

PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO HOSPITAL TRUST ACCOUNTS

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON WEDNESDAY, 13 AUGUST 2003**

Members

Mr J.B. D'Orazio (Chairman)
Mr M.G. House (Deputy Chairman)
Mr J.L. Bradshaw
Mr A.J. Dean
Mr M.P. Whitely

Committee met at 10.05 am

DAUBE, MR MICHAEL MATTHEW
Director General, Department of Health,
examined:

AYLWARD, MR PHILIP JOHN
Acting Group Director, Department of Health,
examined:

The CHAIRMAN: Welcome to the Public Accounts Committee hearing. As you are aware, we have requested your presence here in relation to a particular report. Before I deal with that, I will read the procedure for the examination of witnesses. The committee hearing is a proceeding of Parliament and warrants the same respect that the proceedings of the House itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee can be regarded as contempt of Parliament. Have you completed the "Details of Witness" form?

Mr Daube: I have, as has my colleague Philip Aylward, who is the group director of finance and information.

The CHAIRMAN: Do you understand the notes attached to it?

The Witnesses: We do.

THE CHAIRMAN: Did you read the witness briefing sheet regarding giving evidence before the committee?

The Witnesses: Yes.

The CHAIRMAN: Have you made a formal written submission to us?

Mr Daube: We have not at this stage made a formal written submission on this matter. I would appreciate an opportunity to make some brief preliminary comments to you.

The CHAIRMAN: Yes. I received your letter, which made the request for some confidentiality in relation to the committee. The committee has considered that request, and gives an undertaking that it will keep the report as confidential as possible. However, it would like the main issues of whether money was claimed etc to be in the public forum. Names and specifics of the document will not be released. We will keep that information in confidence.

Mr Daube: May I run through some of the themes? Then I will have complied with the legal advice with which I have been provided. I appreciate the opportunity to speak briefly. I am conscious that the committee requested me to provide it with a copy of the report by the Health Insurance Commission on investigations into allegations of inappropriate billing of Medicare by King Edward Memorial Hospital for Women and the Princess Margaret Hospital for Children. I note in passing that although the reference is generally made to both hospitals, as they are under the one administration, the discussion relates to Princess Margaret, not King Edward. That report was sent to me on a confidential basis and was marked "commission-in-confidence" by the acting managing director of HIC on 25 March. It was received on

28 March. I responded to the committee on the basis of legal advice noting at the time that I was not able to provide a copy of the report for the reasons to which I referred. I willingly acknowledge the obligation to comply with the summons and provided to have the report with me for this purpose. I have brought a spare copy and sufficient copies for members of the committee.

The themes I wanted to raise briefly are the confidentiality with which you may wish to treat the report and the context in which the report should be seen. You will be aware, Sir, that the legal advice I have received is that the department and I have a duty of confidentiality in respect of the report for three interrelated reasons. The first relates to the nature of the report's contents, and the circumstances in which the report was made available by the Health Insurance Commission and the confidential nature of that. The effect of that report being confidential is that any use of its contents for any purpose that is inconsistent with the purpose for which the information was provided and obtained is unauthorised without HIC's consent. The second reason is that the report contains information obtained by HIC as a consequence of the exercise of compulsory powers, and information in such circumstances should be used only for the purposes for which the information was obtained. Clearly, that confidentiality attaches primarily to the commission. Having become aware of the information's confidential character, we feel under a similar obligation. The third reason relates to the confidentiality obligation arising from section 130 of the Health Insurance Act, as I quoted in my letter to you. As indicated, the report contains information relating to individual's affairs in a form that identifies some individuals and allows others to be identified. Much of that information was obtained by HIC officers in the exercise of their functions under the Health Insurance Act, as released and authorised by section 133 of the Act. There are some obligations there. I note also that some parts of the report contain the substance of the legal advice given to King Edward and Princess Margaret Hospitals and the Metropolitan Health Service Board. That legal advice was released to the commission by the former Commissioner of Health for the limited purposes of the commission's investigation. That release was for a specific purpose and was not meant to waive legal professional privilege in respect of the legal advice.

There is a further important issue arising from this matter from my perspective: if the report and its contents were made public, there could be serious implications in future dealings the department might have with HIC and other organisations that might consider providing documents on a confidential basis, even though the information may not be directly involved with this matter. For those reasons, as well as the contextual issues to which I have referred briefly, I respectfully request that the committee consider the confidentiality that should apply to the report once it is provided. Given the circumstances in which the report was provided to us, the circumstances of evidence that has been provided to HIC, and the possible implications arising from the publication of this report, we request that the report be treated with confidentiality.

There is one other important contextual matter: although we have received the report from the HIC, we see it as the beginning of a consequent process. We have received a letter from the HIC with the report. We have responded in some detail. I received yesterday a further response from the commission, and we anticipate further discussions with the commission. The legal advice we have received on the report is that we have a great deal of difficulty with some of the legal positions taken by the HIC. This entire matter, as you will be aware, is factually and legally extremely complex. Although a range of observations and assertions are made in the report, our

legal advice disagrees with many of them. These matters are being addressed in our correspondence with the commission. We hope they are capable of resolution, but the legal views on some key matters differ significantly, particularly in relation to section 19(2) of the Health Insurance Act.

In summary, I am here of course to comply with the summons and to provide the report to you, as I do very willingly. I note that in this exceptionally complex area, our legal advice is at odds with many of the positions taken by the HIC. I request that the confidentiality aspects be considered by the committee. I note also that although the report refers to seven attachments and eight references, those documents were not provided to me by the commission. Therefore, I am not in a position to be able to direct them to you.

The CHAIRMAN: Thank you for that. We understand the reasons for the confidentiality. You must also understand that the Public Accounts Committee has been investigating the trust accounts of Princess Margaret, and that this report is fundamental to our inquiries. To remind you of the position, the allegation made to us was that money was inappropriately charged to the HIC. The report is fundamental to the inquiry. Without the report and information in it, it would make it difficult for the committee. The Public Accounts Committee has not reported on the trust accounts matter, as it is waiting for the report because it will be the fundamental basis of the committee's report. The committee has given you an undertaking that, in essence, it will keep the report confidential. In other words, all the information will be confidential apart from the items we need to outline; for example, where the report indicates that sums of money have been inappropriately claimed by the hospitals and/or doctors from the HIC.

Mr Aylward: I think that is probably an area where our legal advice differs significantly from the HIC's advice. The report, as committee members will see, makes assertions along those lines - namely, that it believes there have been funds directed that contravene sections of the Health Insurance Act. However, our legal advice purports to differ.

The CHAIRMAN: I understand that you want to defend your position. All I really want to know is whether HIC is making assertions that substantial sums of money were inappropriately claimed.

Mr A.J. DEAN: I have one fundamental question before you start: what period does the HIC report cover - from what date to what date?

Mr Daube: Subject to correction, the HIC investigation and claims relate to the period from 1 July 1998 to 30 October 2000. You will have the opportunity to draw your own conclusions from the report. To respond directly, the commission asserts that moneys were sometimes inappropriately claimed. Obviously, that is a matter for discussion with them, and our legal advice is that we take -

The CHAIRMAN: The committee is also not on a witch-hunt. It wants to understand only whether there was a problem and the nature of the problem. All sort of allegations have been made about how the funds were used and derived and which accounts they went to. We still have the problem of special purpose accounts versus trust accounts. We understand all that. We want to know whether funds were inappropriately claimed during this period, according to HIC - even though you disagree with it.

Mr Daube: The answer to that, Sir, is yes.

The CHAIRMAN: What is the range of the funds involved? Are we talking about \$10 million or \$20 million or \$1 million?

Mr Daube: In terms of the request for repayment, the amount that HIC requests is a little over \$1 million; that is, \$1.2 million.

The CHAIRMAN: That was not the question I asked. I asked how much was the outstanding money inappropriately claimed.

Mr Aylward: They say in the summary and the notes that they determined that \$1.2 million was inappropriately claimed by the hospital for this period.

The CHAIRMAN: Is that the money claimed by the hospital? Are they making any claims about claims by doctors on the same basis?

Mr Daube: That is by doctors working in the hospital. It is the totality of the amount. There is no other figure to which they refer in terms of claim or any estimates.

Mr M.G. HOUSE: How many doctors does the \$1.2 million relate to?

Mr Aylward: We have not counted. It talks about a range of clinics operating at Princess Margaret Hospital. It refers, as the director general mentioned, to specific doctors. It does not specify the number of doctors involved, but it may do so in the attachments we did not receive. We cannot glean from this report the total number of doctors.

Mr M.G. HOUSE: Are you talking about King Edward exclusively - not Princess Margaret?

Mr Aylward: The report deals -

Mr M.G. HOUSE: With both?

Mr Aylward: The report deals purely with the doctors at Princess Margaret. From the administrative point of view, it talks about Princess Margaret and King Edward as a single entity.

The CHAIRMAN: To get it right on the record, the money we are talking about is money claimed by doctors to Medicare; that is, moneys not going to the doctors but coming to the health system; is that what I am hearing?

[10.20 am]

Mr Aylward: That is our understanding.

The CHAIRMAN: According to this record, the doctors were claiming this money from Medicare, which they then put into the state health system. It did not go into their trust accounts for their own use. Have you studied that money trail? That is what I am asking in a roundabout way.

Mr Aylward: It is part of those discussions we are having with the Health Insurance Commission through and with our legal advisers. We are still disputing and certainly have good grounds to say that the arrangements in place were valid arrangements. There was nothing irregular.

Mr M.G. HOUSE: In other words, you disagree with the report.

Mr Aylward: There are substantial parts in terms of their legal opinion that we disagree with.

Mr M.G. HOUSE: Do you disagree with it also? You are saying your legal opinion disagrees with it.

Mr Aylward: Absolutely.

Mr Daube: Yes.

Mr M.G. HOUSE: In other words the report is wrong in your view.

Mr Daube: Aspects of the report are wrong. This is not one in which I believe there is a great adversarial approach between the Department of Health and the HIC.

Mr M.G. HOUSE: You might paint it that way but you have come in here saying the HIC is wrong and you are right. You might not think that is adversarial, but it seems quite strange to me.

Mr Daube: As I said in my introductory comments, this is an exceptionally complex area.

The CHAIRMAN: Tell me what is so complex about people claiming money which they are not entitled to?

Mr Daube: I do not claim expertise but the interpretations of section 19(2) of the Act are a matter on which our legal advisers differ significantly from those of the HIC. I am happy to make available to you -

Mr M.G. HOUSE: That was not the question. I do not care whether it is complex. You said this is a complex matter. I want to understand why it is so complex. The doctors claimed and were paid appropriately or they were paid inappropriately. That is not complex to me. Please explain why you think it is complex.

Mr Aylward: I guess it is due to the fact that the HIC took a view that a fairly extensive investigation was required, which it undertook. When the HIC produced a report we obviously took that into account. We took steps. You will be aware that on the basis of the review by the HIC, we took, I guess, a pre-emptive position and stopped the practice of billing patients by some of those clinics in which the doctors and the hospitals were participating. When we finally received the HIC report, we believed there was a significant difference in the interpretation. Again, it gets down to an interpretation of what is appropriate under the HIC Act and what could be legitimately billed under the Australian health care agreement, as it is in other States and, as the committee would be aware, in private clinics.

Mr J.L. BRADSHAW: If you stopped the billing would that not concede that inappropriate action was being taken previously?

Mr Aylward: We found that there was sufficient uncertainty, particularly with practitioners, that we thought it prudent to stop the billing at that time - and still do - given that there was a formal investigation under way.

Mr M.P. WHITELEY: Had the practitioners or the hospital at the time sought clarification about this? You are describing it as a murky, complex area. It seems they made assumptions that ran in their favour rather than tried to get clarification.

Mr Aylward: The practitioners?

Mr M.P. WHITELEY: Yes, or the hospital

Mr Aylward: I think the practitioners acted at all times under the direction of the hospitals and the legal entities.

The CHAIRMAN: Can I remind you, Mr Aylward that you wrote a report to the department saying that those practices were inappropriate.

Mr Aylward: That was an initial view we formed when I was in the Metropolitan Health Service Board as the acting chair of the audit committee. Subsequently, we are responding to what is not a clear black and white set of -

The CHAIRMAN: I understand that. Following from that, we are going to put the state health system in a position in which it might owe money. More importantly, you might put some of the doctors in a position in which they face tax liabilities and all sorts of problems if what the HIC says is correct.

Mr Aylward: We are not certain that will be the case.

The CHAIRMAN: You are not sure which funds that money went into. Did the money go into SP accounts or their private accounts?

Mr Aylward: I did not bring that information with me today.

The CHAIRMAN: We want to digest the report and, obviously, there will be more discussions.

Mr Daube: I will give as honest an answer as I can to the question which is: do I agree? I said that, in this area, I must work on the best advice I can from our legal advisers, Crown Solicitor's officers and so on. Clearly, I am persuaded by that advice. Do I claim to have the detailed legal expertise to make a judgment on this? No; I must act on the best advice available to me.

Mr J.L. BRADSHAW: Through the Metropolitan Health Service Board, a review was undertaken of what was taking place. It has been pointed out by the chairman that he considered what was going on to be inappropriate. It seems strange to me that you have had a change of heart since the report on whether it was legal or illegal.

Mr Aylward: I think there was sufficient doubt at the time that the arrangements may not have complied with the Health Insurance Act. The prudence of a stance adopted by the MHSB at the time was to start to decommission or cease those practices, particularly at the time ongoing discussions were being held with the HIC, which also expressed concern. We agreed as a system, because we needed to continue to work with the HIC, to improve the opportunities of this system to access revenue, to hold off and to slow down those arrangements until the report was finalised. The report, as mentioned by the director general, was provided in late March.

Mr J.L. BRADSHAW: From your memory of the audit, was double-dipping taking place; namely, two fees claimed for the same service?

Mr Aylward: I did not bring that information with me. My recollection was that there was no impropriety by medical practitioners.

The CHAIRMAN: That was not the question. Were you paying the doctors when they were claiming Medicare benefits? That is a simple question.

Mr Aylward: I cannot recall the specifics on every individual practitioner at the time. There are provisions under their agreements and various arrangements, such as in the enterprise bargaining agreement, for fees to be raised on behalf of the doctors as well as private income.

Mr M.P. WHITELY: That is the type A and type B contract, from memory. Tell me about the system you had in place to make sure there was compliance with that.

Mr Aylward: The system?

Mr M.P. WHITELY: Correct me if I am wrong, but there were type A and type B contracts, one of which you had access to -

The CHAIRMAN: This is private practice. We are not talking about private practice; we are talking about public patients.

Mr M.P. WHITELY: How did you monitor? You alluded to that being an issue and that some doctors could claim. How did you know which ones could and which ones could not claim?

Mr Aylward: I guess it was part of their employment contract. It was a fairly defining monetary process.

Mr M.P. WHITELY: I know that, but how did you as a paying body systematically monitor whether they should be getting payment?

Mr Aylward: It is something I did not bring with me today. I may not have the precise information you are seeking in terms of the specific situation.

Mr M.P. WHITELY: That is the heart of this issue is it not? The claim is that double-dipping was going on. That is a core issue here, surely?

Mr Aylward: I think that in subsequent reviews by the Auditor General on this area, I did not detect that there was any double-dipping by medical practitioners.

The CHAIRMAN: Let us clear this up. The Auditor General did not investigate the revenue side; he investigated the expenditure side. That is the comment this committee made at the time of that report. We commented at the time that we were a bit premature in coming to the fact that the accounts were cleared waiting for this report. Do you now concede that some of the comments made by Michael Moodie; the things that happened at Princess Margaret Hospital; the changes that occurred, supposedly because of allegations; and a report to this committee from another senior officer who also went to Anti-Corruption Commission about what was happening, were allegations that had some basis?

Mr Aylward: I did not come today to compare their allegations or assertions made at the time. I have not come with any opinion to offer.

Mr Daube: In fairness to us - obviously we are open to any questions put to us - our intention was to provide the committee with the report we have from the HIC and to discuss issues around that. I came into this role recently and I cannot talk about the history.

The CHAIRMAN: We understand that you are new on the block. This has a lot of history. It goes back a number of years - well before your time. A number of allegations have been made about people being removed because they blew the whistle on this type of operation. It is fundamental to our inquiry and we want to make sure that whatever we say at the end of this is true and correct. Obviously, this report gives some validity to some of those claims.

Mr Daube: It would be important to provide you with that report. It is also important - if you agree, I propose to do so - that we provide you also with legal advice we have obtained in relation to the report, which will either clarify or complicate, as legal advice does, but at least we will give an indication of the advice we have on the comments of the HIC. If there are further issues you wish to pursue in relation to the monitoring of historical issues and so on, we would obviously be

willing to speak to those. However, I would prefer to be better prepared on those matters.

The CHAIRMAN: I would like new information on the money trail in relation to the Medicare payments to those individual doctors who made claims while they were working for the hospital system and to which accounts the money went. If it went into the state health system one could argue it was cost shifting. If it went into private accounts for the benefit of individuals it certainly was not cost shifting. It changes the whole situation. As a member of this committee I would like information on which accounts the money went into. The committee will then examine the expenditure.

[10.30 am]

If it went to a hospital account, it could be said that doctors were acting for the benefit of the health system - basically, cost-shifting.

Mr Daube: We will seek to do that. There is not a deal of detail in this report as you will see. It may be hard to pursue some of those issues, but we will certainly do that to the best of our ability.

The CHAIRMAN: That is fundamental to our inquiry. Our staff may need to help, or the committee might want to do that itself. It is important ultimately where the funds came from and which accounts they went into. It has tax liabilities, and implications for the State, let alone what happened to the funds. If you argue to me that they were for the benefit of the State, I would like to see that the funds were for the benefit of the State and not the benefit of individual doctors.

Mr M.P. WHITELY: There are details needed about who controlled the accounts and how they were authorised to find out the real benefit.

Mr M.G. HOUSE: Are you in a position to tell the committee that you are confident that this is not occurring at the moment? It finished almost three years ago in the sense of the end of the report in October 2000. Are you confident that you can give the committee some comfort about that aspect?

Mr Aylward: Yes. At the moment, the arrangements referred to in this report are not in existence any longer. However -

Mr M.G. HOUSE: I am not sure whether you are choosing your words carefully when you say "At the moment". I just want a yes or no answer, if possible.

Mr Aylward: The arrangements at Princess Margaret were discontinued. The health system has spent a considerable amount of time in recent years, and certainly since the single entity was brought together, looking at how we might go forward to look at opportunities to appropriately, legally - and with the appropriate compliance and support from HIC - to look at ways of improving the health system by attracting additional revenue from the Commonwealth. The arrangements that were in place were discontinued.

Mr Daube: Those arrangements were discontinued. If we were to develop anything along those lines, it would only be if we were absolutely confident that the HIC and the Commonwealth were content with that process.

The CHAIRMAN: The other question I would like you to assess when you look at the accounts and where the money is whether the doctors were being paid by the State at the time they claimed these benefits. The third matter has not been canvassed at this time. Was there any private charging of the same patients by individual doctors? I am not sure how difficult it will be for you to chase that up. Some process is needed

to make sure the matter is aboveboard and to make sure that private patients under the AMB arrangements are also not charged for the same service privately. That would make it triple-dipping, not double-dipping.

Mr M.P. WHITELY: Did the \$1.2 million come about because it is the claim the Commonwealth is making from the State?

The CHAIRMAN: Is that what it wants you to pay back?

Mr Daube: That is the question.

Mr M.P. WHITELY: There may well be more money if the triple-dipping as described is occurring.

Mr Daube: The HIC has conducted a very full investigation, and the totality of the figure it seeks from us is \$1.254 million.

The CHAIRMAN: There is a difference between what they ask you to pay back and what is actually claimed. Is this a negotiated position? Has HIC said there is a lot more than this -

Mr Aylward: I am sorry, Mr Chairman -

The CHAIRMAN: I have not seen the report, so I do not know.

Mr Aylward: Clause 11 or paragraph 11 of the report reads -

... HIC determined that \$1,294,935.00 was inappropriately claimed by hospital doctors practising from the "privatised" clinics attached to KEMH/PMH.

That is its determination, and it sought a refund of that amount from the State.

Mr M.P. WHITELY: That refers to a benefit accrued to the State.

The CHAIRMAN: The question is that the claim is by the individual doctors, so why is the HIC coming back at the State?

Mr Daube: There are two things. First, this matter will be discussed with them, and the perception is that the doctors were acting on the basis of administration process arrangements, and that this was a matter that related primarily to the administration of the system.

The CHAIRMAN: I understand that, but the claim legally for Medicare is made by individual doctors; it cannot be made by the State. The money was being claimed by the doctors. They are saying it is inappropriate. Why is HIC coming back at the State? Have you signed a legal document saying that doctors should have done it on our behalf?

Mr Aylward: Under a series of formula arrangements - arrangement A and B - we bill or can raise a bill for and on behalf of the medical practitioner. In return, under arrangement A, they receive an additional private practice allowance. We can raise a bill for and on behalf of the medical practitioner. With a private practice -

The CHAIRMAN: Before you go to the next one, are you saying that you claimed the money from Medicare, not the doctors?

Mr Aylward: The claim by the doctor, we do -

The CHAIRMAN: Who signs the form and says, "I've claimed this money from the feds."

Mr Aylward: The medical practitioner.

The CHAIRMAN: Then why does HIC come back to the State?

Mr Daube: I think we are still on the same theme as earlier. We discussed with the commission their view and our view. When it was being done by doctors, it was done on the basis of pre-history -

The CHAIRMAN: Absolutely. We know it was three years ago and before your time.

Mr Daube: Nonetheless, this was done by doctors on the basis of requirements placed on them and requirements made by the administration. Therefore, it is appropriately carried by the administration. It was not being done on the initiative of the doctors.

The CHAIRMAN: If that is the case, the committee would want to see those arrangements in writing. I cannot believe any bureaucrat would make in writing arrangements that are illegal.

Mr J.L. BRADSHAW: You would not make the arrangement with HIC; it would be with the doctors. Therefore, the arrangement between HIC and the doctors should be HIC's target -

The CHAIRMAN: Not the State.

Mr Aylward: It would be important to have a look at and examine the report.

The CHAIRMAN: We will and get back to you.

Mr Aylward: There is significant tension between us and HIC. Most of these doctors - I have not tracked down all the individual doctors involved in the arrangements - were acting in accordance with instructions they received from their employers.

The CHAIRMAN: Has any action been taken by the HIC to your knowledge against individual doctors?

Mr Daube: No, not to our knowledge.

The CHAIRMAN: Is anything pending?

Mr Daube: No.

Mr M.G. HOUSE: Was the legal advice you are using today from Crown Law or did you go outside Crown Law?

Mr Daube: It was through the government departments - through our legal department and Crown Law.

Mr M.G. HOUSE: And Crown Law?

Mr Daube: In conjunction with Crown Law.

Mr M.G. HOUSE: It does not surprise me one bit that Crown Law gives advice to say as little as possible and contrary to the report. Does it surprise you as a senior bureaucrat? It does not surprise me!

Mr Daube: I have been enormously impressed with the calibre of the advice we have had from Crown Law.

Mr M.G. HOUSE: You are good at not answering questions. You are as good as I have seen. I have seen a few bureaucrats, and you get the prize!

Mr Daube: This is a genuine view. If Crown Law did not feel that way, it would not support it.

The CHAIRMAN: Can we have a time frame in which you will provide the information? The inquiry been going for nearly two years. We want to put it to bed. We waited for this report, which is the foundation to our report. We would like closure, and would like your response as soon as possible. We will take whatever lines of inquiry we need in the meantime. When can we expect it?

Mr Daube: I would assume, in the legal advice, within the week.

The CHAIRMAN: Not legal advice, but the financial -

Mr Aylward: To be honest, in terms of tracing it down, I am not certain how detailed or how difficult it will be. However, I should be able to get back to the committee today and talk about a reasonable time frame.

The CHAIRMAN: Can you advise our staff of the time frame? The committee needs to discuss it, and our financial people may need to look at those accounts and where the money went. I am not sure what the committee will resolve to do.

Mr M.P. WHITELY: I am not sure whether an issue has been covered. With type A and B contracts - I cannot remember which is which - one is allowed to allow claim higher payments from Medicare.

Mr Aylward: Bill privately

Mr M.P. WHITELY: On top of that \$1.2 million, which is an issue between the Commonwealth and the State, there may be an issue between the State and some of the doctors. What sort of monitoring went on to ensure that they were complying with the terms of their contract so they were not triple-dipping or even double-dipping on the State. Do you understand? It goes above and beyond the \$1.2 million.

Mr J.L. BRADSHAW: Doctors were on salaries at the hospital as well as receiving these payments.

Mr M.P. WHITELY: Exactly. It is a different issue.

Mr Aylward: I can probably give the committee a good understanding of what is in place now. The committee heard evidence from the previous administrators of those area. I would like to go back and look at that time at PMH to see exactly what monitoring practices were in place to cover that. It may seem very different to what is available today.

Mr Daube: We will do our level best for you on this. I am looking at the report. Bearing in mind that it goes back some period of time, HIC had a huge investigation on this matter and put a lot of resources into this. In some areas, they were unable to provide some of the documents, documents could not be located, there was uncertainty about where the documents might be and the value of the documentation. We will find whatever we can. I cannot promise that the people are around who knew everything then or that we can provide all the data. We will absolutely do whatever we can.

[10.46 am]

Mr M.P. WHITELY: The HIC's focus would not have been on the relationship between the State and the doctors; it would have been on the Commonwealth and the doctors and the Commonwealth and the State.

Mr Aylward: I think they covered all aspects of the arrangements they chased. They looked at the source of the billings, the administrative arrangements in place between us and the doctors.

The CHAIRMAN: Can you in written form advise us how many individual doctors are involved? It is probably in the report. I am not sure whether the appendices are there. Can you tell us how many doctors in general terms were involved?

Mr Aylward: Yes, we will make efforts to do that.

Mr J.L. BRADSHAW: They went to accounts commonly known as trust accounts - I think there were 1 000 in place some years ago.

The CHAIRMAN: It was 1 200.

Mr J.L. BRADSHAW: Do doctors still channel money into those accounts and use them down the track for going to conferences or whatever? Can you advise us on that when you come back to us?

Mr Aylward: I think the administration and the control of accounts we now term special purpose accounts has changed quite substantially in terms of authorised expenditure out of those accounts. We certainly took on board both, particularly the Auditor General's recommendations, and have picked up on things highlighted by this committee and our internal audit program. It is a substantive and large focus by the department to get this right. We are fairly confident that authorisation of expenditure is in accordance with the Financial Administration and Audit Act, with the appropriate delegations. That is the feedback we get from the OAG.

Mr J.L. BRADSHAW: Can you tell us whether doctors' income is going into special purpose accounts, which may look like tax minimisation or tax avoidance, or is that not going on these days?

Mr Aylward: I am not sure. In our view there are many allegations that it may have occurred. Certainly, there is no evidence that it did or that we have seen so far. We will obviously wait. Processes are occurring at the moment, including the work of this committee. This area has been reviewed and reviewed over recent times.

Mr M.P. WHITELY: It is important to note that the Auditor General's report referred to a period after this. Basically, it was a cleaner bill of health than the period we are looking at. It said things had improved. However, the HIC report applied to the period after the period we are examining now.

The CHAIRMAN: Interestingly, the ACC said it was out of its jurisdiction and was therefore not investigated by the ACC, so it is a problem.

Mr Daube: This is not a criticism of the HIC, but, in some ways you will be disappointed with the level or absence of detail and specificity in the report. There is not much I can do about that. That is part of the problem. We are dealing with some very general issues - some conclusions fairly broadly reached. We are dealing with - this is no criticism of the HIC - a report that says in some instances that something was asserted and then further credence was given by a press report. I think you will be disappointed with the detail. You may wish to explore other avenues. I would not want to raise your expectations that there is great detail in this report. There is some information on which a conclusion is based and then the request that we reimburse the commission \$1.25 million. After discussion with the commission, the department felt that was the appropriate avenue. We are now discussing that matter with the commission.

The CHAIRMAN: Are you telling the committee that you have taken the liability from the doctors?

Mr Daube: In that context, yes, because, on advice, we felt that was the appropriate course of action.

The CHAIRMAN: My next question obviously had to come. Have you checked to make sure those funds that went into accounts were not used for the specific purpose of those doctors?

The answer is yes or no. If it is no, how can you accept their liability. Obviously, it is no, because you told me before that you had not done that. If that is the case, how can you take the liability from them when you do not know where the money went?

Mr Aylward: The liability in terms of this liability?

The CHAIRMAN: Yes - paying back the money to the HIC.

Mr Aylward: The liability in relation to the transaction sits clearly with the Department of Health, in particular the Metropolitan -

The CHAIRMAN: Why are you accepting that liability so easily when those funds could have easily gone into trust accounts that were for the specific purpose of individual doctors? Why pay back the money to the HIC?

Mr Aylward: Because there are different contractual arrangements in place here.

The CHAIRMAN: If you are not sure that that is the process of these contractual arrangements, how can you take on their liability? Would it not be more prudent to make sure the money was not spent by the individual doctors and then say yes or no we will take on the liability?

Mr Aylward: If, ultimately, there is proved or demonstrated to be impropriety according to the allegations, we are not surrendering our recourse in relation to those funds. However, these doctors were acting as employees and under instructions from the administrators at that time. They were under clear direction to do certain things.

The CHAIRMAN: You can only say that if you have evidence to prove those moneys went into funds for the benefit of the hospital. What worries me as a member of this committee is that the funds did not go back into the hospital; they went to SP accounts for the specific purpose of individual doctors. How can you say they were acting under administrators if you do not know where the money went?

Mr Aylward: I did not bring the information on that here today. We will double-check and provide that information to the committee, as you have requested. In terms of the liability or relationship to the issue that this report refers to, the HIC may have things ongoing with individual doctors. It may not. We are not privy to that. In relation to this, it is clearly within the department's area of responsibility to respond because these doctors were acting under direction as employees of the Department of Health and acting in good faith.

The CHAIRMAN: Who authorised those illegal arrangements for those doctors?

Mr Aylward: It is detailed comprehensively in the report.

The CHAIRMAN: We will track it down and get back to you.

Mr Daube: There will be a history there. We will have to follow through. We have that request now from the commission for \$1.25 million. We are discussing that

currently with the commission. Clearly, it is important for us that any future arrangements are agreed to and approved by the commission and the Commonwealth.

The CHAIRMAN: Are you having discussions at all with the doctors?

Mr Aylward: On this matter?

The CHAIRMAN: Yes.

Mr Aylward: Not as yet, because we want to resolve the matter first with the HIC.

The CHAIRMAN: Would it not be prudent to advise them that there is a problem with their accounts?

Mr Aylward: I think we have taken that step by ceasing the previous arrangements under which those doctors acted in good faith. As I mentioned before, the administration has come in and said that we believe there is risk that these arrangements may fall foul of the HIC's deliberations. We have advised them and put those arrangements totally on hold at the moment.

Mr Daube: I do not think any of those doctors are unaware that this matter has been under review.

Mr J.L. BRADSHAW: Regardless of the arrangements the Department of Health or Princess Margaret Hospital have with individual doctors, I find it quite astounding that the HIC takes note of those arrangements when the claim is by an individual doctor on the HIC. I cannot work out how the HIC can claim that money from the government or the Department of Health. It is beyond my comprehension and I think, legally, you could tell the HIC to get lost.

The CHAIRMAN: If it wants to recover the money it can recover it from individual doctors. They have made the claim, not the State. I am concerned that you are giving away our position.

Mr Aylward: We might differ on that point. We would be happy to provide more clearer explanation about the operation of arrangements A and B.

Mr M.G. HOUSE: The answer might be in their contractual arrangements with the hospital. If the contractual arrangements shift liability -

Mr J.L. BRADSHAW: That is not with the HIC; that is with the State. That has nothing to do with the HIC.

Mr M.G. HOUSE: We will want to have a look at the contract, I think.

The CHAIRMAN: We will have a look when we get the evidence from you that shows us the arrangements and how the liability can be with the Government and how that chain of command came to the point at which our liability took over the doctors' liability. You will obviously hear from us again. Once we look at the report and go through it we may want to get you back here for further discussions. We will probably have more hearings about the issue. As I said, we will keep the document itself confidential. The discussion that has occurred to this point obviously is not confidential. We will keep the doctors' names confidential for the purposes you indicated. More importantly, the committee thinks we need natural justice to occur here and we need to do some research before we make any further comments. Thank you very much for your attendance.

Mr Daube: I am happy to hand you the report.

Committee adjourned at 10.56 am

