maybe Mr Ryan would not have accepted it if there had been some clause in there requiring him to give considerable notice. I do not know what forces operated during the negotiations.

**The Hon. J. HATZISTERGOS:** What sort of impact would that have during the period of the notice if it were a lengthy notice?

**Mr KNIGHT:** What would have impact? I am sorry.

**The Hon. J. HATZISTERGOS:** If, for example, he has to give 12 months notice, what sort of impact does that have on the administration of the Police Service during the 12 months notice period?

**Mr KNIGHT:** Well, I think that is another consideration.

**The Hon. J. HATZISTERGOS:** It is a fundamental one.

**Mr KNIGHT:** I think such a person is a lame duck. If you had too lengthy a period, it would be simply a lame duck situation. I am not sure that a notice provision of that length would be valid. It may well infringe industrial legislation or conventions relating to the length of notice that could be required.

**The Hon. J. M. SAMIOS:** But a normal or a reasonable period - not an unreasonable period - of, say, three months, would have at least given the people of New South Wales some protection against a vacuum in the appointment of the State's senior police officer.

**Mr KNIGHT:** Yes, but even then you have complications. He may have had leave owing to him which he would insist on taking and that would see him through the three months. I just think there are so many problems with that that at the end of the day it does not work. I do not think it works to hold a person.

**The Hon. J. H. JOBLING:** Mr Knight, did you look at, or were you asked to advise on, the question of what end of contract payment means? One advising that I asked for suggested that it is certainly not at all clear as to whether end of contract payment is to be characterised as a bonus or a termination appointment. From the document, clause 22 merely provides such sum "to be paid in the most tax efficient manner" whatever that means. What advising, if any, did you give or was sought in relation to the determination of the end of contract payment?

**Mr KNIGHT:** I had no explanation from the Auditor-General as to what it was intended to mean.

**The Hon. J. H. JOBLING:** No advice was sought from you as Crown Solicitor in that regard?

**Mr KNIGHT:** No, and in fact I think when I was instructed to draft the documentation by the Crown I was instructed specifically to use the language of the original clause 22. I got the impression that that had been negotiated specifically with the Commissioner and there it was. There was no more explanation to be given.

**The Hon. J. H. JOBLING:** You raised no concerns in any form in that regard with anybody? Mr Knight, you did not have any concerns raised verbally or in other ways with you in that regard?

**Mr KNIGHT:** No, I did not.

**The Hon. R. D. DYER:** Mr Knight, the expression "the most tax efficient manner", would that not have an ordinary and well-understood meaning?

**Mr KNIGHT:** I guess it would. It means to be paid by some means which is lawful but which results in the lowest taxation of the amount that is permissible in law.

**CHAIR:** Maybe I should ask a question here because I want to go back to the question I asked you earlier about the Premier's memorandum. I am not sure whether you are aware of this memorandum?

**Mr KNIGHT:** I am aware of it. It is some time since I have looked at it.

**CHAIR:** Part of it is, just for your benefit:

No additional inclusion in the contractual arrangement for CES and SES officers relating to remuneration or benefit may be entered into by a separate contract without the approval of the Director-General of the Premier's Department.

That is from Bob Carr, the Premier. I still want to know what the legal status is of this memorandum and would it invalidate additional contracts entered into between Ministers and CEOs and CEOs and SES officers. Are there appropriate safeguards to prevent the proliferation of secondary contracts?

**Mr KNIGHT:** It is a lawful direction which must be obeyed by the public sector. It, of itself, does not invalidate anything and, presumably, if a separate contract were to be entered into despite the Premier's direction, it would probably still be a binding contract but, presumably, it operates on the basis that all public servants would comply with the direction and no-one would make a recommendation contrary to it.

**CHAIR:** But the point is if they do not comply.

**Mr KNIGHT:** If they do not comply and they arrange for a separate contract providing some additional benefit, it is probably lawful and probably binding upon the Crown. The Premier's direction would not, I think, render invalid a contract entered into between the Crown and an employee, even though that is contrary to what the Premier says.

**CHAIR:** So, in your view, then, there should be some kind of changes in legislation to make it effective?

**Mr KNIGHT:** Well, it is only, I guess, if you think that public servants will not comply with the Premier's direction and if you think the Director-General of the Premier's Department will give approval in circumstances where he should not that you would want to provide specifically to exclude it. It may be desirable in some circumstances, I do not know.

**CHAIR:** Can I put it another way? Would it be more effective to have legislative change so that all contracts can be incorporated into one contract?

**Mr KNIGHT:** We discussed this originally. Legislative change which required all remuneration and all benefits to be in the one contract would be desirable from the point of view of convenience. One could see them all in the one contractual document. But, in principle, there is nothing wrong with having remuneration and benefits in different contracts. It is only if one cannot see them all and work out the entire entitlements.

**CHAIR:** Is that not the very point, though, for government, for accountability and transparency that all these various contracts can be found in one place?

**Mr KNIGHT:** I agree. If one cannot see the additional contract, then I can understand that various people would say that there is a lack of accountability, but that can be provided for. You do not necessarily need legislation.

**CHAIR:** It is just one way I am suggesting.

**Mr KNIGHT:** Certainly, legislation would be one way of doing it, but that may be more than what is needed.

**The Hon. J. R. JOHNSON:** But there are certain statutory requirements on employers, like the Long Service Leave Act and the Annual Holidays Act, that do not have to be included in the contract for those benefits to flow to the employee.

**Mr KNIGHT:** Exactly.

**The Hon. J. R. JOHNSON:** It is not necessary for them to be in.

**Mr KNIGHT:** And all of the contracts say in one of the clauses that this contract is subject to other legislation, including, and it indicates some of them.

**The Hon. R. D. DYER:** Could I put it to you that accountability has absolutely nothing to do with whether the contract terms are reduced to writing in one or more documents. It is simply a function of whether the documents are available.

**Mr KNIGHT:** I think that is correct. I think in principle it does not matter if it is in one document or a number of documents, provided you have access to all the documents. I guess I cannot say more than that.

**CHAIR:** Do you have a closing statement you want to make?

**Mr KNIGHT:** No.

**CHAIR:** On behalf of the Committee, I thank you for your very informative answers. The Committee will take a short break and come back in five minutes.

**(The witness withdrew)**

**(Short adjournment)**

**LESLIE THOMAS TREE**, Director-General, Ministry of Police, Level 19, 14-24 College Street, Darlington, sworn and examined:

**CHAIR:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Mr TREE:** Yes.

**CHAIR:** Are you conversant with the terms of reference of this inquiry?

**Mr TREE:** Yes.

**CHAIR:** If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request and resolve into confidential session. I should warn you that the Parliament may override that decision at any time and may make your evidence public. Mr Tree, do you have any opening statement?

**Mr TREE:** No.

**CHAIR:** You are in a very good position to know the sequence of events with the signing of the contract. In the submission of 6 December, you state that on 4 February 1999 Dr Gellatly verbally advised you that the determination with Commissioner Ryan had been completed, details of the contract had been settled and that SOORT had resolved the level of the Commissioner's remuneration.

Your submission goes on to say that you will then provide a final version of the new contract for the contract provided by Dr Gellatly, and the Minister and Commissioner signed the contract at their regular meeting on 8 February 1999.

Dr Gellatly has advised the Committee in his submission of the same date that he indicated to you on 4 February 1999 that the formal process for direction under section 24D of the Act would need to occur. However, as the inclusions had been agreed with, the process was essentially a formal one to complete the statutory requirements of the Act. My question is, did Dr Gellatly advise you as he has submitted to the Committee?

**Mr TREE:** That is correct.

**CHAIR:** Were you, therefore, aware of the need for SOORT to issue this determination before the contract was signed?

**Mr TREE:** Well, the Act says that the contract can be varied, and I am referring to section 41(4) of the Police Service Act, at any time. It does not link it to the SOORT determination.

**CHAIR:** I thought it did. Did you advise the Minister and the Commissioner for the need of the tribunal to issue this final determination?

**Mr TREE:** No, because section 41 says that the contract can be varied at any time. It does not say it has to be linked to the SOORT determination.

**CHAIR:** I actually thought that SOORT had to make the determination. That is why I asked that question. SOORT sent the determination on 9 February and the contract was signed on 8 February.

**Mr TREE:** Right, as you stated, I received verbal advice from Dr Gellatly that the matter had been resolved and that the amount had been settled and that was his advice. That is what you read out and that was the sequence of events.

**CHAIR:** Yes, but my understanding, and you can correct me, is that SOORT's determination has to be obtained before the contract is valid.

**Mr TREE:** That is correct, but it does not say that the contract cannot be varied. It means that it will not take effect. It can be prepared, it can be signed and that is what the provisions of section 41 say.

**The Hon. J. H. JOBLING:** Mr Tree, following the verbal discussions with Dr Gellatly, was the draft contract provided by Dr Gellatly supplied during your discussion with him on 4 February 1999?

**Mr TREE:** On that day, yes.

**The Hon. J. H. JOBLING:** Therefore, looking at that draft contract when it was made available to you, was it supplied complete as to remuneration, benefits, termination payments and conditions as at that time?

**Mr TREE:** Yes.

**The Hon. J. H. JOBLING:** Would you tell me where the draft contract is now?

**Mr TREE:** I think the Committee has it in its possession, a copy of it.

**The Hon. J. H. JOBLING:** I was interested if you knew where the original was.

**CHAIR:** I have a copy of the original contract.

**The Hon. J. H. JOBLING:** In looking at this particular document, would you like to tell us when did you prepare the final draft that was signed?

**Mr TREE:** On Friday, 5 February.

**The Hon. J. H. JOBLING:** One day after it was presented to you?

**Mr TREE:** Yes.

**The Hon. J. H. JOBLING:** Could you tell us when it was submitted for signature and to whom you submitted it?

**Mr TREE:** It was submitted on Monday, the 8th, the next working day, which is the day that the Minister and the Commissioner had a scheduled meeting, and it was signed on that day. It was submitted to the Minister - he is a party - and a copy was given to the Commissioner, of course, because he is the other party to the contract.

**The Hon. J. H. JOBLING:** That would be reasonable. Do you think that legal advice ought to have been received from the Police Service solicitor in respect of the contract between the Commissioner and the Minister?

**Mr TREE:** You mean I should have obtained it? Well, the police ministry is a separate organisation to the Police Service. The Commissioner was a party to the contract. I am not quite sure that it would have been appropriate to get the Police Service solicitor's advice.

**The Hon. J. H. JOBLING:** Why would you not have wanted to obtain that advice for your own protection?

**Mr TREE:** Because I had been given a copy of the contract by Dr Gellatly. I do not have a formal relationship with the Police Service solicitor. It would not have been appropriate to have got their advice.

**The Hon. J. H. JOBLING:** On such another contract, if Dr Gellatly had not told you that the contract was okay, would you have obtained such advice?

**Mr TREE:** Not in the same circumstances, no.

**The Hon. J. H. JOBLING:** Can we then look at PSW of 22 February 1999, which says that negotiations began in September 1998? Were you or, to your knowledge, anyone else involved in negotiation with the Police commissioner over his contract at that time?

**Mr TREE:** No, I was not and I am not aware of any negotiations. The first I was aware of it was, as I said in my submission, on 11 January 1999, when I returned from leave and obtained the Commissioner's letter.

**The Hon. J. H. JOBLING:** Why would that be so, Mr Tree, when in a press release of 30 October 1997, from you to the Minister for Police in the series of the activities of the ministry in a highlighted dot point you indicate the appointment of Mr Peter Ryan as Commissioner of Police on 30 August 1996, when you clearly had an involvement then? Why did you not later?

**Mr TREE:** I am not familiar with the document you are referring to. Could I see it, Madam Chair, if that appropriate?

**The Hon. J. H. JOBLING:** Yes.

**Mr TREE:** This is the foreword to - this is the Police Service - sorry, the ministry's annual report. This relates to the original appointment of the Commissioner.

**The Hon. J. H. JOBLING:** That is correct. So the basis of that question is: if you were involved in the original appointment of the Commissioner and made a highlight dot point on it, why did you have nothing to do with the second appointment?

**Mr TREE:** Well, I did not say I had nothing to do. I said I was not aware of anything until 11 January because I was on leave during December when the Commissioner provided his letter to the Minister. I am not aware of anything in October. I am not quite sure what the validity of the *Police Service Weekly* comment is.

**The Hon. J. H. JOBLING:** It is an unusual situation, is it not, having been so heavily involved in it the first time that you were not au fait on the second?

**Mr TREE:** As I said, I was advised when I returned from leave on 11 January.

**The Hon. J. H. JOBLING:** I see. If we look at the question, then, of what exactly did or could you tell us what exactly did the Police Minister's chief of staff say to you when he spoke to you on 11 January about referring Commissioner Ryan's contract to Dr Gellatly?

**Mr TREE:** That the document had been provided by the Commissioner, that the Commissioner believed it was appropriate that Dr Gellatly as the head of the Public Service negotiate such a matter and if I could facilitate that process, so I accordingly made an appointment with Dr Gellatly.

**The Hon. J. H. JOBLING:** In other words, they passed you by on this occasion? Having done the first one, you were passed by on the second occasion.

**Mr TREE:** No, I did not say that. I think what you referred to me there was the Commissioner's previous contract. It was not about negotiations. There was a Police Board at that time, as you might recall, and the Commissioner was appointed by the Police Board.

**The Hon. J. M. SAMIOS:** Had you had any discussions about Commissioner Ryan's request for a new contract with Commissioner Ryan and/or the Minister and/or Mr Gleeson and/or anyone else prior to this discussion with the chief-of-staff?

**Mr TREE:** No.

**The Hon. J. M. SAMIOS:** Did you receive any documents relating to Commissioner Ryan's request prior to the discussion with Mr Whelan's chief-of-staff?

**Mr TREE:** No, only that document that the Committee has before it dated 23 December.

**The Hon. J. M. SAMIOS:** Mr Tree, what discussions took place between you and any other person in connection with Mr Ryan's contract between 11 January and 18 January 1999?

**Mr TREE:** Well, I discussed the matter, as my submission says, with Dr Gellatly. He was the only person I discussed the appointment with other than the Commissioner and the Minister after the negotiations were concluded.

**The Hon. J. M. SAMIOS:** Did you, or anyone else to your knowledge, send or receive any documents in connection with Commissioner Ryan's contract between 11 January and 18 January 1999?

**Mr TREE:** Could you repeat that, please? Sorry.

**The Hon. J. M. SAMIOS:** Did you, or anyone else to your knowledge, send or receive any documents in connection with Commissioner Ryan's contract between 11 January and 18 January 1999?

**Mr TREE:** No, only the Commissioner's letter, which I provided to Dr Gellatly at the meeting that I had with him on 18 January, as I mentioned in my submission.

**The Hon. J. M. SAMIOS:** Exactly what transpired between you and Dr Gellatly on 18 January 1999?

**Mr TREE:** Well, I mentioned to Dr Gellatly that - well, I said that the Commissioner had given this proposal to the Minister and that the Minister believed that it was appropriate that he conduct the negotiations, that the Minister should not be personally involved in such negotiations and would he take on that task, and he said yes.

**The Hon. J. M. SAMIOS:** Were any documents exchanged?

**Mr TREE:** Well, the Commissioner's submission, which was dated 23 December.

**The Hon. J. M. SAMIOS:** Between 18 January and 4 February 1999 what discussions took place between you and any other person in connection with Commissioner Ryan's contract?

**Mr TREE:** Well, Dr Gellatly kept me informed. I think I spoke to him on maybe two occasions as to the progress of the negotiations, just that they were gathering material, and then subsequently that negotiations had commenced.

**The Hon. J. M. SAMIOS:** Did you, or anyone else to your knowledge, send or receive any documents in connection with Commissioner Ryan's contract during this period?

**Mr TREE:** Not to my knowledge.

**The Hon. J. M. SAMIOS:** Were you, or anyone else to your knowledge, involved in any meetings or conversations relating to Commissioner Ryan's contract on either 3 or 4 February 1999?

**Mr TREE:** I was not involved in any discussions about that.

**The Hon. J. M. SAMIOS:** Did you, or anyone else to your knowledge, send or receive any documents in connection with Commissioner Ryan's contract during this period?

**Mr TREE:** No. I think I answered that previously. No.

**The Hon. J. M. SAMIOS:** Were you, or anyone else to your knowledge, involved in any meetings or conversations relating to Commissioner Ryan's contract between 4 and 8 February 1999?

**Mr TREE:** Well, other than the ones that I have already said I was involved in, no.

**The Hon. J. M. SAMIOS:** Did Mr Gellatly tell you that SOORT had resolved the level of the Commissioner's remuneration and exactly what did he say?

**Mr TREE:** Well, to the best of my recollection, and I do not have a verbatim record of the conversation, that SOORT had made up its mind on the appropriate amount, and that was the amount that was published in the final contract.

**The Hon. J. M. SAMIOS:** Exactly what did Mr Gellatly say about the formal processes for a direction under 24D?

**Mr TREE:** He said that the amount had been agreed but the formal processes would need to be completed, as I indicated in my answer to Madam Chairman.

**The Hon. J. M. SAMIOS:** Did you receive a draft from Mr Gellatly?

**Mr TREE:** As I already indicated in my answer to Madam Chairman, yes.

**The Hon. J. M. SAMIOS:** Did your final version differ from Mr Gellatly's draft?

**Mr TREE:** No.

**The Hon. J. H. JOBLING:** Can you explain the reference in the final contract to a section which does not exist in the Act which does not apply to the Police Service, and I am referring to section 42S?

**Mr TREE:** Yes, that is a reference to the Public Sector Management Act. There is a similar provision in the Police Service Act but that is an error. It should have been transposed. It is exactly the same provision. It should have been transposed into the Police Service Act provision.

**The Hon. J. H. JOBLING:** Who, then, in your view, would you suggest bears the responsibility for what is a fairly basic mistake?

**Mr TREE:** It was in the original draft. I suppose, to an extent, I do, because I prepared the final document.

**The Hon. R. D. DYER:** Would I be correct in assuming you were Director-General of the Ministry for Police when the police royal commission was sitting?

**Mr TREE:** That is correct. Well, from March 1996. Prior to that I was the Deputy Director-General.

**The Hon. R. D. DYER:** So at all relevant times when the royal commission was sitting you were a senior official of the Ministry for Police?

**Mr TREE:** Correct.

**The Hon. R. D. DYER:** Would you agree with me that the royal commission revealed substantial levels of police corruption?

**Mr TREE:** Yes.

**The Hon. R. D. DYER:** Would you also agree with me that it is the policy of the Minister and the Government to not only wipe out that corruption but to ensure that a commissioner is in place who is well fitted to do that?

**Mr TREE:** Yes, definitely.

**The Hon. R. D. DYER:** Would you agree with me that the Government's view is that Mr Ryan is well qualified and suited to that task?

**Mr TREE:** Yes.

**The Hon. R. D. DYER:** Would you further agree with me that the Government's view is that Mr Ryan's services are so valuable that his continued tenure in the office he holds should be secured if at all possible?

**Mr TREE:** Yes, I think the Government's view is that he is integral to the police reform process.

**The Hon. R. D. DYER:** Therefore, it follows, does it not, that the Government might be prepared to enter into somewhat better conditions than have applied to police commissioners in the past given the enormity and importance of the task that Commissioner Ryan faces?

**Mr TREE:** That is correct.

**The Hon. J. M. SAMIOS:** But you would agree, just on that point, that we should be meticulous about due process?

**Mr TREE:** Well, I do not think that there was a question of due process not being followed. As I said before, I think the terms of the legislation were followed. But, yes, you have a right to be meticulous about that as much as anyone.

**Ms LEE RHIANNON:** In a letter from Mr Gleeson to Mr Gellatly of 29 January at the end Mr Gleeson states:

We cannot have Ryan pushing us to the brink and then putting pressure on the Minister. In other words, Mr Whelan has to be quite firm that he will be accepting our advice on the contract.

Do you share the concerns of Mr Gleeson that Mr Ryan had been putting pressure on the Minister?

**Mr TREE:** I am not aware of that letter. I have not seen it before. Knowing my Minister, I do not think anyone can put pressure on him. So I do not know that I would share those concerns.

**The Hon. J. M. SAMIOS:** Not even the Premier.

**Ms LEE RHIANNON:** Who did the Minister take advice from regarding the Commissioner's contract?

**Mr TREE:** Well, he took it from me that the negotiations had been completed after I was advised so by Dr Gellatly.

**Ms LEE RHIANNON:** Following on from Mr Dyer's question about the police royal commission and the importance that is seen in terms of retaining Mr Ryan as the Commissioner, has the impact that this will have on future commissioners been considered?

I understand that it has been indicated that there will no longer be a pay packet of this size for future commissioners. The process of weeding out corruption in the police is not going to stop when Mr Ryan leaves, so has the follow-through process to a commissioner who presumably will be Australian been considered and what impact that will have on the morale of the force when we have a pay an entitlement package that will be much reduced on the one that we presently have?

**Mr TREE:** Not to my knowledge at the moment. I do not think anyone has turned their mind to that. The commissioner has a contract that lasts until 2004, and that is the situation at the moment.

**Ms LEE RHIANNON:** So the method of succession has not entered into any of your considerations?

**Mr TREE:** You mean the appointment process?

**Ms LEE RHIANNON:** Maybe I will move on to another question and you can consider that question in the light of this. I understand one of the things that you look at with the Commissioner is his performance agreement, and there are the various aspects of that.

**Mr TREE:** Sure.

**Ms LEE RHIANNON:** In light of that performance agreement, surely you would be considering where the police force is going?

**Mr TREE:** Yes. Sorry, I misunderstood your earlier question. One of the key things in the performance agreement is that succession planning or development of senior officers is something that the Government is interested in and it is vital to the future of the Police Service.

**Ms LEE RHIANNON:** Specifically on the issue of the salary package, considering that the next commissioner will not be paid at the same level and most likely will be Australian, has consideration been given to the impact that the huge drop in salary will have when one takes somebody from the force itself?

**Mr TREE:** I do not think those issues have been determined. I think there is a separate thing there in your questions about candidates for possible promotion and the conditions of employment of someone who may become the police commissioner in the future.

**Ms LEE RHIANNON:** So it has not been considered at the moment?

**Mr TREE:** No.

**Ms LEE RHIANNON:** On the performance agreement, could you elaborate how this is judged in terms of the work of the Commissioner? Who makes the determination of how he is performing and what are the criteria on how you judge it?

**Mr TREE:** The contract is with the Minister. The performance agreement is with the Minister and he is the person who judges the Commissioner's performance as the party to the performance agreement.

**Ms LEE RHIANNON:** So the Minister alone does that?

**Mr TREE:** That is correct.

**Ms LEE RHIANNON:** Is there a mechanism in place by which he reports? Is it a written report that he makes? Does he give that back to the Commissioner?

**Mr TREE:** The annual report of the Police Service contains a report on the Commissioner's performance, as does the annual report of every CEO in the public sector that is signed by the Minister.

**Ms LEE RHIANNON:** And considering these three aspects that are spelt out in the performance agreement, can you elaborate what would have to happen for the Commissioner not to achieve or fall short of achieving those three points that are set out under the performance agreement?

**Mr TREE:** I do not think I can answer that.

**Ms LEE RHIANNON:** I will be more specific. In number two you say:

Performance Agreement: Ensuring security of athletes and spectators in the conduct of the 2000 Olympics, a duty for which he has ultimate responsibility.

So does that mean that if there is a terrorist attack or if something happens at the Olympics you would see that he has not performed his duty?

**Mr TREE:** That is not my judgment to make. As I explained to you, the performance agreement is with the Minister. It is not my performance agreement with the Minister.

**The Hon. J. HATZISTERGOS:** What is the international reputation and standing of Commissioner Ryan?

**Mr TREE:** I understand, from my knowledge, that it is first rank, that people believe that he is a very highly skilled and experienced police officer who was a very good appointment for New South Wales to make particularly at that point of time in our history.

**The Hon. R. D. DYER:** Am I correct in assuming that it is part of the firm arrangement between the Commissioner and the Government that the Commissioner is required to have a firm succession plan in place before his contracted term expires?

**Mr TREE:** Yes, that is in the performance agreement that the Commissioner has with the Minister.

**The Hon. R. D. DYER:** So there is absolutely no doubt that the Commissioner has a legal obligation to put a succession plan in place?

**Mr TREE:** That is right, yes.

**The Hon. J. H. JOBLING:** In your mind and when you were considering the contract, how important to the contractual negotiations was the Commissioner's commitment to stay on in New South Wales until 2004?

**Mr TREE:** What is in my mind is irrelevant to the process. I was just preparing the document. But I think that the Commissioner's commitment to New South Wales is a very important thing. We have just said how important he is to the reform process, so the fact that he has a longer term appointment is beneficial to New South Wales.

**The Hon. J. H. JOBLING:** But surely that must have been a matter that you considered. Are you saying to me that you did not give any consideration to that?

**Mr TREE:** It is not my position to have a personal view about this at all. I prepared the documents, and that was my role.

**The Hon. J. H. JOBLING:** You just merely prepared the documents. You did not consider or think about any matters whatsoever?

**Mr TREE:** No, I did not say that. I just said that my opinion is not really important in this matter. It is a matter of record that the Commissioner has been reappointed, and that is a good thing. I just said that.

**The Hon. J. H. JOBLING:** In answer to a question a moment ago to my colleague Ms Lee Rhiannon, you said, "The Minister took advice from me after I was advised by Dr Gellatly that it was in order".

**Mr TREE:** Yes.

**The Hon. J. H. JOBLING:** But you were not a participant, basically, to what Dr Gellatly did, so how could you give advice to a Minister as a non-participant?

**Mr TREE:** Because I was advised by the Director-General of the Premier's Department that the negotiations had been completed.

**The Hon. J. H. JOBLING:** So, in other words, you just accepted the words and, like the previous comment, had no opinion?

**Mr TREE:** Well, Dr Gellatly, you know, is a very senior person, and I had confidence in his verbal advice.

**The Hon. J. H. JOBLING:** Verbal advice you took without any question. I am surprised. Can we then press on?

**Mr TREE:** Well, look, in 28 years of public service, if we wait for written advice on everything, I think that the processes can get bogged down. I acted on the verbal advice of someone whose advice I trusted.

**The Hon. J. H. JOBLING:** Could you perhaps offer me a view on why no attempt was made in the latest contractual documents signed to require the Commissioner to give some notice perhaps before terminating given that just months after signing the contract last year and agreeing to stay for five years he applied for the London commissioner's job and actually went to London for an interview?

**Mr TREE:** I do not think I can answer that question.

**The Hon. J. H. JOBLING:** Perhaps we could put to you a question, then: do the latest documents signed demonstrate that the previous year's attempt to appoint the Commissioner for five years on 8 February 1999 were legally misconceived and that any further appointment could not commence until the end of his current contract on 29 August 2001?

**Mr TREE:** I think you are confusing the date of the contract signing and the date of the appointment. The contract does not appoint a person. It says that clearly in the Act. It says in 41(3):

An officer is not appointed by or term of office . . .

**The Hon. J. H. JOBLING:** The direct requirement from the Commissioner in writing in January or February was to seek a further appointment for five years. What I am putting to you is the variation in contract was necessary to ensure that it did occur from 29 August.

**Mr TREE:** Well, the contract can be varied at any time it says.

**The Hon. J. H. JOBLING:** And in varying it for any time or for any matter, to whom would such a reference be referred for variation?

**Mr TREE:** I am sorry, I have missed your thread?

**The Hon. J. H. JOBLING:** You said the contract can be varied at any time; am I correct?

**Mr TREE:** Yes.

**The Hon. J. H. JOBLING:** If, therefore, the contract is desired to be varied at any time during the duration of the contract, to whom would such a variation be referred?

**Mr TREE:** Well, a request can be made by either party to the contract to vary the contract.

**The Hon. J. H. JOBLING:** And how would this become known to the members of the New South Wales public?

**Mr TREE:** Well, in this case the contract variation was made, an appointment was made and the appointment was publicly announced.

**The Hon. J. H. JOBLING:** So, can we look at the question of asking you as to whether you were involved in a performance review of the Commissioner's work prior to the 1999 contract being signed and would you tell us then what did the Commissioner say to you about the public affairs branch during that review?

**Mr TREE:** Well, I have not had a conversation with the Commissioner about the public affairs branch. I am not quite sure what you are referring to.

**The Hon. J. H. JOBLING:** In a letter dated November 1998, Mr Ryan said that an internal affairs command had investigated the branch and had uncovered no evidence of criminal offences. However, there were many areas of gross mismanagement and inappropriate actions by members of the public affairs branch which required further consideration. If that was in a letter dated November 1998, I come back to the question --

**Mr TREE:** But that letter was not to me.

**The Hon. J. H. JOBLING:** It was a public document.

**Mr TREE:** This was a matter that was raised in the Legislative Assembly on Friday. I am not quite sure what it has to do with the terms of reference of the Committee.

**The Hon. J. H. JOBLING:** The terms of reference of the Committee relate to the question of were you involved in a performance review of the Commissioner's work prior to the 1999 contract being signed and what did the Commissioner say to you about the public affairs branch during that review.

**Mr TREE:** I had not had a conversation with the Commissioner about the public affairs branch in the context of this review.

**CHAIR:** Our terms of reference under (b) read:

- (b) the circumstances in which the Statutory and Other Officers Remuneration Tribunal came to make a determination on the salary of the Commissioner at least one day after the salary had been agreed to in the contract.

You just told me that in the Police Service Act, section 41(4), a contract of employment may be varied at any time by a further contract between the parties. Now, I am not clear whether this contract that Commissioner Ryan has is a new contract because it is a new appointment or it is only a variation of the previous contract. That is the first question.

**Mr TREE:** It is a new contract but it was made as we discussed.

**CHAIR:** But were you aware that there is a need for SOORT to issue a determination before the contract was signed because it is a new contract?

**Mr TREE:** I have answered that question already.

**CHAIR:** I am not clear. Would you repeat it, please?

**Mr TREE:** The Act is not linked to the determinations of SOORT. I cannot find a reference in the Police Service Act to SOORT, so there is no linkage legally, so I am not quite sure where we are going.

**CHAIR:** But does not the senior services management Act apply to all senior public servants, including Commissioner Ryan?

**Mr TREE:** Well, the Commissioner's appointment is governed by the Police Service Act.

**CHAIR:** As well as the senior services management Act?

**Mr TREE:** No, the Public Sector Management Act, which covers other appointments in the public service, does not apply to people who are employed in the Police Service.

**CHAIR:** So you actually did not advise the Minister and the Commissioner that it was not appropriate to sign the contract on 8 February?

**Mr TREE:** No, I said that it was appropriate to sign it because the contract can be varied at any time and it says also that a contract of employment may be made before or after the appointment.

**CHAIR:** You just agreed that the contract is not a variation, that it is a new contract.

**Mr TREE:** But 41(2) says a contract can be made before or after the appointment.

**The Hon. J. M. SAMIOS:** Mr Tree, why did the Police Service try to resist an FOI application for the contract to such an extent that the Administrative Decisions Tribunal said its response was not acceptable and that the service should educate itself in relation to even attempting to satisfy the FOI Act in a meaningful way? As adviser to the Minister, what are you doing about it?

**Mr TREE:** Well, I cannot answer for the Police Service. I am not a member of the Police Service. I cannot answer that question.

**The Hon. J. SAMIOS:** But you are an adviser to the Minister?

**Mr TREE:** Correct.

**The Hon. J. H. JOBLING:** If in fact then, Mr Tree, that question was asked, what advice would you give the Minister in relation to such a question if he were asked it as to how to respond?

**The Hon. J. R. JOHNSON:** That is hypothetical.

**Mr TREE:** That is hypothetical. If the Minister asked me that question I would answer it but I have not been asked that question by the Minister. It is hypothetical.

**The Hon. J. H. JOBLING:** I would have thought, Chairman, with respect, and allowing for the assistance that my colleague gave, that as the senior person who would be advising the Minister you could offer me some thoughts as to how you would deal with a resistance to an FOI application and why there should be resistance.

**Mr TREE:** I am not quite sure where this relates to the terms of reference, actually. It is a matter for the Police Service, not a matter for me. I do not have a role as the determining officer or the person who FOIs are made to in the Police Service. That is not my role.

**The Hon. J. H. JOBLING:** What would you describe your role as, Mr Tree?

**Mr TREE:** What, in relation to the Freedom of Information Act?

**The Hon. J. H. JOBLING:** No, how would you describe your role?

**Mr TREE:** I am the Director-General of the Ministry for Police.

**The Hon. J. H. JOBLING:** What does the Director-General of the Ministry for Police do?

**Mr TREE:** Well, you have my annual report. That explains it, but also --

**The Hon. J. H. JOBLING:** I would appreciate a precis from you.

**Mr TREE:** All right, I will give you one. The director-general is responsible for the management of the ministry, the preparation of the portfolio's legislative program and advice to the Minister.

**The Hon. J. H. JOBLING:** You do actually give advice to the Minister, then?

**Mr TREE:** Do I have to answer that, Madam Chair or is that a gratuitous remark?

**The Hon. J. H. JOBLING:** It was not intended as a gratuitous comment. I just find it difficult to try to understand where Mr Tree is coming from. I ask you a different question, perhaps, Mr Tree. In relation to the ministry, how do you perceive the role of SOORT in relation to the Police Service and the question of salaries? Do you believe it should be there?

**Mr TREE:** In relation to the ministry?

**The Hon. J. H. JOBLING:** The ministry that you advise and in relation to the Police Service.

**Mr TREE:** Well, SOORT determines the remuneration paid to people who are in the senior executive service in the ministry, so it has a statutory role in that area. As to the role of SOORT generally, my understanding is it is the Government's adviser and determining authority on remuneration matters. But it is not my responsibility to talk about the role of SOORT. It does not come within the police portfolio.

**Ms LEE RHIANNON:** What date did you become aware that Mr Ryan had applied for a job with the Police Service in England and what advice did you give to the Minister on how he and the New South Wales Government would be best to respond to this development?

**Mr TREE:** I am not aware that that is within the terms of reference of this inquiry.

**Ms LEE RHIANNON:** I will explain why it is within the terms of reference. We are here looking at the determination of the package and that is linked with keeping the Commissioner in Australia to do the job, as you yourself said, until 2004. So, therefore, any possibility that he may wish to change jobs would be relevant to deciding on the make up of that package. I actually think it is extremely relevant and it would be useful if you could answer it for the work of this Committee.

**The Hon. R. D. DYER:** On a point of order. Ms Lee Rhiannon made reference to Commissioner Ryan applying for a job in London. I am not sure that the assertion is justifiably made. There is no evidence before this Committee that Mr Ryan did apply for that job. It may well be that he had some discussions in London. However, I have never heard it said at any stage that he formally applied for that position.

**Ms LEE RHIANNON:** In July last year --

**CHAIR:** Do you want to rule this question irrelevant to the inquiry?

**The Hon. J. H. JOBLING:** On the point of order. For the benefit of the Committee and as the Hon. R. D. Dyer raises the question of whether Commissioner Ryan applied for a position in London, if need be I will table for the Committee a media release under the heading "New South Wales Police Service Commissioner's Office" which reads:

**Commissioner Ryan**  
**Re: Job of London Metropolitan Police Commissioner**

A spokesman for the Police Commissioner has confirmed Mr. Ryan has been included on the short list for the job of Commissioner of Police for London and that Mr. Ryan has been interviewed for the position.

And it goes on. It is dated 20 July 1999, and I will be happy to table that.

**The Hon. J. R. JOHNSON:** That does not say that he applied for the position. He may have been asked to be interviewed.

**The Hon. J. H. JOBLING:** If need be, there is a second one from the Police Service, which reads:

Police Commissioner, Peter Ryan, has told the British Government he does not wish to be considered any further for the job of Commissioner of Police for London.

That is dated 21 July.

**The Hon. J. R. JOHNSON:** It still does not say that he applied for the position.

**The Hon. R. D. DYER:** Further to the point of order. The position clearly is regarding executive selection, that search committees are established and people are approached on an international basis, and that may well have been the case with Commissioner Ryan. However, to say that and to say that he applied for the position are two different matters.

**CHAIR:** I think that this is relevant. Perhaps you can phrase the question closer to the terms of reference.

**Ms LEE RHIANNON:** I think it is very much within the terms of reference because of the explanation that I gave earlier. I think it will make the work of the Committee difficult if we are not able to get an answer to it because every indication is that the Commissioner did apply for the job.

Some of the other information that was released at the time was that he discussed it seriously with his wife, and he eventually said that he told the British Government in writing that he no longer wished to be considered for the job.

I cannot see how you can get any closer to applying for the job than that information. Therefore, it was a real application, and, therefore, coming back to the situation in New South Wales and with the Minister for Police, the Commissioner's attempts to find work elsewhere would obviously have come into any consideration of his new pay package and entitlement package that was being negotiated, so I do think it is very relevant to the work of the Committee, and I again request that we receive an answer to this question.

**The Hon. J. H. JOBLING:** Chairman, also, looking into my notes here I also hold a copy of a document from the Home Office which obviously deals with the matter in question. In the "Notes to Editors", and this is important, it says:

Five applicants applied for the post. All five attended a panel interview chaired by the Home Office Permanent Secretary, David Omans. The short list was personally interviewed by the Home Secretary. One applicant withdrew before the final decision was made.

Clearly, that answers the question before you as to whether there was an application or not. Again, I would supply those to the table.

**CHAIR:** The Committee is not privy to this document, the last document in particular. It only just came to light now when you tabled this document.

**The Hon. J. H. JOBLING:** It is an open document that has come from the Internet.

**The Hon. R. D. DYER:** Madam Chair, on a point of order. The terms of reference for this Committee are that we inquire into and report on two matters:

- (a) the circumstances surrounding the contract of employment between the Commissioner of Police and the Minister for Police, signed on 8 February 1999;
- (b) the circumstances in which the Statutory and Other Officers Remuneration Tribunal came to make a determination on the salary of the Commissioner of Police one day after the salary had been agreed to in the contract.

I submit to you that that does not entitle us to go back in time and examine what the Commissioner might have done when he visited London a very considerable time ago. There is no nexus between that and what we are inquiring into today.

**Ms LEE RHIANNON:** On the point of order. It is useful that Mr Dyer read out the terms of reference. I think it shows why, again, this is a most relevant point because he used the phrase in the terms of reference "the circumstances surrounding the signing of the contract".

This issue is very relevant to the circumstances surrounding the signing of the contract and how the discussions would have gone on with the Minister for Police, particularly in light of the fact that there was a period of about a year when Mr Ryan said he was not interested in the job and then in July

1999 he issued a statement saying that he had been to London for the interview and had been seriously considering this job, which means the application.

If that is happening, and we have heard today repeatedly how important this commissioner, Mr Ryan, is to the future of the New South Wales police, therefore, all those issues would be considered by the Minister and also, obviously, by the director-general, who would be giving advice to that Minister in terms of determining what that package would need to be to hold the Commissioner in Australia, and that is why I am arguing very strongly that we need to be able to explore this issue.

**The Hon. J. HATZISTERGOS:** You say he should have been offered more.

**Ms LEE RHIANNON:** I think you know what I am saying.

**The Hon. J. HATZISTERGOS:** I am just wondering.

**CHAIR:** Members of the Committee, at this point of time because you are debating a point of order, I wonder if I can ask everyone to clear the room for about two minutes or three minutes so that we can actually decide on this point of order. Thank you.

**(Short Adjournment)**

**CHAIR:** Mr Tree, I have made a ruling already and I have asked Ms Lee Rhiannon to repeat her question.

**Ms LEE RHIANNON:** Did you discuss with the Minister that the Commissioner had applied for a new job in London, and what advice did you give to the Minister about how the New South Wales Government should respond to the decision of the Commissioner to look for work overseas and, within that context, the implications that had for the contract with the police commissioner?

**Mr TREE:** You have brought this in order now, have you?

**CHAIR:** Yes.

**Mr TREE:** Right. The commissioner, to my understanding, did not apply for a job overseas, I understood. The facts of the matter are set out in the press releases that I think Mr Jobling tabled. My advice to the Minister would have been, and I must admit I am not --

**CHAIR:** Maybe if I can interject, have you advised the Minister?

**Mr TREE:** I am not sure where this goes to in the terms of reference, but you have ruled it in order. My advice to the Minister has been consistent: that the Commissioner is the most appropriate person to be the Commissioner of Police in New South Wales and that it is appropriate that he stay as the Commissioner if at all possible.

**Ms LEE RHIANNON:** Therefore, did you then discuss the entitlements and the salary package in the light that he was considering returning to England and, therefore, we may need to offer him further inducements to stay in Australia?

**Mr TREE:** No, I thought it was clear from my evidence that I had no dealings on remuneration whatever at any part of the process.

**CHAIR:** Thank you very much, Mr Tree, for the information you have given to the Committee.

**(The witness withdrew)**

**GERALD GLEESON**, New South Wales Statutory and Other Offices Remuneration Tribunal, Level 32, Governor Macquarie Tower, 1 Farrer Place, Sydney, sworn and examined:

**CHAIR:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Mr GLEESON:** I have.

**CHAIR:** If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee would be willing to accede to your request and resolve into confidential session, but I should warn you that the Parliament may override that decision at any time and may make your evidence public.

**Mr GLEESON:** I do not wish to seek any discussions outside of the public inquiry.

**CHAIR:** Do you have any opening statement that you want to make to the Committee?

**Mr GLEESON:** Yes, I have two. Firstly, when I received notification from you, I took advice and I was told that I should not confer with or discuss this matter with any other persons whom you were calling, so I just wish to put that on the record, that I am not aware, I have had no discussions with any other witnesses, so the documents of which I am aware are limited to two, namely, the Crown Solicitor's advice back in the early days and the Auditor-General's report, but I am not aware of any other matters that are put before you.

The second matter is that as a result of the Crown Solicitor's advice I believe that he has made it clear that there are defects in the current legislation.

I have a document here which I am prepared to give to the members to explain what I consider those defects to be.

**The Hon. J. H. JOBLING:** We would appreciate it, Chairman.

**CHAIR:** Would you like to table it now?

**Mr GLEESON:** Yes, I would. I would like to table it.

**Motion by the Hon. J. M. Samios, seconded by the Hon. J. H. Jobling, agreed to:**

That the document be tabled.

**Mr GLEESON:** Well, in 1989 the new Government made a deliberate decision to change the system for remuneration of senior public servants. They decided that we should move to the private sector type of remuneration system which was based on total cost of employment and, as a result, the current legislation was introduced. This was the first attempt by a government across the country, actually, to move to this type of remuneration and, it is not surprising, therefore, that in the final outcome there might be some defects in the legislation.

Secondly, the Government said that it intended to provide for performance pay. That Government and the current Government have never provided specifically for performance pay, but in my determination since 1996-98, I have built into the determinations a system of performance pay. Presumably, as you will note in point 2, this is the reason why this section 46(4) of the Police Service

Act and 42L(4) of the Public Sector Management Act, were introduced. They have never been used but they are there. They are the sections which are giving the Crown Solicitor some difficulties.

We now come to his advice. His advice is that damages under clause 6 are okay, but the end of contract sum under 22 is not valid. That is the basis of his decision. You will see that he himself has some difficulty in this matter, and that is what I have indicated in my quote from him in section 6, where he himself says:

I must say, I have found it difficult to ascertain the intended operation of section 46(1) and section 46(4) of the Police Service Act and it is perhaps unsatisfactory that such uncertainty as to the entitlement of executive officers exist.

So he is affirming here that there is some uncertainty in the current legislation. Since the introduction of this system, it has been assumed by most people or by all people that the tribunal would determine the remuneration package to include all monetary remuneration and monetary benefits. Then I come to the Auditor-General's statement in section 8 where he says:

If the SOORT process is intended to govern all (or at least all significant) payments to senior public sector managers, then there is a shortcoming . . . It would seem that Ministers (in respect of Chief Executive Officers) and Chief Executive officers (in respect of Senior Executive Officers) now have great greater scope than was intended in providing financial rewards to their employees.

Now this is the matter about which some members have spoken frequently in the press, as I have noted, and they have said that there are deficiencies in the current Act because Ministers can now virtually go off and do their own thing. Likewise, chief executive officers can go off and do their own thing.

Well, I agree with the Auditor-General. Let that be clear. I think there should be a prohibition on any of these secondary contracts and, therefore, this Committee should consider recommending to the Government the deletion of those two sections, 46(4) and the other one is in the Public Sector Management Act. I think consideration should be given to that so that there is this prohibition.

The Crown Solicitor also identified a defect in section 24A of the SOORT Act. I do not know whether members have that in front of them but if they have, section 24A, definition of remuneration package, just to make everything perfectly clear, he recommends, and I agree with him, that you should insert in that definition a reference to section 46 of the Police Service Act.

So at the outset, Chairman, I believe that there is a strong case, acting on the advice of the Crown Solicitor, that there should be consideration given to amending those Acts and, indeed, if you delete, as I have suggested, you would not have these secondary contracts.

**CHAIR:** Thank you. That is very clear, Mr Gleeson. I was concerned about the secondary contract myself. Perhaps at this point I would like to ask you if you can outline to the Committee your role in determining the remuneration for the Commissioner of Police?

**Mr GLEESON:** Firstly, the remuneration tribunal determines by legislation the remuneration of the police commissioner. Secondly - and I did the original determination - in January I was informed by the Director-General of the Premier's Department that the Commissioner had sought to renegotiate his contract and would I examine what I believed was the appropriate remuneration package for the police commissioner. So, this exercise really began in late January - I was away for the first two weeks - when I was informed that I would be receiving a special reference from the Premier and would I examine that matter.

So in that next fortnight, as I made clear in my original submission to you, I had discussions with Mr Anderson, who represented the police commissioner, in an endeavour to determine what I believed was to be the just and reasonable remuneration package, and having regard to the fact that that package needed to include the benefits, that is under the Act, that I believed he was entitled to.

You will note from his original letter that I think only one or two of those benefits were conceded. The first of those was a private vehicle. The second was that I have regard to spouse travel, which means that by including that amount in the total amount, he is now personally responsible for spouse travel. So there was the car, there was the spouse travel, and he is entitled to take out of that total amount whatever he wishes for superannuation.

So the \$425,000, about which there has been a lot of excitement, is the total figure and out of that he has to pay for his own car, pay for whatever superannuation he wishes to seek and the spouse travel, and \$425,000 was the figure that I determined, and I conveyed that decision orally at first to the director-general, who is an assessor to the tribunal, so when I say conveyed it to him, I was working with him.

**CHAIR:** Can you outline for the Committee the role of the assessor to SOORT, and is there a conflict of interest if the same person, the director-general, for example, acts both as an assessor to SOORT and co-signs a contract for an SES officer as Dr Gellatly did? Can you explain the reason?

**Mr GLEESON:** Definitely there is no conflict.

**CHAIR:** Why not?

**Mr GLEESON:** Because the legislation provides that he be the assessor. So it is by an Act of Parliament that he is an assessor. Secondly, why is he an assessor? Perhaps that is what you are more interested in. Well, when remuneration tribunals were first introduced, and it goes back almost 30 years and I have been associated with it for most of that time, we determined that there would be a one-member tribunal who makes all the decisions, but alongside him there should be some people who bring some special expertise to the work of that tribunal.

Now up to 1995 when I was appointed, the previous tribunals had been, firstly, two very senior solicitors from Sydney and then the third one was from the Employers Federation in the metal industry. So they were the people who were the tribunal and they needed, alongside them, a person who was able to bring to the assessment some knowledge of and experience in the public sector. There was another assessor here who brought some experience in the private sector. Now that is what the Parliament legislated for, and I know personally the extent to which those previous tribunals relied upon that person from the public sector.

At one stage in the legislation that person was the head of the Department of Industrial Relations when the Greiner Government moved public remuneration down to that department. Now, it so happens, of course, that the current tribunal, myself, happens to have some knowledge of the public sector, but on the other hand, I have found the presence of that Director-General of the Premier's Department very valuable in all of these determinations because I cannot claim currently to be across the public sector perhaps the way I used to be.

So, it is a very, very important that the director-general or a nominee be an assessor to the tribunal, and I think any suggestion to the contrary just does not understand, frankly, how the tribunal has worked over a period of 20 to 30 years.

**CHAIR:** Given the fact that the Director-General of the Premier's Department is the assessor by legislation and in this particular negotiation he is also the negotiator on behalf of the Minister for Police, you do not think there is a conflict of interest there?

**Mr GLEESON:** No, because we are dealing with two different matters. I mean, the function of the tribunal is quite clear. It has to determine the remuneration package, which includes the monetary plus the benefits. Now that is not what the Director-General of the Premier's Department is determining in the rest of the contract; not at all - not determining but recommending in the rest of the contract. They are two distinct areas of responsibility but they come together in the contract.

That happens with every other contract for a CEO. I mean, some people seem to think that this is something out of the ordinary that is going on. This is happening every time there is a determination and, that is, the Remuneration Tribunal makes its determination, publicises it and then the Minister forms the contract with the head of his department, setting out performance objectives and other things.

**CHAIR:** As was suggested in one of the submissions from Dr Gellatly, is that not a mere formality, almost a rubber stamp of the assessor in your determination?

**Mr GLEESON:** I rather resent that suggestion - not from you - about rubber stamp, and it has been used by the press and others, probably by some of these people sitting back here who, regrettably, do not understand the mechanics of it.

**CHAIR:** I used the term rubber stamp.

**Mr GLEESON:** Yes, I know you did, but the press have picked it up and run with it, and they have run with it, I think, improperly because there is no rubber stamp in what I have done. I came to my view about this matter and I conveyed it to the Director-General. I did. Now where is the rubber stamp in that, I might ask?

**CHAIR:** No, I understand that. I actually was very impressed with you sticking to your ground and not acceding to those requests made by the police commissioner. I read all that. But, still, it was on the negotiation in fact that you said that there was a determination on the 9th and the contract was signed on the 8th.

**Mr GLEESON:** What do I think about that? Good. I require a formal reference from the Premier in order to carry out any roles. In late January, and this is quite a regular thing, I was told or I was asked would I make a determination because the police commissioner was renegotiating his salary, and I went ahead and I got on to it exactly the same as I did last week when a Minister rang me and said, "We passed legislation for the Thoroughbred Racing Board that requires you to set the remuneration. I will be sending you a reference." He informed me and I started to inform myself straight away about racing, which I normally do not know much about.

I then arranged for interviews with the Racing Control Board - I think I saw them last Thursday - and I will be making a determination when I leave here today. The letter from the Minister then came along, and that is the way we have done it.

In this case, I made the determination, I conveyed it to the Director-General. I think it was the 4th or the 5th. I then received the formal reference from the Premier. It would have been beneficial, frankly, if I had had it a week earlier, but I did not have it, but it did not impact on anything I was doing.

When I asked the officers they said, "We have still got to get it." So they got it, I think, on the Monday. I signed it on the Tuesday. Now, what the Minister did in relation to signing a contract and what dates he signed it on have got nothing to do with me at all. I just sent my determination along, and the fact that it was signed before is really not my business and I was unaware until, I think, three months ago that that had happened. But it had nothing to do with me as a tribunal.

I did not rubber stamp anything. That is where I say a mistake is being made by anybody who thinks that way because I had already told them what the decision was. Now, how in those circumstances because I signed the letter two days later could that be regarded as a rubber stamp? I object, not to you, Chairman, but to some of these other people who run around using that word. It is wrong.

**CHAIR:** Can I just repeat the question, then, Mr Gleeson? Would you clarify for me is there unlawfulness in your determinations on the 9th when the contract was signed on the 8th?

**Mr GLEESON:** Is there any unlawfulness?

**CHAIR:** Yes.

**Mr GLEESON:** Firstly, there is no unlawfulness so far as I am concerned because I made the decision, conveyed it orally, which I do, signed the letter as soon as I got it, or the day after, so there is nothing unlawful in what I have done.

My expectation, you are asking me - and I do not think I should answer the other question about there being something unlawful - would have been that nobody would sign a contract until they had the formal approval. That is a normal expectation of anybody who has been around the public service. You do not run around signing things. But I would not like to comment on whether that was lawful or unlawful. That is not for me.

**CHAIR:** This is my final question at this point in time. You referred to this secondary contract and you did say that the employment of this SES officer should be contained in one single contract.

**Mr GLEESON:** Yes.

**CHAIR:** So my question is: would this require a broadening of the role of SOORT in terms of the benefit that SOORT could determine? Alternatively, would it be appropriate for legislation to prescribe the type of arrangements that can be covered in secondary contracts?

**Mr GLEESON:** Well, firstly, this is a matter for the Government. All that I can do here is give a personal opinion, but I am now at the stage where probably I can give personal opinions and not be too concerned about the results of that.

My personal opinion is that all benefits and entitlements should be set by the tribunal, by one person, and that has actually been the assumption for 12 years until this matter arose. It has just been assumed that that is how it was done. And my opinion is, per se, that that is how it should be done.

I do not believe that Ministers or chief executive officers should be permitted to take my determination and then start to build something else on to it, which they can do under that section of the Act, which I have suggested to you that you might consider recommending should be abolished. That is the first part.

Now, the second part of your question is this: should there be some special provision in the Act? I would argue against that very strongly because it would mean that we would then have to define whatever benefits we think SOORT can give and whatever benefits we think this other mythical person - it may be the Minister, I do not know - should give.

Now, that would lead to cross-over, it would lead to conflict, and you would not really be able to specify precisely what you wanted done here and wanted done there. I could just see it being a complete mess, and it is not the case in other tribunals. Remember that it is not the case.

If you look at the Commonwealth Act, they do not run around trying to say you can tick off this benefit or that benefit or that benefit, and I do not think, frankly, the Parliament would be wise to endeavour to define it when the simplest thing to do is simply to ensure that there are none of these secondary contracts and let SOORT do it while they are doing everything else.

**CHAIR:** Thank you, Mr Gleeson. I have finished my questions at this point of time.

**The Hon. J. HATZISTERGOS:** When was the first occasion that you saw the actual contract or a draft of the contract?

**Mr GLEESON:** I saw his previous contract because I wanted to know what was in it. Although on the previous occasion I had determined the remuneration, I had not seen the contract and I wanted to make sure.

**The Hon. J. HATZISTERGOS:** So you made the determination without seeing any draft?

**Mr GLEESON:** On that first occasion when we were recruiting Mr Ryan from overseas, I made the determination as to what I believed his total remuneration should be.

**The Hon. J. HATZISTERGOS:** In relation to the subsequent contract of February 1999 was it after the determination that you saw any draft or was it before?

**Mr GLEESON:** I am pretty sure this is what I told you earlier. When the Commissioner set out those benefits which he was seeking in a letter of 23 December, I did not get this letter until late January but his letter of 23 December set out what he wished to have considered as benefits and so on.

Now, I asked for his previous contract, and that was supplied to me. I then discussed, and if you look at my letter of 29 January, GG to Gellatly, in that letter I said "Here is a draft contract". I had gone through his earlier contract and I had looked at his various requests, and the first one - well, they speak for themselves after that. I think that would be the answer to your question.

**The Hon. R. D. DYER:** Mr Gleeson, in your preliminary remarks before you responded to any questions at all you made reference to the development of performance pay as part of SOORT's determinations. Could I ask you what you regard as the legal basis for providing performance pay within the tribunal's determinations?

**Mr GLEESON:** I think I am quite entitled to do it as an annual figure, firstly, because the SOORT determination is a total figure based on an annual basis and because, as I say, governments have not moved to introduce or to advise me or to legislate for performance pay, I did discuss this with the Government and because over this last five years it has been my view that we should not continue in the public sector simply giving 2 per cent here, 1 per cent there, 4 per cent there and so on, and that we should be developing a system which has a base and then we have a variable on top of that.

Some chief executive officers or the SES are probably not happy about this, but in the last four determinations - and I am wandering a bit from your question, Mr Dyer - at least I have provided for a performance element which has at least been equal to what I have given in relation to their base pay. Now, the specific answer to your question is that I believe that I am entitled to do that under section 24, under remuneration package.

**The Hon. R. D. DYER:** So far as the written document you tendered here this morning is concerned, am I correct in assuming that your main concern is to ensure that all remuneration and other related benefits are comprised within a statutory provision and that, to the extent that the law might not reflect that state of affairs at the moment, it should be amended to achieve it?

**Mr GLEESON:** That is my recommendation, yes. It may be done in a different way to what I have recommended but there should be a change. It should be clarified. In fact at one stage the Crown Solicitor says in relation to one of these it might be remuneration or it might be a benefit. But if it is not a benefit - you know, you tend to go round in a circle here, so let us clear it up.

**The Hon. J. H. JOBLING:** Mr Gleeson, as ever, an eminent professional and I appreciate the supplementary legislation and I think you raised some interesting points.

**Mr GLEESON:** Thank you.

**The Hon. J. H. JOBLING:** I note for the record that a document signed off on 4 February 1998, under the heading of "Ministerial and Parliamentary Services", subject "Remuneration of the Police Commissioner", was issued seeking a reference to you signed off by Mr Sklavounos which does not appear to have been signed off back to you by Mr Gellatly until February 1999. Would you have been in a position to have been the person who directed the issue of this particular document? I will show you a copy if you wish.

**Mr GLEESON:** I would like to see it, if I may. I doubt it though. No, I have not seen that piece of paper. That is prepared within the Premier's Department.

**The Hon. J. H. JOBLING:** I just wished to clarify that and Mr Gleeson has answered the next question, that the actual document comes from the Premier's Department issued in February 1998 but it was not then released, interestingly, until February 1999.

**Mr GLEESON:** I am sorry, that is a 1998 figure?

**The Hon. J. H. JOBLING:** Yes.

**Mr GLEESON:** In February? I do not think I made any determination for the Commissioner.

**The Hon. J. H. JOBLING:** Again, if it assists the Committee, I will table the document.

**Mr GLEESON:** I have not seen it, so that is the situation.

**The Hon. J. H. JOBLING:** Looking at your letter of 29 January in relation to the request of the Commissioner dealing with the remuneration of Police Commissioner Ryan, you wrote in this case to Mr Gellatly in respect of a draft contract. You have indicated how you became involved in the matter. Were any special instructions or directions given to you in relation to this matter?

**Mr GLEESON:** No, none.

**The Hon. J. H. JOBLING:** Could I inquire whether anybody authorised or directed you to hold discussions with Lyn Anderson?

**Mr GLEESON:** I decided that, actually.

**The Hon. J. H. JOBLING:** Would you like to tell me why?

**Mr GLEESON:** Sure. Can I just come back to your previous question, if I may? The Minister for police told me somewhere, I do not know where, in December that --

**The Hon. J. H. JOBLING:** This is 1999?

**Mr GLEESON:** 1998, that the Commissioner would be seeking to renegotiate his contract. He told me that some time in December of that year. I went off for three weeks holiday and when I came back late January I was told by the director-general that there was now a formal request to do this. So, I just wanted to clarify that previous question. That is the only time I spoke to the police commissioner about the matter, and we did not discuss the question of what the total should be, nor did he give me any request, or whatever.

From the day that I became involved, which was late January, I have had no discussions with either the Minister or anyone on his behalf or the Premier or anyone on his behalf. I did speak with the Commissioner and I said to him that I needed to talk to him about this matter. That, of course, is as provided, and I would like to table this because I think it is very important, if I may. It is actually section 24G of my Act.

#### **Document tabled.**

I table this because I wish to make clear that this tribunal is empowered to make inquiries as it sees fit. Now, I have heard that the word "negotiation" has been thrown around by somebody. I do not know where I got it but I heard it, and I reject that negotiation concept, that I negotiated anything. Now, I know that "negotiation", according to the dictionary, means that you meet to arrive at a decision.

In no way did I negotiate with the Commissioner or his representative to reach a decision. I negotiated to do what I felt was for the best in the circumstances. As a matter of fact, I would be regarded as a pretty poor negotiator if you look at the result because I did not actually accede to anything he requested, except for the spouse travel.

But I want to point this out, that the inquiries that I make are wide, and the word is "inquiry". I know negotiation has crept in but really it is discussion or inquiry. You can see even in section 4 that the tribunal may invite submissions from whoever and even the Ministers and others. So I am supposed to look very widely at all this and I am coming now back to the question, and you might help me again with the second question, Mr Jobling. It was?

**The Hon. J. H. JOBLING:** The question of Lyn Anderson.

**Mr GLEESON:** That is right, yes. Lyn Anderson had been the representative of the agency that did the search for a police commissioner back when we were searching. He was the one who finally recommended that we pursue the Commissioner, and we did that. So I spoke with the Commissioner and said, "You and I had better sit down and start to go through all of these things". He was a bit uncomfortable about that. I think I said to him, "You know, if you would like someone to represent you if you like, that is okay". He said, "Yes, Lyn Anderson". I said, "That is fine", So I rang

up Lyn and away we went. I had two sessions with him and not with the Commissioner himself which I felt was satisfactory.

**The Hon. J. H. JOBLING:** Can I look specifically at paragraph 5 of your letter dated 29 January 1999. You refer to spouse travel. Just to refresh your memory, it says:

Ryan seeks payment or reimbursement of expenses for spouse travel. Again, there is no way this can be granted and therefore the only way to assist him is by supplementing the total remuneration cost. I have still included this as a benefit cost. It helps to spell out that we are helping him and then in addition it will not be forgotten in future years.

Following on from that statement of yours, would you like to tell us why you took the view that it was necessary to assist Commissioner Ryan by supplementing the total remuneration cost, bearing in mind your admission that payment or reimbursement for spouse travel cannot be granted?

**Mr GLEESON:** Well, I took the view that it was not in the Government's interest to grant spouse travel as a direct benefit because having done that, I would then get requests from every chief executive officer for spouse travel. I did not think that was proper, yet I believe that in the case of the police commissioner, having regard to the circumstances of his recruitment and that he was here for five years, now extended a little, that it was only proper that we should give him some assistance in this regard because I think the police commissioner and his family are a very special case.

On the other hand, as I say, I did not want it to be set out there separately so I would get a host of other requests. Nextly, and I think this is important, and some people have said to me, what did you mean in that last sentence, I have been knocking around in industrial relations for quite a while and it is important that you document why you give this benefit or that benefit or some other benefit because in five years time, seven years time, someone will come along with exactly the same request and try to convince you that it has never been catered for.

What I have tried to do in this determination, and you have to look at the determination to see this, is spell out very carefully that I have included spouse travel. I have not included a specific amount because I do not know whether the Commissioner wants to go home to England for a trip, two trips, or whether he wants to travel first class, second class or whatever it is. So it was far better to just form in my mind a sum and include it.

But it will not be forgotten. The point about that is if the police commissioner came along to the next tribunal and said, "What about some spouse travel", that next tribunal has only got to look up the file and say, "Thank you very much, but your current remuneration already caters for that."

**The Hon. J. H. JOBLING:** So this is why you are spelling out that you are helping him for future years?

**Mr GLEESON:** So that there can be no request in future years for spouse travel per se, that already in the \$425,000 there has been a consideration of this.

**The Hon. J. H. JOBLING:** As somebody who is very precise with their words, and you were always known as being very meticulous with words, would you reiterate the reason as to why you used the words "then in addition it will not be forgotten in future years"?

**Mr GLEESON:** I thought that was the point I was making.

**The Hon. J. H. JOBLING:** You did, but I would like to clarify that for the record.

**Mr GLEESON:** I can only repeat myself, I think, and that is that in this determination, 1998, there has been consideration given to an amount being included in that total remuneration for spouse travel. Therefore, any future tribunal must understand that and take that into account if there are any further requests for spouse travel.

**CHAIR:** It is the 1999 determination.

**Mr GLEESON:** 1999. Okay. In that regard, you might - it does not matter.

**Ms LEE RHIANNON:** In this determination of 1999, in point 4 you talk about the performance agreement and you have the three points there. When you were --

**Mr GLEESON:** Is this in the determination itself?

**Ms LEE RHIANNON:** Yes.

**Mr GLEESON:** Just let me find it.

**Ms LEE RHIANNON:** The one dated February 1999, and it is headed "Report and Determination". You mentioned point 4 is about the performance agreement and there are three points under it.

**MR GLEESON:** Yes.

**Ms LEE RHIANNON:** When you were preparing the determination did you look at the performance of the Commissioner up to that point? How did you go about making that assessment of how he was going and how did that influence your decision? So what did you look at and how did it influence your decision?

**MR GLEESON:** Well, firstly, I looked at, I suppose, what you might see as the community expectation of the police commissioner and whether the community believed that he was performing very satisfactorily, and any inquiry that I made in the community was here is an outstanding man. Anybody who heard him speak, saw him in action, saw him interviewed and compared back over the years, here we had an outstanding man.

Secondly, several times over the last 12 or 18 months, well before this, I would have spoken to the Minister, and in those discussions I would said, "How is the Commissioner going?" So I had a good contact with the Police Minister and I understood what he believed was the performance of the Commissioner.

Thirdly, of course, I relied upon the Director-General of the Premier's Department as an assessor. So they were the indicators up to this time.

Then we looked ahead, of course, and the bonus that we agreed to pay is based on future performance. As in the determination there, it spells out very clearly what the expectations are of the Commissioner and, to me personally, I believe the most significant expectation of the Commissioner is that when he finishes his contract he has prepared a police force where there are two or three senior police officers who could succeed him, something we have not had for decades, frankly, and the Government looks to Commissioner Ryan, and that is the reason for this bonus, to ensure that next time we do not have to, frankly, go outside Australia to try to find a police commissioner.

**Ms LEE RHIANNON:** You outlined that there were three aspects of making a decision, the first one the community. Was that just based on anecdotal evidence that one gets in terms of one's day-to-day life or did you have some hard and fast measure where you were able to assess the community?

**Mr GLEESON:** I would not call it anecdotal, but I have been around long enough to assess what I think is the reaction of the community, but there has been no research study, no hard data.

**Ms LEE RHIANNON:** Going back to your letter of 29 January in your final paragraph you say:

We cannot have Ryan pushing us to the brink and then putting pressure on the Minister.

Could you just explain what you meant by "pushing us to the brink"?

**MR GLEESON:** Well, you know, I am really a before-freedom-of-information man whereas, head of a department, I said to my Minister what I thought and said it in fairly blunt terms and, hopefully, that is why they might have appreciated me. Nowadays I find, of course, under FOI, and I am not criticising FOI as a principle, but I do find there is a very great reluctance of people to be frank. So I come to that sentence and, of course, if I had my life all over again I would not have put it there. Do you understand?

**Ms LEE RHIANNON:** It is good that you put it there.

**MR GLEESON:** But having put it there, let me explain it. Mr Lyn Anderson, on behalf of the Commissioner, saw it as a responsibility to try to convince me that he deserved to be treated a lot better in terms of remuneration and benefits and so on, and so there was some pretty hard toing and froing in these discussions, and, remember, the contract finally is signed by the Minister and all he does is that he includes my bit but the rest of it is up to him.

He on this occasion, I think very wisely, said to Dr Gellatly, "Look, you go ahead and do this." But I was just reminding Col Gellatly, in my normal pleasing phrasing, "Now, look, do not let the Minister come back and say, 'Oh, gee, I think you ought to do this and do that, give him two cars or give him this or give him that or a baby-sitter'." I was just saying to Gellatly, "Look, keep the screws on. I have gone as far as I ought to go on benefits and entitlements. Do not let us get pushed any further." Very frank. It probably would have been better not said, but, anyhow, it is there.

**Ms LEE RHIANNON:** I was just also curious that you did mention Ryan's name there because earlier you had gone to considerable effort to say that Ryan was actually not part of the negotiations so I was curious why you put Ryan in that sentence. One is left with the impression, reading that, that you are in a tussle with Ryan, not with Anderson.

**MR GLEESON:** No, far from that. I saw Anderson being phased out. Having arrived at my conclusions, I saw him now not in the picture. The next part of this transaction would be the Minister taking a contract to the police commissioner, not to Anderson, and saying to the police commissioner, "There is my proposed contract." Ryan, for the first time, would be reading it. He would not have known what was in it up till then, and he might have then said, "Well, gee, I think you have been a bit mean on this or mean on that." That is the explanation of why I said "Ryan". There is nothing sinister about it.

**Ms LEE RHIANNON:** And then the last sentence:

In other words, Mr Whelan has to be quite firm that he will be accepting our advice on the contract.

**MR GLEESON:** Yes.

**Ms LEE RHIANNON:** So you are confident that Mr Whelan accepted your advice?

**MR GLEESON:** Well, in my case, it was not advice. That is important. I was not advising Mr Whelan about anything. Mine was a determination, and it did not matter what the Minister thought. He could not do anything about it. That was done. I was just spelling out again that he had asked Dr Gellatly to do this, and Ministers sometimes feel that we ought to do things in a different way.

**The Hon. J. R. JOHNSON:** And even Presiding Officers, as I have found out.

**The Hon. J. M. SAMIOS:** Mr Gleeson, what inquiries, if any, did you make upon receiving information from Lyn Anderson and in particular the letter from Stephen Roger, the Director of BKR Walker Wayland Services on 21 December 1998 to verify the information supplied to you? You have got a copy of that letter, I take it?

**MR GLEESON:** Yes. In the private sector, as you know, every effort is made to minimise the tax, every effort is made to build up the superannuation in order to minimise the tax and so on. Now, in fairness to the Commissioner, since his representative had asked us to look at the tax implications in anything we were doing, they had asked us to look at the superannuation as to what we could do there. That was why I said to Anderson, "Look, we will get some private advice on this." But, in the result, I do not think I accepted any of that advice anyhow.

In terms of superannuation I said, "Look, you will have to be like any other CES. You put as much money as you like into super, but we cannot help you, no special deal." In relation to leave, I think he asked for special leave, did he not? Once again, we cannot do anything about that. So, I do not think that that piece of advice, Mr Samios, really, was acted upon at all. It helped us reject it probably.

**The Hon. J. M. SAMIOS:** At the time you determined Mr Commissioner Ryan's salary in 1999, Mr Gleeson, is it the case that he had had four increases in salary since his appointment in 1996, taking his pay from \$315,000 to \$372,000, an increase of 17 per cent?

**MR GLEESON:** Yes. That first determination was \$315,000, you say? Is that right?

**The Hon. J. M. SAMIOS:** Yes, that is my information.

**MR GLEESON:** He then was given the normal public service increases over that time. That was quite a period of salary increases. As I say, when I came to look at this, that was a fait accompli, it had been done, so I then had a base of \$373,000.

I think it might interest the Committee that that determination was made in February 1999. In August 1999 the Commissioner was entitled to a further review of his remuneration along with every other chief executive officer. I do an annual review. I thought that since he had had this increase negotiated, or what have you, in February, he should forgo any increase in the following August, and so I put that in my determination that Mr Ryan's salary should be next looked at in February 2000. That was my report.

As it turns out, the Government accepted the determination of no increase in August and in February it said, "No, we do not wish you to review this salary until August this year." So Ryan's salary

in fact has been static from February through to August. It will be an 18 months period and in August, as part of the annual review, I will look at that remuneration again.

**The Hon. J. M. SAMIOS:** In your determination for statutory officers each August, and I know you dealt with this but if you can just codify it, is it not the case that you do not negotiate on the Government's behalf but rather you assess the submissions made to you by the officers and government?

**Mr GLEESON:** I said all along I was not negotiating. I had discussions and inquiries. We send out a letter in June, I think it is even going in May this year, and we invite any head of department to come and meet me. Many of them come, many do not. Some are represented, some are not. But I take the view that it is an informal inquiry and, as I have already explained, on Friday last week I had the racing people there.

I did not negotiate with them but, frankly, I laid out for them what the rates of pay were for the heads of other organisations. I laid out what the Electricity Commission was getting, what the Water Board was getting and said, "Now, they are the sort of parameters. Let us talk about what you think you are worth". That is how I believe it should be done, not just sitting in a room on your own sort of conjuring up some pay increase.

**The Hon. J. HATZISTERGOS:** I want to ask you some questions relating to your letter of 29 January 1999. In paragraph 2 you addressed the issue of payment for damages. Was that something that you had to address in terms of your determination?

**Mr GLEESON:** No, not essentially, but what I was trying to do was to get a complete picture of everything and then take out of that what was essentially mine. Some people could argue that I should have only concentrated on my little bit of something or other but I think, and Dr Gellatly agreed, that it was far better for us to get on the table everything that the Commissioner had put on the table and then having done that, I took what was mine, Dr Gellatly took what was his and they were put together.

**The Hon. J. HATZISTERGOS:** The concept of clause 6 which the Auditor-General discusses as being valid was something that you had proposed?

**Mr GLEESON:** Well, certainly Mr Anderson raised that with me because there was this very significant change for Ryan. When Ryan came here, there was a Police Board and that was, and please do not misinterpret the word, his protection against a Minister who might take some action, you know, to dismiss him even. That was Ryan's protection. Now that Police Board was abolished within six months, I think, and the Commissioner took the view, "Well, now, have I got any protection against such a circumstance."

**The Hon. J. HATZISTERGOS:** Change of government?

**Mr GLEESON:** Yes, and it could be that as well, yes. We had found that there was some precedent for this as well, so I got involved in that, but it was not my decision.

**The Hon. J. HATZISTERGOS:** In relation to paragraph 8 of that letter, you talk about the eligible termination payment. Did that proposal come from yourself, Mr Ryan or yourself?

**Mr GLEESON:** Well, it has been criticised, but I am admitting it. Yes, it came from me. I felt we had to have some way of trying to retain the Commissioner and I have done this in my more recent determinations for chief executive officers. In those determinations I have introduced what is called a

recruitment and retention allowance. In other words, if a Minister feels that the current rates are not sufficient for him to attract some outstanding person with special qualities, there is an extra \$20,000 or \$30,000 he can pay them.

Likewise, if he, through the fellow's contract, becomes concerned that he is going to lose that man, I have introduced what is called a retention allowance and that, indeed, is very similar to what has been done here for Ryan.

**The Hon. J. HATZISTERGOS:** Was that necessary for your part of your determination?

**Mr GLEESON:** Was it? Well, now you come to the heart of the matter. I believe that this was part of the total remuneration package that we should conclude with Ryan and that is not only this annual sum but this retention sum as well. It then became an issue of, is that in the SOORT determination or is it outside it. Dr Gellatly and I formed the view that it probably should be outside it, and we put it outside the SOORT contract, and Dr Gellatly put it into the general contract.

Now, the Crown Solicitor has advised that such a benefit should not be in the general contract, it ought to be in a special contract. Now, it is part of my recommendation to you earlier, and right at the outset, that that is not a desirable course of action, that the SOORT tribunal should be responsible for all benefits and they should all just go into the one determination, into the one contract..

**The Hon. J. HATZISTERGOS:** Was it a matter that you had regard to at the time you made your determination?

**Mr GLEESON:** What do you mean?

**The Hon. J. HATZISTERGOS:** You were aware of its existence at the time you made the determination.

**Mr GLEESON:** The bonus?

**The Hon. J. HATZISTERGOS:** Yes.

**Mr GLEESON:** Yes, I recommended it.

**The Hon. J. HATZISTERGOS:** Was that a consequence of some advice that you received from Grant Thornton on 28 January 1999?

**Mr GLEESON:** I cannot be precise about that but it came up in my discussions with Anderson, definitely.

**The Hon. J. HATZISTERGOS:** You did receive some advice previously from Grant Thornton about the appropriateness of these types of payments?

**Mr GLEESON:** Yes, I was looking to see how can we really retain this person. From my personal point of view the Police Force is in better shape than ever it was when I was head of the Premier's Department, and I did not want to lose this man. Having been involved in the recruitment, I knew how hard it was going to be to get someone else.

**The Hon. J. HATZISTERGOS:** In terms of entitlements and benefits, you were aware of all of the entitlements and benefits that Mr Ryan and was going to obtain, whether they were to be in the original contract of employment or in a supplementary?

**Mr GLEESON:** Yes, I was aware, and the Crown Solicitor --

**The Hon. J. HATZISTERGOS:** It was not the case, in other words, that the Minister went out and negotiated outside --

**Mr GLEESON:** Look, I did not speak with Whelan or the Premier, and that is the situation. I had no advice from anybody, and I would reject it if I got it and I think that people know me well enough.

**CHAIR:** Do you think that your contract, the deed of agreement, would undermine the SOORT process?

**Mr GLEESON:** The advice from the Crown Solicitor? He is recommending secondary contracts. I think that is wrong, absolutely.

**CHAIR:** Will it undermine it?

**Mr GLEESON:** Of course. How can I go ahead and determine remuneration of any chief executive if someone over here is going to do something else? In fact, the Crown Solicitor said that is a benefit or monetary remuneration. The Crown Solicitor, or whoever he is, gives good legal advice but he does not necessarily give good administrative advice, what will work and what is good in the whole political area in which we live.

**Ms LEE RHIANNON:** In making your determination in January-February 1999 were you mindful of the fact that the Commissioner had attended a job interview in London? Could the actions of the Commissioner in seeking a new job influence your determination to grant a \$425,000 package?

**Mr GLEESON:** I was not aware from the Commissioner that he might have been being interviewed in London. I read it in the press like everybody else, but I probably felt that it might be accurate, because here is a man who clearly people are tapping on the shoulder and saying, "What about this?" So whilst I was not aware of it, I was not surprised that he was being looked at. That is number one. Your second question, was, I am sorry, did it influence me?

**Ms LEE RHIANNON:** Did it influence your decision for the \$425,000 package?

**Mr GLEESON:** I do not think that precisely influenced me, but I certainly agree that because I saw in this man a person whom we were fortunate to have I felt that I should grant benefits to him which, hopefully, would retain him and which were not excessive, and I do not believe that the benefits - and I put this on the record - given to the Commissioner here in this contract are excessive.

Indeed, most private sector people I have talked to, as late as last Saturday night at the football, say, "\$425,000! Gee! What are you getting for that?" But any tribunal cannot help but be influenced by everything that is going on around it. There is no question about that, and that is why you get some sensible decisions and you get some decisions out of remuneration tribunals and industrial commissions which are not sensible. We are all human. But I cannot find, frankly, a critic of this decision. I cannot find one.

**CHAIR:** Mr Gleeson, we are very grateful for your appearance today and your very informative answers. I hope we will make some sense in rectifying or amending legislation. Thank you very much.

**(The witness withdrew) (Luncheon adjournment)**

**ROBERT JOHN SENDT**, Auditor-General of New South Wales, Level 11, 234 Sussex Street, Sydney, affirmed and examined:

**LEE INGLIS WHITE**, Assistant Auditor-General, Level 11, 234 Sussex Street, Sydney, and

**JACK KHEIR**, Director of Audit, Level 11, 234 Sussex Street, Sydney, sworn and examined:

**CHAIR:** Mr Sendt, did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Mr SENDT:** I did.

**CHAIR:** Are you conversant with the terms of reference of this inquiry?

**Mr SENDT:** I am.

**CHAIR:** Mr White, did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Mr WHITE:** Yes, I did.

**CHAIR:** Are you conversant with the terms of reference of this inquiry?

**Mr WHITE:** Yes, I am.

**CHAIR:** Mr Kheir, did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Mr KHEIR:** Yes, I did.

**CHAIR:** Are you conversant with the terms of reference of this inquiry?

**Mr KHEIR:** Yes.

**CHAIR:** I say to all three of you that if you should consider at any stage during your evidence that in the public interest certain evidence or documents that you may wish to present should be heard or seen only by the Committee, the Committee would be willing to accede to your request and resolve into confidential session, but I should warn you that the Parliament may override that decision at any time and may make your evidence public. Mr Sendt, do you have any opening statement?

**Mr SENDT:** Yes, thank you, Madam Chair, if I may take a few moments. At the outset, I believe it is important to understand why this issue attracted the attention of the Audit Office. I should make it perfectly clear that it was not the level of the police commissioner's remuneration, nor was it the type or quantum of benefits making up his total package. Neither of these, per se, is of interest to the office.

There are three aspects to this issue that did concern us. First was the secrecy aspect. As a general principle, Auditors-General generally believe that secrecy by government is inimical to sound accountability. It erodes Parliament's capacity to make informed judgments as to the actions of the Government of the day. It can also limit the capacity of auditors to form opinions as to the veracity of agencies' financial statements if part of the transactions contributing to those statements is not available.

Second was the aspect of the legality of certain clauses of the contract. This particularly interested us as we were not aware of any other contracts for CEOs or SES officers that contained clauses such as clause 6 and clause 22 of the Commissioner's contract.

Third was our concern at the possibly more widespread availability of clauses similar to this in employment contracts in the public sector. We needed to review what this contract covered and what the Statutory and Other Officers Remuneration Act and the Public Sector Management Act or other relevant employing legislation allowed in order to understand what may be occurring elsewhere.

This aspect became even more of a concern to us with the advice of the Crown Solicitor indicating the potential for separate secondary contracts to be entered into. I note that the capacity for Ministers and CEOs to enter such secondary contracts has now been limited by the Premier in his memorandum 2000-5 of 31 March 2000.

I turn now to the specifics of this matter. In undertaking a financial audit we are required under Australian auditing standards to obtain evidence to support the validity and accuracy of the amounts that appear in that organisation's financial statements. We are also required to ensure that those amounts are not materially inconsistent with any relevant legislative provisions. Auditing standard AUS702 states:

The auditor should form an opinion on compliance with those statutory and other requirements that affect the formal content of the financial report when those requirements apply to the entity by virtue of an Act of Parliament.

And that, Madam Chair, was what concerned us as to the issue of legality, or potential non-legality, of the clauses. In most cases, we test the veracity of amounts by undertaking substantive procedures on a sample of transactions within the population being tested. The population there may be such things as assets, liabilities, payroll costs, et cetera. The sample subject to testing can be selected at random or by using professional judgment.

In the case of the contract, our attention was drawn to it by the media publicity around April 1999 surrounding the secrecy provisions in relation to the Commissioner's salary. It was our view that such a secrecy clause surrounding a public official's salary seemed to be, as far as could be ascertained, unique in relation to the public sector. The reporting provisions governing public companies in the private sector also indicated this.

In then conducting our substantive testing of the Police Service's payroll expenditure, we decided to select the Commissioner's salary as part of the sample. My predecessor wrote to the Commissioner on this matter in April 1999 stating that he had directed his staff - I am talking about my predecessor, of course - to examine the employment contract and also he had asked the staff to examine whether there were any special reasons to justify the secrecy provision.

The Commissioner made the contract available for my staff's review, after a number of requests, in late August 1999. Following on from our review of that document, I then sought the Crown Solicitor's opinion regarding the validity of clauses 6 and 22, namely, the clauses governing damages for early termination and the payment of the end of contract sum. This is standard Audit Office procedure where important questions of law arise. The Crown Solicitor's advising was reported by me in the addendum to volume 2 of my 1999 report tabled on 15 November. Thank you, Madam Chair.

**CHAIR:** Do Mr White or Mr Kheir have any statements to make?

**Mr WHITE:** Nothing to add to that.

**Mr KHEIR:** No.

**CHAIR:** Your statement has answered some of my questions already but I will need to ask some. It would appear that the remuneration negotiation for the Commissioner of Police demonstrates a shift in the New South Wales public sector towards remuneration packages similar to those for private sector employees. Can you tell the Committee how relevant, then, is SOORT to these types of negotiations?

**Mr SENDT:** I am not sure that that is a question I can give any detailed or expert answer to. I might say that the introduction of the senior executive service and chief executive service - in 1989 I think it was - was, of course, a move in the direction of more closely aligning public sector senior management remuneration and contractual arrangements to the private sector.

**CHAIR:** In that case, the question I will follow with is: do you think that it is desirable in fact to insist that all aspects relating to employment of any SES officer be contained in one single contract?

**Mr SENDT:** I certainly think that is very desirable. We were unaware, until the Crown Solicitor's advice, that there was even a potential for secondary or further contracts of employment. It is most desirable that everything be available in the one contract or, if there is to be some regime of secondary contracts for some good reason, that those be clearly identified, be available and be subject to the normal perusal arrangements by auditors, by Parliament, et cetera.

**CHAIR:** I understand that SOORT had no role in the signing of the deeds amending the contract. In your view, does the signing of the additional contract undermine the role of SOORT's process?

**Mr SENDT:** I think the general perception would be that SOORT determines the total remuneration package available to individuals in the senior executive service or chief executive service. If there are mechanisms whereby additional components of remuneration or benefits can be made available to those officers outside of the SOORT process, I think that is certainly a matter for concern. I am not aware that Parliament, in passing the SOORT legislation, would have contemplated such an act arising as secondary contracts.

**CHAIR:** So in other words, you think that there should be some kind of broadening of the role of SOORT or amending some kind of legislation?

**Mr SENDT:** I think the legislation certainly needs to be clarified in relation to secondary contracts. If secondary contracts, as I said, are desirable for some reason, the legislation should address what types of benefits could be included in those secondary contracts or alternatively what types of benefits should not be included in those contracts. The relationship of SOORT or the role of SOORT in relation to primary and secondary contracts should probably be reviewed, given what has happened.

**CHAIR:** Is there a conflict of interest if the same person acts both as an assessor to SOORT and co-signs a contract of an SES officer such as what Dr Gellatly has done in the case of the Commissioner of Police? Can you explain whether there is any conflict and give me your reasons?

**Mr SENDT:** I am not sure that I can say that there is or is not a conflict. I could point out that the Act which sets up the position of assessor is silent on what the role and responsibilities of that assessor is. It may be that it is a term that, through usage in other parts of the legal profession, for

example, or judicial profession, has some meaning, but certainly within the Act itself there is no definition of what an assessor is there for. Whether there is a conflict is something that you need to address to either Mr Gleeson or Dr Gellatly.

**The Hon. J. HATZISTERGOS:** In relation to the primary and secondary contract point that you were making before, the Act does not require SOORT to approve the contract, does it?

**Mr SENDT:** No.

**The Hon. J. HATZISTERGOS:** It only requires it to prove monetary remuneration?

**Mr SENDT:** Remuneration package in total, yes.

**The Hon. J. HATZISTERGOS:** Such benefit provided in contracts of employment but it does not require it to prove the actual contract, just the monetary remuneration?

**Mr SENDT:** That is correct.

**The Hon. J. HATZISTERGOS:** And section 46(4) exempts from that process approved performance-related incentive payments and any other remuneration or benefits to which an executive officer is otherwise entitled to by law?

**Mr SENDT:** Yes.

**The Hon. J. HATZISTERGOS:** I am just wondering where you get this perception that section 46 in some way requires everything of a remunerative nature to be approved by SOORT in the light of what 46(4) says, which is the opposite. Maybe it should be changed, but it does not as it currently stands indicate that SOORT has to prove everything.

**Mr SENDT:** Well, the tribunal in relation to SES officers generally determines the performance bonus ranges that may be payable to those officers, so SOORT does have a role in that, but as you have said quite correctly, it does not have a role in determining or verifying the contracts that may contain the entitlement to such --

**The Hon. J. HATZISTERGOS:** Nor does it have to approve anything that falls within 46(4) which may be of a remuneration nature.

**Mr SENDT:** Section 46, as I understand it, was in part prescribing or limiting the remuneration paid to executive officers in the Police Service to those amounts as determined by SOORT. In section 46(4) it, however, excludes that limitation, if you like, as far as it might otherwise apply to the performance-related incentives.

**The Hon. J. HATZISTERGOS:** Or subsection (b). I suppose it gets back to the point and, that is, that maybe it should be changed. There has been a suggestion that it should be changed but I think in answer to a question put to you by the Chair, you suggested that the legislation only envisages that SOORT would approve a contract which would have in it all the remuneration benefits. Now that is just not so, is it?

**Mr SENDT:** I thought that what I was saying in my answer, and maybe it was not clear, was that I was not sure if Parliament, in passing the SOORT Act, had envisaged a regime for senior and chief executive officers where benefits were generally available, other than perhaps under some statutory provision, outside that determined by SOORT.

There are a couple of specific provisions in the Police Services Act. What I was alluding to more was the potential for existence of secondary contracts generally. I might also add that the Crown Solicitor in his advising to me did indicate that he found it difficult to understand at least parts of section 46 of the Act.

**The Hon. J. HATZISTERGOS:** Yes, I understand that. You indicated there were three factors which excited your attention to this matter and the third of those was the possibility of more widespread availability of secondary contracts.

**Mr SENDT:** Yes.

**The Hon. J. HATZISTERGOS:** I think you also indicated that there was a concern also about the use of clauses similar to clauses 6 and 22 in other similar contracts.

**Mr SENDT:** Yes.

**The Hon. J. HATZISTERGOS:** In your report, however, you seem to only deal with the question of the legality of these two clauses. You do not address at all whether or not it is desirable or undesirable for these sorts of clauses to be included in an agreement, nor do you address in your report the question of whether there are in fact other contracts of other CEOs which have similar clauses in them.

I am just wondering, if that was one of the factors that excited your attention to undertake this inquiry, why you did not address those issues and how you came to the conclusion that you do in the first paragraph of your report under the heading "Conclusion"?

**Mr SENDT:** That was a statement based on the fact that we had never previously come across any instance of this broad nature.

**The Hon. J. HATZISTERGOS:** Who did you ask?

**Mr SENDT:** Well, I was not Auditor-General at the time.

**The Hon. J. HATZISTERGOS:** It is just that we have heard this morning from SOORT, for example, that this had been a feature of previous contracts and an example was cited to us of the CEO of the railways that had a similar clause in it. I am wondering what the extent of your inquiries was to make a statement like that in your report, and leaving that question aside, the whole question of the desirability of it when you do not even refer to it?

**Mr SENDT:** Well, it is not our role to comment on the desirability of employment conditions or remuneration quanta. Our role is partly, as I mentioned, to test the veracity of the financial statements but, secondly, to ensure on a test basis, again, that there has been no non-compliance with legislative provisions.

**The Hon. J. HATZISTERGOS:** I thought you stated that one of the concerns you had was that clauses such as 6 and 22 might flourish into other contracts?

**Mr SENDT:** Yes, and our concern was that if that were occurring or would occur in the future, that similar issues might arise that we needed to investigate. That is, for example, whether there were any concerns as to the legality of any of those provisions or whether we were to be excluded, perhaps, from viewing those contracts.

**The Hon. J. HATZISTERGOS:** So, in terms of undertaking the inquiries into these two particular clauses, you were only interested in the question of legality, not on the question of whether or not it was desirable to have such an agreement because you saw it as novel, whether you were right or wrong?

**Mr SENDT:** That is correct.

**The Hon. J. H. JOBLING:** Mr Sendt, it was put to us this morning by Mr Gleeson in his capacity as SOORT two recommendations, that we should amend section 24A to ensure that the remuneration package also refers to section 46 of the Police Service Act and there be a prohibition on secondary contracts, consideration to amending section 46 of the Police Service Act and section 42 of the Public Sector Management Act to ensure that SOORT determines all payments to SES and CES officers. I would be interested in hearing the Auditor-General's view of these two suggestions.

**Mr SENDT:** Perhaps if I could address the second one first. If there was a prohibition on secondary contracts and, therefore, that all provisions relating to the employment of an officer were included in one document, that would certainly overcome one of our concerns that there may be second, third, fourth contracts in relation to an individual that we would not be aware of unless we came across those by either sampling and discovering that way or by some other accidental means almost.

As I said before, it could perhaps be equally well addressed by ensuring that within any primary contract there was a reference to the existence of a secondary contract or there were legislative provisions governing what could or could not be in a secondary contract. I think that would be another way of addressing the same issue but, certainly, I do not have any problem with the recommendation as it is there.

I am sorry, on the first question I do not have the SOORT Act in front of me so I am at a bit of a loss to know what section 24A specifically refers to.

**The Hon. J. H. JOBLING:** While we are doing that, should we wish to pass this to any of the other members present, could we table the document given to us by Mr Gleeson today so that that can be available to any members at the table?

**CHAIR:** It was tabled this morning. Unless you want to publish it, it is tabled.

**The Hon. J. H. JOBLING:** If it is tabled, I also would like to make it available for publishing, which I should have done this morning.

**Motion by the Hon. J. H. Jobling, seconded by the Hon. J. M. Samios, agreed to:**

That the paper tabled by Mr Gleeson this morning be made available to the public.

**Mr SENDT:** In relation to the first recommendation of Mr Gleeson, I would not see any problems with that. It seems to neatly tie up what could otherwise be a loose end.

**The Hon. J. H. JOBLING:** In view of the concerns that you generally expressed in your various reports to the Parliament and in volume 2 in the addendum about the contract, was any concern expressed by or were any views sought from the Auditor-General's office in relation to the variation of the contract that has now been executed?

**Mr SENDT:** No, there has not been any contact, Mr Jobling.

**The Hon. J. H. JOBLING:** You commented equally, as I understand it, in answer to an earlier question relating to the possibility of clauses such as 22, 6 and 2 appearing in other SES contracts. Are you now aware of any other contracts that may contain similar clauses, or have you been asked to comment on any new contracts which are proposed to contain similar clauses?

**Mr SENDT:** We certainly have not been asked to comment on any contracts, but that is not normally something we would be asked to do. Partly as a follow-up to this issue we are looking at CEO contracts and benefits across the board to see if there are any benefits being paid that are not in accordance with either the tribunal's determination or the contractual arrangements. But I do not have the results of those inquiries at this stage. That is something that we would be reporting to Parliament in a future volume.

**The Hon. J. H. JOBLING:** Could we just go back, Chairman, to volume 2 of your 1999 report to Parliament from the Auditor-General, then Mr Mitchell, to the Crown Solicitor, Mr Knight, dealing with the validity of clauses 2 and 6 on the police commissioner's contract? You refer to a letter of 12 October and a subsequent telephone call with Mr White and Mr Kheir of your office. Could you tell us what the subject of the letter and the telephone conversation with your office basically concerned?

**Mr WHITE:** As best I can recall, the telephone conversation was with the Crown Solicitor to ascertain where he was in terms of deliberations on the issues. It was to get a status report.

**The Hon. J. H. JOBLING:** And what was the reason for your office coming to the conclusion that you should refer the matter of validity of clauses 2 and 6 of the Commissioner's contract to the Crown Solicitor rather than the Attorney General?

**Mr SENDT:** While I have the capacity under the Act to refer cases to either the Crown Solicitor or to the Attorney General, it is office policy - there may be exceptions to this, but certainly in my time it has always been policy - to seek the Crown Solicitor's advice.

**The Hon. J. H. JOBLING:** And when you received that and looking now at the Police Service Act and other Acts for interpretation conferring the power of the Minister in your third paragraph, where you asked a question of the ability to pay certain sums or preclude an agreement pursuant to any other power the Minister may have, what answer did you receive in that regard and did you agree with the answer that you received?

**Mr SENDT:** Sorry, the third paragraph of?

**The Hon. J. H. JOBLING:** The letter of 20 October, I am sorry.

**Mr SENDT:** Well, we referred the issue to the Crown Solicitor because we saw it essentially as a legal issue rather than an audit issue, that is, determining the validity. I do not think it is a question of whether we were satisfied or agreed with the advice. We accept that the Crown Solicitor is the expert in the field of law, whereas we may consider ourselves the experts in the field of audit. We saw no reason to disagree with his advice.

**The Hon. J. H. JOBLING:** So, if, in fact, you were not happy, you would take no action anyway because it is outside your ambit is what you are saying to me.

**Mr SENDT:** If I had some problems with advice that I received and I thought maybe some issue had been overlooked or something needed clarification, I would take that up with the Crown Solicitor. I would suggest that it probably may then more reflect my lack of understanding of the law, but I had no reason to contact the Crown Solicitor to get any further clarification of that issue.

**The Hon. J. H. JOBLING:** You told the Crown Solicitor if he required any further information to contact two of your officers. Was any contact made with your office by the Crown Solicitor to seek any further advice? It is the penultimate paragraph.

**Mr WHITE:** Not that I can recall.

**Mr KHEIR:** No, I can't recall that we had any further discussions on the matter.

**Mr SENDT:** Perhaps if I can add to that, the only discussions I had with the Crown Solicitor after 20 October and prior to the receipt of his advice were simply following up when we might be getting that advice. The timing was that my volume 2 report was presented to Parliament on 10 November. I had hoped to get that advice in that report but, as it eventuated, I did not receive the advice until the following day, but there was no contact with any substantial issues.

**Ms LEE RHIANNON:** In your opening remarks you made the statement, just after you had spoken about the contract and I think how you took it up after the publicity, that you made a number of requests. I did not fully understand what you meant by that, but could you elaborate did you make a number of requests and does that mean that you had difficulty in getting the information that you needed to be able to investigate the contract fully?

**Mr SENDT:** The office did make a number of requests, or my predecessor did make a number of requests. Part of the response by the Commissioner was that there was a confidentiality clause in the contract and he could not unilaterally break that confidentiality clause. I understand that at some point in the process he advised my predecessor that he had obtained the agreement of his Minister, as the other party to the contract, to release the details of the remuneration benefit. At the same time, there were inquiries being made by the media, FOI requests and others, and I think it was at that stage that the remuneration quantum became public.

**Ms LEE RHIANNON:** So these were the number of requests. That was the request to the Commissioner that you were referring to, was it?

**Mr SENDT:** Yes, by my predecessor.

**The Hon. R. D. DYER:** Mr Sendt, can I explore with you for a moment the place of employer-employee remuneration negotiations within a tribunal-based determination system? My understanding is that you have suggested that the Committee might investigate whether the practice of such remuneration negotiations is desirable and whether they can exist within a tribunal-based determination system. Can you tell me what the difficulty you perceive might be?

**Mr SENDT:** Well, I saw that in this particular case it appeared that there may have been a difficulty based on what I had read of the Committee's forthcoming inquiry. I suggested that that might be a useful part of its investigation. I did not express any view that the existing system was desirable or undesirable, merely that I thought it might be a useful avenue for the Committee to pursue.

**The Hon. R. D. DYER:** I understand you have indicated that it is your belief that the legislation does not currently envisage the tribunal being involved in negotiations. Mr Gleeson has given evidence very clearly to us this morning that he certainly is not involved in negotiations. Can you

tell me where any difficulty lies given that Mr Gleeson says he forms an independent view and, on the other hand, the parties to negotiations negotiate between themselves before the matter goes to court. Where does the difficulty lie, then, if at all?

**Mr SENDT:** I think the --

**The Hon. R. D. DYER:** If I can assist you, does that not happen every day in the Industrial Relations Commission of New South Wales? Is there anything incompatible as between parties negotiating, employer and employee, and an independent tribunal subsequently ratifying, rejecting or amending whatever agreement might have been reached?

**Mr SENDT:** In terms of the way you have put it, Mr Dyer, I do not know enough about the workings of the industrial relations system. I am not sure that negotiations at the level and type that we are dealing with in these circumstances are necessarily parallel to those that might take place in the Industrial Commission.

**The Hon. R. D. DYER:** Where does the difference lie? Surely negotiations were occurring involving Mr Ryan's contract.

**Mr SENDT:** Yes.

**The Hon. R. D. DYER:** And the matter did go before Mr Gleeson. I am just trying to probe where you see any difficulty.

**Mr SENDT:** I guess the difficulty that I saw, as, to some extent, an outsider to that process, was understanding the role of the tribunal when that tribunal seemed to be involved, perhaps not from a negotiating stance, but certainly seemed to be involved in the discussions that took place involving negotiations between the employer, through Dr Gellatly, and Commissioner Ryan or his representatives.

**The Hon. R. D. DYER:** Mr Gleeson has told us very directly that he forms his own independent view and he resents any implication that he is a rubber stamp. Do you have any different view?

**Mr SENDT:** No, I have never made any suggestion that he should be regarded as a rubber stamp.

**The Hon. J. HATZISTERGOS:** Indeed, he goes further than that. He says his Act requires him to inquire into and inform himself in whatever way he feels is appropriate.

**Mr SENDT:** In writing what I did in my letter to the Chairman, I was merely reiterating the point that was made in that letter which did indicate the possible conflict of interest of Dr Gellatly in being an assessor to SOORT, his involvement with the SOOR Tribunal and being a negotiator. In my response I was simply indicating that, if there was seen to be a conflict of interest by the Committee, that might be an interesting area to pursue.

**The Hon. R. D. DYER:** I would have thought that was a separate issue, the role of the assessor.

**Mr SENDT:** The assessor is part of the Act but the assessor is acting as part, in a sense, of the tribunal, so hence the tribunal is not totally independent from the negotiating process.

**The Hon. J. HATZISTERGOS:** That is the point that Mr Gleeson rejects. He says that the assessor is quite useful but has a separate function as Dr Gellatly has. His function is to determine the appropriate remuneration level and to do that across a wide spectrum of different positions involving different skills, different people and different issues, he needs assistance from people who have broad experience in the public sector, his being somewhat later.

He says that having an assessor like Dr Gellatly there being able to provide assistance has not jeopardised his independence but allows him to form views on the basis of information which he thinks is relevant. What could be wrong with that?

**Mr SENDT:** I do not think my response in the letter was making the point that you believe it may be. My point was the tribunal or its assessor. When I used the term "tribunal", I was including the assessor to the tribunal being involved in negotiations, and Dr Gellatly was both an assessor to the tribunal and part of the negotiations. So my statement there was not about the tribunal as Mr Gleeson but the tribunal through its assessor.

**The Hon. J. HATZISTERGOS:** So what do you say, someone else should be the assessor?

**Mr SENDT:** As I said, the Act does not appear to set out what the assessor's role is. If an assessor is part of a semi-judicial or judicial process, it would seem to me that that is not generally the way such processes work, to have that person also involved in direct negotiations.

**The Hon. J. Hatzistergos:** Let me explain to you, as best I can recall, how it was explained to us this morning. The contract has two components. There is the component that requires remuneration and that needs to be determined by SOORT. Then there are all the other aspects of the contract that do not have to be determined by SOORT but have to be negotiated through. SOORT makes its determination on the remuneration that it has to approve under section 46. For the that purpose, SOORT has the benefit of the assessor in giving the tribunal information about what may be appropriate in the tribunal's views.

In terms of the rest of the contract, all the other terms and conditions that do not relate to remuneration, the terms have to be negotiated with the individual who is the subject of the contract. That is separate from what SOORT has to do. Do you understand? That is the way it was put to us. Where do you see the conflict in that because I cannot see the conflict? It seems to me that in his capacity as SOORT he is giving some advice to the tribunal and, in relation to the other issues, he is negotiating those out.

**Mr SENDT:** If your question is based on Dr Gellatly not being involved in any negotiations or discussions with Commissioner Ryan or his representatives as to the quantum of remuneration, then your point is completely valid. I was not party to those meetings.

**The Hon. J. HATZISTERGOS:** I am not saying he is not involved. I am not going so far as that. It is a different role that he plays in terms of the remuneration as opposed to the other conditions he is negotiating. He is not determining the remuneration. The remuneration is being determined by the tribunal.

**Mr SENDT:** I am not suggesting he was determining the remuneration. I mean, that would be quite illegal.

**The Hon. R. D. DYER:** Could it not be suggested that Dr Gellatly is in a uniquely well-suited position, better than anyone else given the circumstances, to give advice as an assessor to the tribunal which in turn makes its own independent judgment?

**Mr SENDT:** That is correct. I have no issue with Dr Gellatly or the head of the Department of Industrial Relations being assessors to SOORT.

**The Hon. R. D. DYER:** I thought you were saying that there was some conflict attaching to Dr Gellatly as between his role as a negotiator and his role as an assessor?

**Mr SENDT:** Well, what I am suggesting is that if someone who is involved in negotiating a contract and coming to some agreed position with the other party and then has the responsibility of advising the tribunal on what is an appropriate quantum of benefit, may be in a position of conflict.

**The Hon. R. D. DYER:** That does not exclude the capacity of the tribunal to make an independent decision.

**Mr SENDT:** No, it does not.

**The Hon. J. HATZISTERGOS:** In fact, what you are saying suggests that the tribunal is somehow weak-kneed and will give in to the pressure of the Director-General or the Premier's Department.

**Mr SENDT:** I do not think I am suggesting anything like that.

**CHAIR:** Would it have been more appropriate for someone other than Dr Gellatly to conduct the negotiations on behalf of the Minister?

**Mr SENDT:** Could I make the comment that the issue of SOORT and assessors and conflict of interest was not something I included in my report. I included it in a response to the Committee, agreeing that, as they had stated it might be a useful area to pursue, I simply agreed that that may be so. I was not making the point in my report that I saw any conflict of interest in this area. It was the Committee that raised the issue of potential conflicts of interest. I suggested in my letter that if the Committee saw that as a possible area of concern, it would be useful to pursue it.

**CHAIR:** If it was another person other than Dr Gellatly who so happened to be the assessor and the negotiator, I thought that can be compromised because we do not have any information about the role of the assessor. With which I have a problem. If what government members say is true, he is in a unique position. I have to confess that.

**Mr SENDT:** Could I make point that I would not want to in any way impugn Dr Gellatly's action or behaviour. I have no reason whatsoever to suspect that if there was a conflict of interest that he in any way acted inappropriately. As I said, my point simply was that the Committee seemed to think there was an area of concern and my response was to suggest that if there was that area of concern it should be pursued.

**The Hon. J. HATZISTERGOS:** You are not necessarily conceding that there is a conflict of interest?

**Mr SENDT:** I am not conceding that there is or is not a conflict of interest.

**The Hon. J. M. SAMIOS:** Your first comment, I think, of why the contract attracted the attention of the Auditor-General, that opening line of yours, included three matters. One was secrecy, the other one was the aspect of legalities and the other one was the Public Sector Management Act. If I could just dwell on secrecy for a moment. I suppose it is refreshing to note that the Auditor-General

has taken that viewpoint. To your knowledge, has there been another example in the years that you have been involved in agreements with chief executive officers since the system came into being in 1989 where the material was marked confidential and the public did not have access to the terms?

**Mr SENDT:** I am not aware of any other issues. I have only been Auditor-General for seven months now but I do not know whether my staff are aware of any other contract that has such confidentiality clauses.

**Mr WHITE:** In my experience, access to those types of documents has always been available to us.

**The Hon. J. M. SAMIOS:** Even the Premier's salary is no secret.

**Mr KHEIR:** The point we were making, I suppose, is that in the public and private sectors these days the remuneration of the chief executive is actually required to be stated somewhere in the annual report or in the private sector there is an Australian accounting standard which has the force of law that actually requires the salaries of the most senior executives to be stated in the financial statements of the organisation, not just the annual report.

So the point we were making was merely that it seemed to be unique sort of a clause that was included in the contract and, as Mr Sendt said, what we were trying to establish in terms of our obligations under the auditing standards to look at the legality of transactions if they were to have some impact on the financial statements. That is what we were trying to establish. So, you know, as I say, it seemed to be unique in the public sector at the time.

**The Hon. J. M. SAMIOS:** Would it be fair comment to say that if there had been no confidentiality, then the question of secondary contracts would not be such a problem because you are getting a response from the Government saying, "Here is the information you want in relation to this particular person. We vouch for this information and the deed of variation and the contract are the total sum part of the contract"?

**Mr SENDT:** I think there is an issue of maintaining that something is confidential as opposed to making it freely available in the first instance. A secondary contract may exist. It may not be held to be confidential by anybody, but its existence may not be known to anybody outside the parties. I mean, in the case of the remuneration package for the police commissioner, as we have said, we are not aware of any similar confidential provisions relating to remuneration.

Almost exclusively I thought they were published in the *Government Gazette* when the tribunal makes a determination. They would be included in annual reports, if not as a requirement, at least by way of good practice. In the case of the Auditor-General, my predecessor established the pattern of including his salary in the Office's annual report, even though strictly speaking that was not a requirement. But he thought that was good practice. I agree with him totally and will continue that practice.

**The Hon. J. M. SAMIOS:** To your knowledge, is there any other State in Australia that has a confidentiality provision in it relating to the salary of a police commissioner?

**Mr SENDT:** I have no basis for answering that one way or another.

**The Hon. J. M. SAMIOS:** In your professional estimation, do you think it is a good practice to have full disclosure of the salary?

**Mr SENDT:** Certainly, yes.

**The Hon. J. M. SAMIOS:** That would be the case with your two officers?

**Mr KHEIR:** Yes.

**The Hon. J. M. SAMIOS:** Can I go back to your statements relating to Dr Gellatly and, as my colleague indicated, Mr Gleeson had this morning indicated a dichotomy in the role of two aspects of the salary, section 46 of SOORT providing for remuneration where Dr Gellatly was the assessor and the second part of the equation which was the negotiation stage. It is your opinion, I think, that there is a perception, is there not, that those two roles if effected by one person may not create a correct impression?

**Mr SENDT:** Certainly the perception seems to be shared by the Committee that there was a potential there for at least a perception of conflict. I do not know if I can add much to that. I am not suggesting there is a conflict. What I am suggesting is that if you, as a Committee, believe there is a conflict, there is a problem because if members of Parliament and others in authority believe there may be a problem, that in itself is a problem that should be addressed.

**The Hon. J. M. SAMIOS:** And perception is terribly important in terms of the public confidence, is it not?

**Mr SENDT:** It is indeed.

**The Hon. J. M. SAMIOS:** So that justice must not only be effected but must also be seen to be done.

**Mr SENDT:** Yes.

**The Hon. J. M. SAMIOS:** So your motivation, or the motivation of your predecessor who made these points about secrecy and the aspect of legalities, stems from your desire to maintain the public confidence as well?

**Mr SENDT:** Yes. I think initially the concern, or the reason our attention was turned towards this, was the secrecy element. Subsequently it became the issue of whether this established a precedent or whether there were other examples of this. Particularly when it was discovered that part of the contractual arrangement was invalid it increased our concern.

Just one further point. In pursuing this issue we were interested also in the question of appointments and reappointments. As you would be aware Commissioner Ryan was given a further appointment concluding at the end of his current appointment taking the total period of employment up until early 2004. We were interested as to whether there were any aspects or any concerns in that process, that is, making a new appointment while the existing appointment was still under way.

I have had some discussions with Dr Gellatly, who has indicated to me that he, based on Crown Solicitor's advice, which I have not seen, does not believe there is a problem in that area. So I just wanted to let the Committee know that while I had had some concerns about whether that practice was appropriate, Dr Gellatly's advice, based on the Crown Solicitor's advice, is that there is no problem with that.

**CHAIR:** I think we had that advice in the Committee. Can I ask one last question?

**Mr SENDT:** Certainly.

**CHAIR:** Do you think that there should be some legislative change so that all employment benefits should be contained in one single contract so that there is no secondary contract?

**Mr SENDT:** I think that would be a good move. As I said, there could also be other mechanisms that achieve much the same end if the first contract alluded to or referenced the secondary contract or if the legislation specifically set up a regime of principal contracts dealing with certain issues and secondary contracts dealing with subsidiary issues. Providing it is established up-front and providing the process and the results are generally transparent, I think that could be another mechanism. But I do not have any problems with your suggestion.

**The Hon. J. R. JOHNSON:** Following on the Chairman's question, would you include in that document which you are proposing all of the statutory employment benefits like long service leave, annual leave, sick leave, tea money, et cetera, or would they be taken as givens?

**Mr SENDT:** If they are statutory provisions such as long service leave, I do not see there would be any difficulty referencing them in the document. It does not really cost any great effort to do that. In terms of access to tea money and other miscellaneous entitlements, I think there is a question of, perhaps, materiality. I am not suggesting that anything that is not included in the contract would be invalid in any way. There would obviously have to be some legislative basis or some agreed procedures for the payment of these incidental items. It would be impossible to have a pro forma contract that covered every possibility across every chief executive and senior executive service officer.

**CHAIR:** The very last question I would like to ask is: are you aware that the SOORT determination came out on 9 February but the contract was signed on 8 February?

**Mr SENDT:** Yes.

**CHAIR:** Do you have any concern about that?

**Mr SENDT:** I am not sure that that is an audit matter I can comment on, Mrs Sham-Ho.

**CHAIR:** Thank you very much. Thank you, Mr Sendt, Mr White and Mr Kheir for coming and for your information.

**(The witnesses withdrew) (Short Adjournment)**

**COLIN GELLATLY**, Director-General, Premier's Department, Level 39 Governor Macquarie Tower, 1 Farrer Place, Sydney, affirmed and examined:

**CHAIR:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

**Dr GELLATLY:** Yes.

**CHAIR:** Are you conversant with the terms of reference of this inquiry?

**Dr GELLATLY:** Yes

**CHAIR:** If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee would be willing to accede to your request and resolve into confidential session, but I should warn you that the Parliament may override that decision at any time and may make your evidence public.

**Dr GELLATLY:** Okay.

**CHAIR:** Do you have any opening statement that you want to make to us?

**Dr GELLATLY:** No.

**CHAIR:** So I will go ahead with my questions and then the other members will take their turn. Of course we heard a lot this morning. I think you are aware of that. Can I ask you this question? The Auditor-General has advised the Committee that he cannot give any assurance whether other secondary employment contracts currently exist within the New South Wales public sector or that the circumstances involving this commissioner are unique. To your knowledge, do any secondary employment contracts exist within the New South Wales public sector?

**Dr GELLATLY:** To my knowledge, no, and I think I would probably be aware of it. I negotiate most of the CEO contracts and remuneration levels across the sector, and I know of no others.

**CHAIR:** Are the circumstances involving the Commissioner of Police unique?

**Dr GELLATLY:** The process that was followed in determining the remuneration and the contract and the reappointment are not unique in that they followed the legislative guidelines requirements and used the SOORT tribunal. I was involved in negotiation. There was a special determination, so they are all within the process and framework outlined in the legislation.

**CHAIR:** I understand that. I am not talking about the illegality or unlawfulness, but I find it unique perhaps that you are an assessor. I guess there are two questions I want to ask you as an assessor and negotiator. In your submission you said there is no conflict, but I need some explanation, if you can explain it more.

**Dr GELLATLY:** I just cannot see where there is a conflict. I have a role as an assessor to the tribunal. The tribunal is very clear that the tribunal makes the decisions and the assessors are there to provide advice.

I have a role as the Director-General of the Premier's Department and a role across the public sector, so a good overview of what is going on in the public sector, and negotiate the CEOs' contracts and their remuneration levels within the bands that are available to CEOs, so I think it is quite logical that I would be involved in the negotiation of the Commissioner's contract. I cannot see how that is in conflict with the role of an assessor providing advice to the tribunal about my knowledge of the public sector, so I am just not sure what the actual conflict is.

**CHAIR:** So your role as an assessor is only to advise the tribunal?

**Dr GELLATLY:** Yes, the tribunal makes the decision.

**CHAIR:** This morning Mr Gleeson actually made some recommendations to the Committee because he saw there were obviously some defects. You probably are not aware of the recommendation that he made but perhaps a copy of that can be made available to you. To overcome the defects in the current legislation he has recommended that:

1. Section 24A of the SOOR Act be amended to ensure that remuneration package also refers to Section 46 of the Police Service Act.
2. There be a prohibition on secondary contracts. Consideration be given to amending Section 46 of the Police Service Act and Section 42 of the Public Sector Management Act to ensure that SOORT determines all payments to SES and CES officers.

**The Hon. J. R. JOHNSON:** With due respect, Madam Chair, Mr Gleeson found that Dr Gellatly had no, or proffered that he could see no conflict there.

**CHAIR:** Absolutely. I have another question now. I am just asking what does Dr Gellatly think about this.

**Dr GELLATLY:** So this is not in relation to the conflict of interest issue? This is a separate point?

**The Hon. J. HATZISTERGOS:** I think Dr Gellatly asked you, Madam Chair, what the conflict was that you wanted him to turn his mind to. I think that is the question that we need to follow up because I am interested to know.

**CHAIR:** He explained that he is a negotiator and adviser to the tribunal.

**The Hon. J. R. JOHNSON:** Both by statute, are they not?

**Dr GELLATLY:** Yes. I am not sure what the conflict in those two roles is.

**CHAIR:** This is what I want to find out.

**Dr GELLATLY:** I do not believe there is one.

**CHAIR:** I know that. That is why I take your answer at face value. And then I am asking you this question.

**Dr GELLATLY:** The issue I think about the secondary contracts is a matter for policy consideration by government, but my own view is that it would be preferable to have everything in one

contract. That is why originally I included everything in the Commissioner's contract because it is all in one place rather than having separate contracts.

The issue that the tribunal and Mr Gleeson has raised that SOORT determines all payments to SES and CES officers I think is one worthy of consideration. We are currently doing a review of the Public Sector Management Act, and this will be taken into account in that review.

**CHAIR:** So can the Committee expect some type of legislative change?

**Dr GELLATLY:** I am just saying that that is a proposal that is receiving consideration. There is already in place a review of the Public Sector Management Act and there is one proposal coming from the head of the tribunal that will be taken into account and considered. But it is for the Government to decide whether it is going to propose changes in legislation.

**The Hon. J. H. JOBLING:** It was put to us, Dr Gellatly, earlier in the afternoon that there is not actually a definition of an assessor and their role. Would you agree?

**Dr GELLATLY:** I have not got one in front of me, so it has been advice given. I would have to take that on notice but I have never looked it up.

**The Hon. J. H. JOBLING:** If that turned out to be correct, would you believe that there should perhaps be some determination?

**Dr GELLATLY:** I think there would be some benefit if it is not spelt out what the role of the assessor is, then it is better to have it spelt out.

**The Hon. J. H. JOBLING:** I take you back to 4 February 1999. Did you inform Mr Tree on that day that negotiations with Commissioner Ryan had been completed, details of the contract had been settled and that SOORT had resolved the level of the Commissioner's remuneration? If so, would you tell the Committee who informed you of these facts?

**Dr GELLATLY:** I was in the negotiations with the tribunal, with Mr Gleeson. We discussed them there both in the role as negotiating that contract and as my role as an assessor to the tribunal. Mr Gleeson, as the tribunal, informed me that he had come to that view, that that was his determination in regard to the remuneration. I said I was okay on behalf of the Minister with the contract provisions, so we agreed and I informed Mr Tree that same day.

**The Hon. J. H. JOBLING:** Can you recall then, perhaps, when the final draft of the contract was submitted to the parties for signature?

**Dr GELLATLY:** I think it was about the same day, either the 4th or the Friday morning, probably, the Thursday or the Friday.

**The Hon. J. H. JOBLING:** When did you receive your instructions from the Premier in relation to the matter of the referral to SOORT?

**Dr GELLATLY:** We actually prepared advice for him with a draft letter to sign. That was prepared on, I think, the 3rd or the 4th. It went through the office on the Thursday or Friday. He signed it off on the 8th. We prepared a request with the draft letter for him to send to the tribunal. He signed that on Monday the 8th.

**The Hon. J. H. JOBLING:** So I am correct that SOORT can only act after a referral is made by the Premier?

**Dr GELLATLY:** In regard to a special determination, yes.

**The Hon. J. H. JOBLING:** In other words, that came subsequent to your determinations of the remuneration package and agreement with the parties?

**Dr GELLATLY:** Yes. I mean, that is the way normally SOORT operates. There is informal discussions, negotiations in these sort of matters and when you are at conclusion of the matter, the actual letter requesting it and the final determination is formally sent back, so it was not an unusual circumstance.

**The Hon. J. H. JOBLING:** You would have no doubt received from Lyn Anderson certain submissions on behalf of the Commissioner and some thoughts in view of the Commissioner's possible remuneration that he would like?

**Dr GELLATLY:** Yes.

**The Hon. J. H. JOBLING:** What studies did you undertake to examine the request put to the Government in this regard in relation to other commissioners of other States in Australia?

**Dr GELLATLY:** The actual remuneration and the level of remuneration, I remember there was a letter that came in that suggested that outside people regarded the position to be worth \$600,000 or \$700,000. But the actual remuneration level details were undertaken by the tribunal and its officers. So I did not personally do an investigation into those issues surrounding the remuneration.

**The Hon. J. H. JOBLING:** You offered no advice to the tribunal in regard to remuneration?

**Dr GELLATLY:** I certainly had discussions with the tribunal from my knowledge in the private and public sectors and what Commissioner Ryan was doing and what an important job he had in implementing the royal commission reforms and how well he was doing that. I thought I could certainly offer my views to the tribunal as an assessor.

**The Hon. J. H. JOBLING:** That, I presume, is the submission from BKR Walker Wayland?

**Dr GELLATLY:** That is the one I referred to, I think, the \$600,000 or \$700,000 that was mentioned.

**The Hon. J. H. JOBLING:** Can we look at a response to yourself dated 6 December 1999, from the Premier's Department and from yourself and on the page there you say:

I indicated to Mr Tree that I would involve Mr G Gleeson, the Statutory and Other Officers Tribunal (SOORT) in the negotiations with the Commissioner.

Could you indicate to us what negotiations you are referring to at that stage?

**Dr GELLATLY:** Well, the Minister had requested me, via Les Tree, to undertake the negotiations with the Commissioner. As the remuneration was an important part of that negotiation and to go into the contract, the logical and statutory place for those determinations to take place, investigations, was the tribunal, so that was the reason for involving the tribunal and the negotiations are the overall contract and reappointment of the Commissioner.

**The Hon. J. H. JOBLING:** In some of the other responses you say:

Accordingly, while SOORT would have to make a formal determination under the Act it was logical that both the Tribunal and myself be involved in the negotiations.

It was agreed between myself and SOORT that the Tribunal would have some preliminary discussions with Commissioner Ryan and his advisers on a new contract. These discussions occurred in late January 1999.

On 3 February 1999 I -

This being yourself I presume:

met with SOORT and Commissioner Ryan's financial adviser to further negotiate the matters to be included in a new contract of employment. It was agreed that all parties and Commissioner Ryan would meet again on 4 February 1999 to further canvass the issues.

Again, that is just a statement of fact I take it?

**Dr GELLATLY:** Yes.

**The Hon. J. H. JOBLING:** Then you indicate:

Following the conclusion of the meeting I asked the Director of Remuneration Tribunals, an officer of the Premier's Department to prepare a submission to the Premier directing SOORT to determine a remuneration package for the Commissioner . . .

And you gave us annexure A. I am interested in a letter that came out from the Ministerial and Parliamentary Services, where you say that taxation advice was sought, file No. SRT760, and it was signed off by Mr Sklavounos on 21 January 1999, and it says:

As there is some urgency in the matter, approval is sought to employ as the taxation officer . . .

Et cetera. It was approved by you on the same day. Could you explain to me what the urgency was?

**Dr GELLATLY:** I think it goes back to Commissioner Ryan had made the approach to the Minister in writing at the end of December, so he made a request for a renegotiation of his contract and the term of appointment. The matter did not start being considered until I returned from leave on 18 January. In these sorts of matters it is important that they are considered swiftly so that the uncertainty that is involved in them does not cause any issues.

Particularly as we were entering into negotiations, my view is always that once you start negotiations you want to wrap them up quickly so they do not drag on and you do not have that uncertainty appearing. Therefore, once we were getting to the crunch in the negotiations and there was need for advice on taxation issues, I thought was a very legitimate request to have the advice sought urgently.

**The Hon. J. H. JOBLING:** Would it have made any difference if it had taken another month or two months?

**Dr GELLATLY:** As I said, I think in these matters, once you start in the detail process of the negotiation it is far better that they are wrapped up quickly. To hold that off for one month for one specific aspect I do not think would have been a reasonable position for an employer and Commissioner Ryan.

**The Hon. J. M. SAMIOS:** I refer you to the second-last paragraph in that Ministerial and Parliamentary Services memorandum.

**Dr GELLATLY:** Could I have a copy, please? I do not have it with me.

**The Hon. J. M. SAMIOS:** Yes. It says that Mr Morrow has advised that his fee is \$300 an hour.

**Dr GELLATLY:** Sorry, that is not the one I have here.

**The Hon. J. M. SAMIOS:** It is dated the 21st. Have you got that one?

**Dr GELLATLY:** Yes.

**The Hon. J. M. SAMIOS:** It says:

Mr Morrow has advised that his fee is \$300 an hour, which is considered reasonable in these circumstances. It is not anticipated that the total cost of his service will exceed \$20,000.

What did the service cost?

**Dr GELLATLY:** I will have to take that on notice.

**CHAIR:** It is already there. You have already given this evidence. I think it is over \$3,000.

**The Hon. R. D. DYER:** The Committee is aware of the cost, so I do not see the purpose of the question.

**CHAIR:** It is in the submission.

**Dr GELLATLY:** I do not know off the top of my head. I will have to take it on notice. The tribunal has made a decision.

**The Hon. J. M. SAMIOS:** You were prepared to go to \$20,000 if necessary I think you have indicated.

**Dr GELLATLY:** Yes.

**The Hon. J. M. SAMIOS:** Can I ask you about Mr Smith's briefing note of 8 February 2000? It says that his contract was negotiated by you. Why was Mr Gleeson's role not revealed in this note?

**Dr GELLATLY:** The actual contract that went was sent to the Ministry for Police. There was certainly never an intention to hide Mr Gleeson's involvement in it. It was quite clear, and I think we have spelled it out in it, that he was involved. As of late January soon after I came back from leave and started the process Mr Gleeson was involved. I have had no reason not to disclose Mr Gleeson's involvement. I think other papers clearly indicate that he was involved, and we have indicated that to the Committee.

**The Hon. J. M. SAMIOS:** Why does Smith's note say you were asked to negotiate by the police Minister and the statement suggests that you were approached by Mr Tree?

**Dr GELLATLY:** I think I have covered that in my earlier evidence, that Mr Tree met with me on the 18th to pass on the message that the Minister had asked me to undertake the negotiations, so his representative had talked to me about them.

**The Hon. J. M. SAMIOS:** And when did you first talk to the Premier about the matter?

**Dr GELLATLY:** I could not give you an exact day. It would have been around the time. The Premier and his office were obviously pretty busy at that time, so it would have been in an update saying that this process had begun and just informing him that it was proceeding.

**The Hon. J. M. SAMIOS:** And when did you first talk to the police Minister about the matter?

**Dr GELLATLY:** I am not sure that I actually had discussions with the police Minister on it.

**The Hon. J. M. SAMIOS:** Why does the briefing note from Emanuel Sklavounos to the Premier and signed by you make no reference to Mr Gleeson's role in the negotiations?

**Dr GELLATLY:** I would have to go back to what I said before. If it is not included in --

**The Hon. J. HATZISTERGOS:** I am sorry, which one are we talking about?

**Dr GELLATLY:** Could I have a look at the briefing note because I am not sure of the context? There was never any reason to not disclose Mr Gleeson's involvement, and we were actually quite public about it in the documents. There certainly was not the intention to say he was not involved.

**The Hon. J. HATZISTERGOS:** Is this the one about the payment of \$300?

**CHAIR:** Mr Samios, which one are you referring to?

**The Hon. J. M. SAMIOS:** This is the one dated the 21st I think it is.

**The Hon. J. H. JOBLING:** SRT760.

**Dr GELLATLY:** This one again?

**The Hon. J. H. JOBLING:** The same one again.

**The Hon. J. M. SAMIOS:** It makes no reference at all to Mr Gleeson's role in the negotiations.

**Dr GELLATLY:** Well, it says:

The SOORT tribunal is required to determine the remuneration.

The tribunal is Mr Gleeson.

**The Hon. J. M. SAMIOS:** Did Mr Sklavounos know of Mr Gleeson's negotiating role?

**Dr GELLATLY:** Yes.

**The Hon. J. M. SAMIOS:** And did the Premier know?

**Dr GELLATLY:** Yes.

**The Hon. J. M. SAMIOS:** Did you discuss the note with the Premier or any of his staff?

**Dr GELLATLY:** Not this note. That was an internal administrative matter in terms of employing some expertise to assist SOORT do its job.

**The Hon. J. M. SAMIOS:** Was it you who initially gave carriage of the matter to Mr Gleeson?

**Dr GELLATLY:** Yes.

**The Hon. J. M. SAMIOS:** How many other SOORT determinations have involved direct prior negotiations between a statutory officer and Mr Gleeson?

**Dr GELLATLY:** Could you repeat the question?

**The Hon. J. M. SAMIOS:** How many other, to the best of your knowledge and recollection, SOORT determinations have involved direct prior negotiations between a statutory officer and Mr Gleeson?

**Dr GELLATLY:** I guess if I can just be granted a bit of time to explain the framework, under the SOORT there are positions that are statutory officer positions, and so there is a determination made each year for those. The tribunal in previous times and with Mr Gleeson as the tribunal has always invited submissions from the parties, the statutory officers.

They come in and give verbal representations as well as their written submissions so, in that way, there are always discussions between the statutory officers and the tribunal about the remuneration. They may make a case that they feel it needs to be increased by so much and their relativities and so on. So in that context there are always discussions between the tribunal and the statutory officers about where the tribunal is making decisions, so in that case, it always happens.

In the case of senior executive and CES chief executive officers, the tribunal makes a determination in a range from the various grades from one to eight. I actually, certainly in the case of chief executives, undertake the negotiations on behalf of the Ministers on where the chief executive officer will lie within that range.

With the special determination, I guess that, to me, is not unusual, and given there was a contract to be negotiated, that the tribunal would be involved in negotiations, and it is really in the same context of being involved with the other statutory officers.

**The Hon. J. H. JOBLING:** Just a brief couple of questions to follow up on that. You mentioned the word and explained the urgency previously about the negotiations. I am curious, given that the contract did not in fact expire until August 2001, about what was urgent in renegotiating it in 1999.

**Dr GELLATLY:** I think the fact that the Commissioner had sought in December 1998 for it to be renewed, for his appointment to be extended and for a new contract. There was speculation in the press about how long he was going to stay there. Because of the fact that he requested it, the process was started. Given the need to retain Commissioner Ryan to implement the police reforms, I think there was some urgency, and these matters, as I said before, are normally resolved both by myself and by the tribunal within a very short time period. They are not issues that you want to linger round.

**The Hon. J. H. JOBLING:** But is it not unusual bearing in mind what happened several months later?

**Dr GELLATLY:** I am just explaining that there was a request made in December.

**The Hon. J. H. JOBLING:** But what I am saying is, looking at the perception - that is what I am getting at - that there were still three years left to run, without going into fine detail, one would begin to say, "What's the rush?" There are three years. If it took six months, it really would not have mattered.

**Dr GELLATLY:** I think the issue is retaining Commissioner Ryan for the job he was doing, and it has been clear that he was integral to that reform being successful and the sooner he could be committed and tied down and reappointed, then it gave a five-year time frame from then, which gave certainty and morale, all those issues about the Police Service.

**The Hon. J. H. JOBLING:** The second very short question I would like to put to you is that in evidence before us earlier today it is my understanding that Mr Gleeson said to us that he was not included in the negotiations. In your evidence and statements you clearly say that he was. Who is correct?

**The Hon. J. HATZISTERGOS:** I think he said that he was not included.

**Dr GELLATLY:** I am unaware of what Mr Gleeson said but I think he was there, he discussed it with Lyn Anderson, the adviser to Commissioner Ryan about the salary thing, and then we concluded the discussions and negotiations. In terms of the actual finalisation of the contract then, Mr Gleeson was not involved in the finalisation of the contract and negotiations because that was then a matter for the Ministry for Police. We provided a draft, which was then signed by the Commissioner and the Minister, and Gleeson as the tribunal was involved in that step. He had the job of providing the determination.

**The Hon. J. H. JOBLING:** My very last question is in fact quite short. I would just like to ask you: in this case would you tell the Committee why you did not obtain comprehensive advice from the Crown Solicitor in relation to the new contract or variations in the same way as you did in the previous one?

**Dr GELLATLY:** Because the contract that was signed this time was based on his previous contract. There were some variations, but the final contract was a continuation of a number of clauses in his first contract. Clauses 6 and 22 subsequently have become issues. At that time I had already had previous advice from the Crown Solicitor that clauses like clause 6 could be included in a contract, and I think any plain reading - well, those are probably the wrong words "plain reading".

**The Hon. J. H. JOBLING:** Not in a contract.

**Dr GELLATLY:** Okay. But from our operations in those areas in previous years we have always assumed the wording in the Act about what could be in a contract that said monetary

remuneration and employment benefits, so we already had a clearance on clause 6 from previous Crown Solicitor's advice.

Clause 22 we took as being an employment benefit, the end of contract payment, so, therefore, in my judgment at the time, given that it was one based on his previous contract, which had been subject to a lot of scrutiny, clause 6, which was previously okayed, similar provisions by the Crown Solicitor, and clause 22 was considered to fall into the employment benefits, so on that basis at the time I did not see any need to seek Crown Solicitor's advice. Everything had been following a number of previous ones where there did not seem to be issues.

**The Hon. J. H. JOBLING:** What the Auditor-General said and the matters that the Auditor-General raised which were known at that stage, and that there was a flaw in the previous contract, the decision not to seek Crown Solicitor's advice, you say, was entirely yours?

**Dr GELLATLY:** There were a number of parties involved in that but I take responsibility for not seeking Crown Solicitor's advice at that time.

**CHAIR:** In that case, Dr Gellatly, can I assume from what you have just said that you were responsible for including clause 6 and clause 22 in the contract?

**Dr GELLATLY:** Clause 6 and clause 22 arose out of the negotiations between Commissioner Ryan and the adviser, and I think actually the end of contract one Mr Gleeson as the tribunal thought of that way of doing the end of contract as an incentive to retain Commissioner Ryan, which is consistent with the recruitment and retention allowance which is already allowed under SOORT determinations. It was a combination of where the idea came from as a result of the negotiations to come up with clauses 6 and 22.

**CHAIR:** May I ask who actually is responsible for drafting this contract that was signed eventually by the police commissioner and the Minister?

**Dr GELLATLY:** We provided a draft on the 4th or the 5th.

**CHAIR:** When you say "we", is it the department?

**Dr GELLATLY:** The Premier's Department, sorry, and we provided that draft to the Ministry for Police, Les Tree, who then used that as the basis for the final contract, and I understand it was not much different.

**CHAIR:** Who exactly is in your department? Is it a lawyer, a staff member?

**Dr GELLATLY:** A staff member.

**CHAIR:** Can you tell the Committee who it is? I think it is very important that we find out.

**Dr GELLATLY:** It is a combination of people who were involved in it. If you want the precise people, there was myself, there was Robyn Kruk, the Deputy Director-General; Alex Smith, the Director of my office; and Emanuel Sklavounos, the Director of the SOORT tribunal. They were people who had had years of experience in drafting contracts and dealing with these sorts of issues, so I did not feel, given, as I said before, the consistency with the earlier contract which had been scrutinised, that there was a need for any considered legal advice at that time.

**CHAIR:** So I suppose, in that sense, the person responsible would be yourself, you are saying?

**Dr GELLATLY:** Yes.

**CHAIR:** Whose responsibility is it to check the validity of the terms of the contract?

**Dr GELLATLY:** Well, certainly I would take a major responsibility in preparing a draft to ensure that the document meets the standards, is legal, has no conflicts in it. It is part of the job of being a professional public servant to make sure documents like that have no errors in them, and then it was passed on to the Minister for Police.

**CHAIR:** So you did not have a legal adviser check the validity?

**Dr GELLATLY:** No, I thought I explained that. The previous contract on which it was based had been extensively reviewed by the Crown Solicitor and the additions and changes to the contract were not considered. Clause 6 had already been endorsed by the Crown Solicitor. Clause 22 was consistent with the recruitment and retention allowances which were in existence. There were no issues that appeared at the time to require separate legal advice.

**CHAIR:** The contract was signed on 8 February and the determination came out on the 9th. Should the SOORT determination have been issued prior to the contract being signed?

**Dr GELLATLY:** In hindsight, you would probably say yes, but the reality of the situation was that it made no difference because that clause in the contract did not have any effect until the determination was made. The legislation says that you can vary a contract before and after an appointment. So there were a number of steps that had to be gone through before that clause and the whole contract had effect.

There was still his matter of appointment that had to go through Cabinet and the Executive Council and so on, but in terms of that contract, the remuneration clause had no effect until the tribunal had made its determination. So in a real sense, it did not have any significance whether it was signed before or after.

**CHAIR:** Is there a requirement of the Act to sign it beforehand?

**Dr GELLATLY:** No.

**The Hon. J. HATZISTERGOS:** I want to ask you a few questions about clause 22. It seemed to me, going through this exercise with Mr Gleeson this morning, that clause 22 was something that he specifically had regard to at the time he was making his inquiry about the appropriate remuneration levels and he in fact got some advice about that. His own determination says that he has regard in setting the remuneration level of \$425,000 to the fact that there is going to be this termination benefit in the event that he completes the full period of the contract.

So the tribunal was aware of that termination payment being made. In answer to a question from myself he said that he did not think that he had to include the quantum amount of the termination benefit in his determination and he discussed that with you.

**Dr GELLATLY:** Yes, we discussed it and I proffered the view that it would be better as part of the contract rather than as part of the actual remuneration because it was not an annual remuneration. Mr Gleeson made his own decision on that.

**The Hon. J. HATZISTERGOS:** Gleeson certainly was aware of the amount?

**Dr GELLATLY:** Yes.

**The Hon. J. HATZISTERGOS:** And certainly was aware that it was going to be provided and thought that was desirable in the circumstances in order to retain Ryan's services. The Auditor-General has since said that that is an improper procedure, seeing it was a remuneration the tribunal should have issued the determination, and the fact that it has not, means that that clause is invalid, and that is where the recommendation for a secondary contract comes in.

It really makes a secondary contract in this instance somewhat extraordinary in terms of the circumstances. I mean, Gleeson was aware of it. He simply was wrong in terms of not including it in his determination.

**Dr GELLATLY:** Whether it was regarded as an employment benefit.

**The Hon. J. HATZISTERGOS:** Yes. If Gleeson had put it in his determination as part of the remuneration package, there would have been no secondary contract and no invalidity.

**Dr GELLATLY:** That is as I understand the Crown Solicitor's advice, yes.

**The Hon. J. HATZISTERGOS:** So this secondary contract only arises because of these extraordinary circumstances?

**Dr GELLATLY:** Yes.

**The Hon. R. D. DYER:** I just want to take you back for a moment to the role of the assessor. I think you agree with me that section 7 of the SOORT Act provides for three assessors including, for the time being, the office of the Director-General of the Premier's Department, and further provides that the tribunal shall be assisted by the assessors and takes into consideration their views and recommendations.

**Dr GELLATLY:** Yes.

**The Hon. R. D. DYER:** Could I put it to you that it is by no means unknown in the legal system in the case, say, of a marine accident for a marine engineer to sit with a judge or in a coalmine disaster for mining engineers to sit with the judge and that the roles of the assessor and the judicial officer respectively are well known and delineated appropriately?

**Dr GELLATLY:** Yes.

**The Hon. R. D. DYER:** In regard to your relationship and the other assessors' relationship to Mr Gleeson as the tribunal, that he is the decision-maker and you are the advisers and that the roles are quite clear?

**Dr GELLATLY:** Yes, and I think it is quite evident that Mr Gleeson makes his own decisions. We provide him with advice, but he makes his own decisions and, as you say, there are precedents in the other forms of the law where you have assessors and determination authorities.

**The Hon. J. M. SAMIOS:** Dr Gellatly, why was no attempt made in the latest contractual documents signed to require the Commissioner to give some notice before terminating, given that just months after signing the contract last year and agreeing to stay for five years he applied for the London commissioner's job and went to London for interviews?

**Dr GELLATLY:** I do not know. I cannot comment on the issue of the Commissioner's discussions or otherwise with a job in London. All I can say is that I think what we undertook in the contract was the reverse approach in saying that we provide an incentive for him to stay for the period of time rather than require a period of notice, because the practice, if you have to give an amount of notice and it is a legal amount and the person wants to go and is not happy with the job, then they can become ineffective. So we thought the better approach was to provide the incentive by way of getting him to want to stay at the end of it rather than forcing him to give a period of notice.

**The Hon. J. M. SAMIOS:** Bearing in mind that he was heading a very large force within the public service, as it were, and bearing in mind the importance of having somebody head that immediately he resigns, and bearing in mind that the contract had already been redocumented, as it were, and bearing in mind the difficulties of replacing the leadership, would it not have occurred to you that you should approach him for some reasonable period of notice?

**Dr GELLATLY:** If that situation arose there always is a negotiation on a release time. I would expect that to be the same in any CEO's case. There is none that I know of who have just walked out the door and said, "We are leaving tomorrow". There is a requirement to have a standard period at least of usually four weeks notice, and that is observed by the CEOs.

**The Hon. J. M. SAMIOS:** Are you saying by practice that there has been that notice given by all CEOs appointed since 1989?

**Dr GELLATLY:** From what I can recollect, yes. I think the standard - yes, that is my understanding.

**Ms LEE RHIANNON:** You and a number of other people today have spoken about the strong desire to retain Mr Ryan as Commissioner in light of the Wood royal commission and to carry forward the work that he had to do. If you could cast your mind back to what it was like in late 1998 and early 1999 when you were involved in these negotiations, what was to the forefront of your mind in motivating you in the decision that you ended up coming forward with, with this \$425,000 package? Was it the fact that because he has applied for a job in England that you needed to increase the amount and make the package more attractive? I mean, maybe another ways to phrase it, if he had not gone for the job in England, would you have ended up with that same package?

**Dr GELLATLY:** As I said, I was not aware, and apart from any speculation I had seen in the press about that, it certainly was not an issue discussed in the negotiations. The pure motivation was that the Commissioner had asked in December for a review of his contract and the length of the appointment.

From the work I had seen, an interdepartmental committee was reviewing the implementation of the royal commission and from my observations of the number of areas in which he is working, the integrity, professionalism, the civilian skills, the improvement in the actual policing, the business-like approach with budgeting, financial skills, right across the whole gamut of it, I thought from a public sector point of view it was crucial that we retain the Commissioner to lead the reforms. He is certainly a key element in it, and that was my driving force in pursuing the reappointment and renegotiation of the contract. I think he was integral to that reform occurring.

**Ms LEE RHIANNON:** As you see that he is integral to those reforms occurring, if we had the situation which we have had once already when he came forward and wanted to increase the contract and you received letters like this one that I understand the Commissioner forwarded to you from Walker Wayland saying that he was really worth in the range of \$600,000 to \$700,000, considering

we have been through this once where it was a fairly unusual situation with the request to renegotiate the package, and I also understand that he can come forward - yes, under point 17, "Remuneration of the Commissioner", that on the thirteenth day of June in each year there can be a review of the contract, like, if we went through this situation again, how would you respond? Like, how much money, how high do you go to keep the Commissioner?

**Dr GELLATLY:** I think those clauses in the contract refer to the fact that there should be an annual review of the remuneration level as per other remuneration levels. It is not there as an opening to come forward and renegotiate the whole package again. I think you can never give a definitive answer and you would have to take each time and each case as it occurs but, clearly, there would be very tough negotiations if someone came forward next month and said they wanted to renegotiate something we had just completed six months ago.

He came forward two and a half years into a contract and there was clearly a need for another five years, so I think people in government know that situation and certainly the new contract was negotiated on that basis. The other point that Commissioner Ryan made was the elements he has to follow through in is succession planning. So I think he is clearly indicating that a period of seven years as the New South Wales police commissioner implementing reforms like that, he is looking at a period after where there would be a number of people to take it on. So, I do not see it as a real issue.

**The Hon. J. HATZISTERGOS:** He does not get the termination pay --

**Dr GELLATLY:** That is why we left it there, to keep him there. That would negate the incentive payment we had already built in.

**Ms LEE RHIANNON:** Going back to the negotiations themselves, you received a letter from Mr Gleeson where he says at the end of it, "We cannot have Ryan pushing us to the brink and then putting pressure on the Minister". Did you share those concerns of Mr Gleeson and how did you feel that that played out?

**Dr GELLATLY:** No, I think Mr Gleeson was just expressing a view that there can be circumstances where a CEO or a person in this position might try to go round the negotiations that are held and ask the Minister to intervene and overrule it, and I think Mr Gleeson was just being cautious and making clear that we were both on the same wave length about how we were going about our parts.

**Ms LEE RHIANNON:** So you were?

**Dr GELLATLY:** Yes.

**Ms LEE RHIANNON:** Did you speak to the Commissioner at all during this period?

**Dr GELLATLY:** Yes, I think on the 3rd or the 4th in the final bits of the negotiation he was in a meeting then.

**Ms LEE RHIANNON:** How many times would you have met with him?

**Dr GELLATLY:** Once or twice.

**Ms LEE RHIANNON:** Because Mr Gleeson said that he did not meet with him so I am just wondering why he does not meet with him and you do.

**Dr GELLATLY:** Mr Gleeson had a clear role of the tribunal getting the remuneration decided. My job was the overall contract and the reappointment issue, so I had a broader role in that sense and Mr Gleeson had a role as the tribunal to determine the remuneration.

**Ms LEE RHIANNON:** So were you dealing with Anderson and Ryan?

**Dr GELLATLY:** Yes.

**The Hon. J. H. JOBLING:** Dr Gellatly, can I come back to one of the previous questions just a moment ago that relates to the letter of 29 January, again, written by Mr Gerald Gleeson in his capacity as Chairman of the Statutory and Other Officers Remuneration Tribunal to yourself in your capacity as Director-General of the Premier's Department?

**Dr GELLATLY:** Can I get a copy of that, please? Is that possible?

**The Hon. J. H. JOBLING:** Whilst the copy is coming up, the question related to pushing us to the brink. The actual words under 10 "Completion of Negotiations" - this document has been made public, I presume, Chairman, has it not? I am just checking for my benefit.

**CHAIR:** It was earlier, yes.

**The Hon. J. H. JOBLING:** So we are reading from a public document. "Completion of Negotiations", and it says:

I have told Lyn Anderson that while I fix the benefits that you are responsible for the contract -  
That is yourself:

and that I will be advising you as to how the benefits fit with the contract.

**Dr GELLATLY:** That is just what I explained.

**The Hon. J. H. JOBLING:** It continues:

What is important here is that the Minister accepts that you are completing the contract arrangements.

It then says, "We", which is a very interesting word:

We cannot have Ryan pushing us to the brink . . .

Firstly, who is "we" and, secondly, how would Mr Ryan actually push you to the brink? What is implicit in those words?

**The Hon. J. R. JOHNSON:** The royal "we".

**The Hon. J. H. JOBLING:** I doubt it, not knowing Mr Gleeson.

**The Hon. J. R. JOHNSON:** Well, papal.

**Dr GELLATLY:** I can only offer my interpretation of those words, and "we" I would regard as Mr Gleeson and myself because we were working together in negotiating the contract and setting the remuneration.

**The Hon. J. H. JOBLING:** But what is "the brink"? Mr Gleeson is very, very particular in using words. He is very precise and he has said "pushing us to the brink".

**The Hon. J. HATZISTERGOS:** It is not his letter; it is Mr Gleeson's letter.

**The Hon. J. H. JOBLING:** As I said, Mr Gleeson is very particular in his words.

**The Hon. J. HATZISTERGOS:** Ask Gleeson that.

**The Hon. J. H. JOBLING:** You worked with him and you are negotiating together?

**Dr GELLATLY:** Yes.

**The Hon. J. H. JOBLING:** So you would pay great cognisance to those words?

**Dr GELLATLY:** They are Mr Gleeson's words.

**The Hon. J. H. JOBLING:** So you would not have been concerned in any shape or form?

**Dr GELLATLY:** Those words there imply that you come to the negotiations and reach the stage where you are just about there and have just about solved it but the parties are not happy with it. Then they go round and talk to another party. I think that is the intention of it, but you would have to ask Mr Gleeson what he meant specifically in this regard.

**Ms LEE RHIANNON:** But there is also another concern there that comes from the last sentence:

In other words, Mr Whelan has to be quite firm that he will be accepting our advice on the contract.

**Dr GELLATLY:** Yes.

**Ms LEE RHIANNON:** So you are a bit worried that Mr Whelan is not going to be firm?

**Dr GELLATLY:** I have not written anything.

**Ms LEE RHIANNON:** I know you have not but I am just asking you to explore it because you have said yourself that you have been negotiating closely, you are talking to Mr Gleeson all the time. One is left with the impression that you are both sharing these concerns and we end up in the final sentence of this letter:

In other words, Mr Whelan has to be quite firm that he will be accepting our advice on the contract.

Did you have worries?

**Dr GELLATLY:** No.

**Ms LEE RHIANNON:** So there are no worries about it?

**Dr GELLATLY:** No.

**The Hon. J. H. JOBLING:** Subsequent to that, then, did Mr Whelan accept your total advice on the contract?

**Dr GELLATLY:** Yes.

**The Hon. J. H. JOBLING:** He did not reject or change anything?

**Dr GELLATLY:** That is right.

**The Hon. J. M. SAMIOS:** Is it not a fact, Dr Gellatly, that the end of contract sum had no effect on Mr Ryan applying to London?

**Dr GELLATLY:** I cannot answer that.

**The Hon. J. M. SAMIOS:** In these circumstances why did you not include a notice period in the contract?

**The Hon. J. R. JOHNSON:** How many times does this have to be asked?

**The Hon. J. H. JOBLING:** We are questioning this person.

**The Hon. J. R. JOHNSON:** And we have to listen to it.

**The Hon. J. H. JOBLING:** Indeed you do.

**Dr GELLATLY:** I cannot explain or give you an explanation of Mr Ryan's thinking. We, clearly, at the time thought that the best way to provide an incentive for him to stay in the position was an end of contract sum.

**The Hon. J. H. JOBLING:** With the Chairman's permission, there are a couple more questions I would like to ask. Did either you or Mr Tree do a performance review of the Commissioner and, if you did, could you tell me where this is mentioned in either of your annual reports?

**Dr GELLATLY:** As part of the appointment process of any CEO in New South Wales there is a Premier's circular, which I can provide on notice, which says that the process is that there is a panel review undertaken to renew a contract, renew an appointment, sorry. In this case it was undertaken by myself, Les Tree and Robyn Kruk. We met on 4 February to review Commissioner Ryan's performance, and that was included as part of the Cabinet process, as it always is, for the appointment to go finally to the Executive Council. There is no need for that to go into my annual report, or the Premier's Department in my annual performance or in the Premier's Department annual report.

**The Hon. J. H. JOBLING:** Could I just go back to 4 February? I would just like to look at the draft. Did Mr Tree add or alter any clauses in the draft as provided by you?

**Dr GELLATLY:** As I understand it, no.

**The Hon. J. H. JOBLING:** You are uncertain or you are sure?

**Dr GELLATLY:** No. I will say no.

**The Hon. J. H. JOBLING:** That is okay. I just wanted to make sure where I stood with it. The other question is just to reconfirm whether you at any stage got any legal advice on that draft contract and if so from whom and when.

**Dr GELLATLY:** No.

**CHAIR:** That was a question asked.

**The Hon. J. H. JOBLING:** I realise that. I just wanted to go back. Sometimes when asking a question for the second time, Chairman, you get a different answer.

**The Hon. J. R. JOHNSON:** Like Oliver Twist.

**The Hon. J. H. JOBLING:** I will leave you to know about that.

**CHAIR:** I would like to ask a couple of questions that I have already asked Mr Gleeson but about which I am still very concerned. I understand that the SOORT had no role in the signing of deeds amending the contract of employment of the Commissioner of Police. In your view, does the signing of an additional contract undermine the SOORT process? Will you explain your answer?

**Dr GELLATLY:** The deed that allowed for clause 22 to be in a separate thing?

**CHAIR:** Yes, clause 22.

**Dr GELLATLY:** I understand the issue Mr Gleeson is raising about that, that it would be better to have it in one determination and one contract. I think it is an issue we are looking at.

**The Hon. J. HATZISTERGOS:** But, effectively, SOORT has already approved that.

**Dr GELLATLY:** They have agreed to it. The technicality of the issue about whether it could be in the contract or not is what became the issue.

**The Hon. J. HATZISTERGOS:** In fact, he said it was his suggestion.

**Dr GELLATLY:** The end of contract one was, yes.

**CHAIR:** Does it mean, then, Dr Gellatly, that there will be a requirement to broaden the SOORT process or the role of SOORT in terms of secondary contract to include them?

**Dr GELLATLY:** Well, that is the issue we are looking at. That clearly is an issue that needs review as part of the current review of the Public Sector Management Act.

**CHAIR:** So it is coming?

**Dr GELLATLY:** We are having a look at it.

**CHAIR:** Any other questions?

**The Hon. J. H. JOBLING:** One that occurs to me. Chairman, in questioning of other witnesses the question was asked, and I think it proper that I should just re-ask it again of yourself, Dr Gellatly. As the person who was responsible for the final signing off on the contract and the proceeding forward of its activity, would you like to explain to me how a reference in that contract to a

section which was later found did not exist in an Act and did not apply to the Police Service, which was turned up by the Auditor-General, got through?

**Dr GELLATLY:** I think the issue there is that the wording of the two acts is the same. It is just that it is a different numbered clause under the Public Sector Management Act from the Police Service Act.

**The Hon. J. H. JOBLING:** It is still deadly legally, though, is it not? That is what a lot of law turns on.

**Dr GELLATLY:** But you just asked me to explain how it happened, and I think it is the fact that the majority of our work, the Premier's Department work, is with the Public Sector Management Act and the clause had exactly the same wording and intent. It is an issue that could be easily rectified and you are allowed to vary the contract at any time.

**CHAIR:** On behalf of the Committee, Dr Gellatly, thank you very much for coming and thank you very much for your information.

**(The witness withdrew) (The Committee adjourned at 4.10 p.m.)**