Senate Foreign Affairs, Defence and Trade Legislation Committee

QUESTIONS ON NOTICE

Department of Foreign Affairs and Trade

Additional estimates 2000–2001—22 February 2001

Outputs 1.1.1 and 1.2.1

Topic: **Nippon Research Centre**
Hansard page 140

Question 1: Senator Hogg asked:

(a) Would the Department provide copies of studies and surveys conducted by the Nippon Research Centre to assess Japanese perceptions of Australia?

(b) Would the Department provide a copy of a market research project by Professor Ando to measure Japanese attitudes towards Australian cultural product?

Answer:

(a) The Department agreed to provide the documents, which are attached **(appendix 1**). *(Not published in this volume)*

(b) The Department agreed to provide the document, which is attached **(appendix 2).** *(Not published in this volume)*

Outputs 1.1.2 and 1.2.2

Topic: **AC Nielsen research project in Singapore**
Hansard page 144

Question 2: Senator Hogg asked:

(a) When and why was an AC Nielsen project commissioned to research Australia's image in Singapore?

(b) What were the results?

(c) Would the Department provide a copy, or executive summary of the findings?

(d) How does the Department use the results of the information gained from the surveys and are they of use?

Answer:

(a) The survey was commissioned by the post in 1999 to ensure that the resources available for public affairs in Singapore were targeted in the most effective way possible. The survey involved four groups:
- a telephone survey of the general public;
- focus groups with potential and current students;
- interviews with public servants; and
- interviews with investors.

(a) The results are contained in appendix 3.

(b) The Department agreed to provide a copy of the findings, which is attached **(appendix 3).** *(Not published in this volume*

(c) It was used for the post's work in formulating its public diplomacy strategy programs, and educational and trade initiatives.

Outputs 1.1.5 and 1.2.5

Topic: **New Zealand fruit imports**
Hansard page 130

Question 3: Senator Hogg asked:

Have discussions been held between the trade arms of the governments of Australia and New Zealand with regard to Australian importation barriers on New Zealand fruit? If so, when did they take place and, to the extent the Department is able to reveal, what was discussed?

Answer:

The issue of the importation of New Zealand apples was raised by New Zealand at the annual Trade Ministers' talks in late August last year, and during Mr Downer's visit to New Zealand in December 2000. Australian and New Zealand officials, including from DFAT, also discussed the issue during the annual Trade and Economic Senior Officials meeting held in Wellington on 18 July 2000.

Topic: **WTO—Sugar**
Hansard page 161

Question 4: Senator Cook asked:

(a) Has the Department been working with the Australian sugar industry on the details of a possible WTO challenge against the US sugar program?

(b) If so, what is the status of that work?

Answer:

(a) & (b) As Mr Vaile foreshadowed in the launch of last year's Trade Outcomes and Objectives Statements, the Department has been working closely with the sugar industry to examine the WTO-consistency of the US government's sugar regime. This is just one example of the Department's ongoing work of analysing the WTO-consistency of the various policies and programs of Australia's trading partners. Any decision on further work on sugar will be made jointly by the government and the sugar industry.

Outputs 1.1.5 and 1.2.5

Topic: **WTO Procurement Agreement and Athens Olympic Games**
Hansard page 161

Question 5: Senator Cook asked:

(a) To what extent is Australia's non-membership of the WTO Government Procurement Agreement a factor in the ability of Australian companies to secure Olympic-related business in Greece?

(b) Has the Department given any recent consideration to whether Australia should join the Agreement?

(c) If not, what strategy does the Department have to prevent Australian companies being disadvantaged in relation to companies from countries that are parties to the Agreement?

Answer:

(a) The government has been working closely with Australian companies to assist them in securing Olympic-related business. However, the specification included in tender arrangements by Greek authorities that commercial participation will be restricted to members of the European Union (EU), countries of the European Free Trade Zone (EFTA), and signatories to the WTO Agreement on Government Procurement (GPA) has effectively precluded Australian companies from bidding as the primary contractor for Athens Olympic projects.

Although Australian companies are unable to tender as primary contractors, the Greek Government has recently adopted a less restrictive approach to the role of special consultants by permitting non-GPA member countries to participate as special consultants on Olympic projects. Most recently the Greek Labour Ministry reissued tenders for the Olympic Village without a GPA pre-qualification clause.

In respect of the problem posed by non-membership of the GPA, the government has made a number of representations to EU and Greek authorities, seeking to clarify the application of EU procurement directives. In response to a letter from the Minister for Trade, Mr Vaile, the Commissioner for Trade in the European Commission, Mr Lamy, confirmed that EU public procurement directives do not prohibit access for Australian companies to Greek public tender procedures (eg Athens Olympic tenders), and that Greece has the discretion to modify Olympic tender criteria to enable non-GPA member countries, such as Australia, to bid for

Olympic projects. Mr Lamy also wrote to the Greek authorities clarifying the situation. The government has used this response to request, in further letters from Mr Vaile, Mr Downer and the Prime Minister to their counterparts in the Greek Government, that Greece amend its Olympic tender processes and allow Australian companies fair and equitable access to bid for Olympic projects.

(b) Please see answer in response to question on notice taken on 23 November 2000, in Volume 4 of *Additional Information relating to Budget Supplementary Estimates 2000–2001*, 23 November 2000, pp15–16.

(c) The department is actively involved in WTO discussions aimed at developing fairer and more transparent arrangements for government procurement, which it would like to see included in any new round of multilateral trade negotiations. The WTO Working Group on Transparency in Government Procurement (WGTGP) has the potential to deliver an agreement that is more flexible and reflects the way Australian governments do business (eg obtaining value for money, and flexibility to choose the most suitable method of procurement). Through the WTO review of The Government Procurement Agreement, Australia is also seeking to encourage other WTO members to consider a much more flexible approach to developing rules for government procurement.

In the meantime, as with the approach to Greece over tenders for Athens Olympic projects, the government will employ a concerted effort in respect of any bilateral trade access issue that arises due to non-membership of the GPA, so as to ensure that Australian companies are given the chance to compete for such work on equitable terms.

Outputs 1.1.7 and 1.2.7

Topic: **Treaties**
Hansard page 162

Question 6: Senator Hogg asked:

On how many occasions since the introduction of the present treaty making process has the government taken binding treaty action before the expiry of the 15 sitting day minimum time frame?

Answer:

Since the introduction of the present treaty making process in May 1996, the government has taken binding treaty action before the expiry of 15 sitting days in both Houses on the following five occasions, four of which were under the urgency provisions:

- Subsidiary Agreement between the Government of Australia and the Government of Japan concerning Japanese Tuna Long-Line Fishing (Canberra, 4 June 1996).
  The treaty came into force upon signature on 4 June 1996 and was tabled under the urgency provisions in the Senate on 17 June and in the House of Representatives on 18 June 1996.

- Constitution of the United Nations Industrial Development Organization (UNIDO).
  The proposal to withdraw from UNIDO was tabled on 11 December 1996. Australia's instrument of denunciation was deposited on 23 December 1996 to allow it to take effect from 31 December 1997.

- Agreement concerning the Neutral Truce Monitoring Group for Bougainville (Port Moresby, 5 December 1997).
  The treaty came into force for Australia on 11 December 1997 following an exchange of notes between Australia and Papua New Guinea. It was tabled under the urgency provisions on 3 March 1998.

- Protocol concerning the Peace Monitoring Group to the above Agreement (Port Moresby, 29 April 1998).
  Signature of the Protocol constituted binding treaty action for Australia. It entered into force for Australia on 1 May 1998, and was tabled under the urgency provisions on 30 June 1998.

- Exchange of Notes constituting an Agreement between Australia and the United Nations Transitional Administration in East Timor (UNTAET) for the continued operation of the Timor Gap Treaty (Dili, 10 February 2000)
  The Exchange of Notes was binding treaty action for Australia. Tabling took place on 15 February 2000 under the urgency provisions.

There are also treaties where routine amendments are deemed to have entered into force on a specified date, such as amendments to the appendices to the Convention on the Conservation of Migratory Species of Wild Animals, amendments to the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and amendments to the Schedule for the Regulation of Whaling. It is not always possible to table such amendments for 15 sitting days before the deemed entry into force date.

Outputs 1.1.8 and 1.2.8

Topic: **Supply or sale of uranium to Taiwan**
Hansard page 167

Question 7: Senator Hogg asked:

Have there been any approaches, negotiations or discussions with Taiwanese officials at any departmental level in the past two years regarding possible safeguard arrangements for the supply or sale of Australian uranium to Taiwan's nuclear power industry?

Answer:

Over the past two years, there have been several discussions between Australian officials and Taiwanese representatives over the possibility of establishing safeguards arrangements which would allow Australian uranium producers to supply uranium for use in Taiwanese nuclear power plants. Since Taiwan is not recognised as a state by Australia, these discussions were aimed at finalising an arrangement based on the export of Australian uranium to the United States for enrichment, after which it would be transferred to Taiwan. In this way, the material would be covered by existing nuclear safeguards agreements involving the United States, Taiwan and the International Atomic Energy Agency. Discussions for such an arrangement, which follows the precedent set by Canada, have been on-going since 1993.

Topic: **Disarmament and non-proliferation conferences**
Hansard pages 168–169

Question 8: Senator Hogg asked:

(a) Would the Department provide the Committee with a list of major multinational disarmament and non-proliferation conferences and meetings together with formal bilateral dialogues scheduled for this year?

(b) What are the proposed dates of those meetings and who will represent Australia?

Answer:

(a) and (b) The Department undertook to provide the attached table **(appendix 4).** *(Published in this volume)*

Attachment 4: MAJOR DISARMAMENT AND NON-PROLIFERATION MEETINGS/CONFERENCES SCHEDULED IN 2001 (as at 09/03/2001)

MEETING	LOCATION	DATES	PROPOSED LEVEL OF REPRESENTATION (subject to refinement)
Small Arms Preparatory Committee (Prepcom) II	New York	08-19.01.01	DFAT – Executive Officer
UN Conference on Disarmament	Geneva	22.01-30.03.01	DFAT – Ambassador for Disarmament and Geneva mission officers
22nd Biological Weapons Convention Protocol Ad Hoc Group Session	Geneva	09-23.02.01	DFAT – Ambassador for Disarmament and Geneva mission officers, Director, Executive Officer
Convention on Arms Transfer	Phnom Penh	21-23.02.01	DFAT - Director
Asian Export Control Seminar	Tokyo	27.02-02.03.01	DFAT - Director
Missile Technology Control Regime Regional Seminar	Tokyo	01-02.03.01	DFAT – Executive Officer
Discussions with US officials on International Atomic Energy Agency (IAEA) safeguards	Canberra	05.03.01	ASNO – Director General, Assistant Secretary, Director DFAT – Assistant Secretary, Director
Non-Proliferation and Disarmament Cooperation Initiative Ad Hoc meeting	Brussels	05-09.03.01	DFAT – Brussels mission officer
Small Arms and Light Weapons in Cambodia	Tokyo	13-14.03.01	DFAT - Director
Pol-Mil talks with Germany	Canberra	16.03.01	DFAT – First Assistant Secretary, Assistant Secretary, Director, Executive Officer
IAEA Board of Governors	Vienna	19-22.03.01	DFAT – Ambassador and Vienna mission officers

Senate Foreign Affairs, Defence and Trade Legislation Committee

QUESTIONS ON NOTICE

Department of Foreign Affairs and Trade

Additional estimates 2000–2001—22 February 2001

MEETING	LOCATION	DATES	PROPOSED LEVEL OF REPRESENTATION (subject to refinement)
Small Arms Prepcom III	New York	19-30.03.01	DFAT – Executive Officer
Pol-Mil talks with France	Canberra	20.03.01	DFAT – Deputy Secretary, First Assistant Secretary, Assistant Secretary, Director, Executive Officer
Missile Technology Control Regime Reinforced Point of Contact meeting	Paris	26-27.03.01	DFAT – Assistant Secretary
UN Asia Pacific Disarmament Meeting and Workshops	Wellington	26-30.03.01	ASNO – Section Head DFAT – First Assistant Secretary, Executive Officer
Unexploded Remnants of War Workshop	The Hague	29-30.03.01	DFAT – Assistant Secretary
Standing Advisory Group on Safeguards Implementation	Albuquerque/ Sante Fe	31.03-13.04.01	ASNO – Director General
2nd Prepcom for Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW) Review Conference (RevCon)	Geneva	02-06.04.01	DFAT – Assistant Secretary
Biological Weapons Convention RevCon Prepcom 23rd Ad Hoc Group Session	Geneva	23.04-11.05.01	DFAT – Ambassador for Disarmament, Executive Officer
Comprehensive Nuclear Test-Ban Treaty Prepcom	Vienna	24-27.04.01	DFAT – Ambassador and Vienna mission officers
Bilateral safeguards and nuclear policy talks with Canada	Canberra	26-27.04.01	ASNO – Director General, Assistant Secretary DFAT – First Assistant Secretary, Executive Officers, Desk Officers

Senate Foreign Affairs, Defence and Trade Legislation Committee

QUESTIONS ON NOTICE

Department of Foreign Affairs and Trade

Additional estimates 2000–2001—22 February 2001

MEETING	LOCATION	DATES	PROPOSED LEVEL OF REPRESENTATION (subject to refinement)
South Asia Task Force	Rome	April	DFAT – Ambassador for Disarmament
Chemical Weapons Convention Regional Workshop	Melbourne	01-03.05.01	ASNO – Assistant Secretary, Section Head, Executive Officer DFAT – Director, Executive Officer
Nuclear Suppliers Group Plenary	Aspen	07-10.05.01	DFAT – Assistant Secretary, Executive Officer
Standing Advisory Group on Safeguards Implementation	Vienna	11-20.05.01	ASNO – Director General
Negotiation of a bilateral nuclear safeguards agreement	Argentina	12-19.05.01	ASNO – Assistant Secretary DFAT – Ambassador and Buenos Aires mission officers, Executive Officer
Workshop on Fissile Material Cut-off Treaty	Geneva	14-15.05.01	ASNO – Section Head
6th Conference of States Parties, Organisation for the Prohibition of Chemical Weapons	The Hague	14-18.05.01	ASNO – Executive Officer DFAT – Head of Mission The Hague, Executive Officer
UN Conference on Disarmament	Geneva	14.05-29.06.01	DFAT – Ambassador for Disarmament and Geneva mission officers
Regional security talks with Thailand (tbc)	Bangkok	15.05.01	DFAT – Deputy Secretary, Assistant Secretary
Convention on Physical Protection of Nuclear Materials Experts Meeting	Vienna	22-26.05.01	ASNO – Assistant Secretary

Senate Foreign Affairs, Defence and Trade Legislation Committee

QUESTIONS ON NOTICE

Department of Foreign Affairs and Trade

Additional estimates 2000–2001—22 February 2001

MEETING	LOCATION	DATES	PROPOSED LEVEL OF REPRESENTATION (subject to refinement)
Zangger Committee	Vienna	23.05.01	DFAT – Counsellor Vienna mission
National Consultative Committee on Peace and Disarmament meeting	Canberra	May	DFAT – Assistant Secretary, Director, Executive Officer, Desk Officer
IAEA Board of Governors	Vienna	11-15.06.01	DFAT – Ambassador and Vienna mission officers, Director
EURATOM Joint Technical Working Group and Article XIII conference	Canberra	21-26.06.01	ASNO – Director General, Assistant Secretary DFAT – First Assistant Secretary, Assistant Secretary, Director, Executive Officer
UN Conference on Small Arms	New York	06-20.07.01	DFAT – Ambassador for Disarmament, Assistant Secretary, Executive Officer
24th Biological Weapons Convention Ad Hoc Group session	Geneva	23.07-17.08.01	DFAT – Ambassador for Disarmament, Executive Officer
UN Conference on Disarmament	Geneva	30.07-14.09.01	DFAT – Ambassador for Disarmament and Geneva mission officers
Comprehensive Nuclear Test-Ban Treaty Prepcom	Vienna	21-24.08.01	DFAT – Ambassador and Vienna mission officers
IAEA General Conference	Vienna	17-21.09.01	DFAT – Ambassador and Vienna mission officers, Assistant Secretary
3rd Meeting of States Parties – Landmines	Managua	18-21.09.01	DFAT – Assistant Secretary, Executive Officer

Senate Foreign Affairs, Defence and Trade Legislation Committee

QUESTIONS ON NOTICE

Department of Foreign Affairs and Trade

Additional estimates 2000–2001—22 February 2001

MEETING	LOCATION	DATES	PROPOSED LEVEL OF REPRESENTATION (subject to refinement)
2nd Comprehensive Nuclear Test-Ban Treaty Article XIV Conference	New York	24-26.09.01	DFAT – Vienna and New York mission officers, Assistant Secretary
3rd Prepcom for Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW) RevCon	Geneva	24-28.09.01	DFAT – Ambassador for Disarmament
Missile Technology Control Regime Annual Plenary	Ottawa	24-28.09.01	DFAT – Assistant Secretary
National Consultative Committee on Peace and Disarmament meeting	Canberra	September	DFAT – Assistant Secretary, Director, Executive Officer, Desk Officer
South Asia Task Force	tbc	September	DFAT – Ambassador for Disarmament
Australia Group	Paris	01-04.10.01	DFAT – Assistant Secretary, Director, Executive Officer, Desk Officer
Standing Advisory Group on Safeguards Implementation	Vienna	October	ASNO – Director General
UN General Assembly First Committee	New York	October-November	DFAT – Ambassador for Disarmament, Geneva and New York mission officers
Comprehensive Nuclear Test-Ban Treaty Prepcom	Vienna	19-23.11.01	DFAT – Ambassador and Vienna mission officers
Biological Weapons Convention 5th RevCon	Geneva	19.11-28.12.01	DFAT – Ambassador for Disarmament, Executive Officer

Senate Foreign Affairs, Defence and Trade Legislation Committee

QUESTIONS ON NOTICE

Department of Foreign Affairs and Trade

Additional estimates 2000–2001—22 February 2001

MEETING	LOCATION	DATES	PROPOSED LEVEL OF REPRESENTATION (subject to refinement)
IAEA Board of Governors	Vienna	29-30.11.01	DFAT – Ambassador and Vienna mission officers, Director
Bilateral safeguards and nuclear policy talks with Japan	Canberra	November	ASNO – Director General, Assistant Secretary, Section Head, Executive Officer DFAT – First Assistant Secretary, Assistant Secretary, Director, Executive Officer
Bilateral safeguards and nuclear policy talks with the United States	Canberra	November	ASNO – Director General, Assistant Secretary, Section Head, Executive Officer DFAT – First Assistant Secretary, Assistant Secretary, Director, Executive Officer
Standing Advisory Group on Safeguards Implementation	Vienna	November	ASNO – Director General
Wassenaar Arrangement Plenary	Vienna	04-07.12.01	DFAT – Executive Officer
Annual Conference of States Parties to Amended Protocol II of the CCW	Geneva	10.12.01	DFAT – Assistant Secretary
Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW) RevCon	Geneva	11-21.12.01	DFAT – Assistant Secretary

Output 1.3

Topic: **The Blunn report—press release**
Hansard page 170

Question 9: Senator Hogg asked:

Did the department consult with the minister or his office concerning the press release on the report?

Answer:

The department followed its normal practice of drawing proposed departmental press releases to the attention of the Minister and his office.

Topic: **The Blunn report—claims of tension between Defence and DFAT over security issues.**
Hansard page 171

Question 10: Senator Hogg asked:

In his report Mr Blunn found that, while the decision to conduct a joint investigation was appropriate, it took place in a climate of tension between Defence and DFAT over security issues. What was the nature of this tension of security issues in April-May 1999, and what concerns did DFAT have about security in the Department of Defence?

Answer:

The department does not accept the characterisation of its dealings with the Department of Defence as taking place in a 'climate of tension'. The department has a continuing exchange with the Department of Defence on issues regarding the secure and proper handling of classified information. The department did indicate in official correspondence (31 May 1999, from Deputy Secretary Mr Miles Kupa to Defence Deputy Secretary Mr Hugh White, released under FOI) that it was concerned regarding the allegations that had been made against Mr Jenkins.

Output 1.3

Topic: **Merv Jenkins case—disclosure of classified material in the media**
Hansard page 171

Question 11: Senator Hogg asked:

Was DFAT concerned that classified defence information concerning East Timor had been disclosed in the media in April 1999?

Answer:

The reason the investigation was undertaken did not relate to East Timor. The allegations which led to the investigation referred to mishandling of large number of classified documents, including DFAT diplomatic cables marked AUSTEO. The allegations made no reference to the content of the cables.

Topic: **Merv Jenkins case—exchanges between DFAT and Defence officers**
Hansard page 171

Question 12: Senator Hogg asked:

(a) Was it not the case that, prior to the commencement of the investigation in Washington, Mr Jon Philp, the assistant secretary, Diplomatic Security Branch, told the Defence Security Branch that the secretary, Dr Calvert, was 'exercised by this incident and it was his desire to have Mr Jenkins withdrawn as soon as possible'?

(b) Did DFAT formally seek Mr Jenkins's immediate withdrawal from Washington as a matter of urgency?

(c) Can you confirm that DFAT Deputy Secretary Miles Kupa wrote to Hugh White at Defence expressing DFAT's view that Jenkins should be immediately withdrawn?

(d) Did Deputy Secretary Miles Kupa write to Defence prior to or post Jenkins's death raising concern over the management of DIO personnel in overseas posts?

Answer:

(a) In a discussion on 1 June 1999 between Mr Philp, assistant secretary, Diplomatic Security Branch (DFAT) and Mr Brown, assistant secretary of the Defence Security Branch, Mr Philp told Mr Brown that Dr Calvert was exercised by this incident. Mr Philp conveyed Dr Calvert's view, set out in a letter of 31 May 1999 from Mr Miles Kupa, Deputy Secretary, to Mr Hugh White, deputy secretary in Defence (see parts (b), (c) and (d)), that Mr Jenkins should immediately be withdrawn from our Embassy in Washington if there was substance to the allegations. The record of this conversation has been released under FOI.

(b) & (c) DFAT did not formally seek Mr Jenkins' immediate withdrawal from the Embassy prior to the investigation. The department's position, put to the Department of Defence, in a letter of 31 May 1999 (from Deputy Secretary Mr Miles Kupa to Defence Deputy Secretary Mr HughWhite, released under FOI), was that 'As a first step, it is this Department's view that the officer concerned should immediately be withdrawn from our Embassy in Washington if there is substance to the allegations. Pending an early investigation into the allegations, you may wish to consider putting the officer on leave'.

(d) There was correspondence from Mr Miles Kupa to Mr Hugh White, which has been referred to in answers to parts (a), (b) and (c). This correspondence did not refer to concern over the management of DIO personnel at overseas posts. It was made available to the office of the Inspector-General of Intelligence and Security. We have no record of correspondence from Mr Kupa to officers in the Department of Defence raising concern over the management of DIO personnel in overseas posts.

Enabling services

Topic: **Departmental staff working at Parliament House**
Hansard page 135

Question 13: Senator Faulkner asked:

Has the Department of Foreign Affairs and Trade or any of its agencies paid the salary, or contributed to the payment of salary, for any staff in Parliament House over the past year, other than the six DFAT, Austrade and AusAID Liaison Officers (DLOs) in the offices of Mr Downer, Mr Vaile and Senator Patterson?

Answer:

Other than six DFAT, Austrade and AusAID Liaison officers working in the offices of Mr Downer, Mr Vaile and Senator Patterson, no salaries or contributions to salaries have been paid by DFAT or its agencies to any of its officers seconded out to work in Parliament House during the past twelve months. Due to a delay in administrative arrangements, one month's salary for an officer seconded to work in Mr Downer's office at short notice was covered by DFAT. This is refundable by the Department of Finance.

Topic: **Alistair Gaisford's suspension**
Hansard page 132

Question 14: Senator Hogg asked:

(a) To whom has the $524,000, spent on legal and administrative costs related to Alastair Gaisford's suspension, been paid?

(b) How many legal actions have there been concerning Mr Gaisford?

(c) To date what have been the outcomes of those legal actions that have been concluded?

Answer:

(a) The Australian Government Solicitor.

(b) Mr Gaisford has instigated 4 legal actions in the Federal Court concerning his suspension and dismissal from the Department of Foreign Affairs and Trade (A28 of 1996; G63 of 1997; A28 of 1999; A67 of 1999). The Department appealed the decision in one of those actions (A28 of 1996).

In addition, in 1996 Mr Gaisford brought an action in the Federal Court concerning Mr Hunt's appointment as the Public Service Commissioner's delegate to conduct an inquiry into the 'Management Response to Allegations of Paedophile Activity with the Foreign Affairs Portfolio'. This proceeding did not concern Mr Gaisford's suspension or dismissal from the Department of Foreign Affairs and Trade.

(c) A28 of 1996—The Federal Court held that the Department had denied Mr Gaisford natural justice before deciding to suspend him from duty. The Department's appeal to the Full Federal Court was dismissed.

G63 of 1997; A28 of 1999; A67 of 1999—These actions are currently before the Federal Court. The Department's decision to dismiss Mr Gaisford has been stayed by the Court pending the outcome of the proceedings.

Topic: **Public Interest Disclosure Policy**
Hansard page 169

Question 15: Senator Hogg asked:

Would the Department provide a copy of the Administrative Circular on Public Interest Disclosure, the procedures by which departmental staff can raise allegations of misconduct or grievances, and "Circular number PO165"?

Answer:

The Department undertook to provide a copy of Administrative Circular PO165, which is attached **(appendix 5)** *(Published in this volume)***.** The Circular sets out the Department's policy on Public Interest Disclosure ("whistleblowing") and was issued in November 1998. The policy was reviewed in December 1999. At that time, the Public Service and Merit Protection Commission (PSMPC) advised that the policy itself was still appropriate but a few amendments of a minor technical nature would need to be made to bring it into full conformity with the *Public Service Act 1999*. The PSMPC suggested the Department await the issue of their more detailed guidance before revising its policy.

Along with Administrative Circular PO165, the PSMPC's publication *Procedures for Dealing with Public Interest Disclosures* is on the Department's intranet, and the Department's policy on whistleblowing is summarised in DFAT's *Code of Conduct for Overseas Service,* at paragraphs 10.2–10.5 in the copy attached **(appendix 6).** *(Not published in this volume)*

There are other procedures that staff can pursue if they have a grievance. Paragraphs 2.61–2.63 of the Department of Foreign and Trade's Certified Agreement 2000–2003 enable staff to have concerns arising from actions relating to their employment considered internally and for those concerns to become subject of a formal internal review. A copy of the relevant paragraphs is attached **(appendix 7).** *(Not published in this volume)*

Attachment 5

FOREIGN AFFAIRS AND TRADE

Administrative circular

Canberra ACT 0221

RETAIN AS A POLICY DOCUMENT

No: P0165

Distribution: All staff to see

5 November 1998

cc:

File No:

Subject: Public-interest disclosure

Summary: The Department's interest in efficient operation, both in Australia and overseas, requires that a transparent mechanism be in place for managing public-interest disclosures made by its officers. This Administrative Circular, which was endorsed by the Department's Ethics Committee, is DFAT's policy on 'whistleblowing'.

Introduction

The Government recently introduced amendments to the Public Service Regulations. Under the new Regulations I am required to establish procedures for dealing with public-interest disclosures and to ensure that those who make them are protected from victimisation or discrimination. Public-interest disclosures in DFAT have in the main been managed by the Conduct and Ethics Unit (CEU) and its predecessors. The Unit's procedures, and the legislative and administrative measures in place to protect disclosers, are outlined below.

2. The public-interest is served by the independent investigation of allegations made in good faith of fraud, misconduct, mismanagement, waste or dangers in the workplace. I encourage colleagues to make such public-interest disclosures when they see a need to do so. Officers' concerns will be taken seriously and those who make

disclosures will receive the Department's protection against reprisal or threats of reprisal should they decide to take this course.

Definition

3. Under the Public Service Regulations, a public-interest disclosure is defined as information provided about a breach or alleged breach of the APS Code of Conduct. In terms of this Department's operations, a public-interest disclosure is information provided in good faith by a DFAT officer, employee or contractor through the appropriate Departmental or other official channels, about unlawful, negligent or improper conduct relating to the operation of the Department in Australia or overseas. **It is *not* a complaint or disagreement about government policy, nor should it be confused with a staffing grievance.** The Department has a long-established policy dissent mechanism (Administrative Circular 93/85) and officers have access to departmental and APS-wide grievance procedures under the Public Service Regulations.

Disclosures

4. This policy applies to any officer, employee or contractor of the Department who reasonably believes that information in their possession may form evidence of:

- An offence under an Act of Parliament, including the Crimes Act or the Public Service Act;
- Theft, mismanagement or waste of Commonwealth funds;
- Fraudulent use, misuse or abuse of Commonwealth property or equipment;
- A breach of the APS Code of Conduct or the DFAT or Locally Engaged Staff Codes of Conduct;
- Practices resulting in danger to public health or safety.

These examples are not intended to be all-inclusive.

5. Disclosures should normally be made through line managers who will in turn refer matters to CEU for investigation. Should an officer feel unable for any reason to make a disclosure through line management, it would be appropriate to contact directly the CEU or the First Assistant Secretary, Corporate Management Division. If for any reason an officer feels that it is inappropriate to make a disclosure within the Department, he or she may also make a disclosure to the Australian Federal Police (for a criminal matter) or the Public Service Commissioner (for a non-criminal matter). The AFP (see para 16 below) or the Public Service Commissioner may choose to refer a disclosure back to DFAT for investigation, unless exceptional circumstances make this impracticable.

Anonymous disclosures

6. Officers may elect to make public interest disclosures anonymously. Officers should be aware, however, that CEU or if appropriate, other receiving agencies, frequently need to seek additional information from disclosers before deciding whether to recommend an investigation and to conduct an investigation properly. This would not be possible in the case of an anonymous disclosure.

Public disclosures

7. **I strongly urge colleagues wishing to make public-interest disclosures to use the Department's established procedures rather than making the disclosures in public.** The Department's procedures for investigating disclosures have been developed with careful attention to the prospects for achieving results. The fewer people there are aware that an investigation is being conducted, the lower the likelihood that important evidence can be tampered with or destroyed. Premature public disclosure may also damage the reputations of innocent officers and possibly trigger action for defamation. If a discloser goes public, either when their initial disclosure is made or during the course of any subsequent investigation, it would not be possible for the Department to extend institutional protection to that officer (see paras 11 to 14 below).

8. From time to time the Department may wish to publicise aspects of a case - once it has been resolved—with a view to quashing rumours and deterring inappropriate conduct. This option will only be pursued if the discloser and the Department agree. In such situations, the Department will protect the privacy of all involved.

Protection for disclosers

Legislative Protection

9. A range of Commonwealth legislation protects officers who make public interest disclosures:

- The Public Service Act (Section 89A) protects officers who make reports in good faith about the work, proposed work or the conduct of other public servants.
- Public Service Regulation 9 provides that no member of the APS may 'victimise or discriminate against' an APS employee because that person has reported breaches (or alleged breaches) of the Code of Conduct.
- The Workplace Relations Act provides that an individual's employment must not be terminated for 'the filing of a complaint, or the participation in

proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities'.

- The Occupational Health and Safety (Commonwealth Employment) Act contains a similar provision with respect to employees who complain about a matter concerning the health, safety or welfare of employees at work.
- Potential disclosers are assured that their identity is 'personal information' for the purposes of the Privacy Act. Under this Act, disclosure of personal information without an individual's consent is only permitted under certain strictly defined circumstances.
- There are provisions in the Freedom of Information Act to exempt documents from access if their disclosure would constitute a breach of confidence or would result in an adverse effect on the operations of the Department, not in the public interest.

10. Under Section 70 of the Crimes Act, it is an offence for an unauthorised officer to reveal publicly any official information, classified or otherwise. Public Service Regulation 7 (13) and the APS Code of Conduct also set out the duty of officers not to disclose official information without authority. A public-interest disclosure made under the terms of the procedures outlined in this Circular will not, however, of itself be regarded as an offence under the Crimes Act, a breach of the Regulations or of the APS Code of Conduct.

Departmental protections

11. The only officers who would be aware of a discloser's identity are those in CEU or senior line management who have a direct need to know. Any other information relating to a public interest disclosure will also be communicated outside CEU only on a strict need-to-know basis. Special physical security measures are in place with CEU to support these arrangements.

12. Consistent with paragraph 10 above, the Department will not undertake any disciplinary action connected with the fact of disclosure and will protect the discloser against harassment, provided a disclosure is not made falsely or frivolously. If a discloser can show grounds that he or she is likely to be the subject of a reprisal and if the Department and the discloser agree that the only practical way of removing the threat of reprisal is to relocate the discloser, this will be done.

13. In cases where CEU and/or senior management are aware of the identity of a discloser, the fact of an officer's having made a public interest disclosure will not be held on files or records held outside CEU. Except in the case of frivolous or false allegations (see para 18 below) CEU will not provide to management details about

public interest disclosures, known or suspected, when management is considering postings, promotions, placements or performance ratings.

14. These protections will also apply to family members of disclosers who may also be officers or employees of the Department.

Investigation procedures

15. I expect all staff to assist with any CEU investigation when required. The Department's guidelines for the conduct of internal investigations are set out in Administrative Circular 27/95. As noted in those guidelines, CEU conducts a preliminary assessment into each allegation it receives which suggests criminal conduct or misconduct under the Public Service Act. CEU then recommends to senior management the form an investigation should take. The same process will apply to public interest disclosures, and CEU will advise the discloser whether the information provided will be investigated. In cases where several officers make disclosures about the same incident, each officer will be advised independently but their information will be amalgamated into a single case.

16. Should CEU consider it necessary, an investigation arising from a public interest disclosure may be referred to another agency, including the AFP, the Auditor General, State Police, the Commonwealth Director of Public Prosecutions or the Public Service Commissioner. If this occurs, the Department will impress upon that agency DFAT's desire to preserve the confidentiality of the source of the disclosure to the maximum degree possible. Officers should, however, be aware that if a discloser is a key witness in a contested prosecution, it is likely that his or her identity will need to become a matter of public record.

17. DFAT cannot direct or control the manner in which external agencies may investigate a public interest disclosure, or any other matter. Should another agency take on a DFAT investigation, the Department will continue to protect the discloser from reprisals in accordance with paragraphs 11 to 14 above.

Frivolous or false allegations

18. The Department may decline to investigate an allegation where it is frivolous or where the matter has already been the subject of a full examination. CEU may, under the Public Service Regulations and/or the Department's Code of Conduct for Overseas Service, recommend disciplinary action be taken against a person making an allegation which is knowingly frivolous, false or malicious. If a discloser has genuinely misconstrued events or a situation but has done so in an honest belief, based on reasonable grounds, or if an allegation cannot be proved on the balance of

probability, no action will be considered against the discloser. The Department will in all cases provide protection against harassment, reprisals or the threat of reprisals.

19. This does not, however, preclude the investigation of a counter-allegation made against the original discloser, irrespective of whether that counter-allegation is related to the original disclosure.

Further investigations

20. Officers who are dissatisfied with the outcome of a CEU investigation arising from a public interest disclosure are entitled to refer the issue to the Public Service Commissioner or the AFP (in relation to criminal matters).

Ashton Calvert
Secretary

Topic: **Human Resources Management**

Hansard pages 171-172

Question 16: Senator Hogg asked:

(a) Would the Department provide a copy of the Secretary's "Working Smarter Discussion Paper" and the list of "Working Smarter Principles"?

(b) Would the Department provide a copy of the Human Resources Manual?

Answer:

(a) The Department agreed to provide copies of Administrative Circular No.P0238 "Working Smarter: Discussion Paper" and the "Working Smarter Principles", which are attached together **(appendix 8).** *(Not published in this volume)*

(b) The Department agreed to provide a copy of the Human Resources Manual, which is attached **(appendix 9).** *(Not published in this volume)* Volume One is presently being updated.

Topic: **Locally Engaged Staff**
Hansard page 175

Question 17: Senator Hogg asked:

a) Would the Department provide a detailed breakdown of its locally engaged staff by post, level and type of employment?

b) How many locally engaged staff in what could be described as household duties—such as cooks, cleaners, personal staff—are employed at the residences of Australia-based DFAT staff?

Answer:

a) The Department undertook to provide the information, which is attached **(appendix 10).** *(This appendix is available in two parts in electronic form on the Committee's website. Not published in this volume.)*

b) Australia-based staff can be divided into two groups—Heads of Mission/Heads of Post (HOMs/HOPs) and other Australia-based staff.

The total number of staff engaged locally in December 2000 to perform household duties at the residences of DFAT's 82 HOMs/HOPs was 293. This includes all staff who performed any household maintenance role, such as cooks, cleaners, housekeepers, and gardeners.

Among other DFAT Australia-based staff, some employees overseas employ domestic staff to perform household duties and, in some cases, are entitled to reimbursement of the cost involved in doing so, up to a prescribed limit. While each post keeps records of the funds reimbursed to officers for this purpose, information is not kept either by posts or by DFAT in Canberra on the number of domestic staff that these Australia-based officers choose to employ privately.