

PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO THE IMPLICATIONS OF THE NEW STRUCTURE AND FUNCTIONS OF THE DEPARTMENT OF THE PREMIER AND CABINET AND THE PUBLIC SECTOR COMMISSION

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 23 MARCH 2009**

SESSION FOUR

Members

Mr J.C. Kobelke (Chairman)
Mr J.M. Francis (Deputy Chairman)
Mr A.J. Carpenter
Mr A. Krsticevic
Mr C.J. Tallentire

Hearing commenced at 1.13 pm**FIELDING, MR GAVIN LEONARD****Retired Industrial Commissioner,****Part-time Consultant to Clayton Utz, examined:**

The CHAIRMAN: Mr Fielding, thank you very much for appearing before the Public Accounts Committee today. On behalf of committee, I would like to thank you for your interest and your appearance. The purpose of this hearing is to assist the committee in gathering evidence for its inquiry into the implications of the new structure and functions of the Department of the Premier and Cabinet and the Public Sector Commission. You have been provided with a copy of the committee's specific terms of reference. At this stage, if I could introduce myself: I am John Kobelke, chair; the deputy chair is Mr Joe Francis, on my left; and then Mr Tony Krsticevic; Mr Chris Tallentire; and Mr Alan Carpenter.

The Public Accounts Committee is a committee of the Legislative Assembly of the Parliament of Western Australia. This hearing is a formal proceeding of the Parliament and therefore commands the same respect given to proceedings of the house itself. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of the Parliament. This is a public hearing and Hansard will be making a transcript of proceedings for the public record. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title of the record.

Before we proceed to questions, we will hesitate a moment while we give Mr Fielding an opportunity to fill those forms in.

Mr Fielding: You want me to do it now?

The CHAIRMAN: I have to ask you questions about it. Have you had a chance to be able to read the notes? I have to ask you questions about the notes on the —

Mr Fielding: Yes, if it is identical to what the principal research officer sent me about the proceedings, then I have read that through.

The CHAIRMAN: Thank you, Gavin. I will go through those minor formalities. Have you completed the "Details of Witness" form?

Mr Fielding: I have now, yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

Mr Fielding: Yes.

The CHAIRMAN: Did you receive and read the "Information for Witnesses" briefing sheet provided with the "Details of Witness" form today?

Mr Fielding: Yes, I did.

The CHAIRMAN: Do you have any questions in relation to being a witness at today's hearing?

Mr Fielding: No, I do not.

The CHAIRMAN: Would you please state your full name and the capacity in which you appear before the committee today?

Mr Fielding: My full name is Gavin Leonard Fielding. I do not quite know what capacity, other than as an interested private citizen, although as I think most of you know, I am a retired member of both the federal and state Industrial Commissions. Currently, I am what I call a part-time consultant to the law firm of Clayton Utz in its employment law division, although I fundamentally regard myself now as a retiree.

The CHAIRMAN: Thank you for your submission you have already provided to the inquiry; I certainly found it valuable. Together with the information you provide today, your submission will form part of the evidence to this inquiry and may be made public. Are there any amendments you would like to make to your written submission?

Mr Fielding: No, but there are a couple of additions—a couple of things that have come to mind since I wrote it that are really additions than —

The CHAIRMAN: The next thing I was going to ask you is: do you want to provide any additional information or make an opening statement before we ask you questions?

Mr Fielding: No. There are two things I would like to say. I think you would have detected from my submission that I am concerned about the fragmentation of the public service. Since I have looked more closely at the instrument of delegation—or the number of instruments—I have found it rather surprising that the power to appoint acting chief executive officers should have not been delegated to the Public Sector Commissioner, but to the chief executive officer of each department. In my view, apart from, I think, undermining the whole concept of having a Public Sector Commissioner, it also restricts the capacity of the Public Sector Commissioner—or previously the Premier—to put people in, in an acting capacity, because the instrument of delegation only permits the chief executive officer to appoint someone from his or her department. Previously, the Premier could have appointed someone from another department. As I said in my submission, that seems to me to be beneficial to the public service, to have people acting, from wherever they come in the public service, from a career point.

The only other thing, Mr Chairman, I did not put in my submission is, I do not know whether you are interested in knowing my view of an alternative formula for selecting chief executive officers, apart from giving the job to the Public Sector Commissioner. Reading through my submission, I realised that I had criticised it for being cumbersome and all the rest, and did not really provide an alternative other than to give it to the Public Sector Commissioner. In short, I would really adopt what applies in the commonwealth, and give the power to the Public Sector Commissioner. Having said all that, I wish to make it clear that in my view the minister and the Premier should ultimately have the right to say who administers his or her department because they are accountable to the public if the department is found wanting.

The CHAIRMAN: Thank you for that further information, or clarification of those points of view. I propose to ask a series of questions which go under certain topics, and then other members of the committee may wish to follow through as well. Those areas I will be looking at are a more professional public sector, then going on to some structural issues between the different agencies, and then to ask questions relating to CEO selection mechanisms. If I can come to a more professional public service, I think you are aware, because it is stated in your submission, that the Premier's media statement talked about the establishment of a Public Sector Commission, with the purpose of providing a more independent and professional public service. In what ways do you understand that the Public Sector Commission would have that greater independence?

Mr Fielding: Well, as you can gather from my submission, I think, under the current structure, the Public Sector Commissioner, as established, does not have much independence because it is liable to have its powers of delegation—or to the extent that it is a department of the public sector—have the department abolished. I think that if they want a truly professional and independent public service, the Public Sector Commission should be established as a statutory office, as it is in many other jurisdictions. I think this is a move in the right direction, but I do not think it is truly

independent, because the Premier, as you would appreciate, could withdraw his delegation tomorrow if the Public Sector Commissioner does not do what he thinks should be done. I do not think there is a real degree of independence in it.

[1.25 pm]

The CHAIRMAN: So, potentially, there is independence in the sense that it is a different functioning entity, which perhaps is more about giving a greater focus, but when it comes to the meaning of “independence” that we all generally take—that is, is able to get on with doing the job and not be dictated to or unduly influenced—on that basis you are saying that you really do not see any great level of independence being established by the change.

Mr Fielding: That is my view.

The CHAIRMAN: Thank you. I take it from your submission that you doubt whether the Public Sector Commission can better achieve its cited aims of leading, building the capacity and driving the reform of the public sector under the Public Sector Management Act, which I think relates to some of your concerns with the nature of the Public Sector Management Act. Can you elaborate on your concerns as to how the Public Sector Management Act limits reform and capacity building in the public sector?

Mr Fielding: Fundamentally, I think the problem started from the day the legislation was enacted, by devolving so much authority to individual departments, and it seems as though the Parliament, when it set up legislation, had in mind the idea that I suspect McCarrey might well have had, that departments should compete with each other like businesses. It is not a single entity. As I put in my submission, perhaps not clearly enough, when I did the review, almost every CEO complained that they were competing with other CEOs to get staff or get better conditions of employment for their staff, and as a consequence there was no camaraderie. The act talks about there being a single public service for the benefit of the community as a whole, but in reality—I do not know how many departments or government agencies there are these days, but there are thousands of them, and they are all to a large degree competing against each other. That is the fundamental problem. The other problem I see for the Public Service Commission is that it cannot do adequately what the role of the commissioner is said to be. I am only reading from the website publication about the commission. It cannot really do what is said there because the act still gives exclusive authority to CEOs to deal with human resource management issues. The very limitations that the Premier had when he was the employer—he still is the employer, but before the delegation was made by law—pass on to the Public Sector Commission. The Premier cannot give any more authority to the Public Sector Commission, or the commissioner as the case might be, than he had, so all those problems about devolution and division of the public service still exist. I do not wish to be rude or offensive to anybody, but it is largely, I think, very much window dressing. It is really like the old Public Sector Management Office under another name.

The CHAIRMAN: I know you have covered this in your submission, so I am really just asking you to put it on the record again, but going down to a bit more detail to support what you have just said, is it primarily related to the fact that the HR provisions cannot be handled or are excluded from the employer, and rest with the directors general? What are some of the elements underlying the problems you have just rightly pointed out?

Mr Fielding: Some of the illustrations are that people can be doing the same job in one department or another and have different classifications, and I know that that is what happens. As an example—I hate to talk about the past, particularly at my age—in or about 1995, when we set out the broad classifications for the whole public sector, I remember that a lot of time and trouble went into seeing that administrative officers in departments were basically at the same level. For example, in the Department of Agriculture we had people in all parts of the state and they were all classified the same. That is an interdepartmental problem, I suppose, but externally, the person in the Department of Health was the same as the person in the Department of Agriculture, but as CEOs wanted to

promote people and there were no vacant jobs for them, they just reclassified them up, and classification creep has come up. If you had a proper public service commission, the commissioner should be saying to the CEOs, “You can’t reclassify any job”—one of the problems is that they reclassify the person rather than the job—“until you run it past my office.” That problem still exists, as I see it, under this arrangement. The other issue is the senior executive service, of which the act makes great play. The senior executive service is designed to encourage people to be trained as managers and from there to be promoted on. Currently, my understanding is that the heads of departments are reluctant to transfer people they have trained as managers to another department, and that is probably natural, but again the Public Sector Commission, or commissioner as the case might be, cannot do anything about that either. I see the Public Sector Commission as establishing a senior executive service so that there is a pool of management in the public service for the benefit of the public service in the future, but I cannot see how he can adequately do that under this arrangement, just as the Premier could not do anything about it, and just as the Public Sector Management Office tried but in the final analysis could not do anything about it. They are some of the examples, if that is what you are asking me.

The CHAIRMAN: Thank you, that was good. I will move on. You have already touched on this today, so I am seeking further elaboration. You raised concerns in your written submission about the fragmentation of the public sector through the introduction of the Public Sector Management Act. Do you believe that the Public Sector Commission is in any way positioned to address this fragmentation?

Mr Fielding: No, absolutely not, because it does not have any more authority. It cannot override the statute. I think section 29, which vests the authority in CEOs, still remains, and the Public Sector Commission cannot override section 29 of the act. One of the things stated on the webpage is that specific functions include “ensuring the overall public sector operational efficiency”. That sounds nice, and I agree with that ideal, but I cannot see how you can do that while the act says, as it does, that the exclusive authority to manage, especially the human resource functions and everything that goes with that, rests with the CEOs.

[1.30 pm]

Mr C.J. TALLENTIRE: Following on from the issue of the fragmentation of the public service, can the DPC successfully counter that fragmentation so that the agencies that are working on similar policy areas can have a coordinated government position?

Mr Fielding: I suppose it could. You are talking about the Department of the Premier and Cabinet, are you not?

Mr C.J. TALLENTIRE: Yes.

Mr Fielding: I do not see how it is any better placed than the Public Sector Commission. The act still limits the capacity to give directions about not just day-to-day matters; they are structural issues, and they cost the state money, which no-one seems to realise either, I do not think. I do not see that the Department of the Premier and Cabinet is in a better position even without the delegation but now that the delegation has been made, I do not see that the Department of the Premier and Cabinet has much of a role left.

Mr J.M. FRANCIS: This is an excellent submission and I thank you for it. When did you decide to make a submission to this inquiry?

Mr Fielding: I was written to late in December. I decided to make a submission because I was invited to make a submission.

Mr J.M. FRANCIS: Okay. When you formed your views about the separation, did you do that just from what you had read in the newspaper and on the website, or did you consult with people?

Mr Fielding: No, I formed my own view about the separation. As I said, I am a retired member of the commission. For many, many years I was the Public Service Arbitrator within the state commission and so I have formed my views from what I have seen from personal experience. I have sat in conferences where one group of employers in the CSA have said that someone in the department is getting this and that condition, such as Fridays off, and we want them. I formed my views from my experience and also from what people told me when I did the 1995 review of the act. As I said, people who know me know that I am conservative by nature. In retrospect, what the Public Sector Management Office was saying about devolution in 1995 has proven, in my experience, to be correct; it just has not worked, and the state is paying, I think, a high price for it because it is inefficient.

Mr A.J. CARPENTER: I will refer to a point that you have raised. I must admit that I did not realise, until I read your submission, that a huge fault exists in the structure of the Public Sector Commission. Just as the Premier cannot address matters below the CEO level, nor can the commissioner.

Mr Fielding: No, because you cannot delegate more than what you have got.

Mr A.J. CARPENTER: Yes. An obvious weakness must be addressed to get a truly strong independent public service. As you have said, it must be done by statute.

Mr Fielding: The act can be either repealed or amended. I do not see any point in going to the trouble of setting up a department that can be torn up tomorrow.

Mr A.J. CARPENTER: Other than as an interim step, perhaps?

Mr Fielding: I think that is right. I have not heard whether there is any legislation on the books to do it. The way public servants think and operate is they are always worried about their jobs, which is natural, so they will not be fearless if they are at risk of having their delegation torn up tomorrow or their department abolished. That is why I think there should be a statutory office. It does not make sense to me to have a public sector standards office and not have an independent Public Sector Commissioner.

Mr A.J. CARPENTER: Yes.

The CHAIRMAN: It might be appropriate to move on to the next area that relates to the various departments and the relationships between them. You cited in your submission that the functions of the Office of the Public Sector Standards Commissioner should be incorporated into the Public Sector Commission. What would you see that final model as being, and what would be achieved by that?

Mr Fielding: The model is that the public service commissioner would be a statutory officer, rather like the Office of the Public Sector Standards Commissioner, which office, I might say, reports directly to Parliament. That is what I would have preferred to have happened.

The CHAIRMAN: Are you suggesting that they be brought together as one?

Mr Fielding: Yes. I am suggesting that the Office of the Public Sector Standards Commissioner should be abolished. I would abolish it tomorrow. I think it is a costly waste of money. I hasten to say that I am not criticising the occupants; I am just talking about the office. I would see the public service commission, especially if it were a statutory body, doing what the Office of the Public Sector Standards Commissioner does; that is, type out a whole array of public sector standards and ethical standards for the whole public service and deal with the selection of CEOs, or anybody for that matter, in the public service.

The CHAIRMAN: Of course, that commission would be the employer as well.

Mr Fielding: Yes, but the Office of the Public Sector Standards Commissioner is not an employer. I do not see why the Premier needs to be the employer. The Office of the Public Sector Standards Commissioner should be the employer, as it was in the old days.

Mr A.J. CARPENTER: What about at the CEO level? You prefaced some of your comments by saying “the minister”, and by that I think you meant that either the minister for public sector management or the Premier should have the right to decide who runs the department.

Mr Fielding: I feel very strongly about it and it is one of my criticisms of the royal commission. The public service commissioner could appoint CEOs after consultation with the Premier or whoever but I would see those people as being appointed only for as long as the government that appointed them was in power, unless the appointee was from the public service. One of the problems of the Burke government was that the public service was fraught with people who were political animals rather than public servants. I do not see why the Premier cannot select who he or she wants as his or her CEO, but they should be formally employed by the public service commission. That is my formula. You must separate the selection process from who is the employer.

Mr A.J. CARPENTER: Yes, that is right. On the point about the length of time a CEO is appointed, we had Peter Conran as a witness earlier and Peter seemed to me to be saying that in the commonwealth government when a new government comes in, all the CEOs go and the government puts in place the ones it wants. Are you suggesting that the model we would have here would be for term-of-government CEOs?

Mr Fielding: In effect. I think that the commonwealth model is sensible. Although the Prime Minister has just appointed someone from the Victorian public service, in the main, they come from within the public service. They just swap them around without advertising for the position. I think that makes a lot of sense. People who are brought in from outside the public service should be term-of-government employees for the reasons that I mentioned. They should not be ministerial officers; they should be public servants. I agree with the royal commission that you cannot have a person from outside the public service running a public service department. If those people were, in effect, political appointees who were plucked by the minister of the day and the next minister did not want them, they should be put on the redundancy list as public servants.

Mr A.J. CARPENTER: Okay, but what about the circumstances that have provoked this inquiry regarding Peter Conran? He has a lot of experience in the public services but for this appointment he has been brought in from outside a public service and has been appointed for a length of time that exceeds the term of government by 12 months.

[1.40 pm]

Mr Fielding: Well, I do not like that. I would say that he should be appointed for the term of government, because it means that the public service and, therefore, the state taxpayers are caught with employing him for one year longer than may or may not be necessary, depending on what happens to the government, and he has got there—I was going to say without any due selection criteria—but he has been parachuted in, which was something the royal commission opposed. I do not wish to be derogatory about the man when I do not know what his capabilities are, but if you parachute someone in, then I think it is only right and proper that they should be on limited terms.

Mr J.M. FRANCIS: Can I ask you to add a bit more detail on what you mean by parachuting?

Mr Fielding: People who come in from outside the public service.

Mr J.M. FRANCIS: Are you aware of the selection process that was used for the director general?

Mr Fielding: Yes.

Mr J.M. FRANCIS: And the composition of the selection panel?

Mr Fielding: I do not know who was on the selection panel.

Mr J.M. FRANCIS: I am just curious about how you can come to the conclusion that he was parachuted if you were not aware of the selection process or who was on the panel.

Mr Fielding: Well, I came here deliberately trying not to mention names. I do not know the man that Mr Carpenter has referred to.

Mr J.M. FRANCIS: Peter Conran.

Mr Fielding: Yes.

Mr J.M. FRANCIS: I am just curious that if you are unaware of the process and who was on the panel how you can assert that he was parachuted in.

Mr Fielding: I accept that criticism.

Mr A. KRSTICEVIC: Is that something you have heard or been told by other people?

Mr Fielding: No, I do not know anything. I do not even know who was on the selection committee. I do not even know whether there were any other applicants for the —

Mr J.M. FRANCIS: There were three applicants.

Mr Fielding: I can say this: the people I associate with—I am trying to chose my words carefully—think that his appointment was political.

Mr J.M. FRANCIS: Are they other politicians?

Mr Fielding: No, I do not really associate—no, they are people who have had a public sector background.

Mr J.M. FRANCIS: Okay, but, as I said, I am curious, if you are unaware—it is not a criticism—of the process and who was on the panel, how you can assert he was parachuted in.

Mr Fielding: I accept that. Let us talk about it in the abstract, because I do not know the man that Mr Carpenter speaks about. I still hold the view that the minister and Premier of the day, in the final analysis, should be able to say who is the CEO of his or her department, because ministers and Premiers are answerable to the public if the department goes wrong. I do not have any objection to ministers saying, “I want Gavin Fielding to be my CEO.” In that sense, I would be opposing the proposition put by the royal commission that has led to all of this, but if I said that I want Gavin Fielding as the CEO, or X, Y or Z as the CEO, and that person was not already in the public service, then I think they should be there for the term of government.

Mr J.M. FRANCIS: Surely, it would be against the law for anyone involved in the selection process to favour a candidate because they were of a particular political persuasion.

Mr Fielding: I suppose it would be, but, in my view, if you adopt the commonwealth model, you do not have a selection panel. I think you do not need the selection process.

Mr A.J. CARPENTER: That is the key.

Mr Fielding: That is what I am saying.

Mr A.J. CARPENTER: Just appoint them.

Mr Fielding: Yes. Let us say that you were the Minister for Agriculture, for example, and you knew X, Y or Z was in private industry and, to you, that person seemed to be a good manager, and you did not think that the person who had been nominated by the public service process should be the CEO, then I think you as minister should be entitled to say, “I want Fred Nerk from private industry as my CEO”, without going through a selection process, because you as minister are responsible if the department goes belly up.

Mr J.M. FRANCIS: Which is basically saying that CEOs should be term-of-government employees.

Mr Fielding: Not necessarily. If someone comes from the public service who is already a CEO and you are impressed with them, and you say, “I am happy to have Fred Nerk as my CEO”—

Mr J.M. FRANCIS: Just one last question, because I would like to get past this point. I just want to clarify this: your opinion that the director general was parachuted in was formed from input from other public servants. Is that what you are saying?

Mr Fielding: I am saying that my friends, who have a public sector background—I cannot speak for them all, of course, but those who I discussed it with—had the view—

Mr J.M. FRANCIS: I do not suppose you would care to name any of them?

Mr Fielding: No. Those whom I have discussed it with take the view that it was a political appointment. I do not know the man, I do not know who was on the selection panel and I do not know who any of the applicants were. As I said at the outset, the individual that Mr Carpenter has mentioned I have never met. I do not know what his capabilities are other than what I have read in the newspaper, so I am not commenting on whether his claim was meritorious or otherwise. I am just putting the abstract that if the Premier wants X, Y or Z as CEO, he should be able to have that person without going through that process.

Mr A. KRSTICEVIC: Basically, what you are saying there is that the Premier of the day should be able to parachute people into those positions as they see fit.

Mr Fielding: Given the admonition I have just had, I hate to use the word “parachute”.

Mr A. KRSTICEVIC: You are saying that parachuting would be the best way to run a government.

Mr Fielding: In reality that is what happens in the commonwealth public service to a large degree. I do not think that anybody criticises the commonwealth public service. If there is any criticism, it is about our cumbersome selection process, which has grown up out of the royal commission, and I think it has proved to be fanciful to a degree. You can see one of the problems—I have only just thought it now. I accept the case that the current director general of department of Premier went through a selection process. If, as seems to be the case, he was the most meritorious applicant, there are still people around who think that he is a political appointee, notwithstanding that he has been selected on his merit, so would not it be better just to say, “This is the person I want” and—

Mr A.J. CARPENTER: And do it?

Mr Fielding: And do it.

The CHAIRMAN: Gavin, can I just try to draw together some strands there so that I have got it clear. You are saying that the government of the day or the minister responsible should have the ability to select who they want as a CEO, with the proviso that it would then be a term-of-government appointment, but it would also be open to them to select an existing CEO or public service worker who is established by a meritorious selection process, in which case, if they took the job, they may be term of government in the role, but then, if they moved out of the role, they would still retain their status in the public service. Is that what you are saying?

Mr Fielding: Yes, if you are going to go through what I regard to some degree—I do not want to use inflammatory words—the selection process. If you are already in the public service, then you stay; if you have gone through a selection process and been selected truly on merit, then I do not have a problem with that. I do not think what I am saying is altogether radical, because even under the act now the minister can say, “I want Gavin Fielding to be appointed”, notwithstanding the selection process recommends someone different. You have just got to publish in the *Gazette* your reasons for wanting Gavin Fielding. No-one, as I understand it, has been game to do that.

The CHAIRMAN: Which has some considerable politic risks attached to it.

Mr Fielding: Yes, of course, and that is no doubt why it has not happened, but theoretically, under the current system you can do it, but you cannot do it until you have gone through the advertising process, which is costing the taxpayer money and I think is unrealistic.

Mr A.J. CARPENTER: As we have seen in this circumstance, it does not mean to say the appointment is not going to be criticised as being political anyway. It does not mean that at all.

Mr Fielding: No, that is my point.

Mr A.J. CARPENTER: I think there are a lot of issues here and you have nailed one issue fair and square. I think the process could have been just as valid if the new Premier said, “I know Peter Conran would be an excellent head of the department; I want him appointed”, and he was appointed for the term of government. We have got this structure that comes out of the problems of the Burke era and WA Inc, which was then addressed by the royal commission. Just to let you know—this might add some strength to your understanding of the position—the selection panel included Barry McKinnon, Peter Brown, whom you would be familiar with —

Mr Fielding: From the education department.

Mr A.J. CARPENTER: Yes, and the one departmental head was Jenny Matthews from the Department of Local Government and Regional Development. So you can make your own judgements as to whether the outcome was supported by the people put in place in the structure—the desired outcome.

[1.50 pm]

Mr Fielding: Yes. I am not a politician, Mr Carpenter, and I do not want to get into a political argument, but I just wonder. I do not think there is any secret, but Maxine Murray used to have a group of three of us and every now and then she sought our advice once or twice a year. I think that if I had been setting up this panel, I would have put on somebody who had been a head of the Premier and Cabinet somewhere at some stage. I am not casting—I do not know this man, and I wish to emphasise for the committee’s record that I think the Premier should be able to have whom he wants as his head of Premier and Cabinet.

Mr A.J. CARPENTER: I know we are only talking hypothetically, but let us just say it anyway. Given what was hoped for as the outcome, I think it would have been very advisable not to have put on a selection panel anybody who has got obvious associations with the political party of the government. To me it does not make sense to do that. Barry and Peter are both publicly identified with the Liberal Party. It does not make any sense to do that.

Mr Fielding: If I had been advising the Commissioner for Public Sector Standards—which I have not, of course—I would think that I would have given her similar advice, and maybe that would have not allowed people like you to criticise the appointment.

Mr A.J. CARPENTER: I do not think I have. I do not think I would have said anything that could be interpreted as me saying that Peter Conran is not a good appointment.

Mr Fielding: I do not know the man and I am not certain about —

Mr A.J. CARPENTER: It is just the process, you know.

Mr J.M. FRANCIS: Just a real quick one. If I hypothesise that Ruth Shean chose that selection panel, would you have any reason to question that judgement?

Mr Fielding: No. All I am saying is that I understand that it is the job of the Public Sector Standards Commissioner to choose the panel. I understand that process only too well. What I had said to Mr Carpenter, and do not resile from, is that had I been asked to advise her, I would have suggested that it would be better, from a perception point of view, if there were no political people who are former politicians on it.

Mr J.M. FRANCIS: So, you would not have chosen the same panel?

Mr Fielding: I would not have chosen the same. Again, I am not casting aspersions on the selection panel, because, except for the public servant, I know the other two people, and they are eminently sensible. I have learnt from my own work as sitting on the commission that perception is more important than the actual outcomes.

Mr A.J. CARPENTER: We all learn from experience; you are right.

Mr A. KRSTICEVIC: I was just going to say that in terms of what we look at in this particular appointment, I know some people would imply there is some political play here. However, from my limited viewing of the situation, as far as the candidates are concerned I would say that irrespective of whether there were 20 people, there is no doubt that the candidate who got the position would have been in the shortlist of two or three. There is no doubt about that in my mind. Therefore, in terms of people being able to say anything about the quality of the candidate and the deservedness of the candidate in terms of experience across the whole of Australia, there is no doubt that it is a very high-calibre appointment. So, in some respects political I think is really the secondary issue that it is playing, and also in terms of, obviously, the number of people applying, the field is open and anybody and everybody could apply for the position and was given, I think, a standard approach and process.

Mr Fielding: I suppose my point is: why go through all of this process? It is costing the taxpayer a lot of money. The system in the federal public service, which most people in the public sector look to as —

Mr A. KRSTICEVIC: The answer I give to that is that in this case we have gone through the process to get someone on merit, rather than, as you have stated before, just parachute someone in who may not necessarily be the best candidate, so at least we have got the best candidate without political persuasion being the overriding determining factor.

Mr Fielding: I do not want anybody to think that I do not think that the new director general did not get it on merit, because I do not know the man and I am not in a position to make that judgement. I stand admonished if I think otherwise. I was really talking about the general in an abstract way.

Mr A.J. CARPENTER: You are not admonished. I think you are speaking the obvious.

The CHAIRMAN: Perhaps I can move us back. I did have questions on that CEO appointment, but from my perspective I think we have adequately covered it. Other members may wish to come back to that. I would like to return if I can, Mr Fielding, to issues of the various structures. You have detailed that the complexity of the Public Sector Management Act is likely to undermine the capacity of the new Public Sector Commission to achieve its aims and objectives. Would you like to elaborate a little on that statement in terms of how complexity is going to be a problem for it?

Mr Fielding: Yes, because the Public Sector Management Act speaks of people who are in “SES organisations” and people who are in “non-SES organisations”, people who are “public servants”, and people who are just public sector “employees”. Also, that there is an arrangement whereby the Premier is the employer of a number of “chief executives” but he is not the employer of a number of other “chief employees”. That is another distinction the act also draws. There are all these various categories or classes of chief executive, to say nothing of employees, and that cannot be dealt with properly until the legislation is changed to get rid of them all and call everybody a public sector employee. So just as the Premier is caught with all these problems, so to will the public service commission. Since I have left the commission, there has been, with the break up of Western Power, all sorts of problems arising out of whether people are “public service officers” caught by this award or this agreement, or whether they are outside it, and all those things are just a nightmare and a lawyer’s delight. They are structural issues within the act that nobody can do anything about until Parliament rewrites the act. Although I have a vested interest in the sense that I review the act, I just cannot see how the act survived for about 14 years without any major amendment.

The CHAIRMAN: I suggest also that you have a vested interest in the current arrangements because of your expertise, which you are undermining by your statement!

Mr Fielding: Mr Chairman, no. I know it is a worry for managers in the public sector that some people are public service “officers” and some people are not; they are just public sector “employees”. As you know, Mr Chairman, for many years I was chairman of the Railways Classification Board, and that had a distinction between officers and employees. They had two separate awards. They worked side by side, but they had different conditions of employment. If a public sector employee was a guard, for example, and he was promoted to become a stationmaster and was then a public service officer, we had issues of long service leave because one was seven years and another one was 14, and their entitlements—it was just a manager’s nightmare. I think the common man who walks down St Georges Terrace would be staggered to think that those sorts of things are enshrined in the legislation.

The CHAIRMAN: If I could move on, there has been a suggestion to us that the Queensland model involving a board of commissioners of public service has real merit and should be adopted here. This would bring in a breadth of experience to help advise the public service commission or Public Sector Commissioner. Are you aware of this model, and how do you view it?

Mr Fielding: Only vaguely. I have thought about it, and I think that a board of three, rather than a public service commissioner, so that you have a public service board, is probably the better way to go for the reasons that you just advanced—that three opinions or three minds are better than one, probably.

The CHAIRMAN: My final question is: would you like to elaborate on your statement in your submission that from time to time there has been conflict between the Corruption and Crime Commission and the Commissioner for Public Sector Standards? Do you want to make any further comment on that?

[2.00 pm]

Mr Fielding: I only have this second hand. You are better off asking Maxine Murray. As you know, one of the tasks of the Public Sector Standards Commission is to hear complaints about breaches of process. I gather that from time to time there were allegations of nepotism or fraud or something else that fitted the definition of corruption under the Corruption and Crime Commission legislation. The Corruption and Crime Commission asked Maxine Murray’s office—the Office of the Public Sector Standards Commission—if it could have evidence of the material that was given to her. That places her office in a difficult position when it gives information, not expecting it to be made available to a third party, in this case the CCC. That is the conflict I was talking about. I understand that she and Kevin Hammond either sought legal advice or had discussions about it when Kevin Hammond was the chairman of the CCC. That was a worry for her because if you give evidence to one body, you do not expect it to go to someone else. I think she felt that she was the guardian of what was given to her. My impression is—I cannot remember the details - that she was reluctant to hand it over, and that would have been my attitude too.

Mr A.J. CARPENTER: There are a lot of people who provided information who never expected it to get to the CCC in one way or other.

The CHAIRMAN: Thank you very much, Gavin, for your written paper and your submission. A transcript of this hearing will be provided to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee’s consideration when you return your

corrected transcript of evidence. Thank you for your written submission and for giving us the benefit of your considerable years of experience in this area.

Hearing concluded at 2.02 pm