

ANZSOG Case Program

Storm in a coffee cup: The Department of Parliamentary Services versus Aussies Café

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An ‘institution’¹ within an institution, Aussies Café had been keeping the politicians, staffers and media corps of Parliament House fed and caffeinated for more than 25 years. Owner Dominic Calabria had been running the business for approximately a decade when his lease on the premises expired in early 2015. Two years later, Aussies was still serving coffee but in the absence of a new tenancy agreement. In February 2017, Department of Parliamentary Services (DPS) Secretary Rob Stefanic was summoned to a Senate Estimates hearing to explain why. There the Senate Finance and Public Administration Legislation Committee zeroed in on recent reports that the Department was trying to impose unfair and onerous conditions on Aussies, including a 70% rent increase and veto rights over menu items.² Stefanic countered that the situation had been inaccurately represented, that Calabria had been largely uncooperative and that the draft agreement sent in late-2016 was merely a starting point for negotiations.

As the mood grew increasingly testy, some DPS representatives might have recalled the words of Stefanic’s predecessor, Carol Mills. During an emotional Senate appearance following her 2015 dismissal she observed that DPS was ‘a department with few champions and many detractors’.³ Mills described an environment of ‘continual review’ in which ‘no agency can fully and effectively operate’ along with ‘increasingly personal’ campaigns against DPS Secretaries, including herself. ‘The issues of resourcing, lack of role clarity, duplication, change resistance, etc which affect the department are systematic’, she said. ‘No one individual can be accountable for their existence nor for their eradication but it does seem that this expectation has been increasingly placed on the position of secretary of DPS’. The situation was so bad that associates had warned her not to take on the role in

This case was written by Marinella Padula for Associate Professor Michael Di Francesco, Australia and New Zealand School of Government. It has been prepared from published materials as a basis for class discussion rather than to illustrate either effective or ineffective handling of a managerial situation.

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¹ <http://www.smh.com.au/federal-politics/political-news/bean-counters-target-parliaments-aussies-cafe-with-lease-hike-20170228-gumvt6.html>

² <https://www.crikey.com.au/2017/02/27/dps-dispute-parliament-house-aussies-contract-fight-crikey/>

³ <http://www.abc.net.au/news/2015-05-13/parliaments-sacked-chief-bureaucrat-carol-mills-breaks-down/6468096>.

2012, Mills claimed, ‘because in their view under the current arrangements the job could not be done.’⁴ She expressed the hope ‘that none of my successors are placed in a similar position’.⁵

Parliament Housekeeping

Responsibility for Aussies Café lies with the Department of Parliamentary Services (DPS), formed in 2004 by merging the Joint House Department, Department of the Parliamentary Library and the Department of the Parliamentary Reporting Staff. At the beginning of 2017, DPS consisted of 13 branches reporting to 4 senior managers (Exhibit A). Unlike other departments, the DPS Secretary does not report to a minister but to the Presiding Officers, namely, the President of the Senate and the Speaker of the House of Representatives. The Department’s operations and employees are governed by the *Parliamentary Service Act 1999*⁶ and are also subject to the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act) as well as a range of other legislative requirements.

DPS’s primary role is to enable the smooth and effective functioning of parliament by (1) providing professional services, advice and facilities to all members; and (2) ensuring Parliament House and related assets are appropriately maintained and fit for purpose. The Department’s remit is broad and often involves liaising with other government entities or contracting out to the private sector. Some of the many tasks performed by DPS (or on its behalf) include:

- library and research services for members of parliament
- information and communication technology support
- security services
- building maintenance, landscaping and other custodial activities
- recording parliamentary proceedings (e.g. Hansard services)
- managing the Parliament House art collection
- public outreach and education (e.g. school tours)
- corporate, administrative and strategic services for DPS
- providing building users with access to retail and hospitality services.

Overall, DPS is responsible for managing \$2.32 billion in assets⁷, primarily the 35 hectare Parliament House site which includes some 4,700 rooms and 100,000 maintainable items.⁸ As at 30 June 2016, DPS had 874 staff (77% FTE), and in 2015–16 had a budget of \$190.6 million (\$8.3 million of which was own-source income).⁹ Approximately 55% of that budget went to external providers via just over 700 contracts for one-off and ongoing services.¹⁰ Building management and information/communication technology provision accounted for the largest outlays (Exhibit B). The Department also manages press gallery licences and commercial leases for businesses based at Parliament House such as Aussies Café (Exhibit C). The Parliament House complex has approximately 4,000 occupants including parliamentarians and their staffers, though this number falls to about 2,500 during non-sitting periods.¹¹ One of Canberra’s biggest tourist attractions, Parliament House also receives large

⁴ <https://www.theguardian.com/australia-news/2015/may/13/carol-mills-was-paid-380000-after-losing-parliamentary-services-job>

⁵ <https://www.theguardian.com/australia-news/2015/may/13/carol-mills-was-paid-380000-after-losing-parliamentary-services-job>

⁶ Most Commonwealth employees are employed under the *Public Service Act 1999*, but both Acts contain similar provisions.

⁷ http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_Parliamentary_Services/Publications/Annual_Report_2015-16

⁸ ‘ANAo Report No. 19 2016–17: Managing Contracts at Parliament House’ Australian National Audit Office, September 2016, p.13.

⁹ *Ibid*, p.14.

¹⁰ *Ibid*, p.13.

¹¹ *Ibid*, p.36.

numbers of visitors (more than 750,000 during 2014-2015)¹² plus visits from foreign dignitaries (26 official visits in 2015-2016).¹³ Catering outlets, including Aussies Café, also made more than 500,000 transactions in 2015-2016.¹⁴ Activity levels and workloads at Parliament House tend to fluctuate from year to year, depending on events such as elections, for example.

In addition to DPS, three other government departments are also involved in running Parliament. They are the: Department of the Senate (DoS), Department of the House of Representatives (DoHR) and the Parliamentary Budget Office (PBO). The DoS exists to serve all Senators (regardless of party affiliation) and Senate Committees in carrying out their legislative responsibilities. Its activities range from supplying office equipment, security and payroll services to recording Senate proceedings and providing administrative support. DoS also offers public education programs.¹⁵ The Clerk of the Senate oversees departmental operations and reports to the President of the Senate. DoHR offers similar supports to members of the lower house, as well as community engagement activities. The Clerk of the House of Representatives heads DoHR and answers to the Speaker of the House. Both DoS and DoHR work closely with DPS to perform their duties. Meanwhile, the Parliamentary Budget Office, established in July 2012, provides independent and impartial analysis of the Federal Budget and government fiscal policy.¹⁶

A bitter brew

By the time of the Senate Estimates hearing in early 2017, DPS had been subject to several inquiries arising from concerns about its performance. In 2012, the Senate Finance and Public Administration Legislation Committee released its review of DPS operations, highlighting many issues for attention including: workplace bullying and harassment, maintenance shortfalls, security lapses, overlooked heritage considerations, inappropriate asset disposal, inadequate reporting and record keeping, and poor contract management.¹⁷ However, the Committee did acknowledge that the preceding decade had been a time of fiscal constraint – the Department’s funding levels had essentially remained static while its responsibilities and costs grew. There was little evidence to suggest that the 2004 merger yielded any substantial savings.¹⁸ Meanwhile, increased security requirements, new technological developments and accelerating refurbishment needs were all testing the tensile strength of the budget. On top of that, government efficiency dividends hit the Department particularly hard. DPS had little capacity to trim costs apart from workforce cuts (staffing accounted for over 61% of departmental expenditure).¹⁹ The result was a lack of adequately trained/resourced personnel, stressed and demoralised incumbents and trouble recruiting new employees with the right skillsets.

Although DPS (along with other parliamentary departments) was designed to operate independently from the executive, the government still determined DPS funding levels through the appropriations process. The Department’s unpredictable and variable workload, however, meant this was less than ideal. By contrast, parliamentary funding in comparable Westminster-based democracies was typically set by a separate mechanism, such as a cross-party committee.²⁰ According to the Latimer House Rules endorsed by all Commonwealth nations, including Australia, ‘Parliaments should have

¹² Ibid, p.13.

¹³ http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_Parliamentary_Services/Publications/Annual_Report_2015-16/Part_4_Report_on_Activities

¹⁴ [http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_Parliamentary_Services/Publications/Annual_Report_2015-16/Part_4_Report_on_Activities#Chief Operating Officer Division](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_Parliamentary_Services/Publications/Annual_Report_2015-16/Part_4_Report_on_Activities#Chief%20Operating%20Officer%20Division)

¹⁵ http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_the_Senate/The_Clerk_and_Other_Offices#clerk

¹⁶ ‘ANAO Report No.24 2014–15: Managing Assets and Contracts at Parliament House’ Australian National Audit Office, February 2015, P.33.

¹⁷ ‘The performance of the Department of Parliamentary Services: Final report’ Finance and Public Administration Legislation Committee, The Senate, November 2012, p.4.

¹⁸ Ibid, p.169

¹⁹ Ibid, p.180.

²⁰ ‘Department of Parliamentary Services: Final report’ Senate Finance and Public Administration Legislation Committee, September 2015, pp.58-59.

control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances.’²¹

Despite the challenges, the then recently appointed Secretary Carol Mills resolved to restructure the department and improve performance. Some three years later, the Department was still under scrutiny and coming up short. A 2015 Auditor-General’s report into asset and contract management at DPS found that although Mills had commenced the reform process, it was far from complete. Inadequate staff training, out-of-date guidance materials, poor record keeping, inconsistent work practices and systemic weaknesses in asset and contract management persisted.²² As things stood, DPS struggled to demonstrate financial accountability, particularly with regard to value-for-money. For example, IHG (the catering company which ran Parliament House venues and events) was paid an annual management fee of \$530,000 despite complaints about food variety and quality.²³ In return, the catering contract stipulated that IHG paid the department a percentage of the total revenue as a Licence Fee.²⁴ Yet for much of 2013 and 2014, DPS had been without a catering contracts manager. That notwithstanding, DPS had finally managed to see revenue from catering contracts exceed management fees for the first time in 2015-16 and the margin was expected to grow.²⁵ Regarding retail licences, the Auditor-General noted that their day-to-day management had been ‘resource intensive’ and ‘problematic’ leading to tensions with some tenants.²⁶ Leases lapsed while the renewal process dragged on. Looking long-term, he observed:

There is no current retail strategy, clear policy or plan to give focus to, or to guide, DPS’ management of retail licensing in Parliament House. Overall, program/policy objectives and intended outcomes need to be clearer to enable forward planning and a better informed process for licence renewal. In general, licences would be significantly strengthened if respective (DPS and provider) expectations were made clearer, and the goods and services to be provided were clearly set out in the licence agreements prior to signing.²⁷

Mills would not see her plans to fruition. By mid-2015 she had been dismissed after investigations into dubious conduct. Though she denied any wrongdoing, Mills was found to have misled Parliament about inappropriate surveillance using CCTV. There was also a \$30,000 photography commission awarded to Mills’ neighbour without evidence of proper process, suggesting a possible conflict of interest. Then Senator John Faulkner dubbed DPS the ‘worst run government department in the Commonwealth of Australia’.²⁸ Senate Clerk Rosemary Laing was no admirer either, writing to the British Parliament where Mills was under consideration for a similar role to express her deep reservations about the Secretary’s suitability.²⁹ Commenting on the fracas, Australian National University Emeritus Professor of Public Policy, Richard Mulgan, noted:

The secretary of any normal department in similar circumstances would surely have been pressured to resign or at least to take leave. However, the DPS, as part of the legislative branch of government, is outside the purview of the Public Service Act. Its secretary is responsible not to a minister but to the two presiding officers (the Senate president and the House of Representatives speaker) acting jointly. The public service commissioner plays only a minimal role acting as a distinct parliamentary service commissioner. The DPS’s external accountability regime is therefore significantly more relaxed than

²¹ <https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13807-independence-of-parliament>

²² ‘ANAO Report No.24 2014–15: Managing Assets and Contracts at Parliament House’ Australian National Audit Office, February 2015, p.15

²³ ‘Department of Parliamentary Services: Final report’ Senate Finance and Public Administration Legislation Committee, September 2015, p.61.

²⁴ ‘ANAO Report No. 19 2016–17: Managing Contracts at Parliament House’ Australian National Audit Office, September 2016, p.37.

²⁵ Ibid, p.39.

²⁶ ‘ANAO Report No.24 2014–15: Managing Assets and Contracts at Parliament House’ Australian National Audit Office, February 2015, p.105.

²⁷ Ibid, p.21.

²⁸ <http://www.canberratimes.com.au/national/public-service/carol-mills-fronts-parliamentary-committee-20150513-gh0jw8.html>

²⁹ <http://www.smh.com.au/national/public-service/carol-mills-strikes-back-at-senate-clerk-rosemary-laing-over-criticism-20140822-1075m2.html?deviceType=text>

that of mainline government agencies, a factor that may help to explain its more casual approach to internal accountability and process. In such a context, good governance relies heavily on ethical values and strong interpersonal relations.³⁰

More than six months after Mills' dismissal, Rob Stefanic was appointed Secretary of DPS in December 2015. Like Mills he was a senior public servant from New South Wales, though unlike his predecessor he arrived with 19 years of experience in parliamentary service, including time as head of the NSW Department of Parliamentary Services. But would Macquarie Street prove adequate preparation for Capital Hill?

Grounds for dispute

It wasn't all bad news for DPS. The 2015-2016 Annual Report found high levels of satisfaction in some quarters. More than 97% of visitors felt that Parliament House met or exceeded their expectations whilst DPS received a neutral or satisfied rating from 90% of building occupants surveyed on the timeliness and quality of Department services.³¹ However, catering was one of the lowest ranked services (just over 75% gave a neutral or positive rating) and written feedback was mostly critical.³² The Staff Dining Room was least popular with a near 40% dissatisfaction rate.³³ (Aussies Café was not part of the survey.) With IHG's catering contract due to expire at the end of 2016, Stefanic decided to take its food and beverage services in-house. This was contrary to the recommendations of a consultant's report which advised the Department to seek a new contractor/s for all IHG catering functions, at least until DPS developed sufficient capabilities in-house. Ideally, this would occur over three years. Said the report: 'In considering the option to bring part or all food service operations in-house, the complex operating environment, the scope and range of service delivery and limited information regarding operating costs of the current operations make effective risk management in the transitioning to an in-house operating model challenging.'³⁴ These views were reflected in a September 2016 Auditor General's report which found that DPS had still not developed a retail strategy and in with regards to taking food services in-house: 'DPS has not developed a business case to show how different arrangements would improve food standards and value for money.'³⁵ Nor was it clear whether catering services would be for-profit or how the Department would address Charging Framework³⁶ considerations.³⁷ Asked about his decision, Stefanic explained:

That consultancy occurred before I came on board. Had I been here, I would have had certain viewpoints that I would have fed into that. One would have been that I did not think the consultants appropriately understood the parliamentary environment. Having come from running a catering operation at the New South Wales parliament, I was confident, given we have a market here which is effectively captive, that we could provide a service with more variety and with better value to the parliament.³⁸

Just before it was due to assume control of House events and catering in early 2017, DPS sent a new licence agreement to Aussies Café proprietor, Dominic Calabria. According to Stefanic, the

³⁰ <http://www.canberratimes.com.au/national/public-service/chaos-on-capital-hill-carol-mills-and-the-department-of-parliamentary-services-20150331-1mbrx2>

³¹ N.B Building occupant response rate was less than 10% of the 5500 invited to participate. Survey conducted April 2016. http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_Parliamentary_Services/Publications/Annual_Report_2015-16/Part_3_Annual_Performance_Statement

³² Ibid.

³³ 'ANAO Report No. 19 2016-17: Managing Contracts at Parliament House' Australian National Audit Office, September 2016, p.38

³⁴ Consultant's report: 'Australian Parliament House Food Strategy' The Maytrix Group, 15 January 2016, p.10.

³⁵ 'ANAO Report No. 19 2016-17: Managing Contracts at Parliament House' Australian National Audit Office, September 2016, p.34

³⁶ The Australian Government Charging Framework (2015) applies to all charging activity where the Australian Government charges the non-government sector. Charging activities include regulatory, resource and commercial service provision. Entities are obliged to consider issues such as equity, efficiency and contestability, as well as the rationale for offering services.

³⁷ Ibid, p.36.

³⁸ Hansard Transcript, Senate Finance and Public Administration Legislation Committee, Estimates Hearing, Commonwealth of Australia, Monday, 27 February 2017.

Department received no response besides an offensive email and a meeting cancellation. By February, the situation had spilled onto the pages of the *Australian Financial Review*:

Last week, without warning or explanation, DPS hit Aussies' proprietor, Domenic Calabria, with a 70 per cent rent hike (from \$94,000 to \$160,000 per annum), a new tenure-by-licence arrangement granted on a month-by-month basis and, most outrageously, has ordered him to stop using the name "Aussies". The new conditions also give DPS a right of veto over the contents of the menu and its prices, and require Calabria to establish key performance indicators for his part-time staff, which include his mother and sister. Yep, DPS wants to file a performance review for Mamma Calabria's tomato soup. Can you believe it?³⁹

The Department also reportedly demanded to see the café's accounts including turnover and detailed profit figures. Calabria approached the ACT Small Business Ombudsman, Kate Carnell, who concurred that the licence agreement appeared to be 'extremely unfair' and beyond what would be considered acceptable in the private sector. 'While they're not bound to do so, I call on all government departments to lead by example and ensure their contractual agreements with small businesses aren't at odds with legislation outlawing unfair 'take it or leave it' contract terms', she said. 'The reason the government set up the ombudsman's office is to act on behalf of small businesses who become involved in exactly these sorts of situations'.⁴⁰

The next day, Stefanic explained his Department's actions during the course of scheduled Senate Estimates hearings. He clarified that the Department had proposed an annual rent increase from \$87,000 to \$150,000 but only because Calabria had refused to provide financial information. They needed this information because, as Stefanic explained, the rent had not been reviewed since Calabria took over Aussies Café, although it was subject to CPI increases.⁴¹ It was also not unusual for tenants to supply turnover figures to determine rent. But in the absence of such information, the Department had been forced to use an independent valuer. Stefanic claimed the valuer based his \$150k/pa figure on the rent of similar Canberra coffee shops, whilst taking factors such as non-sitting days into account.⁴² DPS had also provided the valuer's report to Aussies for transparency.

However, Liberal Senator Eric Abetz and minor party Senator Nick Xenophon were keen to know why the draft agreement asked Aussies for detailed information, such as dine-in versus take-away coffee sales and breakdowns of other product categories. They also asked why Calabria should provide that information to the Department – his landlord – which, as of January, had taken over IHG's operations, including its coffee cart. Stefanic countered that despite the firm wording of the agreement, DPS was open to discussion. He also denied that the department wanted to prevent Calabria from calling his café 'Aussies': it was simply a generic provision to prevent owners from choosing inappropriate or offensive names. Stefanic explained the situation to Committee members thus:

Mr Stefanic: If [Calabria] is concerned with any elements of [the contract], it is subject to negotiation and he has been given ample opportunity to do that. There is no take it or leave it here. He can discuss it with us. He has made no attempt other than, very apparently, making representations to senators and also to the media.

Senator Xenophon: Do you have a problem with that? You do, don't you?

Mr Stefanic: Do most commercial agreements get negotiated using a Senate committee, I guess? That is the question I have in my mind.

Senator Abetz: Most commercial negotiations are not with a direct competitor such as the Department of Parliamentary Services...⁴³

³⁹ <http://www.afr.com/news/politics/kate-carnell-seeks-please-explain-over-moves-to-expel-aussies-cafe-20170226-gulgdv>

⁴⁰ Ibid

⁴¹ <http://www.canberratimes.com.au/national/public-service/cup-of-cronyism-aussies-cafe-and-the-bizarre-attack-on-public-servants-who-did-their-jobs-20170306-guru97.html>

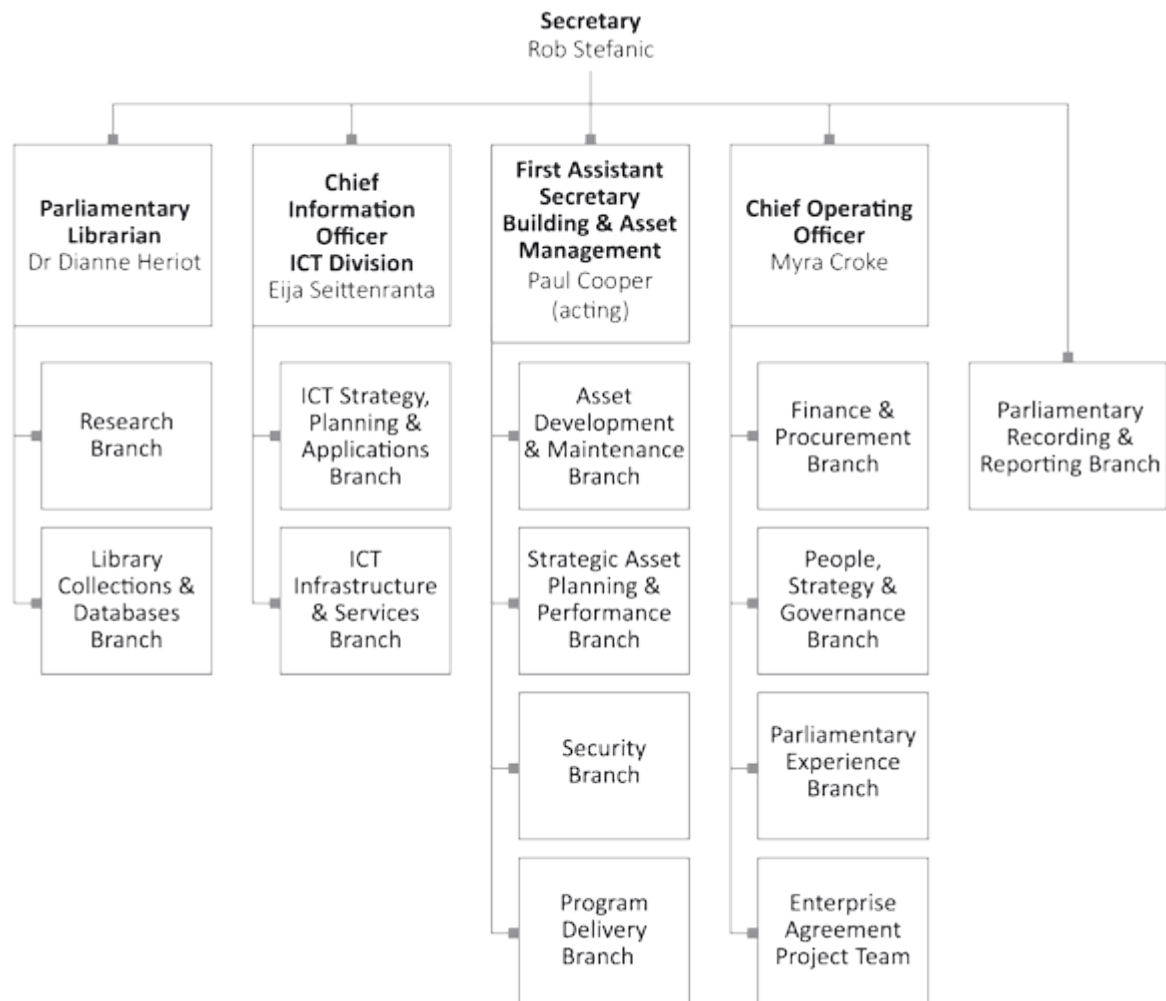
⁴² Hansard Transcript, Senate Finance and Public Administration Legislation Committee, Estimates Hearing, Commonwealth of Australia, Monday, 27 February 2017.

⁴³ Ibid. p.36. However, as noted in hearings by both Stefanic (p.33) and former Senate President Stephen Parry (p.35), the Presiding Officers of Parliament sign-off on the licence, meaning that DPS is not the sole decision-maker.

But this left Stefanic in a quandary. As he also pointed out to the Committee: ‘the licence held by Aussies has not been subject to market testing in 25 years. My department has been criticised by the ANAO for not seeking to maximise a return to the Commonwealth—hence its recommendations to undertake a retail strategy. I do not know where to go, then. Do we just leave the existing licence in place forever?’⁴⁴

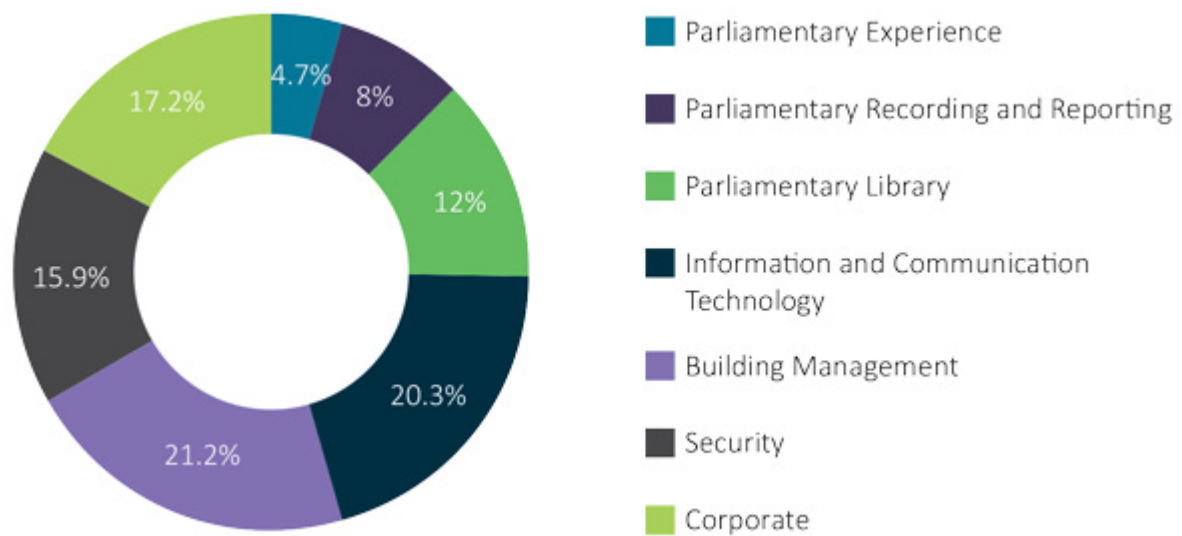
⁴⁴ Ibid. p.37

Exhibit A: DPS Organisational Chart



Source: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_Parliamentary_Services/Publications/Annual_Report_2015-16/Part_2_Departmental_Overview

Exhibit B: Departmental Operating Expenses by Functional Area



The departmental capital result for 2015–16 was \$27.2 million. This is \$4.3 million more than the \$22.9 million in departmental capital appropriated for 2015–16. This \$4.3 million was funded through unspent appropriations from prior years. The additional works represents the delivery of not only the 2015–16 capital program but also projects delayed in previous financial years.

Source: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Department_of_Parliamentary_Services/Publications/Annual_Report_2015-16/Part_2_Departmental_Overview#Figure1

Exhibit C: DPS retail licences

	Catering	Public	Private	Service arrangement	Arrangement status
Queen's Terrace Cafe	✓	✓		Contract	Current contract expires 31 December 2016. Service provider informed that DPS will not be exercising the five year extension option available in the contract.
Staff Dining Room	✓		✓		
Members' & Guests' Dining Room	✓		✓		
Members' Club	✓		✓		
Room service catering	✓		✓		
Event catering	✓	✓	✓		
Committee catering	✓		✓		
Special Suite catering	✓		✓		
Coffee Cart	✓		✓		
Vending machines	✓		✓		
Aussie's Cafe	✓		✓	Licence Agreement	Expired March 2015— month-to-month arrangement
Travel Agent			✓	Licence Agreement	Current to February 2017
Child care centre			✓	Licence Agreement	Current to January 2018
Bank			✓	Licence Agreement	Current to December 2019
Hairdresser			✓	Licence Agreement	Expired July 2013—occupation continues under terms of licence
Physiotherapy			✓	Licence Agreement	Expired June 2014—occupation continues under terms of licence
Postal Services		✓	✓	MoU	Expired June 2014—occupation continues under terms of agreement
Gift shop		✓	✓	DPS	In-house management
Gymnasium			✓	DPS	In-house management

Source: DPS.

Source: 'ANAO Report No. 19 2016–17: Managing Contracts at Parliament House' Australian National Audit Office, September 2016, p.33.