

Lynch, Philippa

From: Martin, Gerard
Sent: Thursday, 3 March 2011 6:27 PM
To: Sterland, Barry; Macgill, David; Lynch, Philippa
Subject: FW: Document for Dr Henry - March 2011 [SEC=IN-CONFIDENCE:STAFF]
Attachments: outline for Dr Henry - March 2011.doc

For info.

From: Martin, Gerard
Sent: Thursday, 3 March 2011 6:25 PM
To: 'marisa.purvis-smith@s47E(d)'
Subject: Document for Dr Henry - March 2011 [SEC=IN-CONFIDENCE:STAFF]

Marisa

Barry Sterland asked me to forward this document to you for appropriate consideration.

Regards

Gerard

Gerard Martin
Senior Adviser
Parliamentary and Government Branch
Department of the Prime Minister and Cabinet
Tel: 6271 s47E(d) Fax: 6271 s47E(d)

The Prime Minister will be able to consider the following options for appointment for Dr Henry.

Appointment under section 67 of the *Constitution*

Section 67 of the Constitution provides:

“Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General or by law of the Commonwealth to some other authority.”

A former secretary can be engaged under s.67 provided that the functions that he or she is engaged to perform are outside the ordinary role of the APS, such as functions of a whole of government character, or where there is a need for the person to operate independently from the secretary of a department or usual department structures, or where the appointee will report direct to a minister. This may include a role that included work on policy or program issues that were not limited to a single portfolio.

The steps for appointment would be as follows; the Prime Minister would need to recommend an appointment to the Governor-General, which would be considered at an Executive Council meeting.

The terms and conditions of the appointment could be specified by the Governor-General in the instrument of appointment, or the Governor-General could authorise another person, in the instrument of appointment, to set the terms and conditions of the engagement.

ss42, 47C and 47F



ss47C and 47F



Termination under section 59 and appointment under section 60 of the *Public Service Act 1999*

Section 59 provides the power for the Prime Minister to terminate secretary appointments, including the requirement for the Prime Minister to receive a report about the termination from the Secretary of PM&C.

Section 60 provides for the appointment of former secretaries that have been terminated, including under section 59.

s42



The steps for appointment would be as follows; ss47C and 47F the Prime Minister, on receiving a report from the Secretary of PM&C, signs an instrument terminating the appointment and another instrument appointing under s60 and setting out the terms and conditions of employment.

ss47C and 47F



Engagement as an APS employee under section 22 of the *Public Service Act 1999*

Section 22 of the PS Act provides that agency heads may engage persons as employees for the purposes of the agency.

The steps for appointment would be as follows;

ss47C and 47F



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Lynch, Philippa

From: Sterland, Barry
Sent: Friday, 4 March 2011 9:21 AM
To: Martin, Gerard; Macgill, David; Lynch, Philippa
Cc: 'marisa.purvis-smiths47E(d)'
Subject: RE: Document for Dr Henry - March 2011 [SEC=IN-CONFIDENCE:STAFF]

s42



Barry

From: Martin, Gerard
Sent: Thursday, 3 March 2011 6:27 PM
To: Sterland, Barry; Macgill, David; Lynch, Philippa
Subject: FW: Document for Dr Henry - March 2011

For info.

From: Martin, Gerard
Sent: Thursday, 3 March 2011 6:25 PM
To: 'marisa.purvis-smiths47E(d)'
Subject: Document for Dr Henry - March 2011 [SEC=IN-CONFIDENCE:STAFF]

Marisa

Barry Sterland asked me to forward this document to you for appropriate consideration.

Regards

Gerard

Gerard Martin
Senior Adviser
Parliamentary and Government Branch
Department of the Prime Minister and Cabinet
Tel: 6271 s47E(d) Fax: 6271 s47E(d)

3



Australian Government
The Treasury

OFFICE OF THE SECRETARY

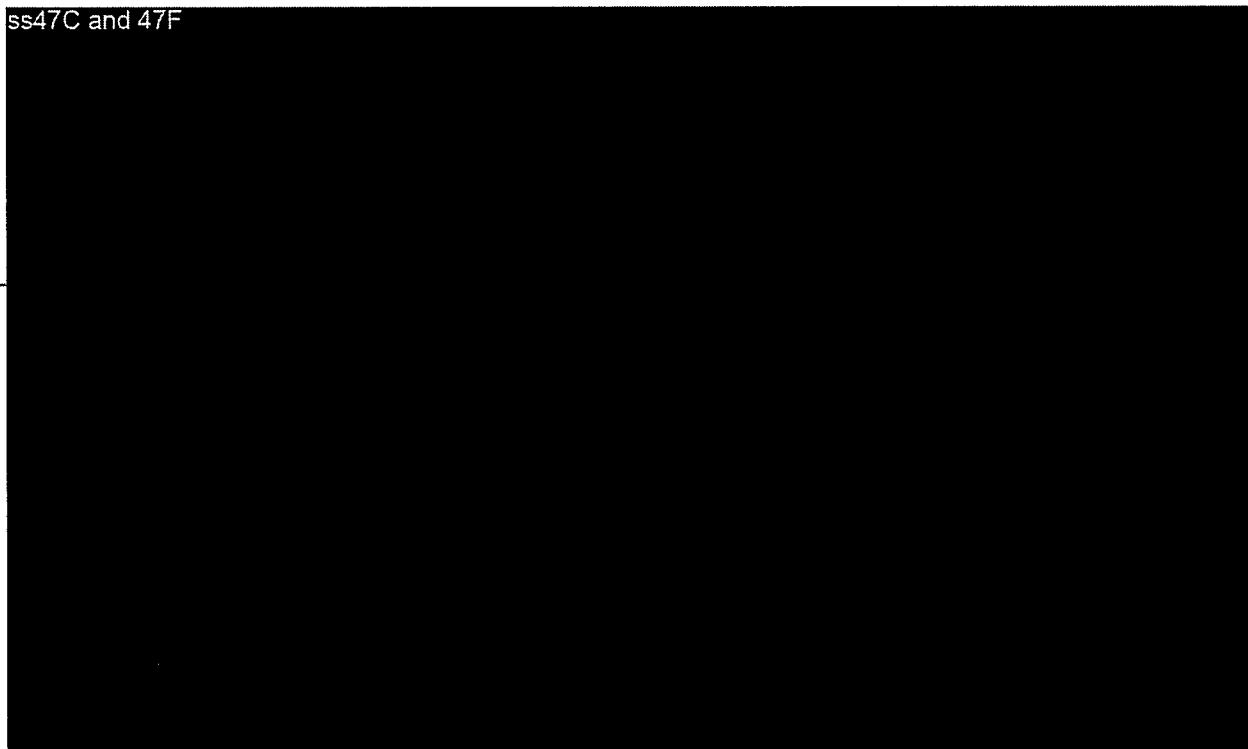
4 March, 2011

Mr Terry Moran AO
Secretary
Department of the Prime Minister and Cabinet
National Circuit
Canberra ACT 2600

Dear Mr Moran

I am responding to certain written material forwarded from Mr Sterland to Ms Purvis-Smith last evening (attached) concerning the arrangements still being explored to give effect to the Prime Minister's announcement of 21 December 2010.

ss47C and 47F



Yours sincerely

A handwritten signature in dark ink, appearing to read 'Ken Henry'.

Ken Henry
Secretary to the Treasury

Attachment

The Prime Minister will be able to consider the following options for appointment for Dr Henry.

Appointment under section 67 of the *Constitution*

Section 67 of the *Constitution* provides:

“Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General or by law of the Commonwealth to some other authority.”

A former secretary can be engaged under s.67 provided that the functions that he or she is engaged to perform are outside the ordinary role of the APS, such as functions of a whole of government character, or where there is a need for the person to operate independently from the secretary of a department or usual department structures, or where the appointee will report direct to a minister. This may include a role that included work on policy or program issues that were not limited to a single portfolio.

The steps for appointment would be as follows; the Prime Minister would need to recommend an appointment to the Governor-General, which would be considered at an Executive Council meeting.

The terms and conditions of the appointment could be specified by the Governor-General in the instrument of appointment, or the Governor-General could authorise another person, in the instrument of appointment, to set the terms and conditions of the engagement.

ss42, 47C and 47F



Termination under section 59 and appointment under section 60 of the *Public Service Act 1999*

Section 59 provides the power for the Prime Minister to terminate secretary appointments, including the requirement for the Prime Minister to receive a report about the termination from the Secretary of PM&C.

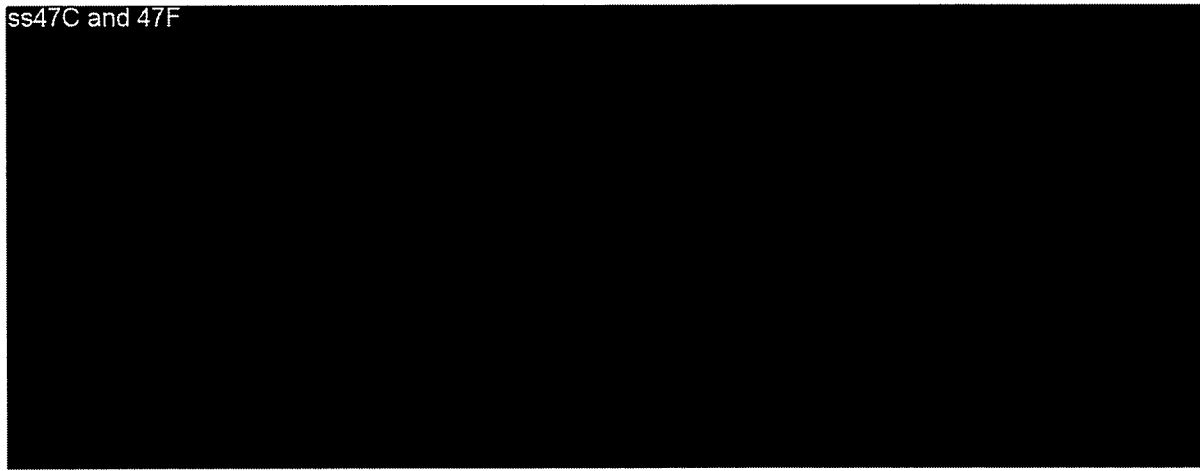
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s42



The steps for appointment would be as follows; ss47C and 47F the
Prime Minister, on receiving a report from the Secretary of PM&C, signs an instrument
terminating the appointment and another instrument appointing under s60 and setting out the
terms and conditions of employment.

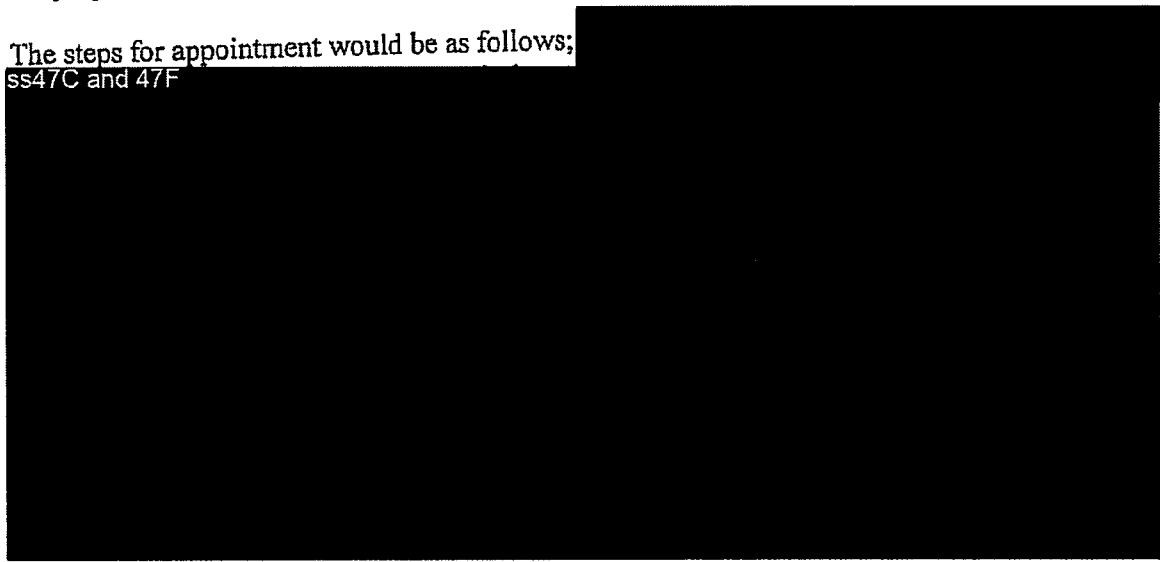
ss47C and 47F



Engagement as an APS employee under section 22 of the *Public Service Act 1999*

Section 22 of the PS Act provides that agency heads may engage persons as employees for
the purposes of the agency.

The steps for appointment would be as follows;
ss47C and 47F





Australian Government

The Treasury

OFFICE OF THE SECRETARY

4 March, 2011

The Hon Julia Gillard
Prime Minister
Parliament House
Canberra ACT 2600

Dear Prime Minister

I became aware last night that there is insufficient clarity in parts of the Australian Public Service about the circumstances leading up to your announcement of 21 December 2010 concerning secretaries.

s47F

I am copying this letter to the Deputy Prime Minister, Secretary Moran and the Australian Public Service Commissioner.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Ken Henry'.

Ken Henry
Secretary to the Treasury

Lynch, Philippa

From: Sterland, Barry
Sent: Friday, 18 March 2011 1:40 PM
To: 'marisa.purvis-smith@s47E(d)'
Cc: Martin, Gerard; Macgill, David; Lynch, Philippa
Subject: FW: Description of Ken Henry role [SEC=PROTECTED]

Just a draft idea for discussion, we will formalise next week
B

From: Sterland, Barry
Sent: Wednesday, 16 March 2011 6:52 PM
To: Cross, Rebecca; de Brouwer, Gordon
Cc: Lynch, Philippa; Macgill, David; Martin, Gerard
Subject: Description of Ken Henry role [SEC=PROTECTED]

Gordon, Rebecca – as discussed earlier, we will need to resolve details of Dr Henry's new appointment soon. I am looking to something like the following:

'In his new position Dr Henry will provide advice to Government through the Prime Minister on whole of government issues, including on longer term policies and frameworks to maximise the development of human capabilities, particularly for disadvantaged groups. The role will be part time etc etc.'

I am wanting to keep it high level, make it clear that he is not working on economic areas, not tread on currently live policy issues but not limit the PM to ask for advice on anything she likes. Legally (for the appt instrument) I don't think we need the detail, but I think from a public presentation point of view the PM has to give some sense of the types of issues he will work on.

But it is all in the domestic space so you guys should clear any description. Govt div may have some views as they are writing up the instrument (which may not have the above detail – it may be reserved for PM's description).

Barry

Barry Sterland PSM
Acting Deputy Secretary Governance
The Department of the Prime Minister and Cabinet
ph 6271 s47E(d)
mob. s47E(d)

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Martin, Gerard

From: Sterland, Barry
Sent: Monday, 28 March 2011 12:11 PM
To: 'marisa.purvis-smith@s47E(d)'
Cc: Macgill, David; Lynch, Philippa; Martin, Gerard
Subject: Appointment of Dr Henry [SEC=IN-CONFIDENCE]
Attachments: Section 67 ExCo Instrument of Appointment - March 2011.docx; Section 67 ExCo EM - March 2011 (2).docx; PROPOSED ARRANGEMENTS FOR DR HENRY.docx

Security Classification:
IN-CONFIDENCE

Marisa

Please find attached the proposed appt instrument and explanatory Memorandum (for the Exco meeting). Note these documents are not generally made public unless the PM chooses to do so.

Note, subsequent to our last advice, s47C

The other document outlines PM&C views on how the appointment may work in practice, and some of these issues will be covered in the covering brief to the Prime Minister.

We intend to send this up to the PM in the next few days.

I would like to have a direct discussion with Ken on behalf of the Secretary to ensure that we have covered all issues prior to formalising. Please arrange a time for this.

Barry

COMMONWEALTH OF AUSTRALIA

Constitution

Appointment of Special Adviser

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 67 of the *Constitution*, hereby:

- (a) appoint Dr Kenneth Ross Henry AC to be the position of Special Adviser from 27 April 2011;
- (b) note that the appointment is to be held at pleasure;
- (c) direct that:
 - i. the functions and duties of the Special Adviser be as determined by the Prime Minister from time to time;
 - ii. the Secretary of the Department of the Prime Minister and Cabinet be the approving authority for the Special Adviser for leave, including long service leave;
 - iii. for any period that the Special Adviser performs the duties of that office on a full-time basis (40 hours per week), the remuneration and other terms and conditions of employment for the Special Adviser be the same as those that apply to the Secretary of the Department of the Treasury, as determined from time to time;
 - iv. the Prime Minister may agree that the duties of the Special Adviser are to be performed on a part-time basis; and
 - v. for any period that the Special Adviser performs the duties on a part-time basis, the remuneration referred to in clause (c)(iii) above be payable, and other entitlements accrue, on a pro-rata basis.

Dated

2011

Governor-General

By Her Excellency's Command

Julia Gillard
Prime Minister

EXPLANATORY MEMORANDUM

Minute No. XX of 2011 - Prime Minister

Subject – *The Constitution*
Appointment of Special Adviser

Section 67 of the Constitution confers on the Governor-General in Council the power to appoint officers to the Executive Government of the Commonwealth, in circumstances where the Parliament has not provided for such appointments.

The Minute recommends the appointment of Dr Kenneth Ross Henry AC to the position of Special Adviser. In that role, Dr Henry will advise the Government, on a case by case basis, in respect of major strategic projects that have a whole of government character. In consultation with relevant departments, Dr Henry will be responsible for advising the Cabinet, through the Prime Minister, on whole of government issues, including on longer term policies and frameworks to maximise the development of human capabilities, particularly for disadvantaged groups. It is proposed that Dr Henry be supported by the Department of the Prime Minister and Cabinet.

Ordinarily the appointment of a person to the Executive Government is made under the *Public Service Act 1999*. In relation to the proposed appointment, however, the functions of the Special Adviser will have a whole of government character and Dr Henry will work on policy and program issues that are not limited to a single portfolio. This will require him to operate independently from the secretary of a department and usual department structures. In these circumstances, it is appropriate for the appointment to be made under section 67 of the Constitution.


Dr Henry currently holds the position of Secretary of the Department of the Treasury. That appointment will expire on 26 April 2011 and it is proposed that this appointment commence on 27 April 2011 and be held at pleasure.

The instrument of appointment specifies that the functions of the Special Adviser be as determined by the Prime Minister, with the terms and conditions to be the same as the Secretary of the Department of the Treasury, from time to time. The instrument also provides that if Dr Henry undertakes the work on a part-time basis, his remuneration will be payable, and other entitlements will accrue, on a pro-rata basis.

The Minute recommends an appointment be made in the form proposed.

Authority: Section 67 of the
 Constitution

PROPOSED ARRANGEMENTS FOR DR HENRY'S APPOINTMENT UNDER SECTION 67 OF THE CONSTITUTION

- The appointment will take effect on 27 April 2011, immediately following the expiration of current appointment as Secretary of the Treasury.
- While the appointment will be expressed to be at the Governor-General's pleasure, the intention is that it will be for a two year period, and agreement to this intention will be sought from the Prime Minister.
 - However, the Governor-General will still need to approve the termination of the appointment at the appropriate time.
 - s42 
- Dr Henry's remuneration and leave will be administered by PM&C.
- Remuneration will match that of the Secretary of Treasury, as varied from time to time.
- Treasury will transfer recreation, sick and long service leave entitlements to PM&C.
- Dr Henry will be able to access his leave entitlements during the term of the appointment with the approval of the Secretary of PM&C.
- Dr Henry may work full time or, with the agreement of the PM, part time. For part time work, remuneration will be calculated on an hourly basis, based on a 40 hour week, up to a maximum of 8 hours per day.
 - we intend to seek the PM's approval to delegate decisions over the precise transition to part time duties to the Secretary of PM&C.
- Mr Moran is aware that Dr Henry wishes to take a fairly lengthy break before formally taking up his new employment and approves that proposal in principle (will need to be formally approved for HR purposes).
 - The instrument 'default' that Dr Henry will be on full time duty would allow Dr Henry to take leave at full time rates while he accesses leave in the early part of the appointment;
- When Dr Henry commences his work, PM&C will provide appropriate administrative, IT and research support and accommodation at One National Circuit.
- Dr Henry will be tasked by the Prime Minister on advice from the Secretary of PM&C following consultations with Dr Henry. There is no need to detail this at the present time, and the instrument is deliberately general – the only specification in the

instrument is that it is directed by the PM and in the explanatory memorandum that it is of a whole of government character.

- One example of the type of project the Special Adviser may undertake would be to investigate longer term policies and frameworks to maximise the development of human capabilities in Australia, particularly for disadvantaged groups. We will indicate such an example to the Prime Minister (and are happy to consult with Dr Henry on the description of this). Such an approach could be indicated publicly if required, say in Senate Estimates.
 - We will clarify the work program closer to Dr Henry commencing work in PM&C.
 - We do not intend to advise announcement of these arrangements, and there is no public requirement to do so.
- The same rules governing the accrual of leave and other benefits/entitlements will accrue in respect of a period of part time work by Dr Henry as apply generally in PM&C.

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Tucker, Jacqueline

From: Tucker, Jacqueline
Sent: Thursday, 21 April 2011 11:28 AM
To: 'Marisa.Purvis-Smith' s47E(d)
Cc: Macgill, David; Lynch, Philippa
Subject: instrument of appointment [SEC=UNCLASSIFIED]
Attachments: Instrument of appointment_ Dr Henry.pdf

Tracking:	Recipient	Delivery
	'Marisa.Purvis-Smith' s47E(d)	
	Macgill, David	Delivered: 21/04/2011 11:28 AM
	Lynch, Philippa	Delivered: 21/04/2011 11:28 AM

Hi Marisa

As per your earlier discussion with Gerard Martin, please find attached a copy of Dr Henry's instrument of appointment.

egards
Jacqueline

Jacqueline Tucker
Adviser
Government Section
Department of the Prime Minister and Cabinet

Direct: +61 2 6271 s47E(d)
Email: s47E(d)

COMMONWEALTH OF AUSTRALIA

Constitution

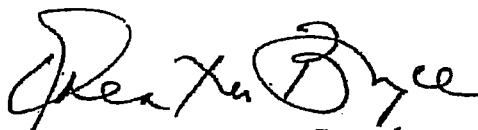
Appointment of Special Adviser

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 67 of the Constitution, hereby:

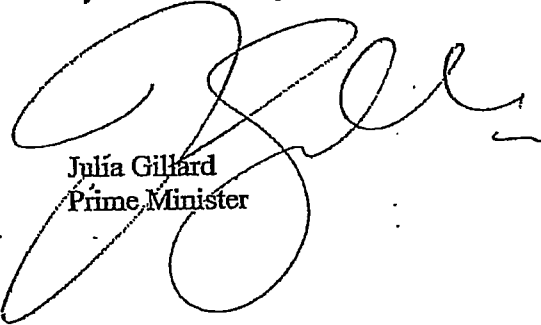
- (a) appoint Dr Kenneth Ross Henry AC to the position of Special Adviser from 27 April 2011;
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- (c) direct that:
 - i. the functions and duties of the Special Adviser be as determined by the Prime Minister from time to time;
 - ii. the Secretary of the Department of the Prime Minister and Cabinet be the approving authority for the Special Adviser to the Prime Minister for leave, including long service leave;
 - iii. for any period that the Special Adviser performs the duties of that office on a full-time basis (40 hours per week), the remuneration and other terms and conditions of employment for the Special Adviser be the same as those that apply to the person who holds the position of Secretary of the Department of the Treasury at the relevant time;
 - iv. the Prime Minister may agree that the duties of the Special Adviser are to be performed on a part-time basis; and
 - v. for any period that the Special Adviser performs the duties on a part-time basis, the remuneration referred to in clause (c)(iii) above be payable, and other entitlements accrue, on a pro-rata basis.

Dated

21st April 2011


Governor-General

By Her Excellency's Command


Julia Gillard
Prime Minister



FILE COPY

7

Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON ACT

SECRETARY

Dr Ken Henry AC
Special Adviser
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Dear Dr Henry

I write to advise you that the Governor-General agreed to your appointment as Special Adviser on 21 April 2011. The appointment was made under section 67 of the Constitution and commenced on 27 April 2011. The term of the appointment is at the Governor-General's pleasure, but I expect that it will be for a period of two years. A copy of the instrument of appointment signed by the Prime Minister and Governor-General is attached for your information.

The instrument of appointment provides that the Prime Minister will determine your functions as Special Adviser. It is envisaged that you would provide advice to the Government through the Prime Minister. I would anticipate that much of the work you will undertake will form the basis of Cabinet deliberations and should therefore be accorded appropriate confidentiality. I understand it is your intention to take a period of leave for some months. I would be pleased to have further discussions with you on a work program and support arrangements closer to your commencement of work in the position.

In the role of Special Adviser, your remuneration and terms and conditions of employment will be the same as those that apply to the person who holds the position of Secretary of the Department of the Treasury at the relevant time. I note that you are interested in undertaking your new duties on a part-time basis so that you have the flexibility to undertake outside employment. I support that proposal. I request, however, that you consult me prior to undertaking outside employment from now on and that you be mindful of any real or perceived conflict of interest. In this context, I would be grateful if you would provide me with a statement of your private interests. A form for that purpose is attached.

If you have any queries about your appointment please do not hesitate to call Mr Barry Sterland, A/g Deputy Secretary, in this department on 6271 5303.

Yours sincerely

Terry Moran

- 4 MAY 2011

COMMONWEALTH OF AUSTRALIA

Constitution


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 - iii. for any period that the Special Adviser performs the duties of that office on a full-time basis (40 hours per week), the remuneration and other terms and conditions of employment for the Special Adviser be the same as those that apply to the person who holds the position of Secretary of the Department of the Treasury at the relevant time;
 - iv. the Prime Minister may agree that the duties of the Special Adviser are to be performed on a part-time basis; and
 - v. for any period that the Special Adviser performs the duties on a part-time basis, the remuneration referred to in clause (c)(iii) above be payable, and other entitlements accrue, on a pro-rata basis.

Dated

21st April 2011


Governor-General

By Her Excellency's Command


Julia Gillard
Prime Minister

Declaration of Interests

This declaration of financial and other personal interests is to be completed annually and is to be forwarded on completion to the Secretary of the Department of the Prime Minister and Cabinet.

Name _____

Position Title _____

Branch/Division _____

Geographic Location _____

I declare that:

- As Special Adviser I will comply with the APS Values and Code of Conduct as if I were an APS employee. As such, I am aware of my responsibilities under the Code of Conduct to behave honestly and with integrity, to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with my employment and to not make improper use of (a) inside information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person;
- I understand the requirement to declare any private interests or relationships which could or could be seen to influence the decisions I am taking or the advice I am giving;
- The attached list at **Annex A** of my private interests and relationships has been prepared on the basis of:
 - the particular roles and responsibilities of the Department of the Prime Minister and Cabinet;
 - my particular roles and responsibilities as Special Adviser.

I undertake to immediately inform the Secretary of the Department of the Prime Minister and Cabinet of any changes to my personal circumstances that could affect the contents of this declaration and to provide an amended declaration/s using this pro forma.

I undertake to declare any private interests or relationships of my immediate family that I am aware of, should circumstances arise in which I consider that they could or could be seen to influence the decisions I am taking or the advice I am giving. I understand that this would require the consent of the family member to the collection by the Department of the Prime Minister and Cabinet of personal information and a declaration that he/she is aware of the purpose for which the personal information has

been collected, the legislative requirements authorising the collection and the third parties to whom the personal information may be disclosed, and consents.

Ken Henry
Special Adviser

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**Declaration of Consent by Immediate Family Member to the Disclosure of their
Personal Financial and other Interests**

This declaration is to be completed by the immediate family member/s of the employee should circumstances arise in which the employee considers that the personal financial and other interests of the family member/s could or could be seen to influence the decisions they are taking or the advice they are giving.

Name _____

Relationship to Employee _____

I am aware that my information has been collected for the purpose of identifying personal and other interests that could or could be seen to influence the decisions that the employee covered by the declarations policy is taking or the advice he/she is giving. I am aware of the Privacy Principles set out in the *Privacy Act 1988* which authorise the collection and the third parties to whom my personal information may be disclosed. I consent to the collection of my personal information by (the relevant agency).

The attached list at **Annex B** of my private interests and relationships has been prepared on that basis.

[Signature
Name
Date]

Annex A

Declaration of Personal Financial and other Interests

Please list any private interests or relationships which could or could be seen to influence the decisions you are taking or the advice you are giving.

The types of interests and relationships that may need to be disclosed include real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships that could or could be seen to impact upon your responsibilities.

[Signature
Name
Date]

**Declaration of Personal Financial and other Interests of Immediate Family
Members**

...Please list any private interests or relationships which could or could be seen to influence the decisions that the employee covered by the declaration policy is taking or the advice he/she is giving.

The types of interests and relationships that may need to be disclosed include real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships that could or could be seen to impact upon your responsibilities.

[Signature
Name
Date]

Dr Ken Henry AC

Email: s47F

18 May 2011

Mr Terry Moran AO
Secretary
Department of the Prime Minister and Cabinet
PO Box 6500
Canberra ACT 2600

Approved
Terry Moran
25/5

Dear Mr Moran

Thank you for your letter of 4 May advising of my appointment as Special Adviser.

As requested, I am enclosing a statement of private interests. That statement refers to my presenting a speech to an investor conference in London in June as a guest of Westpac Investment Bank. s47F

I see no risk of a perception of a conflict of interest here, especially since I am on leave and haven't yet commenced any project as Special Adviser.

I anticipate undertaking some paid work in the private sector later in the year. It is also likely that I will be involved in some unpaid charitable and community activities. s47F

As things develop, I will keep you fully informed, seeking your counsel as necessary.

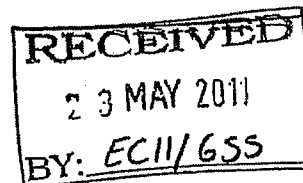
s47F On return, I will seek a meeting with you to commence discussion on a work program and support arrangements.

I would like to take this opportunity to thank you for your support, and I look forward very much to working with you and your team on return from overseas.

Yours sincerely

Ken Henry

Ken Henry



s47F

Declaration of Interests

This declaration of financial and other personal interests is to be completed annually and is to be forwarded on completion to the Secretary of the Department of the Prime Minister and Cabinet.

Name KEN HENRY

Position Title SPECIAL ADVISER

Branch/Division _____

Geographic Location _____

I declare that:

- As Special Adviser I will comply with the APS Values and Code of Conduct as if I were an APS employee. As such, I am aware of my responsibilities under the Code of Conduct to behave honestly and with integrity, to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with my employment and to not make improper use of (a) inside information, or (b) my duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for myself or for any other person;
- I understand the requirement to declare any private interests or relationships which could or could be seen to influence the decisions I am taking or the advice I am giving;
- The attached list at **Annex A** of my private interests and relationships has been prepared on the basis of:
 - the particular roles and responsibilities of the Department of the Prime Minister and Cabinet;
 - my particular roles and responsibilities as Special Adviser.

I undertake to immediately inform the Secretary of the Department of the Prime Minister and Cabinet of any changes to my personal circumstances that could affect the contents of this declaration and to provide an amended declaration/s using this pro forma.

I undertake to declare any private interests or relationships of my immediate family that I am aware of, should circumstances arise in which I consider that they could or could be seen to influence the decisions I am taking or the advice I am giving. I understand that this would require the consent of the family member to the collection by the Department of the Prime Minister and Cabinet of personal information and a declaration that he/she is aware of the purpose for which the personal information has

been collected, the legislative requirements authorising the collection and the third parties to whom the personal information may be disclosed, and consents.

A handwritten signature in black ink, appearing to read 'Ken Henry', with a small horizontal line extending from the end.

Ken Henry
Special Adviser

15.15.11

Declaration of Personal Financial and other Interests

Please list any private interests or relationships which could or could be seen to influence the decisions you are taking or the advice you are giving.

The types of interests and relationships that may need to be disclosed include real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships that could or could be seen to impact upon your responsibilities.

[Signature
Name
Date]

Ken Hickey
Ken Hickey
18.05.11

s47F

*Speaking engagement in London (June 2011)
as guest of Westpac Investment Bank.*

**Declaration of Consent by Immediate Family Member to the Disclosure of their
Personal Financial and other Interests**

This declaration is to be completed by the immediate family member/s of the employee should circumstances arise in which the employee considers that the personal financial and other interests of the family member/s could or could be seen to influence the decisions they are taking or the advice they are giving.

Name _____ s47F _____

Relationship to Employee _____

I am aware that my information has been collected for the purpose of identifying personal and other interests that could or could be seen to influence the decisions that the employee covered by the declarations policy is taking or the advice he/she is giving. I am aware of the Privacy Principles set out in the *Privacy Act 1988* which authorise the collection and the third parties to whom my personal information may be disclosed. I consent to the collection of my personal information by (the relevant agency).

The attached list at **Annex B** of my private interests and relationships has been prepared on that basis.

[Signature
Name
Date]

s47F _____

Annex B

Declaration of Personal Financial and other Interests of Immediate Family Members

Please list any private interests or relationships which could or could be seen to influence the decisions that the employee covered by the declaration policy is taking or the advice he/she is giving.

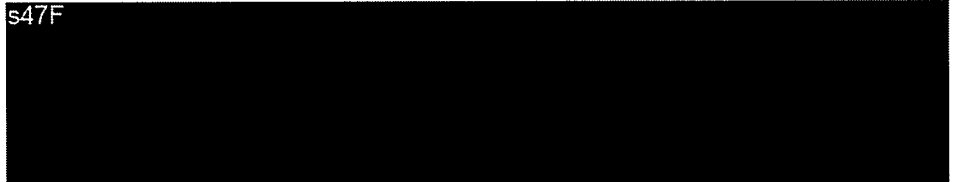
The types of interests and relationships that may need to be disclosed include real estate investments, shareholdings, trusts or nominee companies, company directorships or partnerships, other significant sources of income, significant liabilities, gifts, private business, employment, voluntary, social or personal relationships that could or could be seen to impact upon your responsibilities.

[Signature
Name
Date]

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COPY

Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON ACT

SECRETARY

Dr Ken Henry AC
Special Adviser
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Dear Dr Henry

I write to advise you that the Governor-General agreed to your appointment as Special Adviser on 21 April 2011. The appointment was made under section 67 of the Constitution and commenced on 27 April 2011. The term of the appointment is at the Governor-General's pleasure, but I expect that it will be for a period of two years. A copy of the instrument of appointment signed by the Prime Minister and Governor-General is attached for your information.

The instrument of appointment provides that the Prime Minister will determine your functions as Special Adviser. It is envisaged that you would provide advice to the Government through the Prime Minister. I would anticipate that much of the work you will undertake will form the basis of Cabinet deliberations and should therefore be accorded appropriate confidentiality. I understand it is your intention to take a period of leave for some months. I would be pleased to have further discussions with you on a work program and support arrangements closer to your commencement of work in the position.

In the role of Special Adviser, your remuneration and terms and conditions of employment will be the same as those that apply to the person who holds the position of Secretary of the Department of the Treasury at the relevant time. I note that you are interested in undertaking your new duties on a part-time basis so that you have the flexibility to undertake outside employment. I support that proposal. I request, however, that you consult me prior to undertaking outside employment from now on and that you be mindful of any real or perceived conflict of interest. In this context, I would be grateful if you would provide me with a statement of your private interests. A form for that purpose is attached.

If you have any queries about your appointment please do not hesitate to call Mr Barry Sterland, A/g Deputy Secretary, in this department on 6271 5303.

Yours sincerely

Terry Moran 4
- 4 APR 2011 / MAY

Postal Address: PO Box 6500, CANBERRA ACT 2600

9

Ref: B11/818

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Mr Sterland
Ms Lynch
Mr Macgill

To: Prime Minister (for decision and signature)

SECRETARY APPOINTMENTS

PMO
Mr Hubbard
File

Timing: ASAP – 14 April 2011 – to give effect to your announcement of changes to departmental secretaries and to sign papers for the Executive Council meeting on 21 April 2011.

Recommendations - that you:

s22

s47C, s47F

Purpose: To implement various departmental secretary appointments announced on 21 December 2010 (B10/1861 refers) and to seek your agreement to the appointment of Dr Henry as a Special Adviser under section 67 of the Constitution.

Arrangements for Dr Parkinson, Mr Pratt, Mr Comley and Ms Campbell

1. s22
- 2.
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Arrangements for Dr Henry

6. s47F s47F s42
7. s47F Dr Parkinson commenced as Acting Secretary Treasury from 7 March 2011.
8. Dr Henry has indicated that he would like to take a significant period of leave, at least until September 2011, before commencing any new duties. He has also indicated that he is interested in undertaking his new duties on a part-time basis so that he has the flexibility to undertake outside employment. I support Dr Henry undertaking outside employment but note that he will consult me before undertaking any outside employment. I will ask him to be mindful of any real or perceived conflict of interest.

9. There are a range of options that would enable Dr Henry's skills and experience to be utilised by the Commonwealth, including appointment under section 67 of the Constitution.
- a. Section 67 of the Constitution confers on the Governor-General in Council the power to appoint officers to the Executive Government of the Commonwealth, in circumstances where the Parliament has not provided for such appointments.
 - b. Appropriately, this method of appointment is rarely used given the desirability of making appointments within legislated frameworks. Most appointments to the Executive Government are made under the *Public Service Act 1999* (the PS Act). A Section 67 appointment is proposed in this instance because the proposed role does not come within the ordinary functions of departments as Dr Henry will work on policy and program issues that are not limited to a single portfolio and will be tasked directly by you to provide advice to government. Additionally, the exceptional nature of this appointment is warranted given the PS Act does not currently facilitate the voluntary transition of former Secretaries into further Commonwealth employment.

10.

s47C

11. The appointment instrument also provides that the remuneration and terms and conditions of employment of the Special Adviser will be the same as those that apply to the person who holds the position of Secretary of the Department of the Treasury at the relevant time.
12. The appointment is scheduled for consideration at the Executive Council meeting on 21 April 2011 and papers for that meeting need to be lodged with the Federal Executive Council Secretariat by 15 April 2011. The term of the appointment would be at the Governor-General's pleasure, but is expected to be for a period of two years. There is no requirement to publish these documents or announce the role at this time. Your announcement of 21 December 2010 indicated that you would be discussing a role for Dr Henry. You may wish to announce the role publicly when it is closer to Dr Henry's commencement of the project work and the role has greater definition.

Consultation

13. The Australian Public Service Commission

s42

s42

Financial implications

14. Secretaries' remuneration is paid by their respective departments. Dr Henry's remuneration will be paid from within existing PM&C resources.

Terry Moran

Secretary

April 2011

Policy Officer: David Macgill

Phone no: (6271) 47E(d)

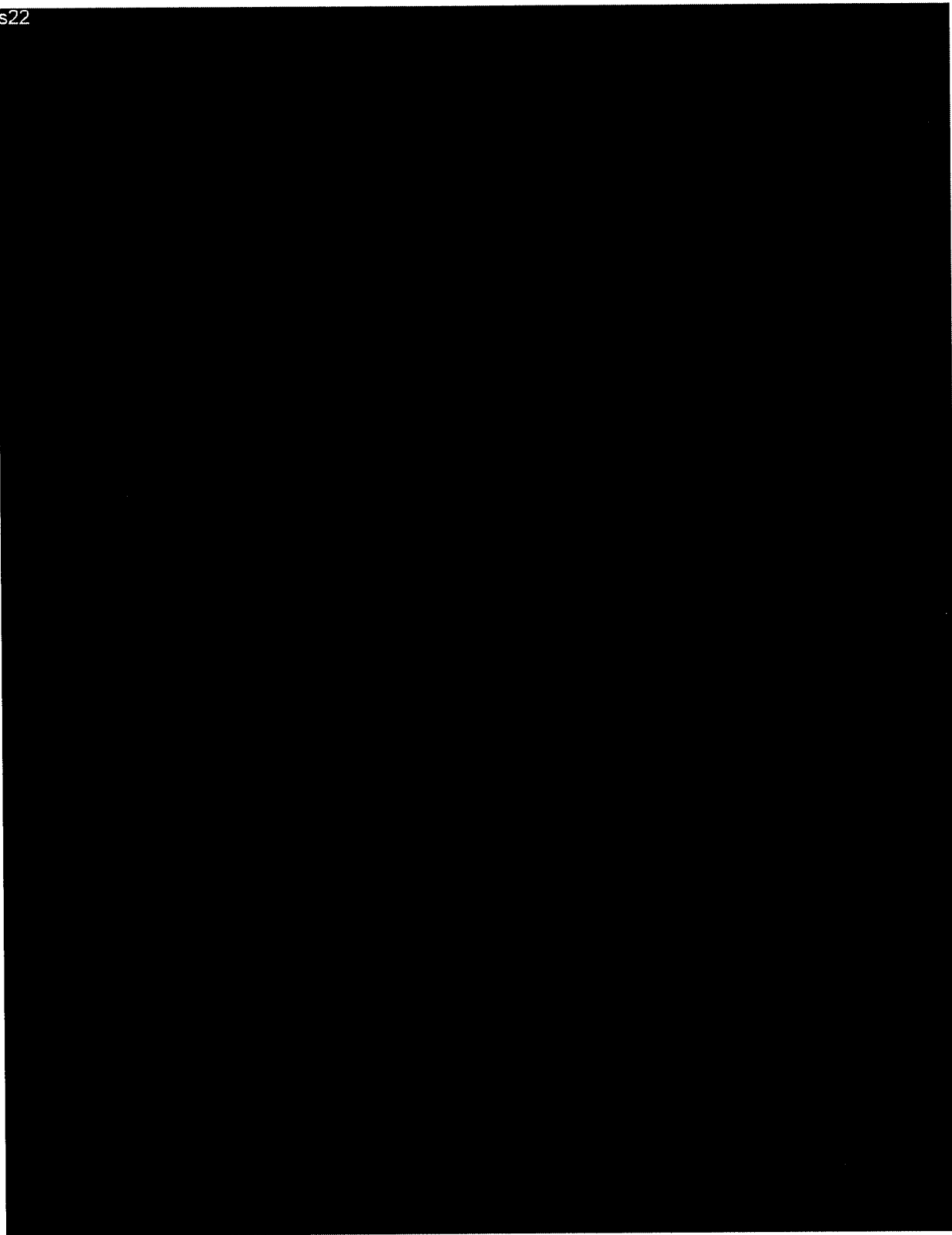
Consultation: APSC, s47C Cabinet Sec

ATTACHMENTS

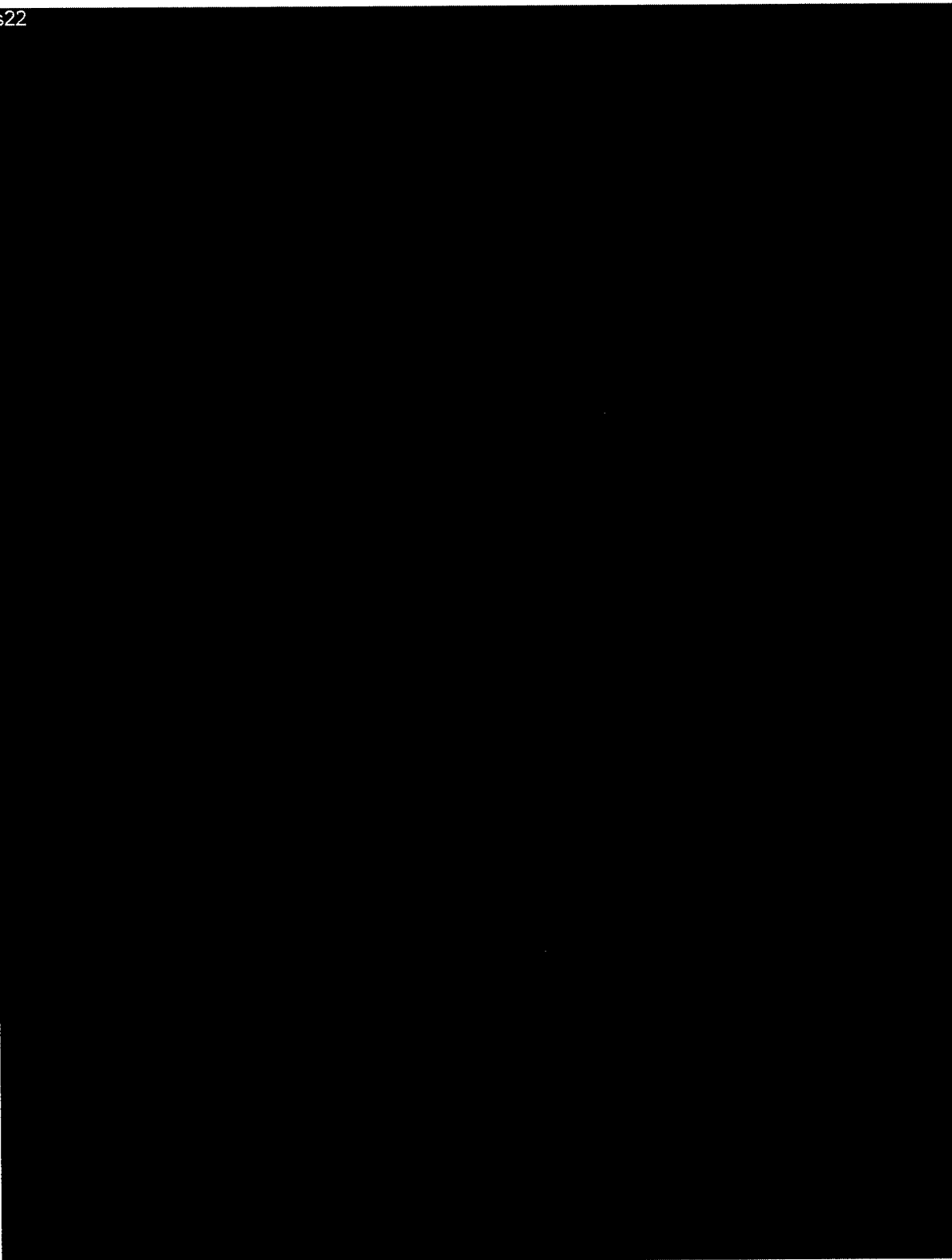
ATTACHMENT A s22

ATTACHMENT B Executive Council instruments – Dr Henry

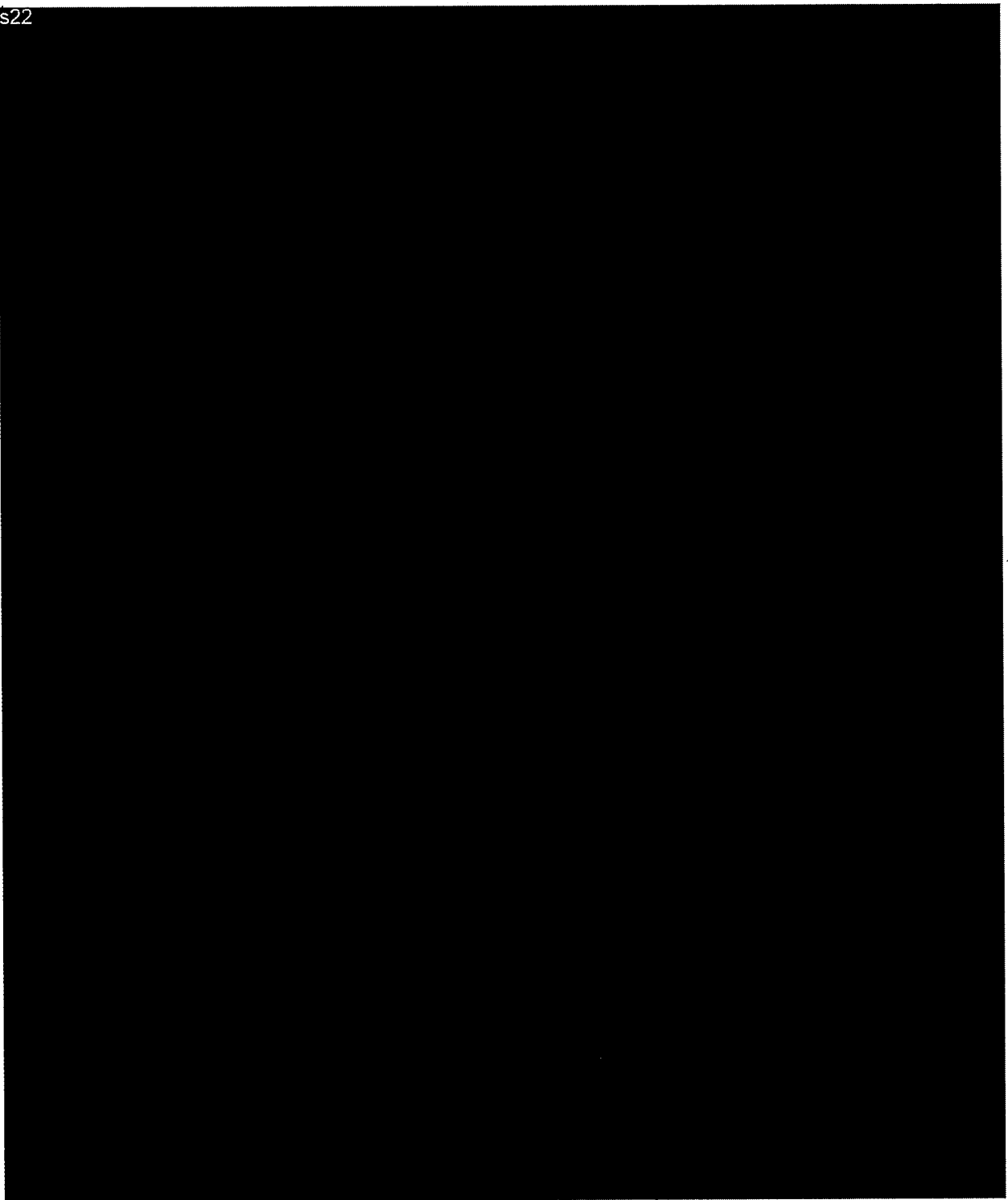
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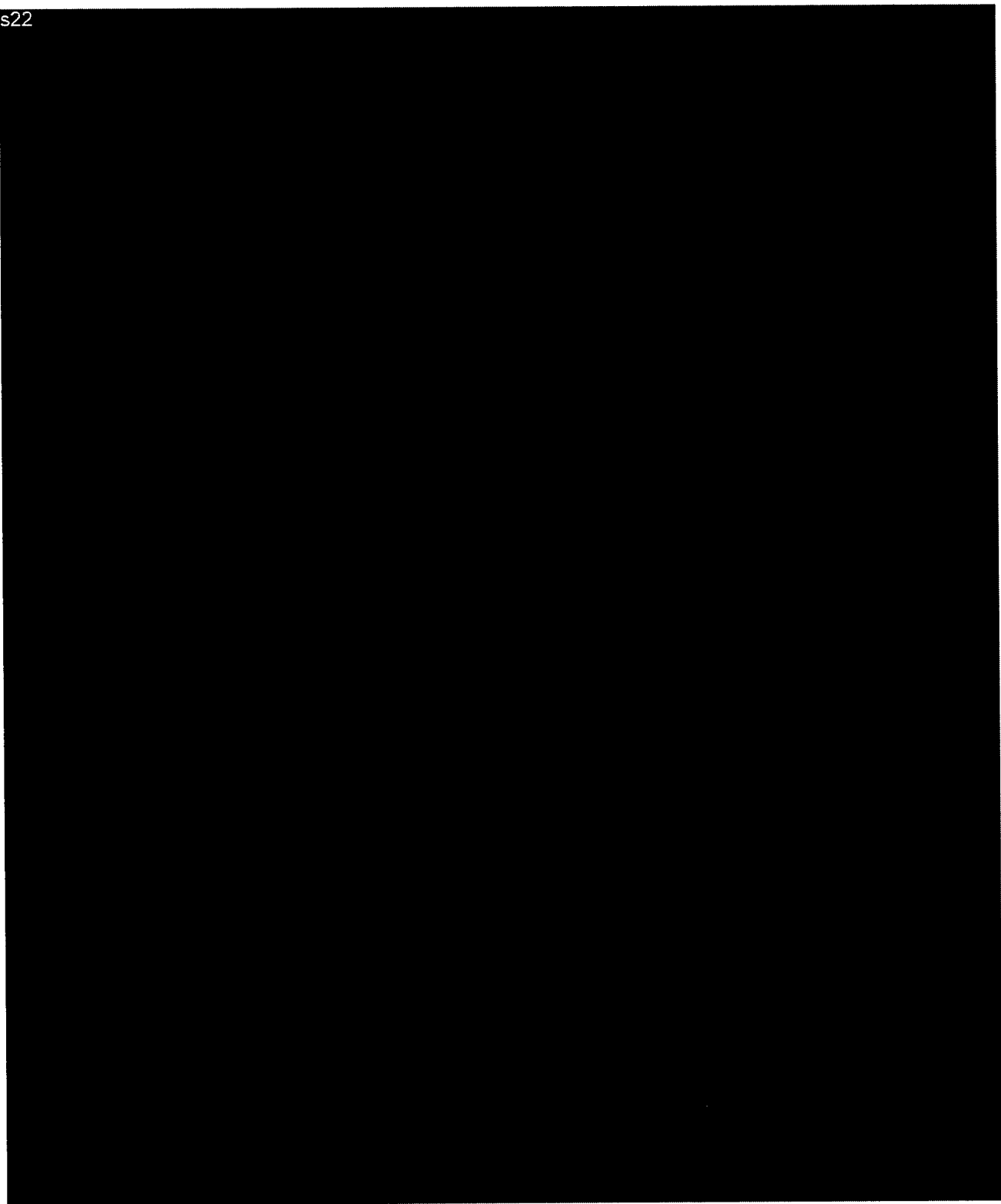
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PRIME MINISTER

Departmental No...1.....

Executive Council Meeting

No.....

Minute Paper for the Executive Council

SUBJECT

The Constitution

Appointment of Special Adviser

Approved in Council

Recommended for the approval of Her Excellency the Governor-General in Council, that by instrument in the attached form, under section 67 of the Constitution, she appoint Dr Kenneth Ross Henry AC to be Special Adviser from 27 April 2011.

Quentin Bryce
Governor-General

Filed in the Records
of the Council

Secretary to the Executive
Council

Julia Gillard
Prime Minister

COMMONWEALTH OF AUSTRALIA

Constitution

Appointment of Special Adviser

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 67 of the Constitution, hereby:

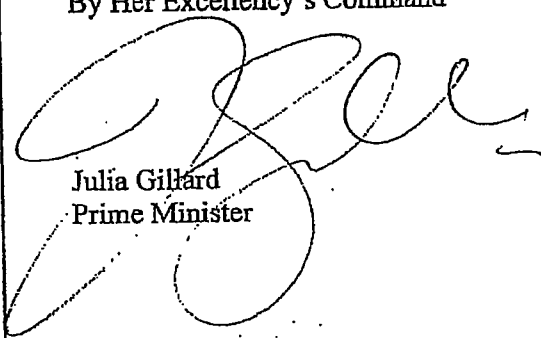
- (a) appoint Dr Kenneth Ross Henry AC to the position of Special Adviser from 27 April 2011;
- (b) note that the appointment is to be held at pleasure; and
- (c) direct that:
 - i. the functions and duties of the Special Adviser be as determined by the Prime Minister from time to time;
 - ii. the Secretary of the Department of the Prime Minister and Cabinet be the approving authority for the Special Adviser to the Prime Minister for leave, including long service leave;
 - iii. for any period that the Special Adviser performs the duties of that office on a full-time basis (40 hours per week), the remuneration and other terms and conditions of employment for the Special Adviser be the same as those that apply to the person who holds the position of Secretary of the Department of the Treasury at the relevant time;
 - iv. the Prime Minister may agree that the duties of the Special Adviser are to be performed on a part-time basis; and
 - v. for any period that the Special Adviser performs the duties on a part-time basis, the remuneration referred to in clause (c)(iii) above be payable, and other entitlements accrue, on a pro-rata basis.

Dated

2011

Governor-General

By Her Excellency's Command



Julia Gillard
Prime Minister

EXPLANATORY MEMORANDUM

Minute No. 1 of 2011 - Prime Minister

Subject – The Constitution
Appointment of Special Adviser

Section 67 of the Constitution confers on the Governor-General in Council the power to appoint officers to the Executive Government of the Commonwealth, in circumstances where the Parliament has not provided for such appointments.

The Minute recommends the appointment of Dr Kenneth Ross Henry AC to the position of Special Adviser. In that role, Dr Henry would advise the Government, on a case by case basis, in respect of major strategic projects that have a whole of government character. In consultation with relevant departments, Dr Henry would be responsible for advising the Cabinet, through the Prime Minister, on whole of government issues, including on longer term policies and frameworks to maximise the development of human capabilities, particularly for disadvantaged groups. It is proposed that Dr Henry be supported by the Department of the Prime Minister and Cabinet.

Ordinarily the appointment of a person to the Executive Government is made under the *Public Service Act 1999*. In relation to the proposed appointment, however, the functions of the Special Adviser would have a whole of government character and Dr Henry would work on policy and program issues that are not limited to a single portfolio. He would be tasked directly by the Prime Minister. In these circumstances, it is appropriate for the appointment to be made under section 67 of the Constitution.

Dr Henry currently holds the position of Secretary of the Department of the Treasury. That appointment will expire on 26 April 2011 and it is proposed that this appointment commence on 27 April 2011 and be held at pleasure.

The instrument of appointment specifies that the functions of the Special Adviser be as determined by the Prime Minister, with the terms and conditions to be the same as the Secretary of the Department of the Treasury, from time to time. The instrument also provides that if Dr Henry undertakes the work on a part-time basis, his remuneration would be payable, and other entitlements would accrue, on a pro-rata basis. A curriculum vitae for Dr Henry is attached.

The Minute recommends an appointment be made in the form proposed.

Authority: Section 67 of the
Constitution

CURRICULUM VITAE

Name: Dr Kenneth Ross HENRY AC

Address: c/- The Treasury
Langton Crescent
Parkes ACT 2600

Date of birth: 27 November 1957

Present position: Secretary to the Treasury

Educational and professional qualifications:

B.Comm (Econ. Hons 1) (1979)
University of New South Wales

Ph.D. (Economics) (1982)
University of Canterbury
New Zealand

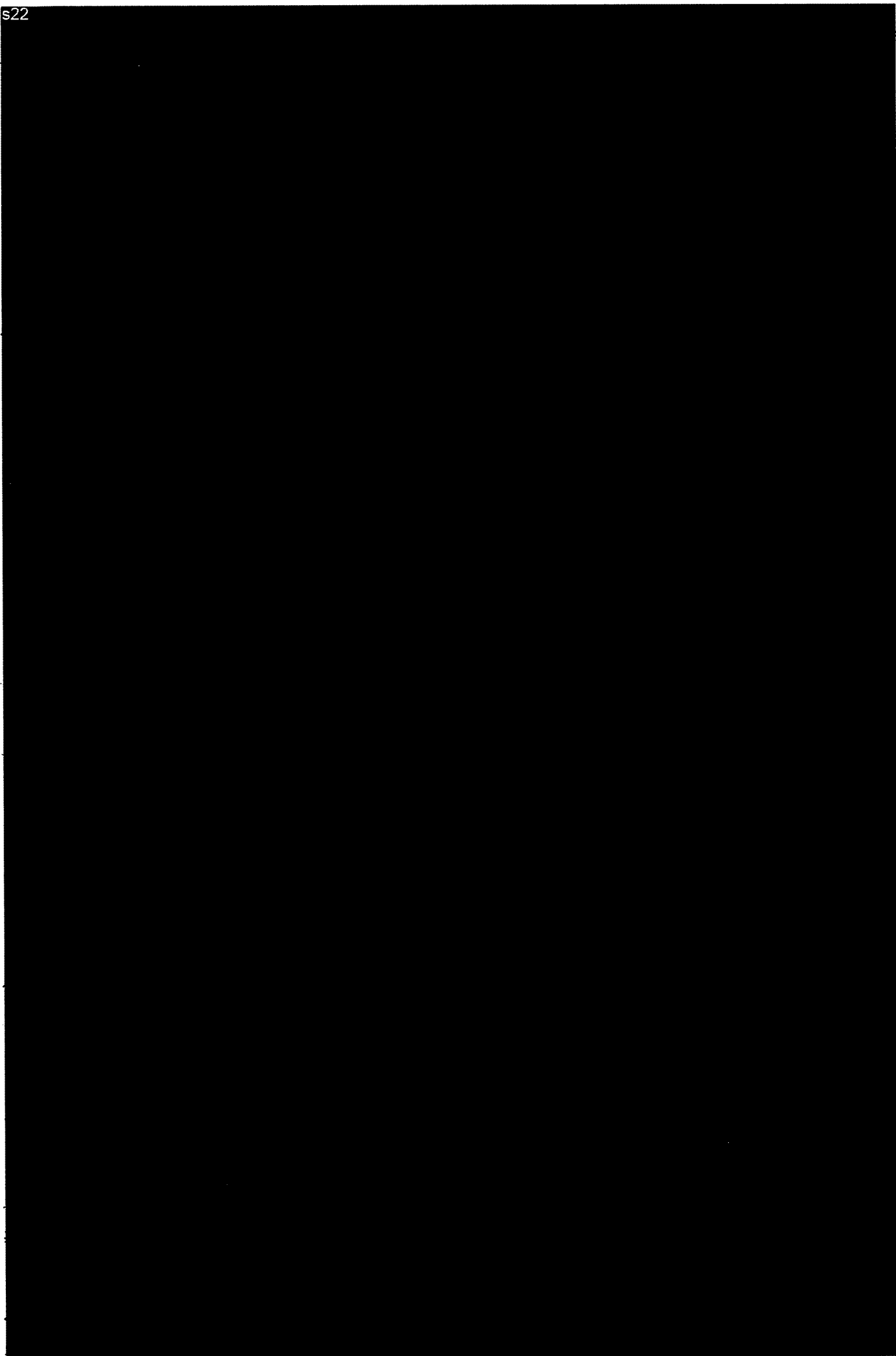
Relevant experience:

More than 26 years in the Australian Public Service, including some 10 years at SES level and 10 years as Secretary to the Treasury. Has had senior executive level responsibility for providing policy advice to Australian governments on taxation policy, retirement incomes policy, business regulation, financial systems regulation, corporate governance, foreign investment policy, competition policy, macroeconomic assessments and policy, budget policy, social policy and Commonwealth-State financial relations.

Board Memberships as Secretary to the Treasury:

Ex officio: Reserve Bank of Australia
Board of Taxation
Sir Roland Wilson Foundation
Alternate Governor (for Australia) of the IMF
Joint Chair of the Trans-Tasman Council on Banking Supervision
Council of Financial Regulators
Chair of the Heads of Treasuries
Chair of the Advisory Board of the AOFM
Defence Procurement Advisory Board
Secretaries' Committee on National Security
Chair of the Standard Business Reporting Board
Infrastructure Australia

Other: Chair of the ANZSOG Research Committee
Chair of the 2009 Review into Australia's Future Tax System



2/6/11

(10)

APPOINTMENT OF DR KEN HENRY AC

ISSUES

- Following your announcement of senior appointments yesterday, there have been a number of media articles focussing on the appointment of Dr Ken Henry AC as Special Adviser.

SUMMARY

- Dr Ken Henry AC has been appointed by the Governor-General as Special Adviser.

KEY POINTS

On 21 December 2010 you announced that Dr Henry would be finishing as Secretary to the Treasury and that over coming months you would have further discussions with him on his future. On 1 June 2011 you announced a number of senior appointments, including that of Dr Henry as part-time Special Adviser.

DR HENRY'S APPOINTMENT ENSURES THAT HIS SKILLS, EXPERIENCE AND KNOWLEDGE WILL CONTINUE TO BE AVAILABLE TO THE AUSTRALIAN GOVERNMENT.

- Dr Henry's extensive knowledge and experience are a valuable resource and I am pleased that they remain available to the Australian Government.

DR HENRY HAS GARNERED A WEALTH OF EXPERIENCE AND KNOWLEDGE THROUGHOUT HIS DISTINGUISHED PUBLIC SERVICE CAREER.

- During his career in Treasury, which spanned more than 25 years, 10 of which were spent as Secretary, Dr Henry has made major contributions to the well-being of Australians and the prosperity of the nation.

DR HENRY WAS APPOINTED TO THE POSITION OF SPECIAL ADVISER BY THE GOVERNOR-GENERAL.

- I advised the Governor-General to make the appointment of Dr Henry, which was made under section 67 of the Constitution. The appointment is expected to be on a part-time basis.
- Dr Henry will be supported by the Department of the Prime Minister and Cabinet in his new role.
- I recommended the appointment to the Governor-General, following advice to me from the Secretary of the Department of the Prime Minister and Cabinet.

DR HENRY IS CURRENTLY ON EXTENDED LEAVE, TAKING A WELL-DESERVED BREAK AFTER 10 YEARS OF OUTSTANDING SERVICE AS THE SECRETARY TO THE TREASURY.

- His appointment to this position means that his skills will continue to be available to the Government and he will have an ongoing advisory role across a range of complex and whole-of-government issues.
- There will be further discussions with Dr Henry on the details of the advisory role closer to his return from leave.

BACKGROUND:

- On 21 December 2010, the Prime Minister announced that Dr Henry would finish in his role as Secretary of the Department of the Treasury and that over the coming months she would have further discussions with Dr Henry concerning his future.
- Dr Henry's appointment as Secretary of the Department of the Treasury expired on 26 April 2011. On 21 April 2011, the Governor-General, on the advice of the Prime Minister, appointed Dr Henry to the position of Special Adviser under section 67 of the Constitution.
- The appointment commenced on 21 April 2011 and is at the Governor-General's pleasure. The remuneration and terms and conditions of employment for the position are the same as those that apply to the person who holds the position of Secretary to the Treasury. Dr Henry is expected to work part-time and will be paid on a pro-rata basis. Information about him being remunerated at Secretary level has been reported in *The Australian*.
- The most recent previous appointment under section 67 was the appointment of Mr Fergus Ryan as the Strategic Investment Coordinator, which expired in 2002. Other examples include Dr Paul Twomey as Chief

Executive Officer for the National Office for the Information Economy, Ms Gwenyth Andrews as Chief Executive of the Australian Greenhouse Office and Mr Michael Hutchison as Chief Executive of the Office of Asset Sales and Information Technology, all in 1998.

- The Prime Minister announced a number of senior appointments yesterday. The appointments included Dr Don Russell as Secretary of the Department of Industry, Innovation, Science and Research, Dr Paul Grimes PSM as Secretary of the Department of Sustainability, Environment, Water, Population and Communities, Ms Robyn Kruk AM as CEO of the National Mental Health Commission. You also announced a number of senior Defence appointments, including Lieutenant General David Hurley, AC, DSC to be the Chief of the Defence Force.
- On 2 June a number of media articles have been published on the appointments, particularly that of Dr Henry. There were articles by Michelle Grattan in the *The Age* and David Uren in *The Australian*, among others.

Contact Officer : Gerard Martin
Branch : Parliamentary and Government
Telephone : 6271s47E(d)
Date : 2 June 2011
Ministerial ID No : QTB11/400