



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE

ESTIMATES

(Consideration of Budget Estimates)

MONDAY, 2 JUNE 2003

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://search.aph.gov.au>

SENATE**FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE****Monday, 2 June 2003**

Members: Senator Sandy Macdonald (*Chair*), Senator Hogg (*Deputy Chair*), Senators Chris Evans, Ferguson, Payne and Ridgeway

Senators in attendance: Senators Jacinta Collins, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Heffernan, Sandy Macdonald, Stott Despoja and Robert Ray

Committee met at 9.03 a.m.

FOREIGN AFFAIRS AND TRADE PORTFOLIO**In Attendance**

Senator Abetz, Special Minister of State

Department of Foreign Affairs and Trade**Portfolio overview**

Mr Peter Varghese, Deputy Secretary

Mr Doug Chester, First Assistant Secretary, Corporate Management Division

Ms Anne Hazell, Chief Finance Officer, Assistant Secretary, Finance Management Branch

Output 1.1—Protection and advocacy of Australia's international interests through the provision of policy advice to ministers and overseas diplomatic activity.**1.1.1—North Asia (including Australia-Japan Foundation, Australia-China Council, Australia-Korea Foundation)**

Mr Murray McLean, AO, First Assistant Secretary, North Asia Division

1.1.2—South and South-East Asia (including Australia-India Council, Australia-Indonesia Institute)

Ms Jennifer Rawson, First Assistant Secretary, South and South-East Asia Division

1.1.3—Americas and Europe

Mr David Ritchie, First Assistant Secretary, Americas and Europe Division

1.1.4—South Pacific, the Middle East and Africa

Mr Ric Wells, First Assistant Secretary, South Pacific, Africa and Middle East Division

Mr Graham Fletcher, Assistant Secretary, Pacific Islands Branch

1.1.5—Bilateral, regional and multi-lateral trade negotiations

Mr Bruce Gosper, First Assistant Secretary, Office of Trade Negotiations

Mr Stephen Deady, Special Negotiator, Free Trade Agreements

1.1.6—Trade development/policy coordination and APEC

Mr Ralph Hillman, First Assistant Secretary, Trade Development Division

Mr David Holly, Director, International Economic and Finance Section.

Mr James Baxter, Director, Asia Trade Taskforce

1.1.7—International organisations, legal and environment

Ms Caroline Millar, First Assistant Secretary, International Organisations and Legal Division

Mr Chris Moraitis, Senior Legal Adviser

Mr Peter Heyward, Assistant Secretary, Environment Branch
Mr Peter Doyle, Director, People Smuggling, Refugees and Immigration Section
Mr Ian McConville, Director, Administrative and Domestic Law Group

1.1.8—Security, nuclear disarmament and non-proliferation

Mr Les Luck, First Assistant Secretary, International Security Division
Mr David Stuart, Assistant Secretary, Strategic Affairs Branch
Mr Bill Paterson, First Assistant Secretary, Iraq Task Force
Mr John Quinn, Assistant Secretary, Iraq Task Force
Mr Nick Warner, Ambassador for Counter-Terrorism
Mr John Carlson, Director-General, Australian Safeguards and Non-Proliferation Office

Output 1.2—Secure government communications and security of overseas missions

Mr Paul Tighe, First Assistant Secretary, Diplomatic Security, Information Management and Services Division

Output 1.3—International services to other agencies in Australia and overseas (including parliament, state representatives, business and other organisations)

1.3.1—Parliament in Australia

1.3.2—Services to attached agencies

1.3.3—Services to business

1.3.4—Services to state governments and other agencies overseas and in Australia

Mr Ian Kemish, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Mr Doug Chester, First Assistant Secretary, Corporate Management Division

Mr Ralph Hillman, First Assistant Secretary, Trade Development Division

Output 1.4—Services to diplomatic and consular representatives in Australia

1.4.1—Services to the diplomatic and consular corps

1.4.2—Provision of protection advice through liaison with the Protective Security Coordination Centre

Mr Matthew Peek, Chief of Protocol, Assistant Secretary, Protocol Branch

Output 2.1—Consular and passport services

2.1.1—Consular services

Mr Ian Kemish, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

2.1.2—Passport services

Mr Ian Kemish, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Mr Bob Nash, Assistant Secretary, Passports Branch

Output 3.1—Public information services and public diplomacy

3.1.1—Public information and media services on Australia's foreign and trade policy

3.1.2—Projecting a positive image of Australia internationally

3.1.3—Freedom of information and archival research and clearance

Mr Ian Kemish, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Output 4.1—Property management

Mr Peter Davin, Executive Director, Overseas Property Office

Output 4.2—Contract management

Mr Doug Chester, First Assistant Secretary, Corporate Management Division

Ms Anne Hazell, Chief Finance Officer, Assistant Secretary, Finance Management Branch

Enabling services

Items—General corporate support; human resource management and overseas conditions of service; financial and budget management; national non-secure (communication system) information technology and information management; records management; property management; executive support; training and development; evaluation and audit; internal legal and statistical services; security services

Mr Doug Chester, First Assistant Secretary, Corporate Management Division

Ms Zorica McCarthy, Assistant Secretary, Executive, Planning and Evaluation Branch

Ms Anne Hazell, Chief Finance Officer, Assistant Secretary, Finance Management Branch

Australian Trade Commission (Austrade)**Portfolio overview**

Outcome 1: Australians succeeding in international business with widespread community support

1.1—Awareness raising

1.2—Government advice and coordination

1.3—Services and opportunities

1.4—Inward investment and attraction services

1.5—Austrade administered grants

Outcome 2: Australians informed about and provided access to consular, passport and immigration services in specific locations overseas

2.1—Consular, passport and immigration services

Ms Fiona Buffinton, Manager, Government and Policy

Mr Tim Harcourt, Senior Economist, Strategic Development

Mr Greg Joffe, Corporate Adviser, Strategic Development

Ms Marcia Kimball, Director, Human Resources

Ms Margaret Lyons, Executive General Manager, Corporate

Mr David Ritson, Group Manager, Accounting Operations and Systems

Ms Julia Selby, Executive General Manager, Australian Operations/South Pacific

Mr Michael Vickers, Group Manager, Client Development and Ally Liaison

Ms Margaret Ward, General Manager, Export Finance Assistance Programs

Australian Agency for International Development (AusAID)

Outcome 1: Australia's national interest advanced by assistance to developing countries to reduce poverty and achieve sustainable development

Output 1—Policy

Output 2—Program management

Administered items—Australia's aid program

Ms Juliette Brassington, Budget Unit, Resources Branch

Mr Bruce Davis, Director-General

Mr Scott Dawson, Deputy Director-General, Asia and Corporate Resources Division

Mr Mark Fleeton, Assistant Director-General, Resources Branch

Dr Robert Glasser, Assistant Director-General, Papua New Guinea Branch

Mr Peter Jensen, Director, Finance and Budget Section

Mr Alan March, Assistant Director-General, Humanitarian, Multilateral and Community Branch

Mr Richard Moore, Assistant Director-General, Mekong, South Asia and Africa Branch

Ms Julia Newton-Howes, Acting Assistant Director-General, East Asia Branch

Mr Murray Proctor, Assistant Director-General, Office of Review and Evaluation

Mr Derek Rooker-Smith, Assistant Director-General, Contract Services Group

Mr James Sweeting, Manager, Budget Unit, Resources Branch

Mr Charles Tapp, Deputy Director-General, Papua New Guinea and Global Programs Division

Ms Margaret Thomas, Acting Deputy Director-General, Pacific, Contracts and Corporate Policy Division

Mr Peter Versegi, Acting Assistant Director-General, Corporate Policy Branch

Australian Centre for International Agricultural Research (ACIAR)

Outcome: Agriculture in developing countries and Australia is more productive and sustainable as a result of better technologies, practices, policies and systems

Output group 1—Collaborative research that addresses agricultural and natural resource management problems of developing countries and Australia

Output group 2—Trained researchers in developing countries and Australia

Mr Peter Core, Director

Mr Michael Brown, Deputy Director, Corporate Programs

Mr Paul Tyrrell, Finance Manager

Department of Foreign Affairs and Trade

CHAIR—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I welcome Senator Abetz, Special Minister of State, representing Senator Robert Hill, the Minister representing the Minister for Foreign Affairs and the Minister for Trade. I also welcome officers from the Department of Foreign Affairs and Trade and from Austrade. I particularly welcome Peter Varghese, Deputy Secretary, and our friends Anne Hazell and Doug Chester.

The committee has before it the particulars of the proposed expenditure for the service of the year ended 30 June 2004, documents A and B, and the portfolio budget statements for the Foreign Affairs and Trade portfolio. The committee will consider the estimates for the Department of Foreign Affairs and Trade, beginning with the portfolio overview. We will then move to outputs and enabling services. After the lunch break today, the committee will examine the particulars of output 1.1.8 relating to security, nuclear disarmament and nonproliferation. The committee will then continue with the program in output order.

When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions. The questions will be forwarded to the department for an answer. The committee has resolved that the deadline for the provision of answers to questions taken on notice at these hearings is Tuesday, 22 July 2003.

Ministers are reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The Senate has resolved

that there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

An officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy. However, you may be asked to explain government policy, describe how it differs from alternative policies and provide information on the process by which a particular policy was selected. An officer shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. I remind my committee colleagues that the Senate Finance and Public Administration Legislation Committee is continuing to monitor the format and contents of the portfolio budget statements. If you have any comments you wish to make about these documents, please place them on the public record during these estimates hearings or direct them to that committee. Minister, do you or any of your officers wish to make an opening statement?

Senator Abetz—No, thank you, Chair.

CHAIR—Senator Faulkner will begin with questions on the portfolio overview.

Senator FAULKNER—I firstly apologise to the committee and to the witnesses for my thin and shaky voice. While the spirit is willing—

Senator Abetz—That is not a matter to apologise for. I think we are all pleased.

Senator FAULKNER—I will try and battle through, Minister, but I will have to speak a little more softly than normal.

Senator ROBERT RAY—I am still in form.

Senator Abetz—Senator Ray ought to be apologising!

Senator FAULKNER—I would like to kick-off, Mr Chairman, by asking some questions about staffing in the department. Mr Varghese, you might take me to the relevant area of the portfolio budget statement. I am trying to find the general picture in relation to staffing levels in the department. My assessment of the PBS is that there is no consolidated table. Is that correct?

Mr Varghese—I will ask Mr Chester, who is the head of our Corporate Management Division, to address those questions.

Mr Chester—You are correct, Senator: there is not a consolidated table in the PBS.

Senator FAULKNER—So I have to look across the four outcomes in the department to find the picture in relation to departmental staffing?

Mr Chester—That is correct.

Senator FAULKNER—On page 46 of the PBS, is it true in relation to outcome 1 that from financial years 2002-03 to 2003-04 there is a proposed loss of 30 staff?

Mr Chester—That is correct.

Senator FAULKNER—In relation to outcome 2 on page 54 of the PBS, there is a loss of eight staff?

Mr Chester—Yes. That is correct.

Senator FAULKNER—In relation to outcome 3 on page 59 of the PBS, there is a loss of four staff for the same period?

Mr Chester—That is correct.

Senator FAULKNER—As I read outcome 4 on page 65, I see a status quo staffing level—no change.

Mr Chester—That is right.

Senator FAULKNER—So if my maths is correct, does that indicate a cut of 42 positions across the department? The point of my question is that I am trying to understand whether that is the full picture.

Mr Chester—Let me explain the figures. You are correct; it is a projected reduction of 42 staff in total across the department for the coming financial year. I can give a breakdown of what those 42 represent and that will probably explain what you are looking at.

Senator FAULKNER—Thank you.

Mr Chester—The vast majority of those 42 is a book transfer of staff from the Department of Foreign Affairs and Trade to the Department of Defence. Those figures include both A based staff and locally engaged staff and there will be a transfer of 39 locally engaged staff who are currently employed in London from our books to the books of the Department of Defence. That explains the vast bulk of those numbers.

Senator FAULKNER—So these are staff mainly in outcome 1, are they?

Mr Chester—That is right.

Senator FAULKNER—It is just a direct transfer from DFAT to Defence for 39 of those 42 positions?

Mr Chester—That is right.

Senator FAULKNER—Where do I find that mentioned in the PBS?

Ms Hazell—There is no mention of the transfer of the staff to Defence at this stage. The financial transfer that goes with those staff will be coming through at additional estimates time.

Senator FAULKNER—Thank you for that. Mr Chester, I think you are really saying to us that there is a status quo staffing position in the department. Would it be correct?

Mr Chester—Yes, fairly close to that.

Senator FAULKNER—But a close reading of the PBS shows a reduction of 42 staff from last financial year to the next. It seems to me that it would be appropriate for this to be at least flagged in the PBS. Was no thought given to that?

Mr Chester—No, Senator, there was not. Perhaps with hindsight we should have put a footnote in there that explained it.

Senator FAULKNER—Can you explain then the rationale for the transfer of these staff to Defence?

Ms Hazell—The transfer of staff to Defence relates to locally engaged staff that work entirely on defence activities overseas. The rationale behind having them in our financial statements against our outcomes is that it would show in our outcomes as costing more when those staff are actually not contributing to our outcomes; they are contributing to Defence's outcomes. By transferring them to Defence we are basically making the cost of outputs and outcomes for Foreign Affairs and Trade and Defence more accurate.

Senator FAULKNER—Where did this initiative come from for the transfer—the Department of Finance or one of the two departments—

Ms Hazell—It came from us, Senator.

Senator FAULKNER—It came from Foreign Affairs in this last budget round, did it?

Ms Hazell—These are the staff in London. Last year we transferred a number of staff from Washington to Defence as well. This is part 2 of the process.

Senator FAULKNER—How many staff in Washington were transferred?

Ms Hazell—Between 50 and 60. I would have to check the exact number.

Senator FAULKNER—Let us go back to financial year 1996-97. What was the staffing establishment in the department then? I am just trying to understand what the patterns are like.

Mr Chester—I do not have the figures added up for 1996-97 but there were roughly 1,500 locally engaged staff and around 2,500 head count staff—A based staff—on 30 June 1996. The figures that are in the PBS are full-time equivalent numbers.

Senator FAULKNER—In order to save time here, could you to take on notice the figures for the financial year 1995-96 through to the figures we currently have in the PBS for 2002-03 and 2003-04? It might be useful if you can indicate the important information that you have in relation to what has occurred to those UK engaged staff that transferred to Defence or, in the previous financial year, the transfer of Washington based staff to Defence so that the committee can get a broader understanding of what the staffing pattern is in the department. I do not want to bog down the committee on that. It should be an easy task to draw out that material and provide it. If there is a clear explanation, like the one you have given in relation to these transfers, it might be useful to flag it to give a broader understanding.

Mr Chester—Certainly.

Senator FAULKNER—But I do respectfully suggest that, if there is a transfer like this and a logical explanation for a reduction of 42 staff, it is often a useful thing for that to be clearly indicated in the PBS. Of the current numbers, can you indicate to the committee how many of the staffing establishment of 3,196 in the department are SES officers?

Mr Chester—Including heads of mission and staff overseas, I think the number is around 160 or something of that order.

Senator FAULKNER—Would it be possible to be more precise? Do you need to take it on notice?

Mr Chester—Yes, I may well need to. I do not think I have that figure with me.

Senator FAULKNER—If you do take it on notice, I would be interested in knowing how many are SES officers and how many are at each level—bands 1, 2, 3 and 4 and secretary.

Mr Chester—Certainly.

Senator FAULKNER—If you could, that would be useful. Are you able to say to the committee, in a broad outline, what the pattern is in terms of the SES officers: how many are A based and how many are overseas on representation?

Mr Chester—Again, I will need to take that on notice for the precise numbers. There are around 100 to 100-plus overseas, given that most head of mission appointments at our 80-plus posts are at the SES level.

Senator FAULKNER—Could you break down the figures that you are providing to the committee into those two categories: A based and non-A based staff?

Mr Chester—Can do.

Senator FAULKNER—What about the pattern in terms of those in the SES? How has that changed since the period we have talked about—1995-96 through to the current day?

Mr Chester—The numbers are very similar. The numbers we have now are very close to those numbers of six or seven years ago.

Senator FAULKNER—What seems to me to have changed though—correct me if I am wrong—is in terms of band 3 or, to put it into English, the deputy secretary level. That seems to have grown dramatically over the past few years. Is my recollection correct?

Mr Chester—Comparing it with 1995-96, the numbers are very much the same.

Senator FAULKNER—Really?

Mr Chester—Yes.

Senator FAULKNER—How many deputy secretaries or band 3 SES officers are there in DFAT?

Mr Chester—There are four deputy secretaries in the department in Canberra and the heads of mission at our major overseas missions are at the SES band 3 level.

Senator FAULKNER—There are four A based deputy secretaries in Australia. How many deputy secretary equivalents are there—non-A based staff?

Mr Chester—I will run through them: Jakarta, Beijing, Tokyo, Washington, Bangkok and Brussels. London is not a DFAT employee but is paid at that level.

Mr Varghese—Kuala Lumpur, Port Moresby, Wellington, Paris and Berlin would be paid at deputy secretary level.

Mr Chester—But not filled by a substantive public servant at the band 3 level.

Senator FAULKNER—There are at least 10 deputy secretary equivalents—non-A based staff. Is that right? I think you have just run through 10.

Mr Varghese—The profile has remained reasonably constant in terms of the total number of deputy secretary equivalent level positions. I can recall that when I was head of staffing in

the early 1990s we had four at home and about 10 abroad. Those numbers have remained, in the aggregate, fairly constant.

Senator FAULKNER—So what you are saying to me is that there is no real change to the pattern.

Mr Varghese—The profile of the posts may change but the total numbers have remained reasonably constant.

Senator ROBERT RAY—How many do you have in total?

Mr Chester—I do not have the total with me. In that list I gave I missed out Geneva WTO. That is also headed by a substantive band 3.

Senator ROBERT RAY—What about the disarmament ambassador. What is he paid at?

Mr Chester—In Geneva? It is a substantive band 2 officer.

Senator ROBERT RAY—The terrorism one?

Mr Varghese—It is an Australian based position at FAS level.

Senator ROBERT RAY—You mentioned London. I did not quite understand that point.

Mr Chester—The head of mission in London is paid a salary equivalent to an SES band 3, but it is not an SES band 3 officer.

Senator ROBERT RAY—Was that the case in the early 1990s, in your figures for then, when you said they were equivalent?

Mr Varghese—In London in the earlier days it depended on—

Senator ROBERT RAY—I am not talking about London; I am talking generally. Were there any equivalents then, in your figures?

Mr Varghese—I am sorry, Senator—equivalents in what sense?

Senator ROBERT RAY—You said that the early 1990s are the same as today. We are excluding London here. Do we have to exclude any from your equivalent figures, for the same reason?

Mr Varghese—I think the exclusion that Mr Chester was referring to was the fact that the high commissioner in London is not a departmental officer.

Senator ROBERT RAY—I am asking whether any of the ones you were talking about were not departmental officers. I am just trying to compare them.

Mr Varghese—In the past, some of them would have been non-career appointments, yes.

Senator ROBERT RAY—We cannot quite compare them, can we? We do not have enough detail in the information to compare them. So is it 11 or 12, including London?

Mr Chester—There are eight overseas plus four in Australia, not counting the London position.

Senator ROBERT RAY—Can you go through the eight again?

Mr Chester—Brussels, Tokyo, head of mission Beijing, Berlin—I missed that before—Paris, Geneva WTO, Washington, Jakarta.

Senator ROBERT RAY—How many is that?

Senator FAULKNER—What happened to Port Moresby? It got dropped off.

Mr Chester—And Bangkok. There are nine overseas.

Senator ROBERT RAY—Is that the final bid?

Mr Chester—I think so.

Senator ROBERT RAY—You can come back to us if there is anything to add.

Mr Chester—I will.

Senator ROBERT RAY—And that includes London?

Mr Chester—It does not include London. There are nine plus London.

Senator ROBERT RAY—So 10 are paid at that level. There are no others paid at that level?

Mr Chester—Yes, there are. As Mr Varghese said, there are a number of other positions that, whilst they may be filled at a lower level, are paid at band 3 level.

Senator ROBERT RAY—Tell us about those.

Mr Chester—Peter, would you run through those again?

Senator FAULKNER—Is it four plus nine that are officially deputy secretaries?

Senator ROBERT RAY—Plus one.

Mr Chester—This is right.

Senator ROBERT RAY—So far.

Senator FAULKNER—Four plus nine plus London—is that accurate?

Mr Chester—Four plus nine plus London—that is correct.

Senator FAULKNER—So that I can be clear about it, why isn't the London high commissioner technically a DFAT officer?

Mr Chester—He is not a career diplomat who has been appointed. He is covered under the Public Service Act. While he is in London he is a DFAT employee.

Senator ROBERT RAY—He is doing a pretty good job. I think I would claim him, if I were you.

Mr Chester—Yes.

Senator FAULKNER—I do not understand why he is not included in the establishment you are talking about. It is still not entirely clear to me what the distinction is. If you are making the point that Mr L'Estrange is not a career public servant from the Department of Foreign Affairs and Trade or another department, I think we understand that that is the case. Is that the reason you are not—

Mr Chester—That is right. I thought the point of your question was about ongoing DFAT employees—how many are at each level and how many are paid at each level. That was a distinction I was seeking to make, Senator.

Senator FAULKNER—I understand that it is a distinction, but in this case, in terms of the department's establishment, it is four plus nine plus London. Is that what you are saying?

Mr Chester—That is right.

Senator ROBERT RAY—You went on to say that there were some others who are possibly paid at this level, but you thought that Mr Varghese might have a clearer idea. If there are any others, who would they be?

Mr Varghese—The others are DFAT officers who are paid within the band 3 range but are not necessarily substantive band 3 officers.

Senator ROBERT RAY—I think I understand that. Who are they?

Mr Varghese—They would be Port Moresby, Kuala Lumpur, Wellington, the Paris embassy and Berlin.

Mr Chester—Berlin is now filled by a substantive band 3, so do not double count it.

Senator ROBERT RAY—Let's just get that clear. What are we doing with Berlin?

Senator FAULKNER—It is in the nine.

Senator ROBERT RAY—It is not in yours. Your list is Port Moresby, Kuala Lumpur, Wellington and Paris.

Mr Varghese—That was it.

Senator ROBERT RAY—Just four?

Mr Varghese—That is right.

Senator FAULKNER—That makes a total of 18 deputy secretaries or deputy secretary equivalents. Would that be right?

Mr Chester—I think there are a few more than that.

Senator FAULKNER—It was a world record anyway, so you are really going for the title!

Senator ROBERT RAY—You are beyond the early nineties at this rate.

Mr Chester—Maybe the best thing to do is rather than trying to—

Senator ROBERT RAY—What else have you found, though? What additions have you currently found to say it may be more?

Mr Varghese—New Delhi.

Senator ROBERT RAY—Is that all?

Mr Chester—There may be more. I think it might be better to take it on notice and come back with a full list rather than go through this.

Senator ROBERT RAY—We will look forward to that after the morning tea break. Is that all right?

Mr Chester—Yes, Senator.

Senator FAULKNER—In relation to the total current DFAT staffing establishment, are you able to inform the committee what proportion are SES level officers? Do you know the percentage or proportion?

Senator ROBERT RAY—It might be easier if you gave us the total number of SES officers.

Mr Chester—As I said, I think I will take that on notice. The figure is somewhere around 160 substantive SES officers. Four of those are not ongoing DFAT employees.

Senator FAULKNER—With this transfer of staff that occurred last year in Washington that you have spoken of and this year in the UK, has it involved anyone up to band 3 level?

Mr Chester—No, these are not staff covered by the Public Service Act. These are locally engaged employees.

Senator FAULKNER—So there are no SES staff at all and it does not affect them. It leads, fairly or unfairly, to the proportion of SES staff becoming greater, effectively, as you reduce the number of non-A based staff going off the DFAT books. That is one of the consequences.

Mr Chester—In relation to the total staff—those covered by the Public Service Act and locally engaged staff—then, yes, that is correct.

Senator FAULKNER—One of the difficulties with the PBS is trying to get a broad understanding portfolio wide of what the staffing levels are and the impact of changes and so forth given the way it is set out. I have never claimed to be a great expert in terms of the DFAT PBS and it may be just the normal way this is presented, but it is useful to get a broader understanding about what the portfolio or department wide staffing pattern is. To that end you might also provide us on notice, in addition to the information that you are going to provide us, staff numbers at each of the levels below SES—ASO 1-6, EL 1 and 2—and give us some historical data there so that we can compare that with the current situation as well. Would you be able to do that?

Mr Chester—As you may know, we have four broad bands in our non-SES categories, broad bands 1, 2, 3 and 4. Could it be broken down that way?

Senator FAULKNER—That would be helpful. What about division head level officers—FAS band 2 officers? What are the current numbers there?

Mr Chester—I would have to take it on notice. I do not have that with me.

Senator FAULKNER—I am trying to understand whether there is a real growth in the SES in the department.

Mr Chester—I can probably provide some guidance in that. Over the last two or three years there have been a number of positions created in the department in Canberra at that FAS level. We have the Ambassador for People Smuggling Issues at that level. This is a new position above and beyond the normal divisional structure we have in the department. There is the Ambassador for Counter-Terrorism and the head of the USFTA negotiating group at that level. There have been probably three or four new positions created over the last two or three years at that level.

Senator FAULKNER—There are some divisions that have more than one FAS, aren't there?

Mr Chester—That is what I was going through. Some of those new division head level positions are aligned to particular divisions.

Senator FAULKNER—But that is not a recent phenomenon, is it?

Mr Chester—Yes, it is.

Senator FAULKNER—How many divisions are there?

Mr Chester—Twelve, I believe.

Senator FAULKNER—You cannot tell me how many FAS staff you have got?

Mr Chester—I could sit down and work it out but I think it would be better to take it on notice.

Senator FAULKNER—I would have hoped that these were the sorts of things that someone would have at their fingertips. I am asking how many division heads there are in the department.

Senator Abetz—Senator, I think we might have an answer.

Mr Varghese—In addition to the 12 division heads that Mr Chester referred to, at FAS level, we have two special FAS level negotiators on the trade side—one dealing with agriculture and one dealing with the negotiations on the Australia-US Free Trade Agreement. We have a senior legal adviser position in Canberra. We have an FAS level position dealing with the Asia Trade Task Force, and that is handling a number of FTA related issues with our bilateral partners in Asia. As Mr Chester mentioned, we have the Ambassador for People Smuggling Issues, which is an FAS level position, and now we have the Ambassador for Counter-Terrorism, which is also an FAS level position.

Senator FAULKNER—What does that add up to?

Mr Varghese—That is six on top of the division heads.

Senator FAULKNER—So 18 in total.

Mr Varghese—At the moment the head of our Iraq Task Force, which is currently coordinating our involvement in Iraq issues, is also at the FAS level.

Senator FAULKNER—What is the situation now with the Iraq Task Force?

Mr Varghese—It continues in operation, headed up by an FAS level officer. At the moment it includes one other SES level officer at the assistant secretary level.

Senator FAULKNER—Who is heading up the task force at the moment?

Mr Varghese—Mr Paterson is heading that up.

Senator FAULKNER—He has been in charge of that since its establishment, hasn't he?

Mr Varghese—That is right, Senator.

Senator FAULKNER—You say it is still in operation. What is it doing these days?

Mr Varghese—It is coordinating the government's involvement in a range of Iraq related issues in relation to rehabilitation and reconstruction in our continuing involvement in Iraq post conflict.

Senator FAULKNER—Obviously you are indicating a change of role, as events have moved on and evolved in Iraq. That is fair enough, isn't it?

Mr Varghese—That is right. We continually keep the staffing of a task force like that under review, and we adjust it upwards or downwards, depending on what the demands are.

Senator FAULKNER—Can you tell us what changes there have been in terms of staffing complement so that we get an understanding of the pattern, how it has changed and what the changes have been?

Mr Varghese—Certainly, Senator. Mr Paterson is here. Perhaps he could address the detail of that question.

Mr Paterson—We currently have 13 staff deployed to the Iraq Task Force secretariat. It is headed by me at the FAS level. Mr Quinn, on my left here, is my deputy, at the assistant secretary level. They are the only two SES level positions. Over the last year at one point we had up to 22 DFAT officers involved in the work of the task force. It is now 13. I think the prospects are probably for it to further reduce in the period ahead.

Senator FAULKNER—Mr Paterson, do you see the Iraq Task Force as having a shelf life?

Mr Paterson—Yes, I do. I think that is an issue for ministers to decide and to make judgments about the continuing value it has for them. It also relates to our involvement as a member of the coalition provisional authority in Iraq. We have a number of Australians attached to that, and that involves servicing and a workload at this end. So the matter is kept under review, at this stage almost on a weekly basis, in terms of the size and shape of the task force. I think the prospects would be eventually for the work of the task force to be reabsorbed back into the geographic division.

Senator FAULKNER—Are you able to indicate to the committee what the timing of that might be? I appreciate that you have said it is matter for ministers at the end of the day, but I assume there must be some departmental planning going into this.

Mr Paterson—I cannot be specific because much depends on the situation on the ground, the requirements of ministers and the demands upon them on the Iraq issue, but it would be fair to say that we would expect that to happen in the course of this year.

Senator FAULKNER—Are the 13 staff you are referring to all DFAT staff?

Mr Paterson—They are all DFAT staff, yes.

Senator FAULKNER—Have you any staff from other agencies attached to the task force at this stage?

Mr Paterson—We do not. Some months ago we had an officer attached from the Strategic and International Policy Division in the Department of Defence, and an officer from AusAID, but at this point it is only DFAT staff.

Senator FAULKNER—So those officers have gone back to their home agencies, have they?

Mr Paterson—That is correct.

Senator FAULKNER—When did that happen?

Mr Paterson—I cannot be precise but if I said around April, that would be correct. I can get you the exact details if you require that.

Senator FAULKNER—Mr Varghese, are there any other internal departmental task forces either planned or in operation? What is the situation at the moment?

Mr Varghese—I have already referred to the Asia Trade Task Force. We have also set up a task force dealing with SARS issues. They are current task forces.

Senator FAULKNER—When was the SARS task force established?

Mr Varghese—I would have to take that question on notice with regard to the date of establishment and its staffing profile and get back to you.

Senator ROBERT RAY—When do you think you will be able to do that?

Mr Varghese—I could do that later today.

Senator ROBERT RAY—I had a couple of constituency inquiries about SARS. I am interested in the timing because they were less than happy with the information they got from the department at the time they made the inquiries. In fact, they had to go to the Internet to get some answers rather than the department. I was interested in the timing of it being setting up.

Mr Varghese—Sure. I will certainly get the date for you that we set it up. With regard to staffing, I can add to what I just said. It has a dedicated staff of three. In addition, it draws on the resources, obviously, of our consular operations branch, a medical officer, the family liaison officer and staffing branches as needed.

Senator FAULKNER—Who heads up the SARS task force?

Mr Varghese—It is headed up by Mr David O'Leary.

Senator FAULKNER—What division did Mr O'Leary come from?

Mr Varghese—He was our Consul-General in Hong Kong. He is a FAS level officer.

Senator FAULKNER—Okay. But it is obviously a much smaller, three-person task force—

Mr Varghese—That is correct.

Senator FAULKNER—so it is significantly different in size, scope and role obviously to the Iraq Task Force. What about the Asia Trade Task Force?

Mr Varghese—I do not have those details with me but I could take it on notice and get back to you.

Senator FAULKNER—You are not aware of any internal planning for the establishment of any other task forces at this stage?

Mr Varghese—I am not aware of any, no. Typically with task forces, they are either in response to a surge requirement or, in the case of the Asia Trade Task Force, something to enable us to handle a set of complicated negotiations, which we cannot easily do within our online divisions.

Senator FAULKNER—We might deal with the SARS task force a little later if you can assist us there. Just so I am clear, what output does the SARS task force come under? These are the questions that I expect you to know at a drop of a hat, Mr Varghese, only because I can never work it out.

Mr Chester—They come under outcome 2.

Mr Varghese—I am advised that it would be handled under our consular output, which is output 3.

Senator FAULKNER—There we are.

Mr Chester—It is output 2.1.

Mr Varghese—It is 2.1, sorry.

Senator ROBERT RAY—No more bids.

Senator FAULKNER—Can we go to page 124 of Budget Paper No. 4, please? In relation to schedule 1, there appears to be a \$23 million drop from last year's funding level. I might be wrong about this—I may have misread it—but can someone indicate to me what the situation is here?

Ms Hazell—It is probably best explained in terms of the changes in our appropriation for departmental and administered items. Those changes in the appropriations are outlined in more detail in our PBS.

Senator FAULKNER—If you could take me to the relevant part of the PBS, that would be helpful.

Ms Hazell—It is pages 22 and 23. They show the major changes in the appropriation for both departmental and administered items. Coupled with the flow-on effects of changes made to our appropriations in previous years—it might flow into the out years—they explain the differences. There are a number of ons and offs.

Senator FAULKNER—I am glad you think that explains it. I am sure you are right. I am sure it does explain it to most people, but not to me.

Ms Hazell—To summarise, if we look at the total departmental appropriation there is a decrease from last year's budget of \$5.838 million in total.

Senator FAULKNER—Where do I find that figure?

Ms Hazell—You will not find that figure in the PBS.

Senator FAULKNER—Right.

Ms Hazell—What you will find in the PBS is a list of the major changes to the appropriation. In addition there are other changes, such as the flow-on effect from previous years' parameters adjustments that go through into the out years. I have a table showing the exact reconciliation, if that would be useful.

Senator FAULKNER—It may be useful. If you would table it, it would be appreciated.

Senator ROBERT RAY—I do not know if this is an appropriate time to ask what constitutes the \$18.1 million reduction shown on page 23 for contributions to international organisations. Do you have some details on that?

Ms Hazell—That essentially reflects the change in the budget foreign exchange rates from year to year. All that is doing is reflecting the anticipated improvement in the Australian dollar for the coming year.

Senator ROBERT RAY—So there is no actual reduction in contributions to international organisations?

Ms Hazell—No, Senator.

Senator ROBERT RAY—It is your anticipation of where the exchange rate will be over the next 12 months?

Ms Hazell—Yes, Senator.

Senator FAULKNER—There is a drop, isn't there, in relation to moneys appropriated for outcome 1, or have I misunderstood and misread it?

Ms Hazell—The majority of the change in outcome 1, the downwards reduction, relates again to foreign exchange. We change the estimate for the outcome based on what they call the budget exchange rate each year. When the Australian dollar improves, the amount of adjustment we get for foreign exchange goes down. This is the first year where we have had a downwards reduction for foreign exchange in quite some time.

Senator FAULKNER—In relation to outcome 1, there is a 13 per cent drop from the year 2002-03 to 2003-04—is that right?

Ms Hazell—I would have to check the actual percentage, Senator, but there is a drop, yes.

Senator FAULKNER—Mr Varghese, this is obviously a very important outcome, isn't it, because this is the outcome, as I understand it, that deals with international security. The government made grand pronouncements during the last budget about its significance, in terms of security enhancement being a high priority. This outcome includes contributions to international security, so I am just trying to understand the significance of this reduction. Are you saying to me, Ms Hazell, that this basically can be interpreted as being as a result of changes in the foreign exchange rate?

Ms Hazell—The majority of the changes are foreign exchange reductions. On page 43 of the PBS you will see there are a number of new measures under that outcome where there is also new funding.

Senator FAULKNER—But the overall funding level for outcome 1 has been reduced. That is right, isn't it?

Ms Hazell—Yes.

Senator ROBERT RAY—In nominal or real terms?

Ms Hazell—It is mainly foreign exchange related.

Senator FAULKNER—Can you explain to us what the other elements of it are?

Ms Hazell—Of the reduction? It is probably easier if I table the reconciliation of the appropriations between the years, so that you can see all the—

Senator ROBERT RAY—I know Senator Collins has a question, Chair. We might read that document and come back to it.

Senator JACINTA COLLINS—On a completely different subject—and I anticipate you will probably need to take this on notice—this document which I am now showing you was provided to us a bit over a week ago. It was a brief that went to the Prime Minister through PM&C on 24 October 2001 in relation to the location of the sinking of SIEVX. We have been advised by PM&C that the title in that brief on the last two pages relating to the status of the ship, where it is headed ‘Boat sank in Indonesian waters’, was produced in consultation with a number of different agencies. I am asking each of those agencies which are listed at the very end of the brief, on the last page, including DFAT, what, if any, information they provided that might have led to the conclusion in that brief as per the heading, that the boat sank in Indonesian waters. As I said, I anticipate that you will need to take that on notice. It will be a matter of your reviewing what information was at hand at the time. I am sure you will understand, as it has taken us this long to get a copy of that brief—we received it only a bit over a week ago—that is why I am asking the question at this stage.

Mr Varghese—We will certainly take that on notice and get back to you with an answer.

Senator FAULKNER—We are still waiting for the document, so we will come back to you.

Senator ROBERT RAY—In the meantime, I have a few questions on related themes. I will take you to Budget Paper No. 2 just to confirm that I have a full list of these things. Regarding page 76, ‘Visa measures for a safer Australia’, I want to make sure I have the total right for increased funding for the Department of Foreign Affairs and Trade. There is an additional \$19 million for ASIS for this year and the three out years—is that right?

Mr Chester—I assume that is correct but it probably should be confirmed by ASIS.

Senator ROBERT RAY—Hold on, it is in your budget.

Senator FAULKNER—ASIS will not be here.

Senator ROBERT RAY—Nor should they be. We do not want to call ASIS; let us just go through the budgeting.

Senator FAULKNER—We are not going to call ASIS, as you know.

Senator ROBERT RAY—So there is an extra \$19 million for ASIS, and there is another \$9.7 million for enhanced travel advice and dissemination in this year and the out years—is that right?

Mr Chester—That is correct.

Senator ROBERT RAY—And we have a one-off \$1.9 million for research into passport biometrics. What is that about—just very briefly?

Mr Varghese—I will have one of my colleagues address that.

Senator ROBERT RAY—Not in any detail. I am just trying to get an overview of the increased funding.

Mr Kemish—In general terms, the \$3 million funding is simply to continue our research into biometric technology.

Senator ROBERT RAY—So you have already got \$1.1 million allocated and this is an extra \$1.9 million to make \$3 million?

Mr Kemish—That is correct. The additional money—you asked what it is for—is to continue with the biometric research to a point where we can provide assurance to government that, should government decide to place a biometric identifier in the passport, it will satisfy appropriate security standards.

Senator ROBERT RAY—What are you looking at—iris recognition, or what?

Mr Kemish—Face recognition.

Senator ROBERT RAY—Face recognition?

Mr Kemish—That is right. Indeed, face recognition has been accepted in the last two weeks by ICAO as the basis of the international standard in this area. It was accepted on the basis of Australian research.

Senator ROBERT RAY—I will pursue the problems of that elsewhere.

Mr Kemish—Sure.

Senator ROBERT RAY—I make that \$30.6 million for recurrent funding, adding up those figures. For the capital measures, on page 77, we have the expansion of Australia's secure diplomatic communication as \$9.9 in a one-off year—is that right, Mr Varghese?

Mr Varghese—That is right.

Senator ROBERT RAY—That means the additional funding for this and the out years comes to something over \$40 million. I have now tracked down the \$3 million: you have got a capital listing of \$1.1 million, haven't you, and a recurrent \$1.9 million. I wondered where you got the \$3 million figure from, Mr Kemish, but I think I have discovered that.

Mr Kemish—That was announced in the budget.

Senator ROBERT RAY—There is no big secret here. I am just getting the facts.

Mr Kemish—My colleagues in the financial management area might be able to help on the detail.

Senator ROBERT RAY—I don't need any more; I just answered the question for you. So we have \$9.9 million there and \$3.5 million further down the page, so that would bring us to approximately \$43 million in additional funding for A Safer Australia. Could you explain what the minus \$0.5 million on page 75 is? I think I know the answer but I would like your explanation.

Ms Hazell—The \$0.5 million is effectively not a savings measure. It is a change in the accounting treatment for some of the project costs for the roll-out of the secure diplomatic communications network. That effectively meant as a result that half a million dollars in operating expenses was not required.

Senator ROBERT RAY—That had nothing to do with the way you depreciate the asset?

Ms Hazell—The money was actually required on the capital side. It was to do with aligning the accounting treatment for capitalisation of the asset with the Australian accounting standards.

Senator ROBERT RAY—That might explain the department of finance's answer. So there are no savings measures anywhere here for A Safer Australia?

Ms Hazell—No.

Senator ROBERT RAY—So you have not had to cough up any savings measures?

Ms Hazell—No.

Senator ROBERT RAY—You have that in common with Attorney-General's, Immigration and Multicultural and Indigenous Affairs, Prime Minister and Cabinet and the department of transport. So it is only the parliamentary departments that have to pay for their own security measures. It is very strange, Chair.

Ms Hazell—I might just clarify a matter. The Ambassador for Counter-Terrorism is being funded from within the department. While technically not a savings measure, it is something that we are doing internally.

Senator ROBERT RAY—So you understand the difference between absorption and savings measures. So do I. That is why I did not ask for what you may have absorbed; I was asking otherwise. I do not believe you should have been asked for any savings measures for these matters, by the way. My point, which I will make elsewhere, is that a parliamentary department should not have to find savings measures to fund the security of this building.

Senator FAULKNER—Ms Hazell, you have tabled a document called 'Comparison of DFAT's Budget 2002-03 to 2003-04'. It is described as attachment A. What is it attachment A to?

Ms Hazell—It was attachment A to a piece of paper which basically repeated the variations in the PBS.

Senator FAULKNER—So it is some sort of internal document. What does it tell us, Ms Hazell?

Ms Hazell—You will see at the top that the net increase/decrease from last year's budget through to this year's was the \$5.838 million that I referred to. Below that it shows all the changes that lead to that \$5.838 million net decrease in total. This table is not divided up by outcome; it is looking at total appropriation.

Senator FAULKNER—So when we go down to the negative \$15,153,000, the point you are making is that that is the major contributor?

Ms Hazell—That is the foreign exchange rebasing adjustment that we are talking about.

Senator ROBERT RAY—Do I take it that the efficiency dividend is less because your overall budget is less?

Ms Hazell—That is actually a reduction in our appropriation, because there needed to be a minor adjustment upwards in the amount of the efficiency dividend.

Senator ROBERT RAY—Just explain that.

Ms Hazell—The figures that are in brackets here on this page with minus signs are reductions in the appropriation. That means that the amount set aside for the efficiency dividend already taken from our appropriation was not quite enough.

Senator ROBERT RAY—Why was that?

Ms Hazell—It would, I suspect, relate to the impact of other parameter adjustments that are applied and then the efficiency dividend is adjusted. So, for example, for the overseas inflation parameter adjustment we got an extra \$4.9 million. All those things are calculated out and then the efficiency dividend is applied and the amount is checked.

Senator ROBERT RAY—So if things like exchange rates go up, you could go the wrong way in terms of your funding, and there are adjustments made for overseas inflation. You are still charged an efficiency dividend on that increased expenditure, even though it has nothing to do with the efficiency of your department?

Ms Hazell—Yes, that is right.

Senator ROBERT RAY—When the exchange rates go the other way—that is, they improve for you—and inflation is less than it had been the year before, you then do not have to pay as much in terms of an efficiency dividend—is that right?

Ms Hazell—That is correct, Senator. In some years this adjustment has actually been the other way, in the department's favour. This year it just worked out to be a negative adjustment.

Senator ROBERT RAY—What do you think, Mr Varghese? Is 'efficiency dividend' a strange term when it applies to those things? It is not a policy matter; it is an administrative matter. It is rather passing strange, isn't it? It is not to do with your efficiency. You don't control world exchange rates and world inflation rates, do you?

Mr Varghese—No, Senator. We just work within the guidelines that are laid down.

Senator ROBERT RAY—No matter how silly they are? Okay, I won't ask you to comment on that.

Senator FAULKNER—What this document also shows, Ms Hazell, is that there are six new budget measures in the DFAT portfolio in this budget—is that correct?

Ms Hazell—That is correct.

Senator FAULKNER—Six, and only six?

Ms Hazell—For DFAT, yes.

Senator ROBERT RAY—Can I ask about No. 6: 'enhanced quality and timeliness for budget estimates'. What does that mean?

Ms Hazell—This funding is for the department to implement the changes required under the budget estimates framework review. You may recall, Senator, that the Department of Finance also got a large sum of funding for that.

Senator ROBERT RAY—What does it involve?

Ms Hazell—It will involve amendments to our systems so that we can extract more cash information for the central budgetary papers. Most departments, as you will know, have full accrual systems and they do need to be tweaked to extract more cash information. It is also to help with the changes to our cash drawdown arrangements, with the abolition of the Agency Banking Incentive Scheme. It is mainly focused on the cash.

Senator ROBERT RAY—So accrual accounting costs more yet again.

Senator FAULKNER—Are any of those new measures outlined in the PBS or are they all just announced separately on budget night?

Ms Hazell—You may remember, Senator, that on budget night some measures were announced relating to property. They are funded out of the overseas property special account. There is no actual appropriation, so you do not see them on this table. They are the new measures that were listed under outcome 4 in the PBS.

Senator FAULKNER—So there is one measure or set of measures that is not included here. Is that the point?

Ms Hazell—That is the point, Senator, because they do not require additional appropriation. This is purely a reconciliation of the appropriation. But under outcome 4 you find a number of measures announced there.

Senator FAULKNER—These six measures are not reported in the PBS, are they?

Ms Hazell—These six measures are recorded under the outcomes that they relate to in the PBS. Outcome 1, for example, has the expansion of the diplomatic communication network and the reopening of the Australian office in Iraq. It also has maintaining the consul-general in Nauru, the grant to the International Development Law Organisation and the budget estimates enhanced quality and timeliness. There is also mention there of a World Trade Organisation informal meeting of ministers, where the funding has not yet been finalised. Outcome 4 has the New Delhi chancery—construction of a new chancery and residential accommodation; Geneva chancery—defects rectification project; Washington head of mission residence—refurbishment; Paris chancery—refurbishment of apartments; Wellington chancery—mid-life upgrade and refurbishment. You will find the new measure relating to enhanced travel advice dissemination under outcome 2 and research into passport biometrics is also under outcome 2.

Senator FAULKNER—Is there consolidated documentation of the property measures?

Ms Hazell—The best documentation is pages 63 and 64 of the PBS.

Senator FAULKNER—Yes. We will get to those a bit later, in outcome 4.

Senator ROBERT RAY—In the document that you have, what does the very last item, ‘Other increases/(decreases) from adjustments from previous Budget updates’, refer to?

Ms Hazell—That refers to the consolidation of a number of measures from previous budget updates. It also reflects the fact that previously we got \$14.5 million for capital spending on the enhanced diplomatic communications network and so, when that funding stops, it shows as a reduction in the following year. There are adjustments for appropriations receivable which are likely to be incurred—for example, a WTO mini ministerial conference

cost—but which are not yet invoiced so we cannot actually have them in there. There are a number of other variations. If you needed further detail, I would need to take it on notice.

Senator ROBERT RAY—No, I do not think so. For ‘International Development Law Organisation’, that was the figure from the previous year, was it?

Ms Hazell—The International Development Law Organisation is a new measure. It is a grant to the organisation. Under outcome 1 on page 44, you will find further explanation of that.

Senator ROBERT RAY—I will have a look at that now.

Senator FAULKNER—Can I ask you about something I did not understand. This came out of Budget Paper No. 4. Can I take you to page 124, in Budget Paper No. 4, outcome 2. It is under ‘Administered expenses’ for ‘Australians informed about and provided access to consular and passport services in Australia and overseas’. It seems that, unless I am misreading it, that is a figure of \$200,000—is that right?

Ms Hazell—That is correct. That represents the consular travellers emergency loan that we make. That is the funding that we receive under ‘administered’ to make loans to travellers in distress under certain circumstances. Those loans are normally recovered from the traveller in due course, but they are considered administered expenses because they are not something that we necessarily have any control over.

Senator FAULKNER—What is the \$3,337,000 figure underneath it?

Ms Hazell—That is the consular revenue that we get in from a number of activities such as notarial services. That is considered administered revenue. It is revenue we basically return to the centre.

Senator FAULKNER—To where?

Ms Hazell—To the centre, to the budget, so it is considered in administered revenue.

Senator FAULKNER—What I do not understand is the disparity between the two figures.

Ms Hazell—The majority of our passport and consular operations are considered departmental. There are just some very few things that are considered administered expenses or revenue. It is to do with aspects of how much control we have, particularly on the expenses side.

Senator FAULKNER—I have not done this, but if I looked at previous budget papers on agency resourcing, I would find a similar disparity there, would I?

Ms Hazell—You would find a similar figure. It did go up to \$200,000. I would have to check which year. It used to be \$175,000 but we found \$175,000 was not enough with the number of Australians travelling and it went up to \$200,000. But it has been that amount for a long time.

Senator ROBERT RAY—Returning to the International Development Law Organisation grant, what does that figure of \$24,000 relate to? It is in the right-hand column of attachment A. I cannot follow that. It seems to me that you are going to give \$200,000.

Ms Hazell—The difference between the PBS and that is an issue of rounding. Anything below \$250,000 is normally rounded down; anything above it would normally be rounded up for the purposes of the document. The actual funding we receive is \$240,000.

Senator ROBERT RAY—\$240,000? I cannot see why we have \$24,000 there; I thought it would be \$240,000.

Ms Hazell—I am sorry, Senator. It is \$24,000 in the first year.

Senator ROBERT RAY—Also in the general area, I had asked a question in PM&C estimates of Senator Hill who promised to answer it today in foreign affairs, but he is not here. I assume he did not know that he wasn't going to be here when he answered in PM&C. The question relates to an article in the *Courier-Mail* on 28 April which refers to documents obtained under FOI. Are you aware of that issue, Mr Varghese?

Mr Varghese—Could you just tell me what the subject matter is?

Senator ROBERT RAY—Yes. The FOI material was on government-to-government communications concerning a diplomatic appointment of Dr Herron.

Mr Varghese—Yes, I am.

Senator ROBERT RAY—According to the *Courier-Mail*—and I have not seen the documents—the documents indicate that there had been government-to-government communications as early as 20 February 2001. Is that right?

Mr Varghese—May I ask Mr Chester to respond to that?

Senator ROBERT RAY—I only want to ask questions on what is on the record. I assume that if it has been the subject of FOI that part is okay to canvass here.

Mr Chester—That is right, Senator. In response to the request, FOI indicated that there were some communications in February 2001.

Senator ROBERT RAY—What was the nature of those communications?

Mr Chester—Those communications were in relation to a possible diplomatic appointment.

Senator ROBERT RAY—And the communications were between the Australian government and?

Mr Chester—Senator, as you would understand, normally we do not comment on possible head of mission appointments and that has been a standing practice and a normal custom given that they are in a sense confidential personnel issues. That is the norm. In this instance, I have been authorised by the minister to indicate that there were communications between Australia and Canada.

Senator ROBERT RAY—I did not want to ask any questions outside the normal range, but I assume that if any of these things were divulged as part of an FOI request and they were confidential matters you would have deleted that before supplying it—is that right?

Mr Chester—That is right.

Senator ROBERT RAY—So I asked you who the communications were between and you can either tell me that they are confidential and they were not divulged in FOI, or you can tell me who they were between—is that right?

Mr Chester—And I have, Senator.

Senator ROBERT RAY—So it was between the Australian government and?

Mr Chester—The Canadian government.

Senator ROBERT RAY—I see. Well, we have the Prime Minister's statement that he had not heard—this is three days after the election in 2001—and that there was nothing to the speculation about a posting for Dr Herron. So this was information kept confidential from the Prime Minister, I take it.

Mr Chester—No, that possible appointment did not progress.

Senator ROBERT RAY—It did not progress, but there was something to the speculation obviously—wasn't there, Minister?

Senator Abetz—There was speculation.

Senator ROBERT RAY—There was not only speculation; the government had already taken some action. So the only explanation for the Prime Minister's statement three days after the election—well, there are three possibles: (1) he was not informed by anyone; (2) he was telling a porky; or (3) he had a memory lapse. Can you give me an additional explanation, other than those three possibles?

Senator Abetz—They are debating points—if you want to make them, make them. You have been told by the officer at the table that discussions took place but no names were mentioned.

Senator ROBERT RAY—I have not heard that no names were mentioned.

Senator Abetz—No names will be mentioned.

Senator ROBERT RAY—I thought you were repeating the evidence of the officer at the table. He had not told me that.

Mr Chester—At the time the Prime Minister was reported to have made that statement the department was not working on any appointment in relation to Dr Herron.

Senator ROBERT RAY—I accept that they were not working on it. The government was working on it, you see. You had not been told at that point. In any event, I again express my disappointment that Senator Hill told me he would be full bottle on this and he is not here. I am not saying he is not here for good reason, but he could have told me last week he was not going to be here.

I want to ask a general question—it is probably under general questions but it could be dealt with later. We had a discussion at the last estimates committee about Mr Betteridge. You will cut me short if this is still subject to legal activity, but I notice he has made the claim—and I do not put it any higher than a claim—that the Australia Embassy in Phnom Penh encouraged him to flee. That is a very damaging accusation. I would just like to give

you an opportunity here at the estimates committee to put a counter proposition, if you so desire.

Mr Varghese—That claim by Mr Betteridge is inaccurate. The Australian embassy in Phnom Penh did not encourage him to leave.

Senator ROBERT RAY—What steps did you take to check his claim subsequent to it being made?

Mr Kemish—A range of steps were taken in the context of the legal proceedings in Australia which remain ongoing. I do not think I can comment any further on what is sub judice.

Senator ROBERT RAY—Okay.

Mr Kemish—But a range of active steps were taken to check the claim.

Senator ROBERT RAY—That will be resolved in the fullness of time so I will not pursue that any further at this stage.

Senator Abetz—There is a bit more information.

Mr Varghese—Not only is what Mr Betteridge has said inaccurate in the sense that he is saying that the embassy encouraged him to leave, but in fact the embassy counselled him against breaching his bail conditions and, indeed, formally advised the Cambodian authorities that he was being issued with a replacement passport.

Senator ROBERT RAY—That last point was not made at the last estimates, was it?

Mr Kemish—Yes, it was made by me.

Senator ROBERT RAY—I must have missed it. I had not realised you had informed the Cambodian authorities.

Mr Kemish—Absolutely. The embassy advised the Cambodian authorities immediately on issue of the passport. I gave that testimony at the last estimates hearings.

Senator ROBERT RAY—It hardly fits the theory that he was then encouraged to flee, does it?

Mr Kemish—Indeed.

Senator ROBERT RAY—A very strong point.

Senator Abetz—I just saw that in the brief and I thought it might be helpful if that were put on the record.

Senator ROBERT RAY—I think it is helpful because there had been a series of versions of what happened. We are starting to get a lot closer to what actually happened.

Senator Abetz—And as one would expect our officials to engage.

Senator ROBERT RAY—Yes, absolutely.

Proceedings suspended from 10.25 a.m. to 10.47 a.m.

CHAIR—Before we proceed with further questions on the portfolio overview, Mr Varghese has some additional information that he would like to share with us.

Mr Varghese—Before the break Senator Ray asked on what date the SARS task force was established. I can confirm that it was established on 3 April.

Senator ROBERT RAY—Was that the additional information?

Mr Varghese—Yes.

Senator ROBERT RAY—Do you recall people making queries of the department, asking what was going on in southern China and not being able to get a proper response? This came from teachers who wanted to go there recruiting for their international program. They tell me that they had rung DFAT on several occasions and got no information. In the end, we went to the Internet to dig out what the latest was. I am just putting to you what they asserted, not what was fact. What they asserted was too slow a reaction.

Mr Varghese—I am not aware of those sorts of complaints. I would imagine that before we set up the task force we would have received a number of inquiries through our consular hotline and in other ways about SARS and its implications for travellers. Perhaps I will ask Mr Kemish to—

Senator ROBERT RAY—As a matter of fact, I do not think it was even called SARS at the time these complaints came to my office. I do not recall it being regarded as having a name, other than that there was a virus loose and whether it was safe to travel.

Mr Kemish—It may have been known as atypical pneumonia at the time. The first occasion on which the disease was referred to as SARS was towards the end of March. An important thing to understand is that since the beginning of April at least the government's provision of information and advice about SARS has been through a SARS information hotline run by the Department of Health and Ageing. Our travel advisories have provided a vehicle for expert advice from Health and Ageing to be made available to the general Australian population. We have been doing that since 18 March.

Senator ROBERT RAY—Where is the major source of advice to the Australian government coming from as to what is happening in the region in terms of other measures they make and, at a particular point of time, want to institute? Is that through your department?

Mr Kemish—Our advices are composite advices based on a range of sources. The World Health Organisation is a primary source of advice and information. For their part, they first put in place information and advice about SARS well after the Australian government did.

Senator ROBERT RAY—Does there have to be some sort of resistance by our overseas representatives to pressure from governments saying, 'This is not as bad as some people make out. You shouldn't try to stop tourists. You should alter your travel advisories,' et cetera?

Mr Kemish—I am not aware of any such pressure in relation to SARS at all.

Senator ROBERT RAY—That is good. Thank you.

Senator FAULKNER—Mr Varghese, could we have an update on where the leak investigation is up to in the department—that is, the Mr Downer-High Commissioner Lackey record of conversation leak? Could you tell us where that is up to, please?

Mr Varghese—I would ask Paul Tighe to address that.

Mr Tighe—The investigation is continuing. As we mentioned last time, it has been referred to the Australian Federal Police and their investigation is ongoing.

Senator FAULKNER—Is that the only investigation that is taking place?

Mr Tighe—The only leak investigation; that is correct.

Senator FAULKNER—The only leak investigation? Are there other matters that are not properly defined as leak investigations?

Mr Varghese—Perhaps I could add to that. There is also a separate process under way in the department, which relates to possible breaches of the Australian Public Service code of conduct. That is separate to an AFP investigation into leaks of official information.

Senator FAULKNER—There is an APS code of conduct investigation?

Mr Varghese—That is right. That is a departmental investigation.

Senator FAULKNER—There is the AFP investigation, which is ongoing—

Mr Varghese—That is correct.

Senator FAULKNER—Are there any other investigations around this issue?

Mr Varghese—Not that I am aware of.

Senator FAULKNER—You would know if there were, I assume.

Mr Varghese—I expect I would.

Senator FAULKNER—Is there any indication when the AFP are likely to conclude their inquiries at this stage?

Mr Tighe—They have not given us a time frame. I would expect it to be relatively soon, given the length of time the investigation has already been going on, but I cannot give you a firm answer, I am sorry.

Senator FAULKNER—When was the matter referred to the AFP?

Mr Tighe—It was 10 February.

Senator FAULKNER—When did the APS code of conduct investigation commence?

Mr Varghese—May I ask Mr Chester if he would address that? It is handled in a different area in the department.

Senator FAULKNER—Sure.

Mr Chester—It commenced around 20 February.

Senator FAULKNER—Is that being conducted internally?

Mr Chester—It is. It is an internal investigation under the code of conduct.

Senator FAULKNER—Who is conducting that?

Mr Chester—At present it is being looked into by Peter Kennedy, who is a former deputy of the Public Service Commission.

Senator FAULKNER—It is Dr Kennedy, isn't it?

Mr Chester—I believe it is.

Senator FAULKNER—Is Dr Kennedy still in the Public Service?

Mr Chester—No, he is not.

Senator FAULKNER—Is he a consultant on these sorts of issues?

Mr Chester—That is correct.

Senator ROBERT RAY—Who chose him?

Mr Chester—The department did.

Senator ROBERT RAY—When you say the department, it was a fair guess that I would be able to get that. Who in the department and what section? Was it the secretary? Can you be a bit more helpful there?

Mr Chester—I am not sure I can say precisely who chose him. It was as a result of consideration within the department to have someone from outside the department look at the issue. Dr Kennedy's name came forward and it was decided that he would be appropriate to do that.

Senator FAULKNER—Let us take a step backwards. Who in the department determined to commence a code of conduct action?

Mr Chester—Back on the 20th?

Senator FAULKNER—That is right. It commenced on 20 February; you have told us that. Who decided to do it?

Mr Chester—I believe that that decision was made as a result of a discussion with a number of staff in the department.

Senator ROBERT RAY—Where did the discussion take place? Let us narrow it down a bit.

Mr Chester—It was formally a decision of mine, having the responsibility for that area of the department.

Senator FAULKNER—So it was your decision?

Mr Chester—Yes.

Senator FAULKNER—If it was your decision to have a code of conduct investigation, whose decision was it that Dr Kennedy should conduct it? Let us take it back a step again. How did you go about determining whether that should be done in the department with an internal investigator or with someone from outside, like Dr Kennedy? Who made that decision?

Mr Chester—I formally appointed Dr Kennedy to undertake the process.

Senator ROBERT RAY—When did you do that?

Mr Chester—I do not have that detail with me at the moment. Somebody else may well be able to help.

Senator FAULKNER—That would be good.

Mr Chester—Sorry, we do not have the date of that with us.

Senator FAULKNER—If you appointed him I would not have thought it would be too difficult, Mr Chester, for us to nail that one down.

Mr Chester—No, not all. I just do not have the date with me.

Senator ROBERT RAY—Did anything happen in between time, with regard to the investigation, before Dr Kennedy started the job?

Mr Chester—Yes. We undertook an investigation within the department.

Senator ROBERT RAY—I am trying to get a clear idea of what the time frame is approximately—then we will get the exact date—between you doing a preliminary investigation and bringing in Dr Kennedy.

Mr Moraitis—I can clarify that. Peter Kennedy was appointed on 16 May this year.

Senator ROBERT RAY—It would be more helpful if you came and sat next to Mr Chester. Then Mr Chester can refer to you, rather than me having to see whether you might know something. It is a better process for your side of the table.

Senator FAULKNER—Can someone explain to the committee, please, why nearly three months elapsed from the decision to hold an internal inquiry, which was on 20 February, until 16 May when someone was appointed to conduct it? Let me just ask this as the threshold question: are we talking about the same inquiry?

Mr Chester—We are talking about the same issues.

Senator FAULKNER—Are we talking about the same inquiry?

Mr Chester—In a technical sense, no, we are not.

Senator FAULKNER—So what happens to the inquiry that you determined be initiated on 20 February 2003?

Mr Chester—With respect to the inquiry that was initiated originally, as I said, an investigation was undertaken by members of the conduct and ethics unit of the department.

Senator FAULKNER—The conduct and ethics unit?

Mr Chester—That is right. The investigation report was then referred to me as a determining officer at that stage.

Senator FAULKNER—So it was completed?

Mr Chester—That is correct.

Senator FAULKNER—The conduct and ethics unit reported to you as the determining officer?

Mr Chester—That is correct.

Senator FAULKNER—When did that report come to you?

Mr Chester—I do not have with me when the report came to me, but my process was concluded on 24 March.

Senator FAULKNER—What is your process in this sense?

Mr Chester—Considering the report of the investigating officer and making a determination on that report.

Senator FAULKNER—So you made a determination with the benefit of the report from the conduct and ethics unit on 24 March 2003?

Mr Chester—That is correct.

Senator FAULKNER—You made a determination?

Mr Chester—Yes.

Senator FAULKNER—What was that determination?

Mr Chester—Given that that determination is the subject of the work that Dr Kennedy is doing, I think it would be unfair to the people involved to discuss that outcome.

Senator FAULKNER—I am not sure about that. In fact, I am very doubtful about it. Your determination has been referred to Dr Kennedy, has it?

Mr Chester—Dr Kennedy has access to that determination, yes. Sorry, I have been reminded that he does not have access to that determination. He has access to the investigation report that that determination was based upon.

Senator FAULKNER—So he is not examining your determination; that stands, does it?

Mr Chester—No, he is examining the issues that were covered in that—

Senator FAULKNER—So your determination stands?

Mr Chester—No, my determination has been revoked.

Senator FAULKNER—You have revoked your determination?

Mr Chester—That is right.

Senator ROBERT RAY—Did you revoke it or did someone else revoke it?

Mr Chester—I revoked it.

Senator FAULKNER—Why?

Mr Chester—Because of advice that we had from our legal advisers that the process that we had gone through would be a more robust process if the evidence that had been gathered had been looked at by a person independent of the department.

Senator ROBERT RAY—Where did it lack this robustness—in what aspects?

Mr Chester—I do not believe it lacked any robustness.

Senator ROBERT RAY—You have no idea of why others formed the view that it should have been more robust from a legal safety point of view?

Mr Chester—The advice that we received from our legal advisers in relation to recent court cases was that issues such as this are more robust if someone outside the department reviews them.

Senator FAULKNER—First of all, when did you revoke this determination? You made the determination on 24 March 2003. When did you revoke it?

Mr Chester—On 28 April.

Senator ROBERT RAY—Who were the legal advisers? Were they internal or external to the department?

Mr Chester—It was a mixture of internal legal advisers plus the Australian Government Solicitor's office.

Senator ROBERT RAY—When were they consulted?

Mr Chester—From very early on in the process—around 20 February.

Senator FAULKNER—Let us go through it in some detail. When was first contact made on these matters with legal advisers, internal or external? I want to go through the whole pattern of this, so we may as well start at the beginning.

Mr Chester—I do not have the date with me but I believe it was from a period very close to 20 February—prior to 20 February.

Senator FAULKNER—Who was consulted prior to 20 February?

Mr Chester—The internal legal advisers would have been involved in considerations of the issue, as would have AGS—

Senator FAULKNER—Thank you. Can we have someone from the internal legal advisers come to the table?

Mr Varghese—Chris Moraitis is our legal adviser in the department.

Senator FAULKNER—Mr Moraitis, can you indicate to the committee when your branch was first involved in this matter?

Mr Moraitis—I understand the Administrative and Domestic Law Group of the Legal Branch would have been involved from a period around the second or third week of February. I do not have the exact date with me.

Senator FAULKNER—This is just a process issue in the department. It is referred by, I assume you, Mr Chester, to the Legal Branch. Who refers it to you, Mr Moraitis?

Mr Moraitis—It would be referred from either the Corporate Management Division or Mr Tighe's division.

Senator FAULKNER—I would like to nail down who referred it.

Mr Moraitis—I think it was referred to the branch by CMD and by Diplomatic—

Senator FAULKNER—By whom?

Mr Moraitis—Mr Chester's division and Mr Tighe's division.

Senator FAULKNER—We have nailed it down: two divisions have referred it. That is a bit odd, isn't it? Normally it would require only one, wouldn't it?

Mr Moraitis—It depends on the circumstances.

Senator FAULKNER—Do we know when they referred it?

Mr Moraitis—I do not have the precise date. Unfortunately, I was absent from Canberra at the time, so I was not aware—

Senator ROBERT RAY—Could be fortunate.

Senator FAULKNER—We know it is prior to 20 February.

Mr Moraitis—Yes, it would be logical for it to be around the period between 10 February and 20 February.

Senator FAULKNER—Surely we can nail down when the Australian Government Solicitor was formally—

Mr Moraitis—I can take that on notice and check it.

Senator FAULKNER—I think we need to know some of this now. This is just standard estimates questioning and most departments are able to provide this sort of stuff at the drop of a hat.

Senator ROBERT RAY—I think we should explain that some questions are taken on notice and get the 10 July deadline but, where possible, if we can get some others in an hour or two that means you can follow the questioning.

Mr Moraitis—Absolutely. I can do that, but sometime between 10 and 20 February would be a logical assumption.

Senator FAULKNER—Did the AGS provide written advice?

Mr Moraitis—I understand it would have been a combination of written and oral advice.

Senator FAULKNER—How many written advices were provided?

Mr Moraitis—I do not have the numbers of the pieces of advice.

Senator FAULKNER—Again, we need to have this information. We need to know how many advices were provided and when they were provided.

Mr Moraitis—Sure.

Senator FAULKNER—Did your branch itself provide written legal advice?

Mr Moraitis—I understand the sections would have provided oral advice to the relevant areas—would have consulted the relevant areas and passed on information from the AGS, as well.

Senator FAULKNER—Did it provide written advice?

Mr Moraitis—I would have to check, Senator.

Senator FAULKNER—That is your own branch. Surely you would know that, Mr Moraitis.

Mr Moraitis—Yes, but I do not have that information here with me.

Senator ROBERT RAY—How long were you away over this period?

Mr Moraitis—I was absent for about two weeks—until about 26 February.

Senator ROBERT RAY—You were absent from 10 February to 26 February. I do not want to put words in your mouth.

Mr Moraitis—Yes. It just happened that, unfortunately, I was away from Canberra on personal matters.

Senator ROBERT RAY—I was just trying to establish that. Who was your deputy at the time?

Mr Moraitis—The Director of the Administrative and Domestic Law Group, Mr Ian McConville.

Senator ROBERT RAY—Do you think we could have his assistance at some stage today?

Mr Moraitis—Yes.

Senator ROBERT RAY—It may just help. It is very hard to ask you questions about things when you were on leave.

Mr Moraitis—I do not have all the details.

Senator FAULKNER—Mr Chester, how often would you be depending on oral advices on matters like this?

Mr Chester—It depends on what you mean by oral advice.

Senator FAULKNER—I am only using Mr Moraitis's terminology. What I mean by oral advice is non-written advice.

Mr Chester—With issues such as these, it will be a mixture of written advice, whether it is from AGS or our internal lawyers, supplemented by discussions on various aspects of the considerations.

Senator ROBERT RAY—But before you undertook the investigation of the events after 20 February, you would have taken some advice as to the way in which that should proceed. Later advice, I assume, was put to you in terms of: 'Mr Chester, on a better view we now believe this.' It makes it very hard for you to benchmark the original advice if you do not have it in writing. If you proceeded on the wrong assumptions on the basis of advice, we will then want to know what you are going to do to make sure that those who gave you that advice—advice that was not advisable—do give you advisable advice in future.

Mr Chester—The advice that we had covered various aspects of this whole process. As you would appreciate, when you are doing an internal investigation under the code of conduct there are all kinds of elements that need to be considered, relating to all aspects of the process. The nature of the advice varied whether it was oral or written advice, depending on what element we were talking about.

Senator ROBERT RAY—But one of the more crucial areas of that advice is your vulnerability to intervention by the judicial process. You would have to be aware of that at the very start, because it would not be the very first time that has happened, nor would it be the last. You should know how you have to proceed to make yourself protected.

Mr Chester—Certainly. There was advice in the process that canvassed various vulnerabilities of various departmental officers doing various steps in the process; we did have that advice. I believe it was written advice that we did have at one stage on that.

Senator FAULKNER—Is it your habit, Mr Chester, when you receive oral advice, either internally from the department or externally, to make a record of it?

Mr Chester—Normally oral advice would be followed up by written advice from those giving it, if it is of a nature of some importance to the process.

Senator FAULKNER—But what is the protocol here? Do you make a record of it when oral legal advice is provided? Mr Varghese, you can help us because you are the senior officer at the table and you are the deputy secretary to the department. What is the departmental protocol when oral advice is provided to a division or a branch?

Mr Varghese—When oral advice is taken and when written advice is taken varies according to the process. There will be times when departmental officers will consult our legal advisers and have a conversation about it and will proceed with the matter. There will be other times when there will be a clear requirement for written advice.

Senator ROBERT RAY—I do not think that was the question. The question is: when oral advice comes, do you normally make a file note of it? Do you normally put a summary of it on the file, because you do not have written advice so you summarise the advice you are given? I think that was what the question was, more than whether you then need to go beyond to seek written advice.

Senator FAULKNER—I am wondering what the procedures and protocols in the department are. I thought it would be best to ask you because you are the senior officer at the table.

Mr Varghese—I do not think there would be a standard practice of making a file note on oral advice.

Senator FAULKNER—Sorry, you do not think there would be or there isn't?

Mr Varghese—I am not aware that there is.

Senator FAULKNER—So oral advice is just provided willy-nilly and no record is taken of it?

Mr Varghese—Willy-nilly is one-way to describe it—

Senator FAULKNER—Oral advice is being provided, divisions and branches might act upon that oral advice and there is no record of it—that is what we have been told, which I find remarkable.

Mr Varghese—There may not be a record of it.

Senator FAULKNER—What happens in your branch, Mr Chester? What do you require of your officers?

Mr Chester—In relation to this particular case, I think all advice that was given, even if it was oral advice, if it was in relation to important issues ended up being in a written form at some stage. Certainly all the AGS advice we got was followed up in writing or was originally in writing.

Senator FAULKNER—That is fine but I am asking: in your branch is there a practice of recording oral advice?

Mr Chester—No, I do not believe it is a hard and fast practice in the division.

Senator FAULKNER—What about in your branch, Mr Tighe?

Mr Tighe—Normally we would get the advice in writing from the originating agency.

Senator FAULKNER—Very wise. So there is no protocol, Mr Varghese, in terms of the recording of oral advices?

Mr Varghese—No, there is no manual that the department has which would set out when to record oral advice and when not to record oral advice.

Senator FAULKNER—Isn't this a bit risky when you take oral advice into account in terms of departmental procedures?

Mr Varghese—I think it would depend on the nature of the decisions that a decision maker is taking. Where it is necessary to act on written advice because of the nature of the decision I think that would be highly desirable. It is hard for me to give you an answer in the abstract. I think it depends on what sorts of decisions are being taken at each step along the way in this process.

Senator FAULKNER—No-one has even thought to establish a protocol on this?

Mr Varghese—Well, we do not have a protocol on it.

Senator FAULKNER—I have gathered that. Anyway, it is true, isn't it, Mr Chester, that written advices were received?

Mr Chester—That is correct.

Senator FAULKNER—Both internal and external?

Mr Chester—Yes, that is correct.

Senator FAULKNER—And you will be able to provide in relatively short order an indication to this committee when those advices were received and who sought them—I do not go to the substance of advice.

Mr Chester—Is this in general or in relation to a particular aspect?

Senator FAULKNER—This is in relation to broad departmental activity on the Downer-Lackey record of conversation leak and all those matters that evolved from it. I do not want every single departmental advice on every single issue. We are narrowing this questioning to those particular matters.

Mr Chester—The reason I asked, Senator, is that even on this particular issue I think there will be numerous pieces of written advice—scores of pieces of written advice—so it will take some time to go through and document when, who asked for it, that kind of thing.

Senator FAULKNER—Scores of pieces of advice?

Mr Chester—Yes.

Senator ROBERT RAY—Can we just go back to the original question because we have drifted onto the philosophy of file notes rather than the actual issue. If I am verballing you here, just interrupt me. You know you have oral advice prior to the 20th. You might have written advice but you are not sure of that.

Mr Chester—Yes.

Senator ROBERT RAY—And the third part of that is: were file notes entered on the basis of the oral advice? Is that right? That is the targeted question

Senator FAULKNER—Yes, but if you want to narrow it down, narrow it down to the breach of the APS code of conduct, which is specifically what we are talking about. Surely there would not be scores of advice on a breach of the APS code of conduct, would there?

Mr Chester—Yes, there is.

Senator FAULKNER—We will get to a later stage about what resources the department has expended on this.

Mr Chester—Could you clarify this? Are you talking about the period from 10 February to 20 February or post 20 February?

Senator FAULKNER—What I have learnt so far is that you made a determination on 24 March about this matter and that determination was revoked on 28 April.

Mr Chester—That is right.

Senator FAULKNER—We now know that on 16 May Dr Kennedy was engaged for a task in relation to investigating this matter as well. We have not got the detail of any of this. You made the point that legal advices had been sought. Since that time, we have been trying to nail down what sort of legal advices these might have been and who has been providing them.

Mr Chester—The legal advice has been sought and given right through that time frame on various aspects of this issue.

Senator ROBERT RAY—You are a little defensive, and no doubt quite properly so, about your determination, but you have revoked that determination on the basis of legal advice, I think—and again, stop me if I am wrong—because that legal advice believed that some of the processes would not stand judicial scrutiny. Am I right in that? That is not a judgmental thing, but maybe it would be found flawed or fail with judicial observation. Is that right?

Mr Moraitis—We would not concede that point. Our consideration was that we wanted this to be seen to be as independent and robust as possible.

Senator FAULKNER—Mr Chester, was your determination revoked on the basis of legal advice?

Mr Chester—Yes, it was.

Senator FAULKNER—Where did that legal advice come from?

Mr Chester—AGS.

Senator FAULKNER—When was it sought?

Mr Moraitis—I do not recall exactly.

Senator FAULKNER—It was after the determination was made, one assumes—is that right?

Mr Chester—That is correct.

Senator FAULKNER—You sought legal advice after the determination was made as to whether the determination would hold up legally—is that right?

Mr Chester—Yes, in essence.

Senator FAULKNER—And you sought that from legal advisers outside the department.

Mr Chester—AGS have been involved in this issue, as we said, from that period between 10 and 20 February. They have been involved very closely in this whole process through that period, so it is really whether it is a matter of describing it as going out to someone external to seek that advice or whether it is part of the way that we have dealt with this issue that AGS are in a sense part of it.

Senator FAULKNER—But did you or another officer in the department seek advice specifically to establish whether the determination that you made would hold up legally? Was that effectively the tasking of AGS on this matter?

Mr Chester—I do not think you could describe it as specific tasking, but AGS did give us advice on this issue.

Senator FAULKNER—Why was that advice sought? Who took the initiative to request AGS to examine whether your determination would hold up? Whose decision was that?

Mr Moraitis—The advice was sought purely because one of the parties involved had initiated Federal Court action and therefore it was logical to seek legal advice.

Senator FAULKNER—So by this stage the matter was before the court?

Mr Moraitis—By this stage, the person had initiated proceedings.

Senator ROBERT RAY—Was the AGS consulted between 10 and 20 February? I was not clear on that. We know they were later, as you say.

Mr Moraitis—I assume they were on various occasions—

Senator ROBERT RAY—No, we do not assume at estimates.

Mr Chester—Yes, they were in that period.

Senator ROBERT RAY—Do you know whether that advice was oral or in writing?

Mr Chester—No, I do not.

Senator ROBERT RAY—Could we find out about that, too? That is a slightly different dimension. If they have given you one set of advice prior to 20 February and a second set of advice that may be a different view prior to 28 April I would like to know about it. We are not looking for a scapegoat here but we like to know why things change. There are a lot of resources involved in all this.

Mr Chester—I may be able to clarify that. I think I understand what you are getting at here and it is in relation to my determination and the revocation of that. Yes, there was advice from AGS early on that indicated that it would be appropriate for me to do the determination. In that advice AGS did indicate some potential risks with me making that determination. On balance it was decided that I would go though and make that determination.

Senator ROBERT RAY—Were they saying on balance you could go ahead and make it? Or did you have to evaluate their submission to you and make a decision about what the on balance decision would be?

Mr Chester—It would be fair to characterise it as us making that decision to proceed.

Senator FAULKNER—Who is ‘us’?

Mr Chester—The department, myself and the internal legal area made that decision to proceed, fully understanding what the potential risks were.

Senator FAULKNER—When you make such a determination, it is not a collective determination. Aren’t you the determining officer?

Mr Chester—We are mixing terms. When I used ‘determination’ in that instance, I was talking about us making a decision to proceed with me as the determining officer.

Senator FAULKNER—It is important to clarify this because the determination that was revoked—the determination that you had come to as the determining officer—is required to be yours and yours alone, isn’t it?

Mr Chester—That is right.

Senator FAULKNER—That was the significance of my question.

Mr Chester—It was my determination and mine alone but prior to that and as a result of advice that came from AGS we made a decision—we had to evaluate that advice—that it was appropriate for me to proceed as the determining officer.

Senator FAULKNER—How was it decided by the department who would take the role of the ‘determining officer’?

Mr Chester—That power is delegated from the secretary. The delegation is held by Peter Varghese’s position and in the hierarchy my position and that of the assistant secretary staffing branch. The decision was made around the time Peter Varghese and Dr Thomas had made a changeover in that position. The assistant secretary staffing had been involved in some earlier considerations of this particular issue and was excluded. It was on that basis that it was thought appropriate that I be the determining officer.

Senator FAULKNER—This was your decision, Mr Varghese?

Mr Varghese—No, I was not involved in that decision.

Senator FAULKNER—Whose was it? I appreciate the point you make that this is a delegated authority from the secretary. That is fine. Who actually made the decision to appoint you as the determining officer? That is the question.

Mr Chester—I believe I made that decision.

Senator FAULKNER—You used your delegated power to determine you would do it yourself?

Mr Chester—That is right.

Senator ROBERT RAY—I think next time you should pick someone else. It would be easier.

Mr Chester—No, not at all, Senator.

Senator FAULKNER—Why was the assistant secretary excluded?

Mr Chester—Mr Moraitis might correct me here, but I believe that she was involved in some earlier elements of this issue which would more logically preclude her from being the determining officer.

Senator ROBERT RAY—Was she ever the determining officer?

Mr Chester—Not in relation to this. She was the determining officer in relation to the suspension of the officer concerned, in my absence overseas.

Senator ROBERT RAY—Having suspended, would that have impinged on the determining officer having made the previous decision?

Mr Moraitis—On balance, yes. It was felt that it would be preferable to have someone else be the determining officer.

Senator ROBERT RAY—We have talked about legal advice and about how to conduct one of these inquiries. Can I just go to the experience of conducting these inquiries? How many similar code of conduct inquiries have you had, let's say in the last three years, that you could have looked back on for guidance?

Mr Chester—I do not have those figures with me, but it is very difficult to give an easy answer to this given that there are so many different issues that can be involved in a code of conduct inquiry. If you are talking about issues such as this, or issues similar to these kinds of matters, probably two or three in that period. That is me trying to subdivide them up into various kinds of issues.

Senator ROBERT RAY—I just want to see if you had some way of looking back at previous ground rules, legal advice and other things within living corporate memory which in the Public Service is usually two to three years.

Mr Chester—Yes.

Senator FAULKNER—Anyway, you have indicated to us that there were court proceedings. What is the background of those court proceedings? First, have they concluded?

Mr Moraitis—Yes, they have been discontinued. They were discontinued on 7 May—

Senator FAULKNER—On 7 May? Discontinued by whom?

Mr Moraitis—By the applicant—

Senator FAULKNER—Why?

Mr Moraitis—Essentially because Mr Chester's determination was agreed that the determination would be revoked.

Senator FAULKNER—So the court proceedings were about Mr Chester's determination, were they?

Mr Moraitis—There were quite a few issues there, but essentially it focused on the determination by—

Senator ROBERT RAY—I see. So the court proceedings would have been prior to 28 April?

Mr Moraitis—They were initiated on 31 March. There was an injunction.

Senator ROBERT RAY—So it was revoked on the 28th. So it was not a continuous court case and then you met back there—

Mr Moraitis—No, there was a five-minute appearance before a judge who agreed to the consent order of the parties.

Senator FAULKNER—Did the court make any orders?

Mr Moraitis—Basically agreed to the orders of the parties—the agreement of the parties—to Mr Chester’s revocation of his determination.

Senator ROBERT RAY—That was on 7 May. So the court action was taken on the 31st and there is the first hearing on 7 May. I am just trying to get the chronology right in my mind.

Mr Moraitis—That is correct.

Senator ROBERT RAY—So some agreement is made on 7 May?

Mr Moraitis—Yes.

Senator ROBERT RAY—What was that agreement?

Mr Moraitis—I cannot really comment on that, Senator. It is still between the parties, and the court has not got a decision from the parties to make that public.

Senator ROBERT RAY—So the two parties having come to an agreement as to certain matters, the legal action is discontinued?

Mr Moraitis—The legal action has been discontinued. There was a consent order ratified by the court. Those consent orders have not been formally made public by the court because they are still subject to the parties’ agreement—

Senator ROBERT RAY—I understand that. Has there been any public determination of costs in the case yet as opposed to matters covered by the consent agreement?

Mr Moraitis—No.

Senator FAULKNER—Do you expect these court orders to be made public?

Mr Moraitis—I do not know.

Senator FAULKNER—What is the normal procedure? Why aren’t they public?

Mr Moraitis—I understand that the registrar is awaiting confirmation from the parties to that effect.

Senator FAULKNER—Does Dr Kennedy have terms of reference for his inquiry?

Mr Moraitis—Yes. His appointment had specified alleged breaches of the code of conduct.

Senator ROBERT RAY—Could we see those terms? I assume they are not confidential if it’s—

Mr Moraitis—At this stage, the advice from AGS is that because they are only allegations at this stage they should not be aired publicly.

Senator ROBERT RAY—I just wanted to determine that. So, in his terms of reference, reference is made to allegations?

Mr Moraitis—Yes. There are allegations made that there have been alleged breaches of the APS code of conduct. They are specified but I prefer not to spell them out in detail.

Senator ROBERT RAY—I am just trying to get to the bottom of what Dr Kennedy has to do here. Is his inquiry solely into an assessment of evidence in relation to the code of conduct?

Mr Moraitis—That is correct.

Senator ROBERT RAY—Or is he also looking at the conduct of the department's handling of these matters?

Mr Moraitis—No, it is alleged breaches of the APS code of conduct.

Senator ROBERT RAY—What powers does he have? Does he only have power to review existing evidence being proffered or can he in fact—

Mr Moraitis—Yes, he has full powers to look into all evidence and to consult as widely as—

Senator ROBERT RAY—No, don't jump in yet; that wasn't what I asked.

Mr Moraitis—I am sorry.

Senator ROBERT RAY—Can he look at evidence solely turned up by the previous team of investigators? We know he cannot look at Mr Chester's determination but he can look at the investigating report. Can he go beyond that and do his own investigations and call witnesses, and if so under what head of power?

Mr Moraitis—Yes, Senator, he can do that. He has wide capacity to examine existing evidence as well as to interview potential witnesses and to explore other areas. That is my understanding.

Senator ROBERT RAY—He can call witnesses only on a voluntary basis?

Mr Moraitis—Yes, he can ask to interview people of interest, officers of interest or other people.

Senator ROBERT RAY—Is there any compellability on other department members to attend and be interviewed?

Mr Moraitis—I am not familiar with the details of his powers but I do not think there is any compellability as such.

Senator ROBERT RAY—I would like to become familiar with his powers to understand how this process operates.

Mr Chester—He is going through the determination process that a normal determining officer would do, and that allows him to look at the material that the investigators have put together. He can look at other material which, as a determining officer, he is able to do. He can talk to people involved in the issues, as a normal determining officer can do. Members of staff can be interviewed, but there is no compulsion there. They can be invited to participate

in an interview or a discussion, whichever you want to call it, but there is no way to compel people to do that, as was the case when I did the determination.

Senator ROBERT RAY—How does he get his head of power as a determining officer when he is not a member of the department? Can you explain that to me? I do not understand that part.

Mr Moraitis—My understanding is that a determination of a determining office is permissible under the Public Service Act. Under the Public Service Act the appointment of a determining officer can be done in those circumstances.

Senator ROBERT RAY—From someone who is not in the Public Service?

Mr Moraitis—That is correct.

Senator ROBERT RAY—What section of the act is that? Dr Kennedy would know because he was an absolute expert in all these things.

Mr Moraitis—I do not have the details here but I can check that provision for you.

Senator ROBERT RAY—But you are assuring me that it is possible to employ a determining officer in legal safety?

Mr Moraitis—That is correct, and I understand it is normal procedure in many cases.

Senator ROBERT RAY—Can you cite me an example of where it has been done before, if it is normal procedure?

Mr Moraitis—Yes, I understand that there was an appointment of a determining officer—so he is not an APS officer—in a case involving another agency.

Senator ROBERT RAY—That did not really help me. I was asking if you could tell me of an actual example.

Mr Moraitis—Yes, I understand the Australian Customs Service has appointed an independent determining officer.

Senator ROBERT RAY—Do you know when they did that?

Mr Moraitis—Sometime earlier this year.

Senator ROBERT RAY—I am not going to seek details of that.

Mr Moraitis—I do not have the details.

Senator ROBERT RAY—I should be able to get that tracked down.

Mr Chester—The power comes from section 15 of the Public Service Act that refers to the Public Service Commissioner's directions, which cover how agencies should handle alleged breaches of the code of conduct.

Senator ROBERT RAY—I will get that.

Senator FAULKNER—Is Dr Kennedy conducting this investigation alone?

Mr Moraitis—Yes.

Senator FAULKNER—At a previous estimates hearing I think Mr Tighe—it may not have been; it was a witness at the table—confirmed that the record of conversation, the Downer-Lackey conversation, had been distributed to other agencies. Was that you Mr Tighe?

Mr Tighe—It probably was me. Yes, it had been distributed to at least one other agency.

Senator FAULKNER—That is right. Did any of the leak investigations go to that other agency or agencies?

Mr Tighe—Yes.

Senator FAULKNER—Who conducted that leak investigation?

Mr Tighe—That was the department.

Senator FAULKNER—DFAT?

Mr Tighe—That is right, yes.

Senator FAULKNER—Are you now able to say what agencies the record of conversation went to?

Mr Tighe—I would prefer not to because, as I described to you before, our investigation was referred on to the AFP. The AFP's investigation is continuing. The AFP may wish to go to other departments, other agencies, and I do not think it is our place to be discussing their process.

Senator FAULKNER—Is it one agency or more than one agency?

Mr Tighe—It was one agency beyond DFAT.

Senator FAULKNER—Do we know when that record of conversation was distributed to that agency?

Mr Tighe—I would have to confirm that.

Senator FAULKNER—Are you saying that the Department of Foreign Affairs and Trade, in its earlier investigations, tried to nail down what occurred in that agency? Is that what you are suggesting?

Mr Tighe—We investigated the distribution of the document and, among those who received it, there was one other agency. We interviewed the person in the agency that had received the document to establish the circumstances of their receipt of it and any further distribution that they may have to given to it.

Senator FAULKNER—Who is 'we' in this instance?

Mr Tighe—The Department of Foreign Affairs and Trade.

Senator FAULKNER—Who was doing those interviews?

Mr Tighe—My division.

Senator FAULKNER—Were they also asked to sign statutory declarations, like DFAT officers were?

Mr Tighe—Yes.

Senator FAULKNER—Are you able to say how many officers from other agencies were asked to sign statutory declarations?

Mr Tighe—Again, given that the investigation is ongoing, I am reluctant to go into details about numbers of people, but I can say that they all did.

Senator FAULKNER—When were those investigations concluded?

Mr Tighe—I do not regard them as concluded. As I said, the matter has been referred to the AFP. We are continuing to support the AFP in their investigation. I anticipate—as I mentioned to you before—that the AFP will report back to us and, at that point, we will conclude.

Senator FAULKNER—You do not regard it as concluded. How many officers do you have working on the investigation at this stage?

Mr Tighe—We have two people within my division who were the ones who kicked off the initial investigation. They are available to the AFP to support them in whatever means the AFP chooses.

Senator FAULKNER—How many resources are going into this departmentally?

Mr Tighe—At the moment on our side it is not a great amount of resources because the bulk of the work has already been covered and information provided to the AFP.

Senator FAULKNER—Was there a period when you had more than two officers working on this?

Mr Tighe—We never had more than two investigators working on it, but we also had people examining audit records. But essentially it has been two people.

Senator FAULKNER—The investigators were not examining audit records; others were doing that, were they?

Mr Tighe—They were doing it with assistance from technical experts who were helping them work their way through—

Senator FAULKNER—Internal experts?

Mr Tighe—That is correct.

Senator FAULKNER—How many of them were involved?

Mr Tighe—I cannot give you a firm answer on that. I would have to check that. It would be a small number.

Senator FAULKNER—It sounds like a pretty substantial use of departmental resources.

Mr Tighe—Yes, it is, and I think it should be.

Senator FAULKNER—Are you able to tell us precisely how many staff hours have been utilised in this investigation?

Mr Tighe—I cannot tell you precisely off the top of my head, but I could come up with a reasonable estimation.

Senator FAULKNER—Are you able to indicate what this investigation has in dollar terms cost the department?

Mr Tighe—Again I could make an estimation based on the number of staff hours that went into it, but otherwise the financial cost of it would be very—

Senator FAULKNER—But it is a pretty substantial number of staff hours, isn't it?

Mr Tighe—When you are investigating the possibility of somebody having committed an offence against the Crimes Act, I would have thought that you would have expected to investigate it. We certainly take it very seriously.

Senator FAULKNER—I have read in the newspaper how seriously it has been taken. So it is a substantial amount of resources and staff hours, but you cannot quite provide precise figures—which might be fair enough. You will take that on notice, will you, and let us know?

Mr Tighe—Certainly.

Senator FAULKNER—How big is your branch?

Mr Tighe—I head a division. Within the division, there is a branch called the Diplomatic Security Branch. It is the one from which the investigating officers were drawn. It has about 40 people.

Senator FAULKNER—When did the investigation by the Diplomatic Security Branch commence?

Mr Tighe—It was 5 February.

Senator FAULKNER—How many officers from that stage until the present day have been at any time engaged in the investigation?

Mr Tighe—The core of the investigation team was two people. At various points they would have drawn on advice from other parts of the branch and other parts of the division.

Senator FAULKNER—I appreciate the core is two. I was wondering how many others from time to time had been involved. Are you able to say?

Mr Tighe—I would have to check that. I cannot give you a precise answer off the top of my head.

Senator FAULKNER—There has been some publicity about this, some newspaper publicity. Have you seen an *Australian Financial Review* article of 27 March 2003, Mr Varghese, headed 'Second DFAT inquiry set up to find source of leaks'? Are you aware of that newspaper article?

Mr Varghese—I cannot recall the actual article.

Senator FAULKNER—Is there anyone at the table who has seen it?

Mr Chester—Yes, I have.

Senator FAULKNER—Thank you very much, Mr Chester; I am glad someone has. In the article Dr Calvert is quoted. It says:

And while the police investigation was not yet complete, Dr Calvert said the second inquiry was "close to completion" and that "someone is under investigation".

Does anyone know whether the article accurately quotes the secretary, Dr Calvert?

Mr Chester—Yes, I believe it does.

Senator FAULKNER—It does accurately?

Mr Chester—I believe so.

Senator FAULKNER—What was the second inquiry that Dr Calvert was referring to?

Mr Chester—He was referring to the code of conduct investigation.

Senator FAULKNER—So what is the first inquiry? Is that the AFP inquiry?

Mr Chester—That is correct. It is the AFP/DID inquiry.

Senator FAULKNER—This is on Thursday, 27 March. The current code of conduct inquiry—Dr Kennedy’s one—was established on 16 May, wasn’t it?

Mr Chester—That is correct.

Senator FAULKNER—So this article predates that well and truly by a few months. Who was conducting that first one? Was that your inquiry, Mr Chester?

Mr Chester—That is the inquiry by the conduct and ethics unit—that is correct. It is the one that I was the determining officer for.

Senator FAULKNER—When I say ‘your inquiry’, that is probably a bit unfair; it was the conduct and ethics unit’s inquiry. Is it a fair thing to say that on 27 March that inquiry was close to completion?

Mr Chester—Yes, that is correct.

Senator FAULKNER—Is it accurate to say that someone was under investigation?

Mr Chester—That is correct. Sorry, is it accurate to say that?

Senator FAULKNER—Was that accurate at the time?

Mr Chester—Quite clearly, we would not be having a conduct and ethics unit investigation if there was not someone being investigated.

Senator FAULKNER—Then the article says:

Dr Calvert said he could speak more freely in ten days’ time, consistent with legal advice and the requirements of natural justice.

Did you check with Dr Calvert as to whether that is a fair summary of what he said?

Mr Chester—I believe that is a fair summary of what he said.

Senator FAULKNER—So Dr Calvert was able to say before the conduct and ethics unit inquiry was completed that someone was under investigation. Mr Varghese, it is right, isn’t it, that he was able to make that grand announcement?

Mr Varghese—That is correct, yes.

Senator FAULKNER—What is the requirement of the Department of Foreign Affairs and Trade’s conduct and ethics unit inquiries in relation to making grand pronouncements about these inquiries before they are concluded? Are there any constraints on the people involved or on departmental officers?

Mr Chester—I do not believe that pronouncements of particular outcomes are acceptable. As far as time frames are concerned, I do not see a problem indicating what kind of time frame the investigation is—

Senator FAULKNER—Sorry, what is not acceptable?

Mr Chester—To prejudge outcomes.

Senator FAULKNER—Isn't someone 'under investigation'—which you would accept Dr Calvert said—prejudging an outcome?

Mr Chester—Maybe we should go back a little bit. As to the phases of this process of investigating breaches of the code of conduct, step 1 is the investigation to determine whether somebody has breached the code of conduct. That process was done by the investigators in the code of conduct unit. The investigators produced a report which said, 'Somebody has breached the code of conduct.' It presents the evidence and indicates that, *prima facie*, someone has breached the code of conduct. The determining officer then determines whether in fact a breach has occurred. To go through that process, you obviously have to be looking at someone to make a determination as to whether they have breached the code of conduct. At the stage it was at at that time, unless you had an officer or officers under investigation, you would not be able to make a determination.

Senator FAULKNER—I want to know how appropriate it is for Dr Calvert to make a public comment on this matter when clearly the matter is still under investigation.

Mr Varghese—Dr Calvert's comments, as you quoted them, were a reference to a process that was under way in the department. He neither named the individual under investigation nor foreshadowed the outcome of the investigation.

Senator FAULKNER—Well, not on the record.

Mr Varghese—He was commenting on the nature of the process and he offered an opinion on when it might have concluded. I would consider that to be totally appropriate and totally unexceptional.

Senator FAULKNER—Really? All I can depend on is what is in inverted commas in the article. I do not know what else has been said and I am certainly not alleging that anything else was said, but we have received evidence today that this is an accurate reflection of the comments that Dr Calvert made. How can it be appropriate for anyone to comment publicly about an investigation which in this case, by Dr Calvert's own admission, has not been completed? I wish someone could explain that to me.

Mr Varghese—The comment that the secretary made actually pointed out the fact that it had not been concluded. He was asked a question about where the investigation stood and he answered it in a way which protected the proprietary of the process and did not pre-empt its outcome. I am surprised you would find any of that inappropriate.

Senator FAULKNER—Not only is it inappropriate, in my view it is totally inaccurate. Did Dr Calvert speak more freely in 10 days time?

Mr Varghese—The outcome that he had expected in 10 days time did not eventuate so—

Senator FAULKNER—Oh, right. That is why it is inappropriate to comment, you see? You have got it at last, Mr Varghese. You are right.

Mr Varghese—He was commenting on what he thought was—

Senator FAULKNER—That is why you do not have a slash outside the off stump at this sort of thing, or you run the risk of making a total goose of yourself.

Senator Abetz—Well, that is the senator's view, Mr Chairman. If he has questions we will answer them.

Senator FAULKNER—It says here that Dr Calvert said he could speak more freely in 10 days time, consistent with legal advice and the requirements of natural justice. You are an expert in natural justice, Mr Moraitis. What does natural justice have to say about the grand pronouncements about the outcome of inquiries before the investigations have been concluded?

Senator Abetz—We are getting into the realm of seeking legal advice and legal opinion. It is in the general that this advice is being sought by Senator Faulkner.

Senator FAULKNER—What are the requirements on departmental officers in relation to public comments while these investigations are taking place? Could you explain that to me please, Mr Moraitis? What are the obligations on departmental officers? You are our legal expert.

Mr Moraitis—Senator, I am not familiar with the further conduct of procedures in terms of allegations.

Senator FAULKNER—You are not familiar with them?

Mr Moraitis—With the details of the specific question you are asking.

Senator FAULKNER—Is there someone who is familiar with them and who can answer that question? I thought it would be appropriate to go to you as the legal adviser for the department. Who can help us?

Mr Chester—The code of conduct obviously doesn't directly cover these issues but, as with all situations such as this, one should seek guidance from the legal area if they are proposing to comment on what are internal processes of this nature to see where the bounds of what one can say are.

Senator FAULKNER—So you are saying that Dr Calvert sought legal advice from the legal area of the department before he made those comments?

Mr Chester—I would assume Dr Calvert would have sought advice on what he should say and what he shouldn't say.

Senator ROBERT RAY—Let's not assume. I assumed that you were saying that he had sought legal advice—is that right or wrong?

Mr Chester—I am not sure whether I could say that he sought legal advice; I can say he sought advice.

Senator FAULKNER—What is the distinction you are drawing? Who did he seek advice from?

Mr Chester—He had discussions with other members of staff including myself on whether—and what—it was appropriate for him to say.

Senator FAULKNER—And which other members of staff were these?

Mr Chester—I assume that the legal area was involved in this but I cannot be sure of that. They may not have been.

Senator FAULKNER—So not lawyers; not legal advisers. Anyway, who did he seek advice from? We have learnt that he sought advice before he made these grand statements which have now proved to be so embarrassing to him. Who did he seek advice from—you?

Mr Chester—That is correct.

Senator FAULKNER—Who else, Mr Chester?

Mr Chester—I don't know. I would have to take that on notice. I thought there may have been involvement of the legal area—

Senator FAULKNER—I thought you gave evidence that he sought advice from others, including yourself.

Mr Chester—I believed that he may have sought advice or that the legal area may well have been involved in this process, but I will need to check whether that is true or not.

Senator FAULKNER—At this stage you are the determining officer, aren't you?

Mr Chester—That is right.

Senator FAULKNER—How appropriate is it for you to be providing advice on these matters?

Mr Chester—I think it is entirely appropriate for me to give advice on when I expect that process to be finished roughly and so on.

Senator ROBERT RAY—You said it might be finished in 10 days.

Mr Chester—That is right, or in that time frame. My process would have been finished in that time frame. That is correct.

Senator FAULKNER—So can we assume, or do we know, if Dr Calvert sought legal advice before he made these public statements?

Mr Moraitis—I cannot recall, Senator.

Senator FAULKNER—You can't recall?

Mr Moraitis—No.

Senator FAULKNER—With respect, Mr Moraitis, I am a very reasonable person but I don't think that is good enough.

Senator ROBERT RAY—Mislead.

Senator FAULKNER—Either he did or he didn't.

Mr Chester—I cannot recall any occasion the secretary—Dr Calvert sought legal advice on this specific issue.

Senator ROBERT RAY—You see, there are two answers you can give. I don't want to lead you in your evidence but there are two emphases you can give here: that you do not recall because it was so insignificant or you do not recall him ever having done it. It is important to make that distinction. You usually remember when a departmental secretary rings you up. I would think you would remember that.

Mr Moraitis—Senator, I cannot recall Dr Calvert seeking my advice on this specific point.

Senator FAULKNER—What about you, Mr Varghese—did he check with you?

Mr Varghese—No, he didn't.

Senator FAULKNER—Do we know whether he checked with Dr Raby? Dr Raby isn't here today, is he?

Mr Varghese—No, he is overseas at the moment.

Senator FAULKNER—Do you know whether he checked with Dr Raby?

Mr Varghese—I don't know.

Senator FAULKNER—Just you, Mr Chester?

Mr Chester—Perhaps. I certainly know that I had a discussion with him about this—

Senator FAULKNER—Are you able to share with us the nature of that discussion?

Mr Chester—It was basically what I thought my time frame was to finish the determination.

Senator ROBERT RAY—Senator Faulkner has probably finished that line of questioning. I want to go back to the appointment of Dr Kennedy. I think in answer to a question you pointed to section 15 of the Public Service Act. Is that right?

Mr Chester—That is right.

Senator ROBERT RAY—It is possible to appoint him under that section, I suppose, but I cannot quite find the area. Could you point out the area?

Mr Chester—I was indicating the general area and then indicating that there were guidelines issued by the commissioner—his directions—and my assumption is that it would be in those directions that we talk about the general processes for undertaking code of conduct inquiries, including the appointment of determining officers.

Senator ROBERT RAY—I cannot find it specifically mentioned in the act where you can delegate it to someone outside the Public Service.

Mr Chester—No, that is correct.

Senator ROBERT RAY—Did the commissioner issue directions in writing in this particular case? Is he required to under section 15 of the act?

Mr Moraitis—My understanding is that there is no requirement for the commissioner to issue anything relating to the appointment of a determining officer.

Senator ROBERT RAY—No, but section 15(4) of the Public Service Act states:

The Commissioner must issue directions in writing for the purposes of subsection (3).

Has he issued directions in writing?

Mr Chester—Yes, he has issued general procedures for agencies to deal with code of conduct issues, and then each agency can tailor those to their specific needs.

Senator ROBERT RAY—I must be reading this wrongly. I would have thought that subsection (4) refers to (3) because it talks about an APS employee. It says, ‘These are the general guidelines to be used in all cases.’ I would have thought that it applied in a specific case whether an APS employee in the agency has breached, or am I reading that wrongly?

Mr Moraitis—I think you are referring to the general proposition rather than a specific case. Maybe I am missing it.

Senator ROBERT RAY—Section 15(1) states:

An Agency Head may impose the following sanctions on an APS employee ...

Then it lists sanctions (a) to (f). Subsection (2) states:

The regulations may prescribe limitations on the power of an Agency Head to impose sanctions ...

That is fairly clear. Then subsection (3) states:

An Agency Head must establish procedures for determining whether an APS employee in the Agency has breached the Code of Conduct.

It goes on to list three of the requirements. Subsection (4) states:

The Commissioner must issue directions in writing for the purposes of subsection (3).

Did he in this case, or are you saying—or does your answer still stand—that it is only meant in the generality and not in each case? That is what I am asking.

Mr Moraitis—My understanding is that subsection (4) relates to the generality. I understand that under subsection (4) the commissioner has issued general directions to agencies and the department has a circular that sets out procedures for determining breaches of codes of conduct.

Senator ROBERT RAY—I will look at the explanatory memorandum.

Mr Moraitis—That is my understanding, Senator. I am pretty sure that the commissioner has issued general directions, and agencies including DFAT have issued appropriate procedures.

Senator ROBERT RAY—If it is in a generality it would not be a document generating any secrecy or confidentiality at all, so could we look at that? Could we have that tabled?

Mr Moraitis—Pursuant to subsection (3) or (4)?

Senator ROBERT RAY—What I think we have established, though not with absolute certainty, is that the commissioner’s direction in writing was in the generality and not in the specific case.

Mr Moraitis—Yes.

Senator ROBERT RAY—I would like you to table a copy.

Mr Moraitis—I will seek a copy of that.

Senator ROBERT RAY—After lunch, if you could—if it does not spoil your lunch. It is not the way I interpret it, but I am no expert interpreter of these things. I will have a look at what the explanatory memorandum says and whether it is in each case. I have a feeling it reads that way rather than in the generality.

Mr Moraitis—We will seek that over lunch for you, Senator.

Senator ROBERT RAY—I want to get these dates in order, because other things have led us away from them slightly. The first step for the investigation was to launch an investigation on 5 February—is that right?

Mr Tighe—The leak investigation was launched on 5 February.

Senator ROBERT RAY—Was that between your investigators and the AFP?

Mr Tighe—No, initially it was only our own investigators; subsequently, the AFP became involved.

Senator ROBERT RAY—What was the date that they were called in?

Mr Tighe—10 February.

Senator ROBERT RAY—I know a bit of this evidence has been given, but I am just trying to get a sequence of events. If they came in on 10 February, how many officers did they devote to the investigation?

Mr Tighe—I do not know.

Senator ROBERT RAY—You don't know?

Mr Tighe—No.

Senator ROBERT RAY—Your two investigators stay with the investigation up to what point—in terms of being very active in it?

Mr Tighe—I think it was probably shortly after 10 February when all their material was handed over to the AFP. They have been involved intermittently since, but they have not been heavily involved since then.

Senator ROBERT RAY—In terms of this particular one, once the AFP came in, they might be intermittently involved in helping but that is all, is it?

Mr Tighe—Essentially, yes.

Senator ROBERT RAY—Okay. There are no other relevant dates for your section now?

Mr Tighe—No, not with regard to the line of questioning you are following.

Senator ROBERT RAY—So we have the fifth to the 10th now. Mr Chester—I am just trying to get the dates in sequence—when did you or your section first become involved? This is in regard to the AFP investigation into a leak, I think, or more than one. Correct me if I am wrong.

Mr Varghese—Since those questions on dates were raised, we now have present the director of our administrative law section. If you would find it helpful, he may be able to clarify a number of those date issues.

Senator ROBERT RAY—Yes, that would be good. Before we go to the chronology, we were looking at that period of time between 10 February and 20 February when Mr Moraitis was not present in the department. In terms of legal advice to Mr Chester or his section, both oral and written from your section and from the Australian Government Solicitor, can you assist us with getting a grasp of the timing of that and the nature of that?

Mr McConville—In terms of the code of conduct investigation we are currently talking about, the first referral of that matter to the AGS was on 13 February.

Senator ROBERT RAY—Had any advice been given by the legal section of DFAT to other department officers at that stage? Or was the caution that you should approach the Australian Government Solicitor first?

Mr McConville—In terms of the last Senate estimates, I had referred to the fact that we had consulted AGS with regard to the statutory declarations that officers were asked to sign. So the matter had been referred to the AGS previously to that in terms of the general leak investigation.

Senator ROBERT RAY—Prior to the 13th?

Mr McConville—That is right.

Senator ROBERT RAY—Yes, but isn't that to do with Mr Tighe's area and the Federal Police and the stat decs?

Mr McConville—That is right.

Senator ROBERT RAY—We are interested in that, of course, but we are interested in what advice was given to Mr Chester and others about how to proceed with the code of conduct inquiry—what the legal limitations were, what the procedures should be and natural justice and all those things—between 10 and 20 February. At the moment we are interested in what your section did and whether it was supplemented or added to by the Australian Government Solicitor. You might be able to let us know about that.

Mr McConville—As is the practice in the department, we work closely with line areas, and in this case with DSB, in relation to investigations or employment matters in reference to CMD. Obviously, we had been consulted, as appropriate, at an early stage of the leak investigation. In terms of the code of conduct matter, as you will be aware, the formal appointment or the commencement of that process was a week later, after Senate estimates, approximately on 17 February. Sorry, it was 21 February.

Senator ROBERT RAY—That has confused me. I thought Mr Chester was appointed the determining officer on 20 February. It seems to me to be a bit Alice in Wonderland to have the determining officer first and the investigation later. Where am I wrong in that? I obviously am.

Mr McConville—In terms of the actual commencement of the process, the appointment—

Senator ROBERT RAY—Was it that the previous person was regarded as the determining officer and Mr Chester revoked that and became the determining officer on the 20th? Is that the way it goes?

Mr Chester—That is correct.

Mr McConville—That is correct.

Senator FAULKNER—The previous person being the assistant secretary.

Mr McConville—No, the previous person being the officer in the conduct and ethics unit.

Senator ROBERT RAY—Let us clear it up this way: can these things be determined without a formal investigation?

Mr Chester—In theory, yes, with a very modest investigation and depending on the nature of the investigation.

Senator ROBERT RAY—I am still a bit confused—and it is probably me—as to how you can be the determining officer on 20 February and have the inquiry set up on the 21st.

Mr McConville—Regarding the reference to the appointment of the determining officer, I think the department's determining officer initially was appointed at the start of the process, which was actually 19 February. That was Catharine O'Ryan from the conduct and ethics unit.

Senator ROBERT RAY—Get back to the 21st. What was formally done then?

Mr McConville—On 20 February, the notice was given to the officer that formal proceedings—an investigation—were being initiated. He was given an opportunity to comment as appropriate and was accorded procedural fairness steps, as we were advised by the AGS.

Senator ROBERT RAY—That was on the 20th. On the 21st the inquiry was officially started, was it?

Mr McConville—The inquiry officially started on the day that the determining officer was appointed, which was 19 February.

Senator FAULKNER—Why was that determining officer replaced?

Mr Chester—Ms O'Ryan was replaced because very soon after she was appointed it became apparent to us that she had been involved in the preparation of a report which involved the officer who was being investigated.

Senator ROBERT RAY—Why would she ever have been appointed in the first place if she was doing the investigation?

Mr Chester—It is quite appropriate for her to be an investigating officer and a determining officer in relation to a single issue. Her disqualification came about because she had been involved in the preparation of a report in relation to an issue prior to her commencing her investigation.

Senator ROBERT RAY—How many issues were there in the end to be investigated? Without going to the issues, obviously.

Mr Chester—In relation to the conduct and ethics investigations she was investigating a single broad issue. That is what she was doing. She had however, prior to that—and this came to light subsequently—prepared a report that was relevant to her conduct and ethics unit investigation and as a result of that, having prepared that report, disqualified herself as being the determining officer.

Senator ROBERT RAY—She recommended her own disqualification?

Mr Chester—No, she did not.

Senator FAULKNER—You said ‘disqualified herself’.

Mr Chester—I am sorry—it disqualified her from being the determining officer.

Senator ROBERT RAY—Slightly different.

Mr Chester—Yes. My apologies.

Senator ROBERT RAY—So how many of these other issues came forward? Without specifying them—I am not going to ask about that.

Mr Chester—There was one report that she had prepared prior to the commencement of these conduct and ethics procedures. There was one matter she was involved in where she had prepared a report.

Senator FAULKNER—It seems strange that your own internal procedures would allow that appointment to take place in the first place. This, again, is done on the delegated authority of the secretary, isn't it?

Mr Chester—That is right.

Senator FAULKNER—Do we know who in the case of this particular officer, Ms O’Ryan, made the decision under the delegated authority of the secretary to appoint her?

Mr McConville—At the time, as you would be aware, there was an investigation into the leak which DSB—Paul Tighe’s division—were looking after. Catharine O’Ryan had provided some small assistance to that process. It was that particular input which, in relation to her own code of conduct investigation, could be interpreted as being a report. Therefore on legal advice it was deemed that there was a potential, if you like, technical breach of our own provisions.

Senator FAULKNER—Thank you, I appreciate that because it is helpful, but it is frankly not an answer to the question that I asked in relation to who exercise the delegated authority of the secretary to appoint her in the first place. That was my question.

Mr McConville—It was Acting FAS CMD at the time, Ms Penny Williams.

Senator FAULKNER—And what is that in English?

Mr Chester—I was overseas at that period. It was the person acting in my position, Ms Penny Williams.

Senator FAULKNER—And why was advice sought about the appropriateness of that appointment? You said advice was forthcoming. Was advice sought?

Mr McConville—I am sorry, there was subsequent legal advice which—

Senator FAULKNER—When you say subsequent, it was pretty hot on the heels of the appointment, wasn't it? Mr Chester was appointed on the 20th—well, this is now a moot point.

Senator ROBERT RAY—Or the 19th. I am still not clear on this.

Senator FAULKNER—Let us go back to Ms O’Ryan’s appointment: when did that date from?

Mr McConville—She was appointed on 19 February.

Senator FAULKNER—And Mr Chester was appointed on either the 20th or the 21st, wasn’t he?

Mr McConville—No—

Senator FAULKNER—That is what we have been told. We have been told both dates.

Mr McConville—With respect, the appointment of Mr Chester was some weeks subsequent to that.

Senator FAULKNER—Not according to Mr Chester, I can tell you.

Senator ROBERT RAY—Some weeks, did you say?

Senator FAULKNER—I thought Mr Chester told us earlier today—but I stand to be corrected—that he was appointed determining officer on 20 February. That was what I thought you said, Mr Chester.

Mr Chester—I don’t recall saying that. I apologise if I said something that led you to that conclusion.

Senator FAULKNER—Maybe you said you were appointed on 24 March—one of those two dates.

Mr Chester—I concluded my determination on 24 March.

Senator ROBERT RAY—I have a very simple question, so that we don’t go around in circles: when were you appointed determining officer? We will accept whatever you say.

Mr McConville—Mr Chester was appointed determining officer on 11 March.

Senator ROBERT RAY—I don’t have that date down anywhere here. So Ms O’Ryan is appointed, we think, on 19 February. When was her appointment revoked, because it has to be revoked before we can put someone else in?

Mr Chester—It would have been around 11 March, maybe the day before.

Senator FAULKNER—It would have been.

Senator ROBERT RAY—That is likely. While we are looking for that, after the luncheon break, so that you are forewarned, we would not mind going back to that issue we raised before about what legal advice you got, or how you were advised on the way to proceed, as compared with later legal advice that said maybe the way you proceeded is open to question. I think that is the kindest way of putting it. We might like to pursue that after the luncheon break. It was one of the reasons that we asked Mr McConville to come to the table.

Senator FAULKNER—Mr McConville, you were going to tell us when Ms O’Ryan’s appointment was revoked.

Mr McConville—Again, as Mr Chester has just mentioned, I think it was 10 March. It is not actually in this file, it is in another one, but I can confirm that.

Senator FAULKNER—In relation to the revocation of Ms O’Ryan’s appointment, you said that it was done on the basis of legal advice—is that correct?

Mr McConville—That is correct.

Senator FAULKNER—When, why and from whom was that legal advice sought?

Mr McConville—The assumption that was open to the decision maker at the time was that the document that—

Senator FAULKNER—Is there some revisionism going on here?

Mr McConville—The assumption at the time was that what Catharine O’Ryan had included, if you like, in the leak investigation was not a report.

Senator FAULKNER—But who made that assumption?

Mr McConville—The decision maker—the delegate, Ms Penny Williams. It is open to interpretation, according to legal advice, whether that would amount to a report.

Senator FAULKNER—So did Ms Williams seek legal advice on this issue?

Mr McConville—Ms Williams was being given legal advice from the internal legal branch and also, where appropriate, the internal legal branch would liaise with and obtain advice from AGS.

Senator FAULKNER—She was being given it; who sought it? Who instigated it?

Mr McConville—I am sorry, Senator?

Senator FAULKNER—Where did this come from? Where did the initiative come from to get the legal advice?

Mr McConville—We would liaise with AGS on most employment matters. In this particular one, we liaise on a daily basis with AGS. It is instigated primarily by me, and I would do so regularly and, as I say, on a daily basis.

Senator FAULKNER—In relation to the appropriateness or otherwise of Ms O’Ryan being the determining officer, can somebody tell us who made a decision to seek legal advice on that matter and when legal advice was sought.

Mr McConville—Ms Williams was being advised by, as I said before, ADL and, where appropriate, AGS. Obviously, in the context of this particular document which has been referred to as a report, we have taken a cautious approach and regarded it as potentially in breach of our own procedures. It is on that basis that we recommended to Ms Williams that the appointment of Ms O’Ryan be revoked.

Senator ROBERT RAY—If you can get the commissioner’s letter, that would be helpful.

Proceedings suspended from 12.31 p.m. to 1.35 p.m.

CHAIR—There are a number of further questions on the portfolio overview but, apart from that, we propose to stick to the program as laid out, with the exception that Senator Ray has some questions for Mr Nick Warner, the Ambassador for Counter-Terrorism. As Mr Warner has to leave later today, we might get those questions from Senator Ray now. If there are further questions on 1.1.8, Security, nuclear disarmament and non-proliferation, we will

come back to them after we are finished the portfolio overview and have moved onto the outputs.

Senator ROBERT RAY—I was only going to get Mr Warner to outline—because it is a recent appointment—what he has done and what is in prospect, and any other questions on nuclear disarmament I will leave until much later. I would like to get a rough idea what the budget of the office holds and what sorts of activities will be involved because, as I understand it, it is quite a new appointment.

Mr Warner—The position was announced on 20 March by the Minister for Foreign Affairs, Mr Downer. I think the salient lines in his press release sum it up quite well. He said:

The Ambassador for Counter-Terrorism will provide a focal point for coordinating, promoting and intensifying the Government's international efforts to combat terrorism. He will have a key role in ensuring a comprehensive and integrated policy approach to fighting terrorism and in facilitating operational-level cooperation between Australian agencies and their counterparts in other countries on counter-terrorism issues.

It has only been about 10 weeks since I took up the appointment. To me, a key aspect of the job is to bring together the very good work that Australian government departments and agencies have been doing in the past seven months—or even way back to September 11—in respect of assistance to or capacity building activities with countries in our region.

To achieve that, I have established an IDC called the international counter-terrorism coordination group, which brings together about 14 or 15 departments and agencies that are involved in capacity building assistance or assistance of another sort in the region. It aims to try to better focus what we are doing in respect of countering terrorism in the region and to identify, if necessary, any other countries or areas within countries where we should be focusing our international efforts. Having done that, we will travel to countries in the region to touch base with their authorities to see if we are hitting the spot in respect of what we are doing and of capacity building with them on counter-terrorism, and to check that against what other major donors are doing in the region—for instance, the United States, the EU or the Japanese.

Senator ROBERT RAY—In terms of memorandums of understanding, how is the one going with Cambodia?

Mr Warner—We are negotiating an MOU on CT with Cambodia.

Senator ROBERT RAY—You have completed similar memorandums with Indonesia, Malaysia, Thailand and the Philippines?

Mr Warner—And with India—it has been initialled but not yet signed—and with Fiji.

Senator ROBERT RAY—What do those memorandums commit us to?

Mr Warner—They allow for other Australian agencies to become quickly involved in a country that has suffered a terrorist attack, if that were necessary. The AFP, for instance, found the MOU we have with Indonesia to be extremely useful after Bali.

Senator ROBERT RAY—Do we have one with Singapore?

Mr Warner—No, we do not.

Senator ROBERT RAY—Is that in prospect?

Mr Warner—We are looking at a number of other regional countries that we may seek to negotiate MOUs with, but I would not like to flag which ones, for obvious reasons.

Senator ROBERT RAY—That is all right. But there are others in contemplation, you are saying?

Mr Warner—There are others in prospect and others under negotiation.

Senator ROBERT RAY—To what extent does your audit involve your role to try to identify those countries around the globe that directly sponsor and are hospitable to terrorist training?

Mr Warner—That would be part of the job but the focus of my activity and I guess Australia's activity is in our backyard, in the South-East Asian and South-West Pacific region.

Senator ROBERT RAY—There is fairly clear evidence that after September 11 that at least one country on the African continent very quickly changed its view on hosting terrorists and seemed to expel them all and deny them resources. Are we keeping a tab on those countries that actually fund and in many ways sponsor terrorism by having them train within their borders?

Mr Warner—My role, as I pointed out, is primarily one of coordination. I do follow the intelligence material and the other material that comes in on terrorist operations and organisations around the world. Rather more importantly, so of course does the Australian intelligence community and other areas of the Department of Foreign Affairs and Trade.

Senator ROBERT RAY—I was just trying to get the scope of what you do. I think I now understand the role.

Senator FAULKNER—What enforcement mechanisms, if any, are in place with these MOUs?

Mr Warner—What do you mean by enforcement?

Senator FAULKNER—Is there any enforcement? Could you outline to the committee whether there are country to country variations? Are you working off a similar template with Indonesia, Malaysia, the Philippines and the like?

Mr Warner—Yes, we are essentially. Most of the MOUs we have are very much the same. There are no enforcement aspects to it. It is an understanding between two countries that in the event of an incident involving one of our countries the other would be prepared to come to the assistance of the other country.

Senator FAULKNER—What was the first one?

Mr Warner—Indonesia was the first one.

Senator FAULKNER—Have you tried to use the Indonesian MOU as a template as this has developed with other countries, and probably into the future? Would that be right?

Mr Warner—Yes, that is right.

Senator FAULKNER—At least regionally?

Mr Warner—At the moment we are only looking regionally.

Senator ROBERT RAY—Have many other countries appointed similar ambassadors?

Mr Warner—Yes, the Thais appointed an ambassador for counter-terrorism the other day. I understand that the Spanish have such a position. The Americans have had that position for a very long time. The Japanese have an ambassador for counter-terrorism. Essentially all countries are grappling with the same issue: how do you bring about, through foreign ministries, a point of coordination in respect of what they are trying to do and what we are trying to do internationally?

Senator ROBERT RAY—Thank you.

[1.43 p.m.]

CHAIR—Thank you, Mr Warner. We move back now to the portfolio overview. After that has finished we will proceed to outputs, starting with output 1.1.

Senator ROBERT RAY—I have a few issues to follow up. In terms of the people who did the investigation for the code of conduct as opposed to assisting the Federal Police, how many people assisted Ms O’Ryan in her investigations?

Mr Chester—One other investigator assisted her on a part-time basis.

Senator ROBERT RAY—Was this Reardon?

Mr Chester—That is right.

Senator ROBERT RAY—What about Hetherington?

Mr McConville—Mr Hetherington was involved in the combined document which Catherine O’Ryan drafted.

Senator ROBERT RAY—I see. So I have to make a distinction here between assisting in the investigation and assisting in the compilation of a report.

Mr Chester—I do not believe that Hetherington was involved in the code of conduct investigation.

Senator FAULKNER—Is that a distinction you are drawing?

Mr Chester—The distinction is that Hetherington was involved with O’Ryan in assisting in the DID leak investigation.

Senator ROBERT RAY—Assisting O’Ryan, but not in the investigation?

Mr Chester—That is right.

Senator ROBERT RAY—What about Jackson and Batten? Weren’t they added to the team at some stage?

Mr Tighe—Mr Jackson and Mr Batten were the officers, as I described before, who were the core of the leak investigation.

Senator ROBERT RAY—Yes, I understand that, but I am asking whether they were assigned in the code of conduct investigation at one stage.

Mr Chester—No, they weren’t.

Senator ROBERT RAY—They weren't?

Mr Chester—That is the advice I have.

Senator ROBERT RAY—Are you sure you did not appoint Jackson and Batten on 25 February to assist with O'Ryan's investigation? Are you sure that is the case? I am asking you, Mr Chester.

Mr Chester—I will have to check that. I can't recall making that appointment.

Senator ROBERT RAY—I am trying to get an idea of how many resources are involved here—how many people were allocated on a part- or full-time basis.

Mr Chester—Essentially for that period of the investigation Ms O'Ryan would have been working full time on the investigation, and Ms Reardon on a part-time basis.

Senator ROBERT RAY—These people are under your control, are they, Mr Tighe?

Mr Tighe—Mr Jackson and Mr Batten are.

Senator ROBERT RAY—Have you any recall of them being approved on 25 February to assist Ms O'Ryan with her investigation?

Mr Tighe—Not that I am aware of, no.

Mr McConville—It is possible that some documentation that Ms O'Ryan was looking at in regard to her investigation had originated in some form from the previous leak of the record of conversation investigation and could have been referred to by Ms O'Ryan.

Senator ROBERT RAY—In relation to AFP inquiries, in an interview of a 'suspect' was anyone in your area, Mr Tighe, present during an AFP interview?

Mr Tighe—Yes.

Senator ROBERT RAY—On what basis were they present?

Mr Tighe—We were conducting the investigation in concert with the AFP, Senator.

Senator ROBERT RAY—I see. That person took notes, as I understand it.

Mr Tighe—The interview was conducted by the AFP in the presence of a DFAT officer.

Senator ROBERT RAY—Yes, and the DFAT officer took notes.

Mr Tighe—I am not certain about that.

Senator ROBERT RAY—I am. But you cannot confirm that?

Mr Tighe—If you are telling me they did then—

Senator ROBERT RAY—Don't take my word for it; I am asking you to give evidence.

Mr Tighe—I would have to check on that, Senator.

Senator ROBERT RAY—The only point of raising it—I am not saying it is appropriate or inappropriate—is that I am wondering about the quarantine between the two investigations. I am wondering about whether an officer in one capacity attending a leaks inquiry conducted by the Federal Police with a potential criminal charge at the end of it can use that information taken in notes and then supply it to the code of conduct investigation which is being

investigated on a whole different set of criteria et cetera. Can that happen, Mr Chester or Mr McConville?

Mr McConville—Senator Ray, to the extent that any information is relevant to a code of conduct investigation, it does not matter whether it comes from one part of the department or another; it can be considered by the determining officer.

Senator ROBERT RAY—Really? So in other words you could be interviewed by the Federal Police, and they extract information from you under the AFP powers, and the department can access that information and use it in a code of conduct hearing. You're joking, I hope!

Mr McConville—If the AFP consent to providing that, but I think in many instances you will find that the AFP will not provide that information.

Senator ROBERT RAY—The difference here is that the AFP did not provide it. The AFP did not provide a transcript, but you have an officer there assisting them in a co-joint operation, taking notes, and that is the information. In other words, information that the AFP may have extracted by their questioning is noted by a department officer and it is then used in a separate inquiry. I am just asking—

Senator Abetz—It has not been agreed, has it, as yet—

Senator ROBERT RAY—No.

Senator Abetz—that notes were taken?

Senator ROBERT RAY—No, all right.

Senator Abetz—You are asserting; the officer cannot confirm or deny.

Senator FAULKNER—Let's have a check.

Senator ROBERT RAY—It is in writing, Minister.

Senator FAULKNER—It should be able to be checked.

Senator ROBERT RAY—It is in writing under signature of people in this room; I think I am right in that. Leaving that aside, the other reason for wanting to know whether that person is then transferred over to the other inquiry, even if the information was not passed on, is that it is very questionable that you can be in the AFP inquiry on one side and the code of conduct inquiry on the other, some five days later.

Mr McConville—Senator Ray, with respect, if there is relevant information, the AFP have consented to a DFAT officer being there. They may not provide us with a transcript, but they are not going to prevent a DFAT officer making notes.

Senator ROBERT RAY—Mr McConville, I have to dispute that. Relevant information: we are deprived of a lot of relevant information at this committee and we have to put up with it. Relevant information is to the inquiry at hand, not to a separate, second inquiry of a lesser nature. There must be some guidance here, surely. You front up to one inquiry which is to do with criminality, which has not been concluded and looks like—who knows?—will never be concluded, and that information, or the person who is involved in taking that information, gets switched across to the other inquiry. There have to be some Chinese walls here, surely.

Mr McConville—Senator Ray, the original terms of reference for Catharine O’Ryan’s inquiry included aspects relating to the leak of the—

Senator ROBERT RAY—I have no doubt about that.

Mr McConville—To that extent, any information relevant to that is appropriate to be passed to the determining officer.

Senator ROBERT RAY—Was the person who was interviewed by the AFP, with a DFAT official present, Mr Jackson, warned that the notes may be taken at that and used in a code of conduct inquiry which we all know is a second inquiry? Was he warned of that?

Mr McConville—He was given an opportunity to comment on all the information considered by the determining officer.

Senator ROBERT RAY—He might have been, but was he warned about that? That is my question. Was he informed that the notes being taken at the AFP interview could later be used, or potentially used, or information gained therein could be used—maybe not even the notes—in the investigation into that person for the code of conduct inquiry?

Senator Abetz—I think we have to be somewhat careful now, Chair. As I understand it, an investigation with the potential for criminal charges to be laid is under way. We are now being asked what questions were asked—

Senator ROBERT RAY—No, you’re not.

Senator Abetz—Sorry, no, not what questions were asked, but what warnings were given prior to or at the time of the AFP commencing their interview. Those sorts of questions may well be quite material to any future trial of the matter. I think it is a matter that is best left alone.

Senator ROBERT RAY—Chair, that is completely false. I have not been doing that. I have been very careful in what I ask. It is a vacuous intervention by the minister. I have asked, because we have two inquiries going, whether information can be taken from one, the more serious one, without warning of the person being interviewed, and used in another forum. That is an absolutely legitimate question to ask.

Senator Abetz—Chair, the point being sought to be made by Senator Ray was whether the person, the actual person, had been warned.

Senator ROBERT RAY—Yes.

Senator Abetz—So we are talking about what actually occurred in the interview room, which has the potential of being raised in criminal proceedings. That was my point exactly, and Senator Ray has now confirmed it.

Senator ROBERT RAY—If that is the case, if you won that particular case and that particular ruling from the chair, what you are saying is that if an individual, present and observing that interview and taking notes, used it elsewhere, it would be a far greater transgression than mine here. That is what I am trying to establish. You seem to have supported my argument rather than intervene against me.

Senator Abetz—No.

Senator ROBERT RAY—Yes, you have.

CHAIR—Senator Ray, I cannot instruct the minister or the department to answer the question.

Senator ROBERT RAY—I am not asking you to.

CHAIR—If they choose not to answer the question, that is a choice that they make.

Senator Abetz—I think we are starting to get to the point where what actually occurred in the interview room is now being canvassed and I think it is very unwise for us as a committee to canvas that whilst the possibility of criminal charges being laid is still pending.

Senator ROBERT RAY—Let's get back to the basics: did Mr Jackson take notes? That is a legitimate question. Did he take notes? This was an interview on about 21 February. Did he take notes?

Mr Tighe—I think the interview was on 19 February.

Senator ROBERT RAY—Was it?

Mr Tighe—He certainly was there; I would have to confirm whether he took notes.

Senator ROBERT RAY—Do you want to have a look through your documents and find out? Do you want to have a look Mr Chester—documents you have signed and Ms O'Ryan signed?

Mr Chester—I have no doubt that a number of these issues you are canvassing at the moment will be looked at by Mr Kennedy and—

Senator ROBERT RAY—He has got his job to do; I've got my job to do.

Mr Chester—It may well be relevant to his findings and the outcome—

Senator ROBERT RAY—No, I am going to the conduct of the department; Mr Kennedy is going to the conduct, or the potential conduct, of an officer of the department. That is evidence you have given already. If Mr Kennedy is also going to the conduct of the department in these matters, tell us now because you haven't told us before.

Mr Chester—No, he is not but he will have before him evidence that has been collected in that early investigation phase—

Senator ROBERT RAY—It is even more relevant that we determine whether or not he is entitled to that evidence now. I am going back to ask you the basic question: did Mr Jackson take notes at an interview, as Mr Tighe said, around the 19th? I am not sure of the date either, Mr Tighe. You see, four to six days later he is assigned by you, Mr Chester, to the investigation on code of conduct, isn't he?

Mr McConville—With respect, Senator Ray, it gets back to the other point I made before: Catharine O'Ryan was conducting the investigation. She can source material from any part of the department if it is relevant to her terms of reference for her investigation.

Senator ROBERT RAY—Correct. This is not information from the department; this is information from a police interview at police headquarters. This person is the only one that is dragged down there; everyone else is interviewed on site, aren't they?

Mr Tighe—Everybody, including the individual you are talking about, was given the opportunity to be interviewed in the department, one person—

Senator ROBERT RAY—The interview did not occur in the department, did it?

Mr Tighe—That particular person was given the opportunity to have an interview in the department—

Senator Abetz—Once again, Chair, I would suggest extreme caution by the committee in going down this track—

Senator ROBERT RAY—That’s just interference, Eric.

Senator Abetz—No—

Senator ROBERT RAY—Yes, it is.

Senator Abetz—on the basis that whether somebody was ‘dragged’ to the police station for an interview or whether they had the opportunity to be interviewed at the department may all be issues in dispute at a future trial.

Senator ROBERT RAY—Rubbish.

Senator Abetz—Senator Ray should ask basic questions like whether notes were taken; that is fine, but as soon as he starts getting into other circumstances which may be material in the determination of the matter, I believe the committee should steer clear.

Senator ROBERT RAY—Before you rule on that, Chair, the witness said that the internal inquiry is entitled to all the information held within the department. That is not an answer to my question about a police investigation which is not material within the department. It is a police investigation. That was my point. Whether it is held inside the department or outside I suspect is irrelevant.

Senator Abetz—Inflammatory terms like, if I recall correctly, ‘dragged’ were used in asking that question. Those sorts of issues sometimes do become material in relation to how the actual investigation was undertaken by the police et cetera—

Senator ROBERT RAY—Rubbish.

Senator Abetz—Well, if Senator Ray’s experience in criminal law is that great, that’s fine. All I am suggesting is that the committee not be canvassing—

Senator ROBERT RAY—You are just running interference.

Senator Abetz—those sorts of issues until such time as the legal proceedings are finalised.

Senator ROBERT RAY—They haven’t even started.

CHAIR—Unfortunately, I do not have the power to stop a question being asked, Minister. I understand the issue—I understand both arguments—but I really think that if you choose for the question not to be answered that is in your power. It is not possible for me, under the limited powers I have, to say a question cannot be asked.

Senator Abetz—I think I have been as fair as I possibly can, in listening carefully to each question, but those questions that I believe may well transgress, inasmuch as they may be about issues in dispute in a future trial, should not be canvassed at this point.

Senator ROBERT RAY—Mr Chairman, I have no intention of canvassing issues that could be used in a future trial. I do not believe I have. I am getting, though, a lot of vague answers when the material exists. I actually want answers. I want to know whether Mr Jackson took notes at the AFP. The witnesses at the table should know that. If they do not know that, they should be able to bring people to the table that do know it. I am getting the run-around on these answers—not from the minister; he knows nothing about this.

Mr McConville—I understand that, Senator Ray.

Senator Abetz—Senator Ray, I did not object to you asking the question about whether notes were taken.

Senator ROBERT RAY—But I cannot get an answer, Senator. You know the answers are sitting at the table somewhere.

Senator Abetz—It is a different issue about the taking of notes as opposed to the other questions that you have asked.

Senator ROBERT RAY—Yes, but then I get told that they are entitled to information that is within the department—information and police interviews. My whole point is that it is not information in the department; it is information in the AFP.

Senator Abetz—That is another issue.

Senator ROBERT RAY—We will get back to the basics, and the minister will again correct me if he thinks I have transgressed. Were notes taken?

Mr Tighe—I will have to confirm that.

Senator ROBERT RAY—Mr Chester, do you know, from any of the reports you read—you must have read them—were notes taken?

Mr Chester—I cannot be sure whether notes were taken or not. I am aware that information that came to light in an interview with the police was used as part of the investigators' report—

Senator ROBERT RAY—In your own report.

Mr Chester—and in my determination.

Senator ROBERT RAY—In your determination.

Mr Chester—That is right.

Senator ROBERT RAY—So it was not osmosis. Somehow that information got translated to your report. Would you care to tell us how?

Mr Chester—Sorry—how?

Senator ROBERT RAY—How did the information from the police interview get into your report? We are leaving aside now anyone else's role.

Senator Abetz—There is an assumption in that—that that, in fact, did occur.

Senator ROBERT RAY—He just said it did. Pay attention.

Mr Chester—How the material got from Jackson to my report was that the investigating officer collected material, collected evidence, in putting her investigation report together. That report was given to me as the determining officer to make a determination.

Senator ROBERT RAY—I assumed all that; therefore, I assumed that Ms O’Ryan got the material from Mr Jackson. That is a reasonable assumption, isn’t it?

Mr Chester—Exactly.

Senator ROBERT RAY—So, the only thing that now remains to be established is if she was able to do that via oral evidence given to her by Mr Jackson or by access to the notes, if he did take them, of Mr Jackson. Is there anything wrong in what I have said there?

Mr Chester—No. I do not know the answer to whether it was a written report or an oral report.

Senator ROBERT RAY—You were somewhat vague earlier on when I asked you the question: were Mr Jackson and Denys Batten added to the investigating team at any stage? Have you been able to refresh your memory on that now?

Mr Chester—I cannot recall that. I will need to check through files. I am advised that they were not.

Senator ROBERT RAY—Not on 25 February?

Mr McConville—It gets back to that original point—someone has provided information which the determining officer has considered relevant. They are not formally part of the investigation.

Senator ROBERT RAY—Formally, now, is it? Or were they any part of it?

Mr McConville—As much as any witness which is mentioned in the determination report is involved.

Senator ROBERT RAY—How do they become witnesses—because they investigated somewhere else?

Mr McConville—They have got information relevant.

Senator ROBERT RAY—Yes, but derived from what—from being investigators in another scope of investigation?

Mr McConville—From listening in on a legitimate process which they had been invited to participate in.

Senator ROBERT RAY—Which comes back to the point—if Senator Abetz will consider the question—about the appropriateness of using that information if appropriate warnings were given. I do not want to transgress on a legal thing, but I am not sure of the ethics of being able to use information gained from an AFP inquiry into a criminal matter—and we are not going to go into the details of what they was—in an internal code of conduct inquiry. You just seem to say: sure you have access to it. I am not sure the AFP would be too pleased with this. Do we know if they were consulted on its use?

Mr McConville—No, I do not know, on that particular point.

Senator FAULKNER—Who took the initiative for the officer to attend the interview of the DFAT official with the AFP? Was it a DFAT initiative or an AFP initiative? The evidence would suggest, from listening to it, that we would learn it is an AFP initiative. So let me just ask: who took the initiative?

Mr Tighe—It was a joint decision. You will recall that the inquiry into the leak commenced within the department, the department referred the matter to the AFP, the AFP agreed to take it on and the AFP sought support from the department in pursuing its inquiry. That included having a departmental officer attend the interview you are referring to.

Senator FAULKNER—It was a joint decision. Can you say who took the initiative? Did the department request a departmental official be present or did the AFP request or offer this?

Mr Tighe—I do not think anybody requested it. Again I would have to confirm this, but my feeling is it just naturally developed that way, that is was logical to have both parties represented.

Senator FAULKNER—Do we know whether other members of staff were interviewed by the AFP?

Mr Tighe—I am not in a position to go into the details of AFP—

Senator ROBERT RAY—You have not been asked to name the people, and you will not be. But before, when Senator Abetz intervened when I was talking about whether people were interviewed in the department or at AFP headquarters or wherever, I think you indicated that others were interviewed not at AFP headquarters.

Senator FAULKNER—That is right—you have already actually answered the question.

Senator ROBERT RAY—I think we are part answered.

Mr Tighe—I am sorry, I think there is some confusion there. What is said to you was that the department sought to interview everybody who had access to the document. Not everyone accepted that.

Senator ROBERT RAY—I see. You could put the question this way: was a departmental representative present at any other interviews conducted by the AFP trying to collect evidence?

Mr Tighe—There may have been. I do not know the answer to that.

Senator ROBERT RAY—You do not know?

Mr Tighe—I do not know off the top of my head, no.

Senator FAULKNER—If there had been, one assumes again that notes would have been taken.

Mr Tighe—I would have to confirm that.

Senator FAULKNER—And may have been provided through the same process, ending up on Mr Chester's desk.

Senator ROBERT RAY—Metaphorically.

Senator FAULKNER—Yes. What are the protocols for keeping notes like this that are taken at an AFP interview?

Mr Tighe—It is a question you would have to put to the AFP.

Senator FAULKNER—No, they are your notes—they are your officers' notes.

Mr Tighe—I do not know that we have established there are any notes.

Senator FAULKNER—No, but why don't we establish it?

Mr Tighe—I am happy to when we get the chance.

Senator FAULKNER—Let us try and do it now.

Senator ROBERT RAY—One phone call to Mr Jackson and at least we would not have to wait until 10 July to get that one out of the way. Do you agree with that?

Mr Tighe—Certainly, Senator. I would like to be here for the questions, though, that is all.

Senator ROBERT RAY—We will leave you out for five minutes. I have another line to pursue, if you would like to make that inquiry. It would be very helpful.

Senator FAULKNER—And you might care to ask Mr Jackson, if there are notes—which I think we know the answer to—how they are kept. I will ask someone else; Mr Varghese, as the senior departmental officer, no doubt would know about all the protocols about keeping these things pretty safely. Where are they? Who has been provided with copies? What sort of dissemination have these notes had in the department of an AFP interview? Let us see if we can find out some answers to these questions.

Senator ROBERT RAY—Mr Chester, one of the reasons for asking these questions is that I assume you have thought through the problem with having a double-tracked set of inquiries—a police criminal inquiry double-tracked with a code of conduct inquiry.

Mr Chester—That is right.

Senator ROBERT RAY—Let me ask you this: you have been pretty solidly involved in the code of conduct inquiry. On your behalf it was delegated, and now you are the determining officer.

Mr Chester—Yes.

Senator ROBERT RAY—And you have made determinations which you have later voided, for good reason. That is correct, isn't it?

Mr Chester—That is correct.

Senator ROBERT RAY—What protects you, having made all those considered decisions, having looked at all the evidence, from later being called in a criminal case to give evidence based on your knowledge only of the code of conduct inquiry? In other words, an officer theoretically may be charged with a criminal offence that you have already voided or considered. Where is your protection in all this and have you taken legal advice on it? I am not going to ask what the advice is, but have you taken legal advice on it?

Mr Chester—I will ask Mr McConville to answer.

Senator ROBERT RAY—Take the fifth!

Mr McConville—Senator Ray, there are two different processes. In terms of the code of conduct investigation, the key thing from a legal perspective is that any information that is considered by the decision maker is provided to the officer in question to discharge the department's requirement for procedural fairness. Wherever the information comes from, as long as that procedural fairness requirement is afforded to the individual, the legal obligation of the department is discharged.

Senator ROBERT RAY—No, you are completely missing my point. I am not now actually worried about the suspect; I am worried about the position Mr Chester may be put in by having two inquiries going at once. Let me put this proposition; it will not be hypothetical: Mr Chester is the determining officer. He makes a determination. Whether it is later voided or not, he has done it on his assessment of the evidence et cetera. Let us just assume that he has found insufficient evidence and has so ruled on a particular matter, without going to the particularities of which matter. There is then an AFP investigation, and that particular suspect is charged with a criminal offence identical to the one that Mr Chester may have voided or found insufficient evidence. What is to stop Mr Chester then being called and placed in the awkward position of having to give evidence for the defence?

Mr McConville—Senator, that is a hypothetical question, obviously.

Senator ROBERT RAY—Except you deal with some questions in the hypothetical matter. You have two inquiries at once. I am just trying to establish whether having two inquiries at once can have massive downsides. More importantly, have you given that forethought? Have you thought about the consequences of having two inquiries at once? We have already looked at one lot of consequences if evidence is taken from one and moved on to the other. Now I am trying to reverse it to see whether we have thought in advance about what protections we have if one proceeds and one does not. Do you understand that? So it is not that hypothetical.

Mr McConville—We have had legal advice from AGS on this. They have been comfortable with the processes that we have in train.

Senator ROBERT RAY—So we have legal advice from the people who advise you between 10 and 20 February, and they change their minds up until 28 April. That does not fill me with a lot of confidence. When are visiting hours, Mr Chester?

Mr Chester—I should correct the point that they changed their advice at a subsequent point in time. That is not correct.

Senator ROBERT RAY—That is a fair comment, because in your earlier evidence you said they drew attention to some possible problems and then you assessed that and made up your own mind.

Mr Chester—That is correct.

Senator ROBERT RAY—Sorry, I withdraw that question. I did not mean to distort what you said. Is it true that during this investigation the Senate *Hansard* record had been searched for evidence?

Mr Chester—I do not know whether the *Hansard* record was searched or not but, yes, there was some account taken of questions asked in Senate estimates proceedings.

Senator ROBERT RAY—How do you adduce the proceedings of the parliament in an inquiry and reconcile that with the privilege of those questions? Have you ever thought that through?

Mr McConville—The issue of to what extent one can take account of evidence outlined in *Hansard* is obviously—picking up your point—that it is subject to privilege that does exist in all Senate proceedings. I think you will find that the reference to *Hansard* has just been raised in the context that a particular question may or may not have been asked.

Senator ROBERT RAY—Yes, but what difference does that make? When you searched the *Hansard* record to assist yourself in the investigation, you could never have adduced any of that information because it is a proceeding of the parliament. It cannot be in an inquiry or a court of law or anywhere else. I am wondering why someone did not alert you to that much earlier on and save you the problem.

Mr McConville—I would just restate that we have had AGS advice provided every step of the way with regard to what the process is.

Senator ROBERT RAY—You are not seriously telling me the Australian Government Solicitor advised you to search the *Hansard* record and that that could be adduced in your inquiry at some stage as evidence? Surely they did not advise you of that.

Mr McConville—The determining officer makes his or her own mind up about what material is necessary to be considered.

Senator ROBERT RAY—Correct. I think this is a fair question to ask: can you say yes or no as to whether the AGS advised you on the specific matter that I have raised?

Senator Abetz—Not what the advice was but whether they advised?

Senator ROBERT RAY—Yes, because, first of all, they ‘advised every step of the way’ but then I got evidence that it was up to the officer himself or herself to make the decisions. Minister, you and I would be very disappointed if AGS did not understand parliamentary privilege.

Mr McConville—AGS have advised there is no significant legal risk in us referring to *Hansard*.

Senator ROBERT RAY—Well, I would get a second opinion. As Chairman of the Privileges Committee, I will give it to you for nothing: you are wrong. Why don’t you take that under advisement and think about it in future? I do not want to editorialise, but you have an expensive investigation and if you make a fundamental mistake of using *Hansard* evidence in that it will tend to undermine the rest of your case because it is a breach of privilege. It would get you into a court case that is unnecessary. You could have voided the investigation or part of it by that one silly act.

Senator FAULKNER—Mr Chester, you indicated that court proceedings had been finalised on 7 May—is that correct?

Mr Chester—That is correct.

Senator FAULKNER—Why are you unable to let us know what the outcome of those proceeding has been. What is the reason for that?

Mr Moraitis—I made the point that on 7 May proceedings in the Federal Court were discontinued following consent orders being agreed to by the parties. My understanding, through our legal advisers, is that those orders have not been finalised by the registrar of the courts and are therefore not public. My advice is that we should not, as a matter of general obligation, disclose that information, including the outcome, at this stage.

Senator FAULKNER—What is the status of the consent orders, then?

Mr Moraitis—They have been agreed between the parties and are not a matter of public record yet, as far as I understand.

Senator FAULKNER—The matters have been agreed between the parties.

Mr Moraitis—Yes, correct.

Senator FAULKNER—They have been finalised.

Mr Moraitis—Yes.

Senator FAULKNER—Why is there any confidentiality surrounding them?

Mr Moraitis—My understanding is that the applicant has not confirmed with the registrar that they should be made public.

Senator FAULKNER—The applicant has not done what?

Mr Moraitis—Agreed to make those documents a matter of public record. That is my understanding.

Senator FAULKNER—What documents? I am not talking about documents. Do you mean the consent orders?

Mr Moraitis—Yes, that is what I mean. My advice is that we are under a general obligation, pending that process being finalised, not to comment on the nature of those orders.

Senator FAULKNER—There are no confidentiality clauses or anything like that?

Mr Moraitis—Not that I am aware of. It is to do with the actual court process of seeking both parties' consent to finalising them and making them available.

Senator FAULKNER—I see. So has that consent been provided by DFAT?

Mr Moraitis—We have not formally consented, but we have had no problem as such.

Senator FAULKNER—Would you be required to formally consent?

Mr Moraitis—I am not aware of the formal process.

Senator FAULKNER—Are there consent orders in relation to this?

Mr Moraitis—Yes.

Senator FAULKNER—The consent orders apply to the applicant only, not to the defendant—is that right?

Mr Moraitis—They apply to both parties.

Senator FAULKNER—If they apply to both parties, how far has this progressed as far as the department is concerned? That is what I was asking. I am trying to find out what the hold-up is here.

Mr Moraitis—Let me assure you there is no hold-up from the department's perspective.

Senator FAULKNER—Why can I be assured of that?

Mr Moraitis—Because we have not indicated that we have a problem with not finalising those orders or formalising them and making them public. That is my understanding. I could be corrected on that.

Senator FAULKNER—What is the latest date of your advice in relation to these consent orders?

Mr Moraitis—I would have to check. It is last Friday—Friday, 30 May.

Senator FAULKNER—Since this leak inquiry kicked off, have there been any changes to broader departmental procedures in relation to the investigation of leak inquiries? Have there been any changes to internal procedures at all?

Mr Moraitis—I am not aware of any.

Mr Varghese—I am not aware of any changes to the procedures.

Senator FAULKNER—There was another record of a conversation leak recently, wasn't there? It was one between, again, Mr Downer and, on this occasion, Mr Alkatiri. That was on 6 March this year, wasn't it?

Mr Moraitis—My understanding of that document is that it was not a DFAT document.

Mr Varghese—If I recall that matter correctly, I think it was actually a leak at the East Timor end rather than at the Australian end. In other words, it was not an Australian document that was leaked; it was a record purporting to reflect the meeting that the minister had with Mr Alkatiri.

Senator FAULKNER—That would accord with some of the commentary about it, I think. I am referring to something I read on the crikey.com web site.

Senator ROBERT RAY—That is the first time it has been mentioned in estimates!

Senator FAULKNER—I just wanted to identify it.

Senator ROBERT RAY—Senator Bolkus identified it.

Senator FAULKNER—This is on 6 March 2003—

Mr Varghese—I think that is the same.

Senator FAULKNER—under the headline, 'Downer: pompous colonial git'. That is just to identify it, so that we are talking about the same leaked document.

Mr Varghese—I think we are, Senator.

Senator Abetz—Who is the poor person in DFAT who has to read *Hansard* and crikey.com?

Senator ROBERT RAY—I think *Hansard* would be preferable.

Senator FAULKNER—You are making the substantive point that, on this occasion, the leak comes from—

Senator ROBERT RAY—It possibly comes from another area.

Senator FAULKNER—That is a nice way of putting it.

Senator ROBERT RAY—I am learning; they are teaching me!

Senator FAULKNER—Diplomacy never was your long suit. Is that what you are saying, Mr Varghese?

Mr Varghese—I am saying that there was no Australian document that was leaked. There were press reports, and I think Crikey was one of the sources which purported to describe a meeting between Mr Downer and Mr Alkatiri.

Senator FAULKNER—So there has been no investigation into that?

Mr Varghese—There was no requirement for an investigation.

Senator FAULKNER—Why is that?

Mr Varghese—Because there was no leak of an Australian document.

Senator FAULKNER—How do you know without investigating it?

Mr Varghese—I do not think anyone had suggested it was an Australian document.

Senator FAULKNER—I do not know whether they had or not. Why jump to the conclusion? It may be right, for all I know. But why jump—

Mr Varghese—I am sure there are a number of reports which might purport to reflect the content of discussions that Australian ministers have had with their counterparts. Every time we see a report in a paper purporting to do that, we do not conduct a leak investigation.

Senator FAULKNER—Is it a leak of a record of conversation?

Mr Varghese—It is not a leak of an Australian record of conversation.

Senator FAULKNER—It is a leak of, what, an East Timor record?

Mr Varghese—I do not know what it is based on; you would have to ask Crikey.

Senator FAULKNER—I do not want to ask them. I am asking you. What I am trying to assess—

Senator Abetz—All Mr Varghese can answer for is that the document—or whatever—that is in the public arena did not emanate from his department. Whether you ask him then to speculate as to where else it may have come from, I am not sure that you can necessarily do that, other than to say that it did not emanate from the Australian end or from DFAT.

Senator FAULKNER—I accept that that is probably the case. My question only goes to how we can be certain of that; that is all. It is just a conclusion that everyone has jumped to, and away we go—is that right? What happens when these things become public?

Mr Moraitis—Mr Tighe will return, and perhaps he might have been involved in having looked at that issue.

Senator FAULKNER—So someone might have looked at it?

Mr Moraitis—He might have.

Senator FAULKNER—But Mr Varghese told us no-one did look at it because there was no need to.

Mr Moraitis—I mean ‘look at’ in the sense of being made aware of that Crikey document.

Senator ROBERT RAY—There are two stages. You have an investigation, which is the second phase. I think Senator Faulkner is asking you whether you had a look at whether there was a need for an investigation, which is standard procedure in a lot of these things. Was that first stage met at all?

Mr Moraitis—My understanding is it was.

Mr Varghese—I do not have the primary documents in front of me, but as I recall it the press reports were actually sheeted home to comments attributed to East Timorese officials.

Senator ROBERT RAY—But Mr Moraitis thinks they did have a preliminary look at it.

Senator FAULKNER—But, after all, if you took press reports seriously, you would take seriously what was said about Dr Calvert’s comment on 27 March 2003—

Senator Abetz—And you would think the Labor Party had a leadership dispute going on.

Senator FAULKNER—when Dr Calvert said he could speak more freely in 10 days time.

Senator ROBERT RAY—Or that you were responsible for the Tasmanian state election disaster. I know not to believe them anymore.

Senator Abetz—I know; exactly.

Senator ROBERT RAY—How can that be?

Senator Abetz—Or that there was a punch-up at your local state council.

Senator ROBERT RAY—Exactly.

Senator FAULKNER—I suppose I have learnt to be very cynical about press reports, Mr Varghese, so I just wondered what procedures were used—whether you would jump to a conclusion that it is not at the Australian end of the exercise or whether you would ensure, through some sort of thorough process, that that is the case. You have made an assessment that there is no need to do so.

Mr Moraitis—My recollection is that the Crikey report was looked at to verify whether it was an Australian sourced document. I understand that Mr Tighe might have been involved in that. It is just a recollection.

Senator FAULKNER—So if crikey.com said that they are dealing with the leak of some sensitive DFAT material but it did not come from DFAT, you would just take that at face value, would you, and move on?

Senator ROBERT RAY—I don’t think he said that.

Mr Moraitis—No, I didn’t say that. You asked me whether there had been a preliminary—

Senator ROBERT RAY—Yes, a preliminary investigation.

Mr Moraitis—My recollection is that Mr Tighe, if he were here, could confirm that. That is all I am saying, Senator.

Senator Abetz—Rather than speculate, let’s wait until he gets back.

Senator ROBERT RAY—I was about to suggest that.

Senator FAULKNER—Speaking of the press, we all seem to have tiptoed around the DFAT official whose name these investigations were being conducted in, yet I noticed in the *Australian* of 22 April 2003 the name of a DFAT officer was mentioned. I wondered if there had been any investigation into how the name of a DFAT officer had appeared in the *Australian* on 22 April 2003. Let me quote it. I do not know whether you recall it.

Senator Abetz—Can we have a copy?

Senator FAULKNER—By all means.

Senator Abetz—Is it an article? Can we identify—

Senator FAULKNER—I did.

Senator ROBERT RAY—It is on page 9—

Senator FAULKNER—It is the *Australian* of 23 April 2003, but I am happy to ask the staff to photocopy—

Mr Moraitis—I can certainly confirm that we have not discussed any names with any person. Again—

Senator ROBERT RAY—Are you speaking on your own behalf or the whole department's?

Mr Moraitis—I understand on behalf of the people involved in it.

Senator FAULKNER—I am surprised when a name appears in a newspaper article like this in a matter that—

Mr Moraitis—Could I make an assumption? With due respect for your point, I assume it could have been from a listing in a court record or a listing in the newspaper perhaps.

Senator ROBERT RAY—That is what I was talking about.

Mr Moraitis—I am making an assumption there, but I think it is a reasonable one.

Senator FAULKNER—I am surprised that on something as sensitive as this, particularly in your own case, Mr Chester, you were not aware of the publication of this in a national newspaper.

Mr Chester—I was aware of the newspaper article.

Senator FAULKNER—You were aware of it?

Mr Chester—Yes, I was.

Senator FAULKNER—It is just Mr Varghese who was not aware it?

Mr Varghese—I do not recall seeing the article, Senator.

Senator ROBERT RAY—You don't read the papers much, do you? I think that is commendable.

Senator FAULKNER—Particularly that one. What action, if any, was taken immediately after the publication of that article?

Mr Chester—No action was taken.

Senator FAULKNER—None?

Mr Chester—No.

Senator FAULKNER—Why not?

Mr Chester—On the face of it, it is not necessarily a leak given that, as Mr Moraitis said, there had been open court proceedings prior to this. There were a number of members of the public present in those court proceedings and, I guess, it was to be expected that at some stage there would be some press comment on the fact that court proceedings—

Senator ROBERT RAY—I was a bit confused when you said there were a number of people present at the court proceedings. I thought the court action was taken on 31 March and the first hearing was on 7 May—I may have misunderstood things.

Mr Moraitis—Documents were lodged on 31 March. In terms of listings, they would have been listed earlier on.

Senator ROBERT RAY—There were no open court proceedings, were there?

Mr Chester—Yes, there were two hearings in the court: the final one on 7 May and an earlier one on 4 April.

Senator ROBERT RAY—You might just check the previous *Hansard* record because I thought the inference was that the one on 7 May was the first time it appeared in court.

Mr Chester—There was one on 4 April.

Mr Moraitis—If I could correct that: I forgot that it actually was an agreement to defer; it was not actually a proceeding.

Senator ROBERT RAY—It is no great crime; I just wanted to correct the earlier evidence.

Mr Moraitis—It is my recollection that it was a one-minute deferral to May.

Senator ROBERT RAY—So it could have been 18 days later that they picked it up out of an open court hearing?

Mr Moraitis—Correct.

Senator ROBERT RAY—Would people have been able to get access to the matters filed on 31 May to obtain names of individuals or not?

Mr Moraitis—I am not aware of the procedures in the Federal Court, so I would not know if they would have access.

Mr Chester—There was certainly a notice in the *Canberra Times* in the court lists listing the 4 April and the 7 May hearings.

Senator ROBERT RAY—We have all been around long enough, and it was not got there—not 18 days later.

Senator FAULKNER—The article in the *Australian* says:

DFAT insiders—

I interpolate that as a bit more leaking—

are speculating that Calvert—

that is Dr Calvert—

who scored an AC from the Howard Government this year, has lost his \$40,000-odd performance bonus (again no comment from DFAT and public service chief Peter Shergold).

It unkindly goes on to say:

The secretary's detractors point to two rising DFAT stars who might happily assume Calvert's mantle—John Dauth, our man at the UN, and John McCarthy in Tokyo.

That sounds like a very highly sourced leak from DFAT. Was that investigated? Were the DFAT insiders investigated who were speculating about the performance bonus?

Senator ROBERT RAY—Make a search of the emails, did we? What about the phone records, private computer records? Of course not.

Senator FAULKNER—That would not have been investigated, would it, Mr Varghese? That would not have suited.

Mr Varghese—As far as I know that was not investigated. On reading it, there is no suggestion of an unauthorised leak of a classified document or something that would normally be the subject of a leak investigation.

Senator ROBERT RAY—Let us get one thing clear: an unauthorised leak does not have to be a document, does it? You are relying very heavily on that; it does not have to be a document.

Mr Varghese—No, it does not have to be a document.

Senator ROBERT RAY—Information.

Senator FAULKNER—Is it true that Dr Calvert has lost his performance bonus?

Mr Varghese—I don't know, Senator.

Senator FAULKNER—Can someone tell us?

Mr Varghese—I would imagine his performance bonus is a matter between him and the government.

Senator FAULKNER—No, it is not. It is a matter between him and everyone who bought the *Australian* on 22 April 2003.

Senator Abetz—It might be a matter of interest to them; this is somewhat different. I personally am not aware of what the process is in regard to that. I would doubt that they are publicly disclosed.

Senator ROBERT RAY—It is not listed in the savings measures, anyway, is it, Minister?

Senator FAULKNER—Anyway, haven't there been changes to the timing in relation to performance bonuses?

Senator Abetz—In DFAT?

Senator FAULKNER—Across the Public Service.

Senator Abetz—I am not sure that these officers can answer that question.

Senator FAULKNER—If it applies across the Public Service, it applies within DFAT. If it does not—

Senator Abetz—If it applies to DFAT, they can answer that.

Senator FAULKNER—If it applies to DFAT, let us know. Someone surely must know what the timing is in relation to the awarding of performance bonuses to the Secretary of DFAT. That is a perfectly proper question that has been asked of other departments during this estimates round, and they have been able to jump all over the answers. Well briefed, they are.

Mr Chester—As you are aware, the performance of secretaries is managed out of the Department of the Prime Minister and Cabinet. My understanding is that the cycle—

Senator FAULKNER—They are managed out of the Department of the Prime Minister and Cabinet.

Mr Chester—My understanding is that the—

Senator FAULKNER—And you pay the money, Mr Chester?

Mr Chester—That is correct. Can I finish my answer?

Senator FAULKNER—Yes, sure.

Mr Chester—My understanding is that the 12-month cycle that these cover has moved to coincide with the financial year rather than the April to March cycle that was the case previously.

Senator FAULKNER—That is my understanding, too. That is what I was intimating a moment ago, that in fact the performance pay cycle—and I think it would apply to DFAT as it applies to other departments and agencies—would be concluded on 1 July. I am asking in relation to DFAT whether that understanding is correct. I think you are confirming it.

Mr Chester—Not DFAT; you are talking about Dr Calvert?

Senator FAULKNER—Yes, in relation to your secretary.

Mr Chester—That is my understanding—that the performance appraisal period will conclude on 30 June rather than at the end of March.

Senator FAULKNER—So we can be assured that this could not be accurate, because the decision has not been made?

Mr Chester—That is exactly right.

Senator FAULKNER—So if DFAT insiders provided this information to the *Australian* newspaper, they were wrong.

Mr Chester—Given that this was so long before the end of the appraisal period, to me it is nothing more than speculation. There is nothing to base it on, as far as I am aware.

Senator FAULKNER—The point is there are no special arrangements in relation to your agency, your department; the decision in relation to changing the cycle for performance pay is a service-wide decision.

Mr Chester—That is my understanding.

Senator ROBERT RAY—I notice Mr Tighe has rejoined us. Do you have any further information that you can assist the committee with, having regard to those questions we asked you?

Mr Tighe—Yes, Senator. I can confirm that notes were taken at AFP interviews where there was a DFAT person present. There was more than one of them.

Senator ROBERT RAY—Who was the other one?

Mr Tighe—I am sorry; there was more than one interview. There was one person from DFAT present, but on more than one occasion.

Senator ROBERT RAY—Was that person also present at interviews other than with the suspect?

Mr Tighe—Yes.

Senator ROBERT RAY—On the second part of that general area: were any of the notes then either passed on or the information used in the second inquiry?

Mr Tighe—The information was placed on our security leak investigation file.

Senator ROBERT RAY—But was it accessible in the code of conduct inquiry?

Mr Tighe—Yes.

Senator ROBERT RAY—Were you able to establish whether Mr Jackson or Mr Denys Batten were added to the investigation team at some stage?

Mr Tighe—I am told that they were never appointed to that investigation.

Senator ROBERT RAY—Never appointed—but did they have any role in that investigation other than providing information coming out of the AFP inquiry?

Mr Tighe—I am told that their assistance was sought in obtaining a statement from an individual who was involved in the leak investigation.

Senator ROBERT RAY—So they were asked to assist in that inquiry; they were just not appointed to an official role?

Mr Tighe—No, their role pertained purely to the leak investigation; it had nothing to do with the code of conduct inquiry. But the information was passed to the code of conduct inquiry.

Senator ROBERT RAY—I see. In your absence, Mr Tighe, Senator Faulkner raised the question of a possible leak of a conversation between Mr Downer and representatives in East Timor, which was mentioned on crikey.com. Mr Moraitis suggested there may have been a look—not an investigation—at whether an investigation was required into this matter. Can you assist the committee with any information on this?

Mr Tighe—Yes, that is correct. We did a preliminary examination of that issue and established that the document that was purported in the newspaper to be leaked was not a document prepared by DFAT nor was it a document that we had access to. It was prepared by one of the other parties involved in that discussion. We, therefore, did not pursue it.

Senator ROBERT RAY—So not only were you able to establish that it was not a DFAT document, but no-one in DFAT had access to that document?

Mr Tighe—That is correct.

Senator ROBERT RAY—While we are on the subject of always chasing down leaks, at the last hearing we looked at Foreign Minister Downer's frustrations at dealing with the helpdesk on computer issues—frustrations I endorse and empathise with on occasion. That made its way into the public domain, unfortunately; it was in a newspaper. Clearly, it could only have come from Mr Downer, which is extremely unlikely, or from the department. Was there a leak investigation into that particular matter?

Mr Chester—There was an investigation undertaken by the conduct and ethics unit of the department.

Senator ROBERT RAY—And how did that resolve itself?

Mr Chester—As unable to ascertain whether it was a leak from someone within the department.

Senator ROBERT RAY—It is pretty hard to point the finger anywhere else, though, isn't it?

Mr Chester—As I said at the last hearing, even at that stage there was no evidence that there was a direct connection between a departmental officer and, I think, the *Canberra Times*. There was certainly a deal of discussion within the department; a number of people were involved in seeking to resolve the problems the minister was having with his computer and there were quite a large number of staff involved in that process. Clearly, there had been some discussion amongst staff within the department—quite a large number of staff. It may well have been that somebody has told somebody who has told somebody and it has then got into the newspaper.

Senator ROBERT RAY—How is that any different from any other leak? Somebody told somebody who told somebody is still a serious thing. In this case the newspaper almost certainly distorted the minister's position and made inferences that were not true. He was held up to some public ridicule. The information that leaked out was not even accurate. Parts of it were and parts were not. Where does that leave him? Why have you not got the AFP in on this one? It is the same principle—something has been leaked.

Mr Chester—I think there is a difference between Crimes Act classified material and what is potentially a breach of the APS code of conduct. That is how this issue was handled.

Senator ROBERT RAY—How many people were devoted to it? How long did the investigation take and what were the resources? I want to compare that with the resources on the other one.

Senator Abetz—It is hardly an issue of national security, is it?

Senator ROBERT RAY—Minister, you have to understand this: the first issue we are looking at has two streams. One is AFP criminal investigation—fair enough—but there is also a code of conduct one. We have all these officers working on voided reports, court cases. Here is another one. I just want to know whether the same resources are being put in, the same privacy being trampled on. I am just trying to get an idea. It is not to do with national security. By the way: they leaked this; what are they going to leak next? It is the same principle. Maybe they do draw a distinction; I do not know.

Senator FAULKNER—There is an issue in relation to the security of the department's IT network, and we canvassed that at some length in the previous hearings.

Senator ROBERT RAY—I would like an idea of how many people were devoted to this investigation.

Mr Chester—To give you a precise answer I will have to take it on notice. Ms O'Ryan from the conduct and ethics unit undertook a number of—

Senator ROBERT RAY—You are batting 0 for 2 now. Go on.

Mr Chester—She undertook a number of interviews. She did not work on this on a full-time basis. She had other issues that were occupying her. Another officer assisted her with some of those interviews. I think it was something of the order of two people for 20 to 30 hours—something of that magnitude.

Senator ROBERT RAY—Going back to the investigation of leaks of what we would call classified information, were MOPS included in the terms of reference for the AFP inquiry? Could the Federal Police look at MOPS as people who may have had access to the document, or did they not have access?

Mr Chester—What is the expression you used?

Senator ROBERT RAY—MOPS—members of parliament staff. In other words, were Mr Downer's ministerial staff subject to the police investigation and indeed were they ruled out because the document never went to the office?

Mr Tighe—The document did go to the office. The Federal Police had a full list of everybody who had access to it and followed it up according to the way they investigate these things. I have not gone into the operational aspects of it but they had the full distribution list of the document.

Senator ROBERT RAY—I understand that but is this an investigation—and this is my point—into a potential leak out of the department as opposed to an investigation of the leak? The latter would involve more than just departmental people. You mentioned that the document went to another agency and there was potential for interviews there. Were MOPS—ministerial staff—subject to the investigation or not?

Mr Tighe—They were certainly subject to the investigation which began in the department of foreign affairs. We provided that information to the Federal Police. Whether the Federal Police chose to follow that up as part of the investigation which they subsequently—

Senator ROBERT RAY—I do not need to know that. I do not ask that question.

Mr Tighe—The answer to your question is, if I am interpreting it the right way, yes.

Senator ROBERT RAY—Are you ever going to establish, Mr Chester and Mr Varghese, what the total cost of this investigation is in terms of resources and time taken?

Mr Chester—Do you mean the code of conduct investigation?

Senator ROBERT RAY—Yes.

Mr Chester—I would assume that we will at the end of the process.

Senator ROBERT RAY—I just thought you might as an exercise because it takes in all that legal advice you have; it takes in the cost of court cases; your time—

Senator FAULKNER—And the cost of the officer suspended on full pay. I would be very interested to see what the outcome of the court action is and whether costs were awarded against the Commonwealth. Can you tell us that, Mr Varghese?

Mr Varghese—I don't have the answer to that.

Senator FAULKNER—Mr Moraitis, do you know whether costs were awarded against the Commonwealth?

Mr Moraitis—That is still subject to the consent orders that are being finalised.

Senator FAULKNER—Well, when it is not subject to the consent orders, I would like to find out about that. I think that this matter is best taken on notice because it seems that a huge amount of departmental resources have been spent on this so far and it has been totally botched up from beginning to end, with Dr Calvert deserving a lot of the credit for that. If you could take on notice please a question going to the departmental costs that have been borne in relation to this, including the matters outlined by Senator Ray which go to departmental investigations, staff resources in at least two branches which have been enormous, the costs of legal advice, the costs borne in relation to the officer suspended without pay, court costs and the like, I would much appreciate it.

Senator ROBERT RAY—I have a couple more issues and then I think we are finished on this. A lot of effort seems to have gone in, whether successfully or unsuccessfully, to get procedural fairness in this; what about the question of privacy issues? Are you satisfied that they have been fully protected? I know it is a difficult area when you are trying to investigate a leak as to whether you can go to private phone records, private computer records or whatever else. How have you handled the privacy issues as opposed to procedural fairness?

Mr McConville—I would think that the handling of the matter covered all the appropriate Privacy Act considerations in relation to the carriage of the investigation.

Senator ROBERT RAY—You have satisfied yourself of that, have you?

Mr McConville—On the basis that there has been no criticism referred to us on that matter and that we have been mindful of the requirements of the Privacy Act in everything that has happened.

Senator ROBERT RAY—That of course would be breached if someone who was the source of the *Australian* story resided in that apartment, wouldn't it?

Mr McConville—With respect, Senator Ray, the individual in question is well entitled to talk to whoever he likes in relation to a matter that concerns him specifically.

Senator ROBERT RAY—No, that wasn't my question. The last area I want to check on is Dr Kennedy's appointment; is he a private consultant now?

Mr Moraitis—An independent consultant, yes.

Senator ROBERT RAY—What was the cost of him doing this task? Was he paid per diem or an overall—

Mr Moraitis—It is on a per diem basis. He was appointed on the 16th so we have not had any—

Senator ROBERT RAY—No, you haven't had a bill in yet.

Senator FAULKNER—There must be some sort of contractual arrangement.

Mr Moraitis—Yes.

Senator FAULKNER—What is it?

Mr Moraitis—It is an hourly rate.

Senator FAULKNER—What is the hourly rate?

Mr Moraitis—I prefer to seek Dr Kennedy's—

Senator ROBERT RAY—Permission?

Mr Moraitis—permission to disclose what his private arrangements are. If he is happy with that, I can—

Senator ROBERT RAY—I am sure it will be reasonable because of his record as a public servant: if any of you can retire on his reputation, you will have done pretty well, let me tell you. I want to refer to what head of power you appoint Dr Kennedy under. I have read section 15 two or three times now and obviously it must be subject to some form of direction from the Public Service Commissioner that allows you to do it and even so I am highly doubtful, but go on—convince me.

Mr Moraitis—I have a copy of the commissioner's directions under 15(4)—

Senator ROBERT RAY—Could I have a look at that?

Mr Moraitis—Yes, I will make a copy for you, if you wish. On the basis of those, agencies, including DFAT, have prepared procedures which are the basis on which determining officers are appointed.

Senator ROBERT RAY—Has he been appointed as a determining officer?

Mr Moraitis—Correct. Capital D, capital O.

Senator ROBERT RAY—Where is 'determining officers' mentioned in the act? It is not, is it?

Mr Moraitis—No. The directions refer to the employment of determining officers, and on that basis—

Senator ROBERT RAY—The employment or the appointment? This is new territory for me: I did not know you could go outside the Public Service to appoint a determining officer. Clearly if you can I am satisfied. I just need to know what linkage there is to that back to this act.

Mr Moraitis—Section 15 subparagraph (4) specifies that:

The Commissioner must issue directions in writing for the purposes of subsection (3).

I have a copy of those written directions issued by the commissioner. I do not know the exact date on which they were prepared.

Senator ROBERT RAY—Hold on. Section 15 refers to an ‘Agency Head’. If you look in subsection (1) it says, ‘An Agency Head may impose the following sanctions.’ Right?

Mr Moraitis—Yes.

Senator ROBERT RAY—Then you say (4) refers to (3), which goes to an agency head.

Mr Moraitis—Correct—(4) sets out directions by the commissioner, on which basis agencies and agency heads can establish internal procedures under which these code of conduct proceedings can be pursued. On that basis—

Senator ROBERT RAY—But your interpretation of the word ‘procedures’ is what I think throws it in doubt. I think ‘procedures’ refers more to the procedural requirements, procedural fairness and difference in application.

Mr Moraitis—Not necessarily, Senator. That is not my understanding.

Senator ROBERT RAY—Have you gone back and had a look at the explanatory memorandum in 1999 for this part of the act?

Mr Moraitis—I beg your pardon?

Senator ROBERT RAY—Have you gone back and had a look at the explanatory memorandum, which often elucidates—

Mr Moraitis—I have not. We have taken advice to the effect that this is the procedure. Pursuant to 15(3), there is an internal procedure established within DFAT, which has been spelt out, which sets out the process for determining a code of conduct process under that procedure, which comes back to the commissioner’s issuing of directions which have been mandated under 15(4) of the act. That is the source of the power. I sought confirmation in the lunch break and that is correct. That is my understanding.

Mr McConville—Senator, there is a distinction also between what a determining officer does and what the next stage of that process is.

Senator ROBERT RAY—Yes. I am not that far behind the game that I do not understand that. In reading section 15, I am not sure how you can stretch that legislation to appoint someone outside the Public Service to be a determining officer. But I have not read these two pages yet where, hopefully, I will get told why.

Senator FAULKNER—While Senator Ray reads that, in relation to the fees paid to Dr Kennedy, there is no suggestion there is anything commercial-in-confidence about that, is there? Regardless of the courtesies involved, these matters are ordinarily provided by witnesses at the table to Senate estimates committees.

Mr Moraitis—As I said, I would have no problem, subject to giving Dr Kennedy the courtesy of checking with him if that is okay.

Senator FAULKNER—Dr Kennedy is well known to us at these committees and he understands how they work. It is just a dollar figure that ought to be able to be provided as soon as possible—unless someone is suggesting there is some commercial-in-confidence clause in the contract.

Mr Moraitis—No, I would just be seeking confirmation that he would have no problem with that, that is all.

Senator Abetz—It has been taken on notice.

Senator FAULKNER—The point I am making is that, whether he has a problem or not, it is the sort of information that must be provided to the committee. I don't think he will have a problem; he is used to how this works and understands it inside out from years of experience himself at the witness table. But this is a matter that ought to be able to be provided, frankly, forthwith. I want to be clear about something that you said, Mr McConville, before lunch. The outside legal advice on these matters has been obtained by the department from AGS—the Australian Government Solicitor—is that right?

Mr McConville—That is right.

Senator FAULKNER—Any other sources? I thought you may have mentioned the Attorney-General's Department; I was not sure. I thought you mentioned two sources of outside legal advice.

Mr McConville—There was an additional legal service provider that we did consult with when we canvassed a particular issue.

Senator FAULKNER—Who was that additional legal service provider?

Mr McConville—Mallesons Stephen Jaques.

Senator FAULKNER—So Mallesons were engaged. You, of course, pay the AGS for their services?

Mr McConville—Yes, we do.

Senator FAULKNER—You obviously have paid Mallesons for services on this issue?

Mr McConville—Yes, we have.

Senator FAULKNER—In relation to the court action that has been concluded, did you engage any outside barristers or others to appear for the department?

Mr McConville—Only AGS.

Senator FAULKNER—Could you indicate to the committee why Mallesons were engaged?

Mr McConville—It was just to get some general advice on a particular process.

Senator FAULKNER—To get some general advice on a particular process.

Senator ROBERT RAY—Do you want to be a bit more vague?

Mr Moraitis—Senator, there was one specific issue. I prefer not to talk about the substance of it because it goes to legal advice, but from my recollection it was one particular issue.

Senator FAULKNER—I am not asking you to go to the substance of the advice. Is there any reason why you cannot identify the issue? Normally these issues are identified without going to the substance of advice that is provided.

Mr Moraitis—On this occasion it is directly pertinent to legal advice we received.

Senator FAULKNER—Could you repeat that?

Mr Moraitis—It goes directly to legal advice that we have sought on a specific issue. If I reveal the nature of the issue that we sought advice on, it goes to the nature of the legal advice. It is hard to keep it distinct.

Senator FAULKNER—What the legal advice is about and what the legal advice is in relation to that matter?

Mr Moraitis—Correct.

Senator FAULKNER—Mr Moraitis, these committees hear regularly about the sorts of issues that departments seek advice on. Where we generally do not go in terms of questions asked at these committees, except in exceptional circumstances, is to the nature of the advice.

Senator Abetz—I don't know about this particular case, but if advice is sought on a particularly narrow question, it may well be fairly prejudicial, I would have thought. I don't know the detail.

Senator ROBERT RAY—We will narrow it down, Minister. Did the question about which you went to the private legal firm relate to the legal proceedings in the court?

Mr Moraitis—In the court?

Senator ROBERT RAY—Yes, which I could understand.

Mr Moraitis—No. I would rather not go into it because the two are interrelated. Given the specificity of the issue, if I make the point about the nature of the advice sought, it goes directly to the—

Senator FAULKNER—Why was the decision made to seek outside legal advice on that point, whatever the point might be? I am just wondering why that was the case in one particular area. Is it because of particular expertise in Mallesons or a lack of expertise in the Commonwealth?

Mr Moraitis—I cannot recall the specific details.

Mr McConville—It was just to ensure a defence for the legal process that the department was carrying out.

Senator ROBERT RAY—Are they employed by you to give general advice or do they charge per advice?

Mr McConville—All the legal service providers that we have on our list charge per hour.

Senator ROBERT RAY—So how much were you charged in this case?

Mr McConville—They have rates depending on a particular solicitor or partner—

Senator ROBERT RAY—Yes. How much were you charged on this occasion, for this narrow legal advice?

Mr McConville—I have not got the particular invoice in front of me.

Senator ROBERT RAY—Would you like to take that on notice for me?

Mr Moraitis—Yes. We can take that on notice.

Senator ROBERT RAY—Getting back to the issue of section 15 of the Public Service Act, you have now given me chapter 5 headed, ‘Basic requirements for procedures for determining breaches of the Code of Conduct’. I assume you are relying on 5.3? I cannot find anything else there.

Mr Moraitis—On provisions 5.3 and 5.4, I understand. On the basis of 5.3 and 5.4 and other provisions, we had established a process for determining code of conduct investigations in our department.

Mr McConville—I think you have the Public Service Commissioner’s directions there, as distinct from the Public Service Act.

Senator ROBERT RAY—I have both here.

Mr McConville—Right.

Senator ROBERT RAY—I am trying to find where the head of power is—

Mr McConville—Section 15(3) is about the head of power, which is then contained in the Public Service Commissioner’s directions. The department then seeks guidance from those directions to formulate our own procedures for managing breaches of the code of conduct.

Senator ROBERT RAY—I am still wondering how under the act or under 5.4, as Mr Moraitis pointed out, you can appoint someone from outside rather than within the Public Service, just because it is not prohibited.

Mr McConville—In terms of the determination process, it is not a power exercised under delegation.

Senator ROBERT RAY—That does not really matter. It does not have to be delegated. The initial appointment was Ms O’Ryan, a public servant, and then the next appointment was Mr Chester, a public servant. The next one is someone who is not in the Public Service. I cannot understand how, under the Public Service Act or under these guidelines you have given me, you can appoint someone from outside the Public Service to do this. You mentioned there may be a third layer that I do not have in front of me.

Mr McConville—That is the department’s own procedures, which are contained in an admin circular.

Senator ROBERT RAY—Can I have the admin circular?

Mr Moraitis—Did I pass that to you, Senator? Sorry; it was under this file.

Senator ROBERT RAY—Was it on a ‘need to know’ basis only?

Mr Moraitis—No, not at all. As I said, section 15(4) specifies that the commissioner can issue written directions on the basis of which, under 15(3), an agency head issues internal procedures—policy admin circular PO308.

Senator ROBERT RAY—But those internal procedures do not relate to the appointment of a determining officer. They go more to the process of what a determining officer will be bound by.

Mr McConville—With respect, Senator Ray, the procedures focus specifically on the appointment of a determining officer—our own departmental procedures.

Senator ROBERT RAY—Is this in the document I do not have?

Mr McConville—That is right.

Senator ROBERT RAY—I will have to wait until I read that. Even so, I am wondering about the legality of that because I would have thought the act took primacy, the Public Service Commissioner is next and an admin circular would run a poor third in terms of weight in a court, if they ever had to determine this issue.

Senator Abetz—Without giving gratuitous advice—and I dare say advice would need to be sought by anybody involved in this procedure as to whether that is the case or not—suffice to say—

Senator FAULKNER—Well, no; with respect Minister, you would think the department would seek advice on this issue before it sought an outside appointee to conduct the task.

Senator Abetz—And the department may well have advice—

Senator FAULKNER—If there is a question.

Senator Abetz—on these issues but, if somebody wants to challenge that, that is for them and not for us to provide legal advice which may forestall them getting their own legal advice.

Senator FAULKNER—We may have checked this. We have washed all around the place on this so I apologise if I have asked this question before. Did the department seek advice on the appropriateness or otherwise of someone from outside the department conducting this investigation?

Mr McConville—Yes, we did. As mentioned by Mr Moraitis earlier, there is a precedent in another agency which has followed a similar process.

Senator ROBERT RAY—Precedent is one thing; it does not mean they were acting legally either.

Mr McConville—Just to restate for the record: in terms of our own procedures, we would argue that they are entirely consistent and defensible pursuant to section 15(3) of the Public Service Act and the Public Service Commissioner's directions.

Senator FAULKNER—And the precedent you mentioned was customs services or something, wasn't it?

Mr McConville—That is the precedent, but they are quiet on the issue of where a determining officer can be appointed from.

Senator ROBERT RAY—My major point in this is not to object to Dr Kennedy—I do not think you would get a fairer person to do this sort of evaluation. My problem is if it is not interpreted as being in accord with the act we will go down another dry gully for a lot longer than we should. I assume there is still an officer under suspension, is there?

Mr Chester—That is correct.

Senator ROBERT RAY—How many other DFAT officers are currently on full pay under suspension? Are there any others?

Mr Chester—I believe there is at least one other.

Senator ROBERT RAY—Is that the long-running case that I won't mention?

Mr Chester—If I think I know what you are saying, no.

Senator FAULKNER—In the second case, how long has that officer been on suspension?

Mr Chester—I would have to check that but it has been many months.

Mr Tighe—I think at least six months.

Mr Chester—It is probably over a year.

Senator FAULKNER—Over a year?

Mr Chester—Yes.

Senator FAULKNER—Where are processes going in relation to that officer?

Mr Chester—We are waiting for processes external to the department to be finalised. It is litigation involving another agency and we need to wait for that to be finalised for this officer's status to be formalised.

Senator FAULKNER—When do you expect that case to be finalised so that you can make a decision about that officer's future?

Mr Chester—I don't think I can answer that, Senator.

Senator FAULKNER—Have we any expectations about when that one might be concluded?

Mr McConville—We are hopeful of the matter being put on for hearing shortly. There is a telephone directions hearing scheduled shortly.

Senator FAULKNER—I won't ask how we define 'shortly'—I just won't ask. If I had a white flag, I would wave it.

Senator Abetz—Does that mean we move on or—

Senator FAULKNER—It is a commentary on my level of frustration.

Senator ROBERT RAY—If this had been handed out when it should have been—so you can cut us a bit of slack there. I am still trying to find the section that allows you to appoint an outsider. I am up to the determination process.

Mr Moraitis—Senator, I could perhaps assist you with this. Nothing is expressly stating that a non-APS officer can be appointed. There is nothing expressly stated to that effect.

Senator ROBERT RAY—I cannot find anything in here that supports the case. There is nothing that harms it either.

Senator Abetz—The rationale has been pointed out to you. Whether that is disputed or not is a matter for determination on another day.

Senator ROBERT RAY—I am wondering if there is something else in the Public Service Act other than 15(3) and (4) that in fact prohibits this process, because it is not even hinted at in the third document we have just had, let alone in the act and in the second document.

Senator Abetz—You have been around longer than I have, Senator Ray, but possibly those sorts of questions might be appropriately addressed next time around to Mr Podger, the

Australian Public Service Commissioner. I am not sure that we can take it any further here given that what you have been told is that the department is of the understanding that they can do it and that they have sought advice in relation to that matter. I dare say, without saying too much, that it is a fair assumption that they would not be proceeding against advice obtained. Therefore I am not sure that we can pursue the matter any further here.

Senator ROBERT RAY—My problem with that, Minister, is that, in seeking further information on the advice obtained, it seems to be based more on a precedent—that one other department has done it and that it has yet to be challenged—than on the act or on any of these other things. That is the point that I am making. It may have even been based on legal advice but I am starting to wonder how good that is.

Senator Abetz—They are fair debating points and comments to be made.

Senator ROBERT RAY—In the end, if it is not a proper procedure the department is going to look pretty stupid—that is the only point I am making. We have had a lot of iterations of this process of inquiry into this leak, and we would like some closure one way or the other. I would hate to see Dr Kennedy do all that work and then someone go to court and say, ‘Hold on, you’re not entitled to be a determining officer.’ I suspect they are not.

Senator FAULKNER—Are ministerial offices linked into the department’s internal computer or IT system? There are two aspects to this question: ministerial offices in Parliament House and those in the minister’s home base.

Mr Tighe—The Parliament House offices are linked in and for the non-secure side of things there can be links to ministers’ homes and to parliamentary representatives’ electorate offices.

Senator FAULKNER—I am not interested in the ministers’ homes at this stage . In relation to electorate offices, is that the case with both the portfolio ministers, Mr Downer and Mr Vaile?

Mr Tighe—Yes, it is.

Senator FAULKNER—Are you aware of an issue that was raised in northern New South Wales recently about a web site poll that was undertaken by a local newspaper, the *Port Macquarie News*, and the unfortunate involvement of the Department of Foreign Affairs and Trade in this particular poll? Are you are aware of this background, Mr Varghese?

Mr Varghese—No, I am not. From a quick check at the table, it seems that none of my colleagues are either.

Senator FAULKNER—We might have to revisit this. This was a poll that was undertaken last Friday by the *Port Macquarie News*. It posted a poll on its web site about a local political issue. This has not been drawn to your attention?

Mr Varghese—No, it has not.

Senator FAULKNER—It is a very boring political issue in one sense about whether the Liberal Party should contest the seat of Port Macquarie at the next state election. I do not have a great deal of interest in who contests the seat of Port Macquarie at the next state election. There were 44 votes on this poll at 8 p.m. on the Monday night, after it had been started and

the web address had been given. Then it got bombarded with hundreds of hits, primarily from two locations. This is the issue that I want to raise with you. According to news reports, one of those locations was linked to the Department of Foreign Affairs and Trade. The poll got suspended the next morning when more than 650 votes had been cast, and the project manager of Rural Press Interactive said it was a ‘deliberate attempt to skew the poll’. I want to ask whether these votes were coming from a DFAT server. Can you assist me with that?

Mr Varghese—I will certainly look into that.

Senator FAULKNER—I would appreciate it if you would. I would like to know how appropriate it is if they were coming from a DFAT server, as is suggested in the press coverage from Port Macquarie. Needless to say, they are incensed about it up there. Does the department have a policy about online voting in these sorts of polls?

Mr Varghese—I am not aware of a policy on online voting.

Senator FAULKNER—Do you just have a general protocol in relation to the use of departmental computers?

Mr Varghese—We do have guidelines on the use of departmental computers.

Senator FAULKNER—Does that include being able to lodge multiple votes from a DFAT computer in one of these online polls?

Mr Varghese—The guidelines are intended to underline that departmental computers are essentially for official purposes, but they do allow some personal use of departmental computers.

Senator FAULKNER—Would they allow personal use to the extent of having hundreds of votes cast in an online poll?

Mr Varghese—I would not have thought that that was something we would be encouraging our staff to do. There is not much point in me answering these questions in the abstract. Let me check what the situation is.

Senator FAULKNER—When will you be able to do that for me, Mr Varghese?

Mr Varghese—I will find some information, if I can, while we are still meeting today and get back to you as soon as I possibly can.

Senator FAULKNER—Thank you for that. According to the *Port Macquarie News*, which is a local media outlet up in the north of New South Wales, 300 votes were cast from a DFAT computer. I would like to know whether the DFAT computer system was being used for political purposes—in this case running an online voting poll. I would like to know which DFAT computer was being used. I am not jumping to the conclusion that this is associated with Mr Vaile, because I do not jump to conclusions, even though suggestions have been made locally that this is the case. But I would like to nail this down, please. Can you establish whether it was the minister’s office using the DFAT server in this way? I would like to know, if that is not the case, whether it was a departmental officer. I would like to know the location of the computer. I would like to know whether it is possible that this sort of voting can emanate from the minister’s office. I would like to know, of course—you will appreciate this,

Mr Chester—whether there will be an investigation into this huge waste of time and money. So let us come back to it, please, Mr Varghese.

Senator Abetz—In fairness, I am sure the department will do its best, but given that large list of questions that has just been delivered, I think it might be a big ask to get it by the end of afternoon tea.

Senator FAULKNER—Minister, the chair of our committee will be very interested. This is all about whether there should be a Liberal Party candidate as opposed to a National Party candidate running in Port Macquarie.

Senator Abetz—Chair, we are into the political point scoring now. All I am saying is that the department will look at it, but given that large list of questions, I think it is unreasonable to expect a full response within 15 minutes.

Senator FAULKNER—I hope you would think that if this occurred—

Senator Abetz—Have we adjourned?

CHAIR—No, we are about to.

Senator FAULKNER—it was a most inappropriate and improper use of departmental computer facilities.

CHAIR—At this point we might take a break. Senator Faulkner, I think Mr Varghese has said he will get the information. I assumed that that was on notice.

Senator FAULKNER—If it is not possible to do it over the short break, we will be returning to the subprogram that deals with these issues later. We intend to progress them.

CHAIR—You are entitled to do so, Senator Faulkner. We will have a 15-minute break.

Proceedings suspended from 3.31 p.m. to 3.51 p.m.

CHAIR—Order! We have finished the portfolio overview. We move now to outputs, starting with output 1.1—Protection and advocacy of Australia's international interests through the provision of policy advice to ministers and overseas diplomatic activity. We will start with output 1.1.1—North Asia, including the Australia-Japan Foundation, Australia-China Council and the Australia-Korea Foundation.

Senator FAULKNER—Mr Varghese, what output does the Ambassador for People Smuggling Issues come under?

Mr Varghese—That would come under output 1.1.7—International organisations, legal and environment.

Senator FERGUSON—Senator Faulkner, while you are finding that, could I ask a couple of questions?

Senator FAULKNER—Yes, go for it.

Senator FERGUSON—Mr McLean, in your role representing the North Asia desk, you may or may not be aware that last Monday in the House of Representatives a private member's motion was moved in relation to Taiwan's application for observer status to the World Health Organisation. It was a motion supported by members of both parties in the House. Because of the seriousness of the effect of the SARS virus, their non-membership or

non-observer status seemed to hinder the initial reaction from the World Health Organisation to react to the problem of SARS in Taiwan. Their observer status and membership could have a dramatic effect on world health issues, both now and in the future. In view of the fact that their application for observer status is supported by both the United States and the European Union, what are the reasons for our continuing to oppose their observer status?

Mr McLean—The issue in fact never came onto the agenda, let alone to a vote. I do not think the position that you suggest that the United States and the European Union took was ever tested. There may have been some views to that effect. To my knowledge there was no public expression by either of those two parties. The position that they took, let alone our own position, has never, as it were, been stated in a forum where a vote needed to be taken. In a sense, it is a bit of a hypothetical question.

Senator FERGUSON—Do we have a position?

Mr McLean—Our position is simply that we support and understand Taiwan's desire to participate more fully at a practical level in the international health system, and we have supported whatever efforts can be made through the WHO or other channels to provide opportunities for technical and practical cooperative measures between the WHO and Taiwan. We believe that it is able to cooperate with the WHO on these technical issues, even though it is not an observer. In the best of worlds it might be better if it were in some formal status of association with the WHO, whether it is as an observer or whatever. It is most unlikely ever to be a member, because membership is open to states, and observership is not something that I understand is currently even an option either, although—

Senator FERGUSON—The Red Cross are observers.

Mr McLean—The Red Cross is an international agency, as it were. Taiwan is—and I do not think I need to explain this in any detail—obviously in an unusual position, probably similar to no other entity in respect of international recognition.

Senator FERGUSON—Taiwan has never sought membership. It has only ever sought observer status, and you said in your own reply that, in the best of worlds, it probably would be better for them to have a formalised relationship. Why shouldn't we support what would be the best of worlds, to use your term, in supporting their admission as an observer?

Mr McLean—As I say, we cannot always realise that just by standing out in our own right on such matters. We have to take account of a broad number of issues. The point that I want to emphasise is that Taiwan has a great deal of access to the technical expertise of the WHO, and indeed they moreover are able to have visits from the WHO, as they did during the course of this SARS epidemic.

Senator FERGUSON—We did not seem to have too many problems about formalising their arrangements with the WTO.

Mr McLean—That is a completely different entity.

Senator FERGUSON—I know, but we did not have any problems with it, did we?

Mr McLean—I am not sure that there is a direct analogy, Senator.

Senator FERGUSON—There may not be a direct analogy, but the point that I am making is that in the recent world health crisis involving SARS, where Taiwan was affected quite seriously—and still is today, although things seem to be getting better day by day there—they say that through their observer status not only would they have had an opportunity to take some action against the SARS virus at an earlier stage, because WHO sent two members in at a late stage after it had been prevalent for some time, but they would also be able to make a contribution to the WHO by way of their own expertise on a variety of health matters. As I understand it, the United States has passed a resolution in either the Senate or the Congress—I cannot remember which—supporting their admission to observer status at WHO. I understand the European Union has unanimously supported their observer status at the WHO. And yet in Australia we seem to have a position where we have said in the past that it must be reached by consensus, and we all know that that consensus is unlikely to eventuate, given the People's Republic of China's current attitude towards Taiwan.

Mr McLean—As you say, our position is to support a consensus on this matter, and that is the position of the United States. It is the position of the EU. When you refer to the United States sense of Congress resolution, that is exactly what it was. It was not the US State Department official spokesman saying that. And the same goes for the EU. I believe it was the European parliament that might have passed such a resolution, and that also is rather different from the EU as a body. I just want to say that all of this is really quite hypothetical because it never came to a test. There was a brief discussion as to whether a motion to consider Taiwan's being admitted as an observer would be put on the agenda. Two countries on each side spoke, and the discussion lapsed at that point.

Senator FERGUSON—You say that it has never been put to a vote, but in my experience most things are not put to a vote until they know what the outcome is going to be, particularly in organisations like that. Are you saying that it is not the policy of the United States state department to support their observer status and that it is not the policy of the European Union to support their observer status at WHO?

Mr McLean—I am not saying that necessarily; I am just saying that it wasn't tested.

Senator FERGUSON—I told you why it probably wasn't tested. Do you know what the position of the European Union and the United States is?

Mr McLean—We consulted with a number of other countries in the lead-up to this World Health Assembly and my recollection of all that is that there was considerable interest in finding some way for Taiwan to participate more actively in the WHO, but as to whether these other entities, and particularly whether the United States and the EU, were specifically going to push for observer status as such is not clear.

Senator FERGUSON—Do you know whether any countries besides the People's Republic of China were openly outspoken against their admission for observer status?

Mr McLean—Yes, there were several others; Pakistan was one. Pakistan and China were the two who spoke up against. I cannot remember who spoke in favour.

Senator FERGUSON—Thank you.

Senator FAULKNER—Mr McLean, it might be useful to receive an update from you on where we find ourselves in terms of Australia's role in trying to facilitate a diplomatic resolution between North Korea and the US.

Mr McLean—Australia continues to be actively involved in a multilateral process to bring about some resolution of the nuclear weapons development program crisis which has unfolded since October last year. We have consulted regularly at the highest level of government with the United States, South Korea and Japan. Apart from that, the Minister for Foreign Affairs has also had meetings with his counterparts in all the concerned countries. He was in Japan a couple of weeks ago and met Chief Cabinet Secretary Fukuda, the minister for foreign affairs and the minister of defence. This is a very important part of ensuring that there is an international group of countries that have a similar view on these matters, namely that we have to have a negotiation process that brings about a nuclear free Korean peninsula.

Senator FAULKNER—Thank you for that.

Senator ROBERT RAY—On 29 April, Secretary of State Powell said that the US would be discussing a North Korean offer on its nuclear programs. He said he was going to discuss that with other regional countries. Have we had that discussion or have we been informed of the nature of those talks and what the offer might be?

Mr McLean—Yes. We were briefed directly by the Assistant Secretary of State, Mr Kelly, who was the lead on the US side in the first round of talks which involved the United States and North Korea which were held in Beijing and which the Chinese also attended. We were briefed on those discussions while Mr Kelly was still in Beijing and subsequent to that, the Prime Minister has visited Washington and Crawford and he met President Bush and that was an issue that was discussed there, as I understand it.

Senator FAULKNER—What is the current status of negotiations between DPRK and the US? Where precisely are we up to as this estimates committee meets?

Mr McLean—First of all, there are no bilateral discussions going on. That is an important point to make. It was a trilateral discussion, albeit only with the Chinese in addition to the other two, that took place in Beijing in late April. Since then, there has been no further meeting involving both the United States and North Korea or, indeed, other countries. With respect to the possibility that that will occur, I guess 'in prospect' is the best way to put it. But, at this stage, there has been no further meeting confirmed for the future. In the meantime, like-minded countries—which include, in this respect, China and, to a certain extent, Russia as well as the others: South Korea, Japan, the United States and, indeed, Australia—are all keeping in close contact with each other, in particular in relation to any developments that have taken place in the nuclear weapons program that the North Koreans have been undertaking.

Senator FAULKNER—Has Australia had any role in encouraging dialogue between North Korea and the US?

Mr McLean—We do not kid ourselves that we have a major contribution to make in this but we are, nonetheless, able to speak on a regular basis—that is, in some cases, several times a week—to their ambassador here in Canberra. We discuss these issues on a regular and

detailed basis with the Americans as well as with a number of the other regional countries concerned.

Senator FAULKNER—What level is the communication with the embassy conducted at?

Mr McLean—That is usually with the ambassador. I frequently have meetings with the ambassador—perhaps once or twice every month or maybe more often than that, if need be. But, apart from that, there are four other diplomats in the North Korean embassy and they are in quite regular contact with my staff.

Senator FAULKNER—Most of our communication is conducted through the embassy here in Canberra—is that right?

Mr McLean—With the North Koreans, that is correct.

Senator FAULKNER—Is there any other method of engagement with them outside the embassy here in Canberra, or is it pretty well almost exclusively limited to that?

Mr McLean—It is not only with the embassy. At a recent meeting of the ASEAN Regional Forum senior officials in Brunei, there was some discussion of this issue and the North Korean representative was at that particular forum. Australia was part of a general push to ensure that there was a clear and strong resolution to put this issue on the agenda for foreign ministers to consider when they meet later this month at the ASEAN Regional Forum.

Senator FAULKNER—Are you able to say, in a general sense at least, what the communications involve in terms of the embassy here in Canberra?

Mr McLean—We have made it very clear that Australia shares the view of the international community and we have emphasised the point that it is simply not just an issue for the United States; it is one that we in Australia as well as other countries in the region share very much in common—namely, that a nuclear weapons free peninsula is an important force for stability within the region. The other side of the issue is of course this: if they were to go on developing their program, including the reprocessing of plutonium or the testing of missiles or even nuclear weapons, then that would be very seriously destabilising. Those points were made quite clear to them. We have also suggested very strongly that it is in their interests—not only in their security interests but in the interests of their people and their economy—that they take firm action to ensure that their program is terminated because there is the prospect that their economy could benefit from a situation that is no longer concerned simply with dealing with the nuclear issue.

Senator ROBERT RAY—I notice in the *Washington Post* on 7 May that Secretary of State Colin Powell cited the need to end North Korea's drug trafficking in addition to its nuclear program and its missile proliferation. Is it true that the Australian government has called in the North Korean ambassador over these matters?

Mr McLean—That is certainly right, Senator. During the breakout of this crisis, which happened over Easter, the North Korean ambassador was called in twice. He was then called in formally on 3 May. I did that myself. I remember it quite well. We made some very direct points to him about the community's anger, which the government shared, that Australia has apparently been targeted by North Korean drug trafficking interests.

Senator ROBERT RAY—I see now. I do not want to transgress into any future legal proceedings but do the events that occurred off the coast of Victoria represent a pattern anywhere else in the globe that you know of?

Mr McLean—We are not aware of a precisely similar incident, Senator. It could be said that it is the latest in a long history of North Korean involvement in illegal activities of this nature. That includes drug trafficking, counterfeit money distribution and shipments, WMD proliferation and that sort of thing.

Senator ROBERT RAY—Thank you.

CHAIR—There are no further questions on output 1.1.1. We move now to 1.1.2. South and South-East Asia. I understand Senator Stott Despoja has some questions on South and South-East Asia, including the Australia-India Council and the Australia-Indonesia Institute. I welcome Ms Rawson. Are congratulations in order for you? Congratulations.

Senator STOTT DESPOJA—Ms Rawson, I have some questions in relation to Aceh, particularly the government's position in relation to the recent military action between the Free Aceh Movement and the Indonesian military. Would you care to elaborate on our government's position on those exchanges?

Ms Rawson—Certainly. The fundamental points of the government's position in relation to Aceh are that the Australian government supports the territorial integrity of Indonesia and does not support the objective of independence of the Free Aceh Movement. The government considers that only a negotiated settlement based on special autonomy will lead to a sustainable resolution of the conflict in Aceh within the framework of a united Indonesia. The government would certainly urge both parties to try to keep channels open for further dialogue. The government has also urged both sides to respect the rules of armed conflict and to do their utmost to protect the rights of civilians. Those are the fundamental points of the position.

Senator STOTT DESPOJA—What form has that urging taken? Certainly we have been conscious of some of the minister's comments through the media—I acknowledge that—but I wonder whether there has been an official discussion at whatever level with, perhaps, the Indonesian charge d'affaires. Would you care to elaborate on what meetings, if any, have taken place between our government and the embassy?

Ms Rawson—The government's position, including the need to respect the rights of civilians in the conflict, has been conveyed to the Indonesian government by our ambassador in Jakarta and other senior embassy staff. That has been conveyed both to ministers and senior officials of the Indonesian government.

Senator STOTT DESPOJA—What meetings have taken place in Australia, to your knowledge?

Ms Rawson—There have been no meetings in Australia.

Senator STOTT DESPOJA—Can you tell me what understanding the department has of the events that have recently taken place—for example, martial law? What knowledge do we have of military actions and, in particular, civilian casualties in the region? Where are we obtaining that information from? I would like to know what we know but, more importantly,

where we are getting our information from. Is it from diplomatic channels? Is it through the Indonesian government? Do we have any contact in Australia with, say, members of the Free Aceh Movement? Are we getting information from that side, so to speak?

Ms Rawson—In terms of what has happened, as you would be aware a state of military emergency was declared in Aceh on 18 May and it came into effect on 19 May for an initial period of six months. Under that state of military emergency the province is under the authority of a military commander. Since that state of military emergency came into effect there have been a number of clashes in the province. In terms of our knowledge of things such as casualties, either on the Indonesian military side or GAM or civilians, I would have to say that we are very much reliant in the main on the same sources as everybody else in a situation where there is some conflict. It is obviously very difficult to ascertain the exact circumstances of incidents that have taken place, so we look to media reporting. Our embassy in Jakarta, of course, talks to as many people as it can as well. But I cannot say to you that I could give you the numbers of those killed or injured and that I would be able to have confidence in their accuracy.

Senator STOTT DESPOJA—Similarly, I suppose that would go for our knowledge, officially or unofficially, of any human rights abuses that had taken place against Acehnese people, including members of GAM. There is no specific knowledge of that.

Ms Rawson—Yes. As I say, it is difficult to ascertain the veracity of reports that are coming out. I go back and make the point that certainly in contacts with the Indonesian government, the point about needing to respect the rights of civilians is mentioned on every occasion, and the need to follow up and ensure that if such abuses have taken place they are thoroughly investigated and appropriate action taken.

Senator STOTT DESPOJA—In relation to us urging that the rights of people be respected, do you know if we have sought any specific undertakings in those meetings—for example, in Jakarta—from the Indonesian government that they will handle this dispute without any violations of international law? Is there an undertaking comparable to that that has been sought by Australia or that has been, you would imagine, the subject of discussion?

Ms Rawson—As I think I said before, we have certainly urged both sides to respect the rules of armed conflict that relate to the Geneva Convention and to respect the rights of civilians.

Senator STOTT DESPOJA—In relation to my earlier question about our source of knowledge, I take on board the point that the government is reliant upon information, like anyone else for that matter, that is coming through myriad sources—probably the media and the observers that are there. In terms of any contacts or information from the Free Aceh Movement, would that be something to which the government would have access?

Ms Rawson—I am not sure that there are any GAM representatives as such in Australia. But the department has had a meeting with Acehnese who have talked about the situation in Aceh with us. They are based in Australia, and I do not know that they would necessarily have any more information than we could all try to glean from the range of sources that we have.

Senator STOTT DESPOJA—Given that difficulty in obtaining information—presumably objective information as well—has the Australian government thought about how best we can

rectify that? What is the best way of either monitoring events on the ground or gaining information? I am thinking in terms of UN representatives, even though I understand the deficiency in asking that question and the difficulties involved in that. Is there an official government position in relation to UN monitors on the ground or granting them safe passage either from the perspective of providing that information or getting humanitarian assistance into the region?

Ms Rawson—In terms of UN involvement, the position is that Aceh is an internal issue for Indonesia and, in that case, any possible new UN involvement is a matter for the Indonesian government to discuss with the United Nations. As I think you are aware Senator, there has been external involvement earlier with the United States, Japan, EU and the World Bank, and a particular NGO has also been involved. That involvement has occurred but, as far as I am aware, the Indonesian government has not requested UN involvement in particular. Of course there are a number of UN agencies represented in Aceh on the humanitarian side: the WFP, UNOCHA—the UN Office for the Coordination of Humanitarian Affairs. I think UNICEF also have some representation. UN agencies are certainly represented there as well as NGOs, such as the Indonesian Red Cross. I also understand that there was some consideration being given by the Indonesian national human rights commission to try and undertake some kind of monitoring role of the situation there. There are a range of agencies on the ground dealing with particular aspects of the situation.

Senator STOTT DESPOJA—Do we have much direct contact, if any, with some of those NGOs or other agencies?

Ms Rawson—There has been a briefing provided by UN agencies and NGOs on the humanitarian situation to foreign missions in Jakarta. Our embassy in Jakarta attended the last of those briefings—I think it was on 29 May—so certainly there is that contact.

Senator STOTT DESPOJA—Have we sought or do we have any specific information from the Indonesian government in relation to those people who have been taken into custody since the commencement of hostilities? Is there information that Australia would have?

Ms Rawson—We do not have any particular information on that.

Senator STOTT DESPOJA—Does Australia have much information about the events that preceded the hostilities and the breakdown in negotiations between GAM and the Indonesian government—that is, the arrest and detention of those GAM negotiators—or any views of those events as they unfolded, or even in retrospect?

Ms Rawson—There certainly were some people who were detained on their way to the talks in Tokyo. I would have to check the facts. My recollection is that they were later released—some of them were later released—but I would have to check that point. As you would be aware, the talks in Tokyo did proceed. There were representatives of the Free Aceh Movement at the talks in Tokyo. They did not result in a—

Senator STOTT DESPOJA—I would appreciate if you would chase that up—and I acknowledge the Tokyo discussions—in terms of the role that they have played in leading to the current state of affairs, because of the importance of those events.

Ms Rawson—Certainly, Senator.

Senator STOTT DESPOJA—Finally on this issue—and please correct me if it is more appropriate to direct these questions to AusAID or the aid session; I am happy to wait—can you comment for the committee on Australia’s intentions, if any, to provide humanitarian assistance to the region?

Ms Rawson—I can comment briefly. AusAID might be able to provide further details. So far, Australia has provided funding to UNICEF to distribute 300 school-in-a-box kits in Aceh. I understand that the kits provide school materials in an easily transportable trunk. They have previously been successful in terms of continuing schooling in areas of conflict. That contribution has already been made. Certainly Australia stands ready to provide further humanitarian assistance if an appeal for Aceh were to be launched.

Senator STOTT DESPOJA—Are you able to explain the distribution method of those? I am happy to talk to AusAID about it.

Ms Rawson—I am sorry, Senator.

Senator STOTT DESPOJA—Thank you for your answers.

CHAIR—Senator Ray, do you have any questions on output 1.1.2?

Senator ROBERT RAY—Around about the time of the release of the defence update, the idea of resuming cooperation with Kopassus was floated. Given the fact that Kopassus will have an absolutely crucial role as a counter-terrorist response force, can we have an update of where we may be up to with those discussions?

Mr Varghese—The government took the view that it was in Australia’s interests as part of our cooperation in countering terrorism that we should open up a line of communication to the part of Kopassus that would be responsible for hostage recovery and hijack resolution. We are in the process of developing those links—I should say we are just in the very early stages of that.

Senator ROBERT RAY—We have always had the dilemma, haven’t we, with special forces—that they nearly always have more than one role? They have a counter-terrorist role; they are also part of an armed forces offensive capability. Are you able to distinguish between the two in your cooperation? Some people would argue—I would not—that, if you train for one, it has flow-on consequences for the other. If you cooperate on one, it has consequences for the other. Another school says you can quarantine the various things so you only cooperate on one particular area of mutual interest. Does the department have a view on that?

Mr Varghese—I think there is probably a little bit of truth in both views. Our position is that the relationship with Kopassus will be limited to that part of Kopassus that has counter-terrorism responsibilities, and so it is not an across-the-board relationship with the special forces. We believe that we can do that in a way which would certainly serve Australia’s interests in the event that we are ever faced with a hijack situation. I think, so far at least, we have been reasonably confident in that judgment.

Senator CHRIS EVANS—What is the current level of contact? It was not clear from your answer. For instance, are we letting Kopassus officers into the training establishments at the moment?

Mr Varghese—No. The contact will be that, in the first instance, we will have some senior Defence officials visiting Jakarta to discuss these issues with Indonesian authorities—not just any individual Indonesian authority but to discuss it with TNI and other parts of the Indonesian system which are responsible for counter-terrorism.

Senator CHRIS EVANS—Does that mean things have not really progressed very far? Do I take it that you are still at the stage of discussing what the arrangements might be?

Mr Varghese—That is right.

Senator CHRIS EVANS—I understood the Americans in particular were looking more to developing links with police forces and supporting them than supporting Kopassus. Is there a difference in approach between the Australian government and the US government?

Mr Varghese—I do not think so. We are also working this issue through the police, because POLRI has a very important role in parts of the counter-terrorism effort in Indonesia. I think you will know from the example of the investigation into the Bali bombing that the link into the Indonesian police force is very strong between Australia and Indonesia. But POLRI does not have total coverage of this issue, and it is particularly in that area of counter-hijacking capability that we need to work with other parts of the Indonesian system. But it is not an either/or—we are doing both.

Senator CHRIS EVANS—Reading between the lines of what the minister has been talking about—he has been concentrating, though, on Kopassus and the military link—are we doing anything in terms of the police link on counter-terrorism?

Mr Varghese—Certainly. We have a very extensive cooperation program, AFP to POLRI, that includes CT.

Senator CHRIS EVANS—What about military links? Is there any military link into the Indonesian police efforts? I am not sure about their boundaries in terms of what organisation does which task inside Indonesia. Are there any ADF links into police links inside Indonesia?

Mr Varghese—ADF to POLRI links?

Senator CHRIS EVANS—Yes.

Mr Varghese—I would have to take advice on that. Our ambassador for counter-terrorism advises me that there are not any.

Senator CHRIS EVANS—So in terms of the proposal for contacts with Kopassus, are they limited purely to the counter-terrorism role or was it envisaged they would be broader?

Mr Varghese—Our intention is to restrict it to counter-terrorism.

Senator CHRIS EVANS—What does that mean, for instance, for things like offering places at ADF colleges and the traditional training opportunities we afford Indonesian officers?

Mr Varghese—You would have to ask the Department of Defence.

Senator ROBERT RAY—Building on those police to police links must be very important now. It is self-evident that they have worked exceptionally well. Are there any plans to expand other areas of that sort of cooperation, based on the success of the police to police links?

Mr Varghese—I will ask Mr Warner to respond to that.

Senator ROBERT RAY—You have not left yet?

Mr Warner—I am hoping to leave very shortly—my flight is in about an hour. You may remember that on 25 October last year the Prime Minister announced a \$10 million package of counter-terrorism assistance to Indonesia. A large proportion of that money—over \$4 million—will be spent on counter-terrorism assistance with POLRI. Some of that will go the establishment of a transnational crime centre with a counter-terrorism focus that AFP, together with AusAID assistance, will establish and equip and provide the training to. That will, we hope, substantially improve and increase POLRI's capacity to deal with terrorism generally.

Senator ROBERT RAY—Are you involved in developing or monitoring other links of Australia's counter-terrorist capacity, through Federal Police and SAS, with other countries in the region? What sort of cooperation is occurring?

Mr Warner—Yes, that is a core function of my position.

Senator ROBERT RAY—Would you like to tell me what is happening in some of the other countries in the region—what sort of cooperation we are undertaking? We will come back to the MOU in a minute.

Mr Warner—Where would you like to start?

Senator ROBERT RAY—Could you give me some examples of other countries where we are cooperating in the counter-terrorist area? I am talking in terms of intervention to resolve a problem through armed force.

Mr Warner—Through armed force?

Senator ROBERT RAY—Yes.

Mr Warner—We are not providing any assistance of that sort.

Senator ROBERT RAY—Any training for them to resist hijackers that have taken over a plane? We don't provide anything along those lines?

Mr Warner—As Mr Varghese was pointing out, there is the beginnings of a process of establishing a dialogue with Unit 81 of Kopassus that may well lead to that.

Senator ROBERT RAY—I am looking a little more broadly in the region than Indonesia—we have taken the evidence on that and I am satisfied with that. I am talking about the Philippines or Thailand or any of our other regional friends. Are we developing any programs of cooperation that involve training and exchange of concepts, if you like?

Mr Warner—Counter-terrorism capacity building throughout the region and broader counter-terrorism assistance in this year will amount to something like \$20 million or \$30 million, off the top of my head. It is a very broad array of activities that we are engaged in. A lot of it concerns, for instance, APEC where, at one end of the scale, there are aviation and maritime security initiatives that I am sure you will be aware of and, at the other end of the scale, there is the sort of activity that AFP and, in future, Defence will be engaging in. At the base, the foundation, of all that are the MOUs that, as you know, we have recently agreed which provide the platform or perhaps the bones on which to put some CT flesh.

Senator ROBERT RAY—Do you think we will have some difficulties in future in interpreting MOUs on counter-terrorism and these other things through a definition of what constitutes terrorism? Some people would argue—not necessarily me—that an ethnic insurgency is simply a breakaway and others will argue that it is a terrorist group. In those circumstances how do we go about defining terrorism so that we have a commonality of definition with whoever we are cooperating with?

Mr Warner—It is a bit of an age-old question, I agree, but there is a definition of terrorism in the criminal code. The United Nations acts on definitions of terrorism. But, you are right, there are grey areas—

Senator ROBERT RAY—I am sorry to interrupt you but we discovered when we were passing a package of bills on terrorism in this parliament that our definition was different from the Canadian, New Zealand, US and British one—in fact, there was not a common one—and it was different to the United Nations one. We would like to think we had the best definition in this country. But if there are those sorts of differences with very close allies I am wondering how the definition works with friends in the neighbourhood that are not necessarily part of the old club of alliances.

Mr Warner—It is a difficult issue, I agree, but in some respects, at one end of the spectrum, those terrorist groups define themselves very easily and universally. No-one in the region is disputing that al-Qaeda is a terrorist group or that Jemaah Islamiah is a terrorist group.

Senator ROBERT RAY—The *Far Eastern Economic Review* reported on 27 March that new legislation was being considered by the Indonesian government that would give the armed forces unilateral authority to deploy troops in emergency situations. I interpret that as meaning they would not need civilian authorisation. Do we know what has happened to that legislation and what the consequences might be?

Ms Rawson—I would have to take that question on notice. I certainly am aware of the draft legislation to which that article refers, but I do not know whether it was finally passed by the Indonesian parliament or whether it is still in draft form. I will take that on notice and provide you with an answer.

Senator ROBERT RAY—Thank you. I think South Asia is the right section for this. I do not see many references to Pakistan in DFAT publications. Just how much do we regard Pakistan as a key player in the region in terms of stability or threats to stability?

Mr Varghese—It is an important bilateral partner of ours. It is a very important country not only in terms of regional stability and security issues but also, now even more importantly, in terms of the role that it is playing in the global campaign against terrorism. I think the effort that Pakistan is making, working with the US and others in the fight against terrorism, has been very important. It has certainly been very important for the prosecution of that campaign. In terms of overall priorities, from our point of view it is an important player.

Senator ROBERT RAY—What sort of bilateral activities are we pursuing currently with Pakistan that you can let us know about?

Ms Rawson—The trading relationship is not a major relationship for us. The total trade of exports and imports is \$631 million per annum. Clearly, there have been factors in advancing the commercial relationship, such as the security situation in Pakistan, which have impinged upon that. We have discussions with the Pakistani government about our defence relationship and on the broader security issues that Mr Varghese has mentioned. So it is—if I can use the word—a normal bilateral relationship.

Senator ROBERT RAY—Do you have any concerns about the possible export of nuclear technology knowledge from Pakistan to other countries—North Korea in particular? Is that a concern of ours? Do we have any knowledge of that?

Mr Varghese—We are very concerned about the overall issue of the proliferation of nuclear weapons. As part of that, we are a very strong supporter of regimes to restrict the export of sensitive nuclear material. That concern applies across the board. It applies in particular to those regions of the world where the proliferation of nuclear weapons has been a very significant security development. I would put our interest in Pakistan in that broader context.

Senator ROBERT RAY—What do you say to that, Mr Luck? Has the possible exchange of nuclear technology for missile technology been an issue that has come across your desk? Is that a hidden problem or agenda in a lot of the things you deal with?

Mr Luck—I am sorry, Senator, but I actually missed your first question. I take it that your question just now was a summary of what you said earlier.

Senator ROBERT RAY—I was wondering whether we had concerns about Pakistan, which, as press reports say, has been possibly involved in the export of nuclear technology knowledge to North Korea, and I just extended that question to you. Is this a problem? The counterargument in the media is that North Korea is exporting missile technology to Pakistan. Everyone could be a loser out of that in the long run.

Mr Luck—That information is pretty much in the realm of the picture that intelligence agencies put together. To the extent that we understand it, and we probably do not have a full picture of that, it is a possibility that does worry us. There may have been exchanges of that kind whereby North Korean missile technology may have been made available to countries in the Middle East and they may have had some assistance in return with aspects of sensitive nuclear technology. It is something that concerns us. As Mr Varghese said, we put a lot of effort into trying to set up international systems and regimes which dampen the demand for this sort of thing and constrict the supply of sensitive equipment. We have taken a very prominent role in a number of those export control regimes to try to prevent this sort of thing happening, but we may need to try to find new ways to be more proactive in this area.

Senator ROBERT RAY—I have not seen much reference in any DFAT publication to the situation in Afghanistan, which seems to have slid out of public view while the matters in Iraq and other things were being resolved. Do we have an up to date assessment of where Afghanistan is at, of what our evaluation is and of where we are assisting?

Ms Rawson—The basic points to be made are that the Afghan transitional administration, led by President Karzai, is doing a good job in very difficult circumstances. It is giving priority to ensuring the delivery of basic services to as much of the Afghan population as it

can and to establishing the essential infrastructure of government. It is, however, working within an extremely difficult security situation where—at least outside Kabul—factors such as remnants of al-Qaeda and Taliban forces, issues of warlordism and outright criminal activity continue to create security risks in a number of areas and make it difficult for the transitional administration to exert its authority over the whole of the country.

Senator ROBERT RAY—I am wondering if there is enough international concentration on the problems of Afghanistan and if those have not been overtaken by other issues—the potential crisis with North Korea and the intervention in and reconstruction of Iraq. Afghanistan, which was front and centre on the stage, is disappearing backwards and is suffering because of that.

Ms Rawson—There continues to be an international security assistance force in Afghanistan and the international community continues to be very involved in terms of the delivery of humanitarian and development assistance to Afghanistan. There certainly continues to be a focus from the international community to try to ensure that the efforts of the transitional administration to establish its authority and to start to deliver countrywide the basic services to its people are met.

Senator ROBERT RAY—You mentioned earlier that warlordism is an inhibiting factor here. To what extent is that warlordism representative of the Taliban, al-Qaeda or similar organisations, or is it more a traditional ethnic division?

Ms Rawson—I would not pretend to be an authority on Afghanistan but my understanding of what is meant by warlordism is that it certainly relates more to traditional power centres rather than to remnants of the Taliban.

Senator ROBERT RAY—I am not sure if you can help me on this issue, and I am much less an expert than you are on this, but the problem of drug production in Afghanistan has had a lot of ups and downs over the last two or three decades. Do we have any recent information that it is back out of control again? Some people would argue that the only thing the Taliban ever did was to temporarily wipe it out for some reason or other for a little while. Do you know what the situation is currently on that?

Ms Rawson—I do not have any figures before me of the levels of opium production but I am aware of reports that since the fall of the Taliban drug production has increased again. To refer to the security situation again, I think that is a factor in that it has not been possible so far for the transitional administration to exercise its governmental responsibilities throughout the country. I have been told that one factor in the drop in production under the Taliban was that at one stage at least there were such stockpiles that it was not going to do the market price much good to increase production. It is an issue that needs to be addressed. Doing that will require an improvement in the security situation and the people who are getting their livelihoods from drug production will have to have other means available to produce income.

Senator ROBERT RAY—I know this may impinge on the aid budget more than anything else, but can you tell us what our financial commitment will be in helping to reconstruct Afghanistan in the next financial year?

Ms Rawson—I do not have the figures in front of me for the cost in the next financial year. Overall since September 2001, Australia has pledged over \$78.9 million in humanitarian and

reconstruction assistance, and about three-quarters of that has been disbursed. I would have to defer to AusAID for the particulars of the overall figure.

Senator ROBERT RAY—Is it the responsibility of our diplomats to talk to the interim government about reabsorbing asylum seekers whose claims have failed, especially with the changed circumstances in Afghanistan? Is that something we do—make representations and negotiate with the interim government?

Ms Rawson—Our diplomats accredited to Afghanistan are based in Islamabad. We do not have a mission in Kabul. I would have to check this but I think that most of the discussions with the Afghan government on those issues relating to people who have sought asylum et cetera have been more directly done through DIMIA officials talking to representatives of the transitional administration or visiting officials from Afghanistan talking here. As I say, I would not say categorically that our post has not been involved in that. I would have to take that on notice and check that for you.

Senator ROBERT RAY—I would appreciate that. I do not think I have any more questions on 1.1.2 but Senator Faulkner might have.

Senator FAULKNER—I was interested to know whether the interagency people-smuggling group still regularly meets in the Australian embassy in Jakarta.

Mr Varghese—We might have to take that one on notice and get back to you.

Senator FAULKNER—You are not aware whether it does or not?

Mr Varghese—No. My expectation is that it still meets but I need to check that.

Senator FAULKNER—If it does meet, can you indicate how often it meets? If it does not meet, perhaps you can indicate when the group wound up and why it wound up.

Mr Varghese—Certainly.

Senator FAULKNER—Would you be able to provide that information for us?

Mr Varghese—I will take that on board.

Senator FAULKNER—I do not expect you to have this detail in front of you, but could I ask you to provide for the benefit of the committee, please, a list of those who attended the interagency people-smuggling group's meeting at 8 a.m. on 13 June 2001?

Mr Varghese—This is in the embassy in Jakarta, Senator?

Senator FAULKNER—That is right.

Mr Varghese—I will take that on notice.

Senator FAULKNER—And if you could indicate, please, which agency or department they were from, if that information is available. I remind you that Dr Raby, in a previous round, indicated that there were no records kept of the interagency people-smuggling meetings, so I do not know how easy it will necessarily be to find out this information. I am certainly aware of the evidence that he gave. Can I confirm with you that there is no formal record of that interagency people-smuggling meeting on 13 June 2001? As I say, the only information we have on this is Dr Raby's more general evidence to us that there were no records kept of these meetings.

Mr Varghese—I will take that on notice, Senator.

Senator FAULKNER—That would be helpful. It is a pity that Dr Raby is not here. Does this mean that generally no-one took notes while these meetings were going on? Would that be the case?

Mr Varghese—I do not think I can add anything to what Dr Raby told you at the last estimates committee. I do not know whether someone would have taken notes in the course of the meeting. I am happy to check that out for you.

Senator FAULKNER—It is pretty unusual, isn't it, going to these sorts of meetings and no record being provided?

Mr Varghese—It is not unusual to have within an embassy meetings of agencies and not have a record. That is not unusual at all.

Senator FAULKNER—Not even when the minister attends?

Mr Varghese—It is very unusual for ministers to attend interagency meetings, so I would not put that in the general category.

Senator FAULKNER—You might not put in the general category but, on this particular occasion, Minister Ruddock was actually present—so it is not usual. I would have thought that, if a minister were present, notes would be taken—is that right or wrong?

Mr Varghese—I will need to check whether notes were taken on that occasion.

Senator FAULKNER—Yes. But can you outline for me the general protocols or principles involved here. If departmental officers are involved in a meeting with a minister, is it normal practice to take notes?

Mr Varghese—It would depend on the nature of the meeting. Often a minister would visit a post and have a meeting with A based staff, and it would not always be the case that a record would be done of that meeting. It depends on the nature of that meeting.

Senator FAULKNER—So there is no general protocol in relation to that? If you could you check whether anyone at the meeting took contemporaneous notes, I would appreciate it. This is for the meeting of 13 June 2001. I would also like you to check if there were any file notes or other notes recorded after the meeting. Would you be able to check that for me?

Mr Varghese—Yes, I will take that on notice as well.

Senator FAULKNER—In relation to Mr Ruddock's program for the remainder of Wednesday, 13 June 2001, could you establish whether anyone from the embassy accompanied Mr Ruddock to his other meetings on that date?

Mr Varghese—I will look into to that.

Senator FAULKNER—If they did attend, could you find out who they were and which meetings they attended? Could you also find out, in relation to those meetings, whether there were any contemporaneous notes or other records of the meetings? Could you establish that for me, please?

Mr Varghese—Yes, I will look into that.

Senator FAULKNER—It may require that you make that request of all the DFAT participants at the meeting—I do not know. I do not know if there were any. Well, I know there were some because I can point out to you that some information has been provided by the Department of Immigration and Multicultural and Indigenous Affairs in answer to a question on notice.

Senator Abetz—Do you have a reference for that, just for ease of departmental officials to cross-reference it? If you don't, don't bother; I do not want to delay the proceedings.

Senator FAULKNER—Budget estimates hearing, 29 and 30 May 2002, Immigration and Multicultural and Indigenous Affairs portfolio '(43) Output: Internal Product'. The reference to the question asked is '(L&C 328)'. I am happy to outline the other meetings, if it is of any assistance. There was the interagency people-smuggling group meeting at 8 a.m.. The other four relevant meetings were: Mr Ruddock met with His Excellency Dr Marsilam Simandjuntak at 9.30 a.m.; Mr Ruddock met with His Excellency Dr Alwi Abdurrahman Shihab at 11.30 a.m.—

Senator Abetz—I reckon *Hansard* might be looking for some spelling on these!

Senator FAULKNER—I think they would think this is rather expert pronunciation, wouldn't you say, Mr Varghese?

Mr Varghese—I don't know.

Senator FAULKNER—No, I did not think you would say that.

Mr Varghese—I have taken careful notes.

Senator Abetz—Sounds like—

Senator FAULKNER—At 14.30 to 14.45, Mr Ruddock met with Professor Yusril Ihza Mahendra; and at 15.15 Mr Ruddock met with Mr Jakob Tobing. That will perhaps assist you to explore this if you go to that answer to a question on notice provided to another committee. In response to the minister, that is the relevant reference.

Senator Abetz—Thank you.

Senator FAULKNER—Speaking of Mr Mahendra, who was involved in the 2.30 p.m. to 2.45 p.m. meeting with Mr Ruddock on that date, Mr Mahendra is currently in Australia, isn't he, Ms Rawson?

Ms Rawson—Yes, he is.

Senator FAULKNER—He had a meeting today with the Attorney-General, Mr Williams—or he had planned a meeting with the Attorney-General, Mr Williams, today.

Ms Rawson—I understand there was a meeting scheduled, yes.

Senator FAULKNER—Were there Department of Foreign Affairs and Trade representatives at that meeting?

Ms Rawson—No.

Senator FAULKNER—It has turned into a diplomatic disaster, hasn't it?

Senator Abetz—I do not think that is a fair question.

Senator FAULKNER—Well, what did it turn into? What happened to the meeting?

Ms Rawson—As I understand it—and I do not have the full details—Mr Mahendra was due to meet the Attorney-General at Parliament House. There was an issue with regard to the security procedures for the delegation to enter Parliament House and the minister, Mr Mahendra, decided that it would not be appropriate for the delegation to proceed into Parliament House and the meeting did not take place.

Senator FAULKNER—He was left waiting at the entrance to the executive wing, wasn't he?

Ms Rawson—I am not aware of that. It may have happened but I am not aware of that circumstance.

Senator FAULKNER—Wasn't he left waiting there for half an hour?

Mr Varghese—We are dealing with events that occurred while all of us here in the room remained in this area.

Senator FAULKNER—Yes, of course. But Ms Rawson is always terribly well briefed, as you can see, Mr Varghese. She actually knows something about this, so I am just trying to understand the background.

Senator ROBERT RAY—The reason I am interested in this line of questioning is that I raised at this committee last time or the time before, very briefly, what you do in terms of airport security and other security in relation to foreign visitors. I raised in particular the expression of concern from the Malaysian trade minister—do you recall that? I asked then about how you smooth the way. I am not asking anyone to abrogate proper security checks, by the way, but how you actually approach it to make sure there are no problems. That is why this line of questioning is relevant, even though it occurred today, because we have raised it in the past.

Senator FAULKNER—How was this matter drawn to your attention, Ms Rawson?

Ms Rawson—I received the information that I have conveyed to you from one of the people in my division in the department.

Senator FAULKNER—Do you know how the division was advised of the diplomatic—

Senator ROBERT RAY—Imbroglio.

Senator FAULKNER—imbroglio, stand-off—call it what you will?

Ms Rawson—No, I am not aware of the source of their information, whether it had been conveyed through the media or they had spoken to other officials who were involved in the arrangements for the visit. I do not know the source. It was a very brief telephone conversation with one of the officers from the division.

Senator FAULKNER—So you are not aware of how serious a diplomatic slight this is from Mr Williams to Minister Mahendra?

Mr Varghese—We are dealing here with third-hand information. I would much prefer that we give you good information and take any questions that you have on this on notice. Ms

Rawson is basing her comments on a conversation she had with a departmental officer who was not present then. That is what I mean by third hand.

Senator FAULKNER—I appreciate that that departmental officer and Ms Rawson were briefing themselves for the inevitable Senate estimates question that would arise as a result of this problem.

Senator ROBERT RAY—I think Mr Varghese's point has some validity. So can we ask you to get a bit briefed up on it and we will revisit it at 7.30 p.m? You may then indicate to us if you have enough information and we can find out some things; if not, you can tell us you haven't enough information and then you can take it on notice.

Mr Varghese—I will certainly diligently follow up that request, but I would like to point out that there were no DFAT officers present during this incident.

Senator ROBERT RAY—No; I understand that.

Senator FAULKNER—We can at least establish how your officer was informed of this.

Senator ROBERT RAY—Not only that, I assume that arrangements for the visit involved DFAT somewhere. It still goes back to my point about your responsibility and the way we would encourage you to try to make any of these visits smooth by anticipating problems. In any event, you may well be able to come back to us and say, 'We had minimal involvement here,' or whatever. I recognise that at 10 past five it may be difficult. You point out that you have been here since nine o'clock this morning. It is difficult; I understand that. But if you get the chance, rather than get the answer on 10 July—because there may be follow-up questions—we might have a chat to you about it at 7.30 p.m. Is that all right?

Mr Varghese—Sure. I will follow it up during the dinner break.

Senator ROBERT RAY—Thank you.

CHAIR—Are there any more questions?

Senator STOTT DESPOJA—I have a couple of quick questions for Ms Rawson. Following on from Senator Ray's questioning about Afghanistan, my understanding is that there has been a changed election timetable as a consequence of some of the difficulties that they have been facing. I am wondering whether there is a role for Australia or whether there has been a request for assistance from Australia in relation to the postponed elections—that is, any electoral assistance in the form of resources, be it people or finances.

Ms Rawson—As far as I am aware, there has been no request to Australia with regard to the elections, but certainly if I am incorrect in that I will set the record straight and provide advice to you. I am equally not sure that in fact the elections have been postponed as yet. As you would know, under the terms of the Bonn agreement those elections are due to be held by June 2004. Certainly there have been discussions about the steps that need to be taken to ensure that those elections can be held on that date, and again the security situation is clearly a factor in whether elections can be conducted in a free and fair manner throughout the country. As I say, I am not aware yet whether there has been any formal decision taken to postpone but again I will correct the record if indeed that has been the case. I know it has certainly been an issue of discussion but I am not sure that there has yet been reached a conclusion that they cannot happen on that date.

Senator STOTT DESPOJA—Thank you; any information would be appreciated. My last question relates to West Papua. There was a conference held in Melbourne on 25 or 26 February this year, as I suspect you would be aware. I am wondering whether the department or, to your knowledge, the minister had any concerns about that conference being held and whether you or the department are aware of any phone calls that were made by the minister or anyone from his office to the organisers of that conference or, indeed, to the Victorian Arts Centre, where there was due to be a Free West Papua concert held. Were any phone calls made expressing the Australian government's concern or any requests made for that event not to go ahead or to go ahead at a changed venue?

Ms Rawson—I can say that there was certainly no call made by my division in the department or by anywhere else in the department. I cannot speak for ministers' offices. I am not aware of any call, but I cannot speak for the ministers' offices as to what calls were or were not made.

Senator STOTT DESPOJA—Finally, on that issue, I am assuming the department did not have any concerns with that conference taking place, as it did in February this year.

Ms Rawson—It was not an issue for us in terms of whether it would or would not take place. Obviously, I think we have talked previously about the government's position with regard to Papua—

Senator STOTT DESPOJA—That is why I did not ask any other questions. I am not going to put you through that again.

Ms Rawson—That position was obviously not shared by the organisers and the people who participated in the conference, but that is one of the nice things about being in Australia—there can be differences of views. So it was not an issue of concern to us.

Senator ROBERT RAY—Could I ask what the modern-day, correct term is: should we be using the term Irian Jaya or West Papua, or are they interchangeable? Are there any diplomatic consequences in using one as opposed to the other?

Ms Rawson—Under the special autonomy law which came into effect on 1 January 2002, the official name of the province is Papua.

[5.16 p.m.]

CHAIR—We move now to output 1.1.3, Americas and Europe.

Senator ROBERT RAY—I have really only one issue in this area. I noted that the *London Financial Times* of 9 May claims that the US House of Representatives International Relations Committee has rejected an administration request for a waiver of ITAR, the international traffic in arms agreement. Do we have any further information on whether that report in fact is true?

Mr Ritchie—I do not have that information, but I wonder if my colleague Les Luck does.

Senator ROBERT RAY—He is a subscriber!

Mr Luck—Senator, I return to the table to ask if I might take that question on notice.

Senator ROBERT RAY—I will detail it out a bit in that case. We have been trying for three years to negotiate a waiver here, and it seems that Congress has knocked it over with

one stroke of the pen. I need to know what the knock-on consequences are from the department's point of view, even though it is more relevant from the Department of Defence to projects such as AWACs and joint strike fighters, on the basis that you are the group that usually carries out the negotiation. The ramifications are in Defence—I understand that—but I would just like to get an update, on notice by all means, of whether in fact the Congress has sunk it, what we see as the consequences and what we are doing about trying to rectify it.

Mr Ritchie—We can certainly find out the state of play for you.

Senator ROBERT RAY—That would be good.

Senator FAULKNER—Could I ask whether the department has had any contact or is aware of any contact with the US State Department, the Pentagon, the White House or any other elements of the US administration regarding the potential placement of US military personnel on Australian soil?

Mr Ritchie—The position for us is as has been outlined by the Prime Minister. He said that neither he nor Senator Hill had been approached on the bases issue. I think Senator Hill has taken that up in Singapore last weekend with Paul Wolfowitz, the Deputy Secretary of Defense for the United States. It might be a question better asked of the Department of Defence. I am not aware of any contact on that issue.

Senator FAULKNER—That is a fair enough answer, but I was careful to note in my question that I asked it in relation to your agency and whether you were aware of any contact or had any contact about that issue.

Mr Ritchie—Senator, I am not aware of any contact.

Senator FAULKNER—Are you aware of any contact with the post in Rome over the past eight days about the attempt to ensure that the Italian government made a contribution towards the Prime Minister's trip there when he stayed at the St Regis Hotel. Are you aware of any contact that the department might have had with the post at Rome about this matter in the last eight days?

Mr Ritchie—Yes, Senator. We have had contact with the post in Rome. The post in Rome has sent two cables on press reports on this issue—one in the widely read *Corriere della Sera*. They have also sent a message which says that Deputy Minister of Foreign Affairs Boniver has, I believe, talked to the ambassador about it to seek his understanding of what actually transpired in Senate estimates. The embassy in Rome has provided its understanding of what actually occurred in terms of recommending that hotel and in terms of the Italian government's payment for it.

Senator FAULKNER—What was that understanding?

Mr Ritchie—The understanding was that, after looking carefully at the notes for guidance for prime ministerial visits, the embassy in Rome recommended the St Regis Grand as being the hotel which met the requirements of that document and met security requirements. I also understand that the Italian government has made it clear that it has met its contribution to the expenses.

Senator FAULKNER—When did the Italian government make it clear that it had met its contribution?

Mr Ritchie—I am not exactly clear when, Senator, but it was contained, I believe, in an answer to a question in parliament by the Prime Minister, where he said that the Italian government had met its contribution.

Senator FAULKNER—I know the Prime Minister has said that, and that received some publicity. I am trying to establish from you what the actual situation is in terms of the payment process. When was the post or the department informed that the Italian government had paid its contribution in full?

Mr Ritchie—By deduction, Senator, it would have been between the estimates consideration of this subject and when the Prime Minister answered the question in the House. Frankly, I don't know. The embassy would have been in contact with the Department of the Prime Minister and Cabinet, which is the organisation which looks after the Prime Minister's travel and his accommodation.

Senator FAULKNER—So the facts of the matter are that the Italian government are refusing to pay any more moneys in relation to this hotel bill?

Mr Ritchie—I do not know the complexities of this issue. The Italian government has met its contribution. That is its position.

Senator FAULKNER—What I am asking is: when did it meet its contribution and when was the post informed that it had met its contribution?

Mr Ritchie—My understanding is that it met its contribution fairly promptly after the Prime Minister visited.

Senator ROBERT RAY—Would you take us through the methodology of paying these bills. Does a bill actually come to the post, the post pays it and seeks reimbursement from (a) DOFA and (b) the host government, if they are making a contribution? I am not sure. Is that right?

Mr Ritchie—I would think that is the case. It would depend on the arrangement made by the post with the Italian government at the time as to whether the Italian government would pay an amount.

Senator ROBERT RAY—I wonder how many people in the audience have been posted overseas and may have dealt with these matters—you may not have—and could tell us what the methodology is. Do you know, Mr Varghese?

Mr Varghese—My understanding—and it may vary from visit to visit depending on the nature of the visit because I think the status of the visit sometimes has an effect on this—is that the bill is received by the post, the post seeks funding authority for its payment and it is paid. Whether the post pays the bill and then gets a reimbursement or whether it waits for that funding authority and then pays it is something that I cannot be categorical about.

Senator ROBERT RAY—Where does it seek its payment from in these circumstances? You do not know if it would pay the bill without having got the funds transferred to it? Otherwise, does it wait until the funds are transferred to it and then pays the bill?

Mr Varghese—That is what I cannot clarify for you.

Senator ROBERT RAY—I know we do not have a big audience, but if someone has been in this position they might know. Ms Hazell, would you know?

Ms Hazell—I believe it depends on the nature of the visit and the arrangements that we make with the individual accommodation establishments. Sometimes the post does pay and it seeks reimbursement from either the Department of Finance and Administration or from the travelling minister's home department, depending on who is responsible for the cost. At other times that funding is forthcoming in advance of the payment being made.

Senator ROBERT RAY—What about arrangements where it might be a split charge between the host country and the Australian government, whichever way it is then funded?

Ms Hazell—I would only be guessing if I were to answer that question in this case.

Senator FAULKNER—Mr Ritchie, you have indicated to the committee that the moneys that were paid by the Italians, as their contribution to this bill were paid soon after the visit. I think that is what you told us.

Mr Ritchie—That is as I understand.

Senator FAULKNER—You said those moneys were paid in full and that the Italians made it clear that was the limit of the contribution they were going to make.

Mr Ritchie—Frankly, I do not have any further detail on what I have said. They paid their contribution. I am not sure what the remainder was.

Senator FAULKNER—But the point is that we were told at the Department of the Prime Minister and Cabinet estimates last week that that department was waiting on urgent advice about a contribution from the Italian government. That is wrong—isn't it?

Mr Ritchie—It is not the situation, as I understand it. My understanding is that the government of Italy have paid the contribution. I am not sure when they paid the contribution.

Senator Abetz—The contribution as they deemed it was payable by them. That of itself is not necessarily the agreement. I do not know what the agreement was between the Australian and Italian governments, so that needs further clarification, and we do not have that information.

Senator FAULKNER—As we didn't ask you any questions, Minister, to expose that level of ignorance you—

Senator Abetz—Yes, you did. In fact, every question you ask is asked of me and then it goes through to the departmental officials.

Senator ROBERT RAY—No, that used to be the case until standing orders changed about eight years ago. That is not actually the case, but I would prefer that to be the case. So you are actually wrong in that interpretation.

Senator Abetz—No.

Senator ROBERT RAY—Yes, you are. It's in the standing orders.

Senator FAULKNER—Do we know how much money the Italians paid? We know that they paid it soon after the visit, as you understand it, Mr Ritchie. Do we know how much they paid?

Mr Ritchie—I do not have an exact figure. I think the question is best directed to the Department of the Prime Minister and Cabinet, which looks after the Prime Minister's travel. They would have been in direct contact with the embassy in Rome.

Senator FAULKNER—You are giving very different information from what we received at the Department of the Prime Minister and Cabinet estimates.

Senator ROBERT RAY—I think it is more accurate.

Senator FAULKNER—I am sure it is more accurate. I would appreciate any assistance you can give us. These moneys are paid to the post, aren't they?

Mr Ritchie—Do you mean the money from the Italian government?

Senator FAULKNER—Are they paid to the post?

Mr Ritchie—They would be paid direct to the hotel.

Senator FAULKNER—So are there effectively two invoices at the hotel? Does the hotel do the calculation on the proportion to be paid by the Italians and the proportion to be paid by the Australian government?

Mr Ritchie—As I said, I really am not across the detail of this and the Department of the Prime Minister and Cabinet would be.

Senator FAULKNER—They are not before us and, when they were, they gave us different information from what you have given us.

Mr Ritchie—But did they not say that they would be coming back to you on the situation?

Senator ROBERT RAY—It is amazing that after questions over two estimates they could not give us the details but, when the blowtorch went to them the next day, a lot of the details suddenly appeared. We didn't have the benefit of it and that is why we are checking the details with you.

Mr Varghese—We are dealing with a set of arrangements that were put in place directly between the post and the Department of the Prime Minister and Cabinet. They are not arrangements typically where the department here in Canberra involves itself. Prime ministerial visit arrangements are typically done between a post and the Department of the Prime Minister and Cabinet. We are finding ourselves in a position where you are asking us questions on an issue in respect of which we have no direct involvement.

Senator ROBERT RAY—I think that is the point Senator Faulkner was trying to find out. He was trying to find out whether in the last week you have had a more direct involvement by contacting the post and seeking information. That was the very first question he asked to get some details on and I am still not sure what the answer is.

Mr Ritchie—The post has come back to us with some information which I gave in answer to Senator Faulkner's question.

Senator FAULKNER—Are you aware whether the post booked the suite for four days or six days?

Mr Ritchie—No, I don't know how long they booked the suite for; I cannot recall.

Senator FAULKNER—That wasn't in the information provided to you?

Mr Ritchie—Not to my recollection. I can't recall how long it was actually booked for.

Senator FAULKNER—When did the post provide this information to you?

Mr Ritchie—Last week.

Senator FAULKNER—For the benefit of the committee, could you outline what information on these matters was provided from the post to the department?

Mr Ritchie—The information had to do with the nature of the decision process. That is to say, the post said it had recommended the St Regis Grand, as I said, after consideration of the guidelines for prime ministerial visits. It then made the point that the Italian government contribution had been paid, as I understand it, to the hotel. But more than that, I just cannot recall at the moment. I can take it on notice.

Senator FAULKNER—Was this a cable?

Mr Ritchie—An email.

Senator FAULKNER—Would it be a classified email?

Mr Ritchie—I do not think it was.

Senator FAULKNER—Would there be any reason why you could not table a copy of that email for our benefit after the dinner break?

Mr Ritchie—I can provide you with answers to the questions that you have asked.

Senator ROBERT RAY—Answer that one.

Senator FAULKNER—My actual question was: could you provide a copy of the email with the names?

Mr Ritchie—Can we take that on notice? We will need to have a look at the email.

Senator ROBERT RAY—It would be more appropriate if you took it under consideration and let us know later rather than take it on notice. When you take something on notice, you are really saying, 'We will get back to you in a month's time.' You may want to do that, but you may want to take it under consideration and then give us an answer as to whether you want to put it on notice or not, or give us an answer on the spot later on.

Mr Ritchie—May we take it under consideration, Senator?

Senator ROBERT RAY—Very good.

Senator FAULKNER—Do I assume that you do not have a copy of the email with you, Mr Ritchie?

Mr Ritchie—I do not think I have a copy with me in these voluminous documents.

Senator ROBERT RAY—You can send it to Senator Faulkner's email address, if you like.

Senator FAULKNER—The chances of me being able to access it are pretty slim.

Senator ROBERT RAY—Yes, I know. It is only a 50 per cent chance.

Senator FAULKNER—Perhaps over the dinner break you could grab a copy so you will be able to answer further questions on this issue. Would that be possible?

Mr Ritchie—Yes.

Senator FAULKNER—It should not be too difficult to put your hands on it, if it only arrived last week. Did the department take the initiative of contacting the post about this matter when it was raised in the estimates of the Department of the Prime Minister and Cabinet?

Mr Ritchie—We asked the post what the situation was.

Senator FAULKNER—So you took the initiative?

Mr Ritchie—Yes, we did, but the post would probably have taken the initiative anyway because the Senate estimates would have been known to it, and it was an issue running in the newspapers in Italy.

Senator ROBERT RAY—You are not saying that anyone over there was watching it on webcast, are you? Get a life.

Mr Ritchie—They read estimates, Senator.

Senator ROBERT RAY—I see.

Senator FAULKNER—The department took an initiative and, as you say, it may well have not been necessary. At what level in the department was that decision taken?

Mr Ritchie—At branch head level and in consultation with me.

Senator FAULKNER—Was a series of questions put to the post?

Mr Ritchie—It was in the nature of, ‘Have a look at Senate estimates’ and, as I understand it, ‘What is the situation in regard to the questions that have been raised?’

Senator FAULKNER—Did articles appear in Italian newspaper about this issue?

Mr Ritchie—As I understand it, from memory, there were two.

Senator Abetz—You made the news.

Senator ROBERT RAY—Did they spell our names right?

Mr Ritchie—I did not see the original.

Senator FAULKNER—You have translations of those articles, do you?

Mr Ritchie—The translation of at least one came through by cable.

Senator FAULKNER—Senator Ray would like a copy of that, if you could provide it to the committee.

Senator ROBERT RAY—No, I wouldn’t.

Senator FAULKNER—Would you be able to table that for us?

Mr Ritchie—Yes.

Senator FAULKNER—Who does the translations on these sorts of articles? Is that done at the post?

Mr Ritchie—Yes, it would be done at the post.

Senator ROBERT RAY—Can I ask the *Daily Telegraph* question: ‘Why would you book a room for \$10,400 a night and not include breakfast?’

Mr Ritchie—I do not know whether that was the case.

Senator ROBERT RAY—It was the case. It is just one of those questions that is floating around that is a mystery to people. Don't take that one on notice.

Mr Ritchie—Okay.

Senator FAULKNER—I assume you then provided the Department of the Prime Minister and Cabinet with details of the information that had been provided to you by the post.

Mr Ritchie—I will have to check on that. I am sure we would have. Can I let you know if that is not the case, but I am sure it would have been.

Senator FAULKNER—Thank you. If you could let us know that and you might also let us know when those matters were communicated to the Department of the Prime Minister and Cabinet. Contrary to all these suggestions that the Italians did not front up with the moneys quickly, in fact they paid up very quickly to the hotel.

Mr Ritchie—That is my understanding.

Senator FAULKNER—So all that spin out of the Prime Minister's office was wrong.

Senator Abetz—Once again, Chair, this is political point scoring.

Senator ROBERT RAY—It is a self-evident statement. It stands on its own.

Senator Abetz—It is not for departmental officials to comment on, Senator Faulkner. It is hyperbole.

Senator FAULKNER—There is of course the issue about the St Regis Grand receiving some publicity. The *Times* of London reported that the Prime Minister stayed this month at the Brook penthouse in Claridges, with a retinue of 14. Are you aware of that, Mr Ritchie?

Mr Ritchie—No, I am not.

Senator FAULKNER—In relation to these sorts of overseas trips, are you aware in advance of whether they are designated trips of guest of government status? Is the Department of Foreign Affairs and Trade aware of that sort of thing?

Mr Varghese—We would normally be aware of the status of an outbound trip, if that is your question—whether it is an official visit, a state visit or a working visit.

Senator FAULKNER—Yes. I understand that elements of two visits to the United Kingdom, one from 19 to 21 March and one from 7 to 11 April, have not been raised with you at all, Mr Ritchie.

Mr Ritchie—No.

Senator FAULKNER—So the only contact you have had from PM&C has been in relation to the stay at the St Regis Grand?

Mr Ritchie—That is the only contact my division has had. I have not personally had it.

Senator FAULKNER—That your division has had.

Mr Ritchie—Yes.

Senator FAULKNER—Okay. We will deal with the rest of that after the break. In relation to a London visit, for example, I assume there would be a significant involvement in accommodation and itinerary and all those sorts of things by the High Commission in London, wouldn't there? That would be standard operating procedure, wouldn't it?

Mr Ritchie—Yes.

Senator FAULKNER—Are you able to advise us on the involvement of the High Commission in organising the Prime Minister's visit to London in May? Can someone assist us with that?

Mr Varghese—As I indicated previously, the normal pattern for organising those sorts of visits is for the post to work directly with the Department of the Prime Minister and Cabinet on the program arrangements and other arrangements. It is not something that comes through the Department of Foreign Affairs and Trade in Canberra.

Senator FAULKNER—But the only accountability mechanism we have available for the activities of the post, as you would appreciate, Mr Varghese, is this particular process in which you are happily engaged at the moment.

Senator Abetz—Engaged in?

Senator FAULKNER—Sure. The post is not before us, but the department which services the post is before us. That is right, isn't it?

Mr Varghese—That is right.

Senator FAULKNER—You are not suggesting that the activities of the post should not be accountable in this process, are you?

Mr Varghese—I am not suggesting that the post should be unaccountable.

Senator FAULKNER—I know that you would not.

Mr Varghese—All I am suggesting is that our knowledge of the details of programs is necessarily going to be limited because of the way in which these things are arranged.

Senator FAULKNER—Unless you ask them, like you did in relation to the St Regis Grand. I assume you would ask them only if something became a matter of notoriety.

Mr Varghese—We would ask them if we required an answer.

Senator FAULKNER—Did you require an answer in relation to the St Regis Grand or did someone just take an appropriate initiative in the circumstances?

Mr Varghese—Mr Ritchie has already explained the background to that.

Senator FAULKNER—You said you would only ask them if you required an answer. Did you in fact require an answer from them?

Mr Varghese—We asked them a question and they provided an answer.

Senator FAULKNER—What was the question?

Mr Ritchie—As I mentioned earlier, my recollection is that—and I did not actually do this myself—we asked them to look at the transcript of Senate estimates and said, 'These things have come up. Please provide a post comment on it.'

Senator FAULKNER—How soon did you do that after the transcript was available?

Mr Ritchie—It probably would have been when the press picked it up, which was the next day, I understand.

Senator ROBERT RAY—Was the transcript available by the time the press picked it up?

Senator FAULKNER—Yes. It was pretty early.

Senator ROBERT RAY—Okay.

Senator FAULKNER—I am not sure when but it was pretty early. Anyway, we will come back to it when you have had an opportunity to have a look at that email again, Mr Ritchie. I do not have much more on the Americas and Europe.

Senator ROBERT RAY—I do not have any.

[5.46 p.m.]

CHAIR—We can move right along to output 1.1.4, South Pacific, the Middle East and Africa.

Senator FAULKNER—I assume the department would be aware of the comments made by the Deputy Defense Secretary, Paul Wolfowitz, in the US that the claims about weapons of mass destruction were for ‘bureaucratic reasons’—it was ‘the one reason everyone could agree on’. The department, of course, would be aware of those statements from Mr Wolfowitz.

Mr Varghese—Yes, Senator.

Senator FAULKNER—When did you become aware of those statements?

Mr Varghese—I read them in the press. I do not have the date of the press article but I assume the press article was soon after he made the statements.

Senator FAULKNER—Are you aware of the statements by the foreign secretary in the UK that finding weapons of mass destruction in Iraq is ‘not crucially important’?

Mr Varghese—I am not personally aware of those statements.

Senator FAULKNER—The only reason I am aware of them is that they too have been reported in the press. I must say, Mr Varghese, when you are in opposition that is the main source of this sort of information, let me assure you.

Senator ROBERT RAY—There is no need to launch a leak inquiry, Senator. We got it from the press.

Senator FAULKNER—I realise that Senator Hill is not the portfolio minister for DFAT, but he has made some recent statements, which I also read over the weekend, that there could be flaws in the government’s assessment of Iraq’s WMD possession. I am sure those have been drawn to the department’s attention.

Mr Varghese—I also read those articles over the weekend.

Senator FAULKNER—Has there been any internal analysis of these and other comments that have been made by a number of public figures in relation to the WMD issue as the validity for participating in military action against Iraq?

Mr Varghese—I am not sure that there has been any analysis as such about those comments. Obviously we have noted those comments. The comments relate to a senior US official and—the one you quoted—the UK government. They do not change the Australian position on any of these issues.

Senator FAULKNER—How would you outline the Australian position?

Mr Varghese—Our position was that our participation in the coalition operation in Iraq was pursuant to a view that Iraq was undertaking a program of weapons of mass destruction which was in breach of a series of United Nations Security Council resolutions.

Senator FAULKNER—Are you able to say whether the department of foreign affairs advised whether there was any doubt expressed by the intelligence community with regard to Iraq's WMD capacity and, if so, whether such doubts were passed on to your portfolio minister?

Mr Varghese—I am not aware of doubts, as you put it, in the intelligence community.

Senator FAULKNER—I think it is a reasonable word to use in the circumstances. However, if you feel 'doubts' has some sort of political spin, I will use the word 'assessments' by the intelligence community.

Mr Varghese—I am sure you will understand that I am not in a position to go into any of the details of intelligence assessments made by the Australian intelligence community. If the question you are asking is the basis on which we came to the view that we had concerns about Iraq's WMD capability I think the answer to that is that it is based on a number of different sources—some of it is intelligence, some of it is public documents, some of it is in relation to the history of United Nations inspections.

Senator ROBERT RAY—Let's just go to the public record, because I would not want you to reveal anything in intelligence reports that has not been revealed. The government has made the following claims in terms of weapons of mass destruction: that there were 360 tonnes of bulk chemical warfare agent, 1.5 tonnes of VX nerve agent, up to 3,000 tonnes of precursor chemicals, enough growth media to produce 25,000 tonnes of anthrax spores and over 30,000 special munitions. This list was added to by Mr Downer on 16 February when he said that UNMOVIC identified further Iraqi chemical and biological weapons unaccounted for—that is, 6,500 chemical bombs, with about 1,000 tonnes of chemical agents, a number of 122-millimetre chemical rocket warheads, laboratory quantities of precursor for mustard gas and indications that VX agent had been weaponised. These are all claims on the public record, you would acknowledge?

Mr Varghese—Yes.

Senator ROBERT RAY—How much of that have they found so far?

Mr Varghese—It is an evolving story in terms of discovery of WMD capability.

Senator ROBERT RAY—Where is the evolution up to?

Mr Varghese—At the very early stages.

Senator ROBERT RAY—And what is the code of that—that you have found none of that yet?

Mr Varghese—It means that the numbers of suspected sites, as I recall, are close to a thousand, of which probably only about 20 per cent have actually been the subject of at least preliminary investigation.

Senator ROBERT RAY—What has that preliminary investigation turned up so far to support these claims?

Mr Varghese—Can I ask Mr Paterson to go to the detail?

Senator ROBERT RAY—Yes.

Mr Paterson—My colleague Mr Luck might be able to add to this, too, but let me make a start at it. We believe that some evidence of WMD programs has already been found. You would be aware of media reports last week about the CIA assessment of two mobile trailers recently discovered in Iraq which appear to have no other purpose than the production of biological material. The judgment is that, although no biological material was made, these vehicles were thoroughly sanitised with a caustic solution to remove that. We believe that is yet another indication of the longstanding practice of the Saddam Hussein regime to hide evidence of WMD programs.

Senator CHRIS EVANS—Whom are you referring to when you say ‘we’?

Mr Paterson—We accept that judgment. It is a judgment that has been made publicly by the United States Central Intelligence Agency, and it is one that we have no reason, based on information available to us, to query.

Senator CHRIS EVANS—When you say ‘we’, do you mean the CIA?

Mr Paterson—I say ‘we’. We have no reason to dispute the assessment that we have seen publicly made by the CIA and issued publicly last week.

Senator CHRIS EVANS—You are commenting on news reports of what the CIA have allegedly said—is that right?

Mr Paterson—Yes. We have seen the CIA report. It is on the web site. You can pull it off the CIA web site. It is available there for everyone to see.

Senator FAULKNER—What about Mr Downer’s comments on 3 March? He said:

The simple fact is that Iraq has failed to explain the whereabouts of 6,500 chemical munitions with a potential chemical agent content of 1,000 tonnes; 8,500 litres of anthrax; 650 kilograms of bacterial growth media, which could be used to make 5,000 litres of anthrax; and 1&half tonnes of VX.

You would recall that, Mr Paterson?

Mr Paterson—Yes.

Senator FAULKNER—Can you, Mr Paterson, now advise this committee whether inspectors or any one else has discovered the 6,500 chemical munitions, or one of them?

Mr Paterson—They have not as yet. We believe that this process, which is only now getting under way in a very detailed way, will uncover further evidence. You asked me a follow-up question, Senator Ray, about the biological weapons trailers. I was going to go on and say that that is not the only thing that has been found so far. Three thousand chemical

protective suits and 200 nerve gas antidote injectors have been found in the city of An Nasiriyah. Atropine has been found.

Senator ROBERT RAY—I know that there are over 100,000 chemical warfare suits in the United States. There are thousands of anti nerve gas toxins in the United States. I do not want to invade them on the suspicion that they have weapons of mass destruction along those lines.

Mr Paterson—The amounts unaccounted for that Mr Downer listed publicly earlier this year are indeed unaccounted for. These were not amounts that we decided were unaccounted for; these were decided by UNMOVIC, the United Nations body. We give credibility to their findings. The Iraqis made no adequate explanation of these munitions or of these amounts of precursor materials or growth media. These questions remain unanswered. We believe that some of the answers will become evident as the Iraq survey team, which is between 1,400 and 1,700 people strong, swings into action. The sorts of examinations that have been done of sites so far have been very preliminary examinations done by the troops that moved in on the spot. These were not CW and BW experts; they simply sought to secure preliminary evidence. The detailed work is yet to be done and it will take, we assess, at least some months and perhaps longer.

Senator ROBERT RAY—I was about to ask you about the timetable of the experts. You are saying a few months?

Mr Paterson—It is hard to say. Some evidence may become apparent reasonably quickly but certainly, as Mr Varghese says, there are a lot of sites to be investigated and the US led teams are intending to do this in meticulous detail, I think. They are faced with a situation where much of this material may have been dismantled before the war, and was almost certainly disbursed and concealed in ways that will make it not a particularly easy task for the investigators to reconstitute the evidence. We remain fairly confident that that evidence will in due course appear.

Senator ROBERT RAY—Let me take you to one example that concerns me. One of the things we want to measure is whether all the intelligence gathered before the war can be benchmarked afterwards. That affects how much credibility you give intelligence next time you gather it. You will not mind me being just a tad sceptical of the press report on what the CIA found, given some of the other things that gained currency only to be disproved later.

Let me raise one of them. On 4 February the Prime Minister—and I have no doubt he is doing this with the best of motives—quoted both the British Joint Intelligence Committee and the Director of the US Central Intelligence Agency concerning Iraq's efforts to purchase uranium from an African country—that is, Niger. Yet on 7 March the Director General of the IAEA told the Security Council that the documents on which this claim were based were not authentic. I translate 'not authentic' as meaning forgeries. Have we been able to check that issue to find out whether the initial claim, no doubt made with genuineness, was in fact in the end based on 'not authentic' documents?

Mr Paterson—My colleague Mr Luck may have something to add on this matter. My judgment would be that that is an issue for the intelligence community. We basically operate from their finished assessments.

Senator ROBERT RAY—Yes, except you are the client, to some extent. I know you are not telling me, Mr Paterson, that that was their assessment and they may or may not have got it wrong. I am asking whether you have undertaken any investigation somewhere in the department as to whether those claims were right or wrong. If they are in fact wrong, why were they wrong? That affects your judgment later on when you have to get more product and make more assessment of that product.

Mr Paterson—The Iraq Task Force itself has not initiated such an examination, but I might ask Mr Luck, who heads the international security division, to add something. I should explain that with respect to many of the detailed questions on weapons of mass destruction, we in effect asked that division, who have the detailed expertise in DFAT, to provide us with the required information.

Senator ROBERT RAY—When we are firing questions, don't take it personally that we are firing them necessarily at you and your knowledge of it. If other colleagues can help, if they have the knowledge, we would like to hear from them.

Mr Paterson—I understand that, Senator.

Mr Luck—I am not sure that I have much more to add. We did note that in his appearance before the Security Council in early March—

Senator ROBERT RAY—It was on 7 March.

Mr Luck—Yes. The Director General of the International Atomic Energy Agency, Dr ElBaradei, had made that statement. I am not aware that we have gone back on it. It seemed to be an expert and professional view. It is not something we have particularly sought to chase down.

Senator ROBERT RAY—Was there ever a correction made to the public record that you know of? We do not want to see the Prime Minister quoting material that is wrong. Was there ever any attempt to correct the public record, to your knowledge?

Mr Luck—I am not aware of any, Senator.

Senator ROBERT RAY—No-one is aware of that?

Mr Paterson—No, Senator.

Senator ROBERT RAY—That is one example that concerns me. Before I diverted to that, we were talking about how long you thought it might take, Mr Paterson, for the inspection teams. Can you tell us where the inspection teams have been drawn from?

Mr Paterson—The main group will be a group called the Iraq survey group. It will comprise specialists from the US, the United Kingdom and around 12 specialists from Australia.

Senator CHRIS EVANS—The figure I had was 13 out of a total of 1,300 but you are now saying 1,400 to 1,700—is that right?

Mr Paterson—It is not clear precisely what the final size of this group will be. It will be of that order. Senator Hill has approved up to 16 Australians participating in that. At this stage—I cannot be absolutely precise because I think some negotiations are under way with

individual specialists who are not within the defence department—it is something like 12 to 13.

Senator CHRIS EVANS—I saw a figure in one of his press releases—I may be wrong—of 12 ADF and one out of Foreign Affairs.

Mr Paterson—I think that is correct.

Senator CHRIS EVANS—Who is the officer from Foreign Affairs who is going? What is their specialty?

Mr Luck—I believe it is somebody with a relevant scientific background and knowledge of chemical and biological weapons science.

Senator CHRIS EVANS—So they are going purely in their role as the particular scientific—

Mr Luck—All those 13 experts have been chosen for their particular expert knowledge.

Senator FAULKNER—And the relevant departments pick up the costs of those—

Mr Luck—They are being funded, I think, by the Department of Defence.

Senator FAULKNER—Including the DFAT officer?

Mr Luck—I believe so, yes.

Senator ROBERT RAY—Mr Paterson, have you done any assessment of what, if it is discovered through paperwork and investigative work rather than through physical discovery that weapons of mass destruction have been transhipped to a neighbouring country, the policy implications are? I am not asking you to give me policy advice here, but have we looked at what happens if that has occurred?

Mr Varghese—To my knowledge, we have not yet done an analysis or assessment of that eventuality. Obviously, if it were to be the case that that has happened, it would be a matter of some very considerable concern.

Senator ROBERT RAY—It would be of concern, because you have gone for a military intervention to prevent the spread of weapons of mass destruction and you could have just encouraged it, not deliberately, to occur.

Mr Varghese—I think the question of what happened to the WMDs that we believe exist is precisely the sort of painstaking detective work that the survey group is going to be doing. Can I add one other thing in relation to a sense of how long this will take. I expect that leads given by Iraqi scientists who were involved in these programs may well turn out to be quite an important source of information for the survey group. That debriefing process is at its very, very early stages, which goes back to the point that I was making earlier that we are dealing with something which will take some time.

Senator ROBERT RAY—They have not listened to enough pop music yet to cough up the information. This is developing as a very substantial issue in the United Kingdom. I am not taking sides on it, but are you monitoring what is happening there in terms of the accusation being made about their comments on weapons of mass destruction related back to intelligence

reports as opposed to whether the information really existed? Are you following that sort of debate?

Mr Varghese—Yes, we are.

Senator ROBERT RAY—You are? How are you following that? Are you getting the post over there to follow it as well as pulling everything out of the ether here?

Mr Varghese—The post reports very regularly on Iraq related issues, including on the domestic debate in the United Kingdom. So that is certainly a stream of reporting that we are getting. Obviously, we also follow it through the media coverage.

Senator CHRIS EVANS—Could I ask a process question. The first major statement by the minister was on 17 September 2002, when he spoke to the parliament about the developing situation in Iraq. Was that speech and the information it was based on compiled by the department of foreign affairs?

Mr Paterson—My recollection is that it was. I need to check that against the date, but yes, I expect that it was.

Senator CHRIS EVANS—For my understanding: this contains a number of the claims that Senator Ray alluded to that have been part of the government's rationale. Those were obviously based on a range of sources, including intelligence. Can you explain to me how you came to establish, verify and make those claims? I do not want you to name the source of the information, necessarily, but I am trying to understand the process. The minister went into the parliament to try to make a substantive case about the need, which eventually ended up in Australia going to war. I want to understand how we got together the information that we thought made the case.

Mr Luck—I recall reasonably clearly, having come into the division in late July, that Iraq was already an issue of some priority. The people in my division had started to assemble, in a fairly careful and diligent way, the array of information that was on the public record. A lot of that detailed information came from our study of various—the predecessor of UNMOVIC—UNSCOM reports. The gaps in information we had were due to the failure of inspectors to be present in Iraq since 1998 and what we understood to be UNMOVIC's work. It was very much an expression of what were the unknowns about WMD in Iraq, based on the knowledge that Iraq had definitely had a very ambitious and comprehensive program of WMD development in the eighties and through to the end of the nineties at least, including some time after they had been put under an obligation by the Security Council to disarm themselves of WMD. So it was very much based on the public record.

One of the issues, frankly, when you are trying to prepare information for the minister and for parliament is: what can you say? Obviously accuracy is important but, to some extent, we wanted to see what was available in the intelligence field. If it was sensitive information, there were sometimes constraints to the extent that it could be used. Just looking through that speech, as I have been doing now, what I recognise is essentially the publicly available information that came from the great amount of material that UNSCOM and UNMOVIC have put together.

Senator CHRIS EVANS—Yes, it is basically historical, isn't it? As you say, it is historical, based on the UN agencies' reports. But there are phrases like 'Australian intelligence agencies believe there is evidence of a pattern of acquisition of equipment that could be used'. There are a few qualifiers in the sentences but there is clearly an intelligence assessment. I just want to understand how you got that. Is that a foreign affairs assessment or is that an ASIS assessment or is it their joint intelligence assessment?

Mr Luck—We try to give an indication of what the judgments of the intelligence community are, based on the information they have, patchy as it often is. That is an indication of where the weight of the judgment lies, when we use phrases like that. I imagine we would have, in a sense, cleared those statements with the intelligence community—

Senator CHRIS EVANS—That is what I am trying to understand. I accept what you are saying but I am trying to understand how that works. I know there are joint intelligence agency coordinating functions—I forget the titles—but how would you get that information together? When you say you think that is a consensus view of the intelligence agencies, how would that be gathered? I am trying to understand the process. Do you do a ring-around of all the agencies or would they be regularly filing their reports with you on their current assessment of Iraq or—

Mr Luck—In the case of the preparation of a speech, we put together the factual base as we understand it from the public record and we check it with a number of more expert people to see that we are getting it right. A lot of those people are in the intelligence community so we check it with them and probably say, 'Is there anything that we can say about the basis of your judgments on any more sensitive information you might have?' That is where you get phrases like that coming in. It is basically that you prepare a draft speech and then you check it with experts.

Senator CHRIS EVANS—Sure, but the government was moving into a position which eventually led to war, so there must have been drivers other than your need to write the speech. I am trying to understand what it was that was happening that led the minister to make the statement to the parliament. What intelligence was coming in?

Mr Varghese—Typically, the intelligence community, and particularly the Office of National Assessments, produces regular intelligence assessments for the government on a whole range of issues. Iraq, obviously, was a very big issue—a very big policy issue—last year, and they would have produced a series of assessments which went to the questions of Iraq's WMD intentions and capabilities. That is a process that occurs without being commissioned by the Department of Foreign Affairs and Trade.

Senator CHRIS EVANS—Sure. I am not trying to be clever, Mr Varghese. I am actually trying to understand the process in terms of what intelligence Foreign Affairs rely on. When the minister quotes in a speech drafted for him by the department, I am trying to understand what his and your source for that is. When you quote, 'Australian intelligence agencies believe,' I am trying to understand: is that just ONA? Would that be purely an ONA assessment or would you have consulted with DSD or DIO?

Mr Varghese—The ONA is the primary source of intelligence assessments. I was not involved in that speech so I do not know whether our consultations extended beyond that in the intelligence community.

Mr Luck—I think they probably did. I cannot swear to this because I did not actually do the consultation myself but in this field we find that the people in the Defence Intelligence Organisation have a lot of the detailed scientific background that is relevant to these kinds of assessments. They have an assessment function vis-a-vis the Department of Defence. They probably would have provided some direct assistance as well.

Senator CHRIS EVANS—Maybe I am not phrasing this very well. Maybe I will come back to you, Mr Paterson. In a sense, I am not concentrating on the speech. I am only trying to understand how Foreign Affairs got to the position it did and how it made the judgments it did that were represented by the minister. As you say, now we have this argument about whether those were correct assessments. I think the jury is out on that, but there have been worrying signs in terms of (1) the failure to discover much evidence early on and (2) some of the comments now being made internationally that suggest that the intelligence may not have been as good as we had relied on. Certainly speaking for the Labor opposition, we relied on that intelligence. We took the judgment that that intelligence would be right. I am just trying to get an understanding of the process. Mr Paterson, with regard to the Iraq Task Force, did intelligence agencies provide you with a briefing regularly?

Mr Paterson—They did on occasion. I cannot recall that they did specifically in the preparation of the minister's statement at that time. Our way of preparing that would have been to draw on published intelligence assessments from ONA and the Defence Intelligence Organisation. I emphasise that they tend to bring together what they call 'all source' information. That would be intelligence information; the UNMOVIC reporting—although that was a little early for UNMOVIC; at that time it would have been largely UNSCOM reporting—and the questions that remained from that; and material available in the media. They bring it all together and form an assessment. We would have drawn on that if we had had particular questions.

At this point, I cannot recall exactly, going back to September last year, whether in this instance we queried aspects, but we may well have. We quite frequently did. We often checked. To the extent that we were putting together this material for the minister, we would check with Mr Luck's area as well, where there were people following this in rather greater detail than the people in the Iraq Task Force. We would agree with them on a line to be taken based on the composite picture but largely derived from intelligence assessment. We had no reason to query the assessments that were put to ministers by ONA or DIO. Of course, assessments are not done by the other agencies by and large. In the end, we rely on the judgments made by the assessment agencies, although we have access to the other material.

Senator CHRIS EVANS—So it is fair to say that in forming judgments and providing advice to the Minister for Foreign Affairs you would have relied on DIO and ONA for assessments of Iraq WMD capability?

Mr Paterson—We would have, Senator. We would have also drawn—Mr Luck might want to comment a little more on that—on our own reading, at that point in September, of

UNSCOM reports and other publicly available information and we would have formed a composite judgment ourselves; but it would have drawn heavily on the judgments of the assessment agencies.

Senator CHRIS EVANS—Were there other international sources that you were able to avail yourselves of or were they filtered through the DIO and ONA process?

Mr Paterson—I think we all have access to the same sources. It is open to officers in the intelligence community to draw on those sources as well. I know officers in the task force draw on publicly available sources like newspaper reporting and other media.

Senator CHRIS EVANS—We have seen the dangers of ONA relying on what is in the newspapers.

Mr Paterson—I do not think they rely on that sort of material, but there is a lot of information on the public record internationally. Obviously, in coming to an assessment, given the fragmentary nature of intelligence in many cases, you draw on what other sources are available to come up with a composite judgment.

Senator CHRIS EVANS—I guess what I was trying to understand was whether you had access to other international agency source material.

Mr Paterson—I do not know about agency source material. We had access to the material of the International Atomic Energy Agency and UNSCOM. Officers draw on other material that is available—for instance, on the web sites of various organisations around the world. But one has to make judgments about their reliability. We tend principally to rely on the international organisations that have detailed expertise in this field, as well as on intelligence sources.

Senator CHRIS EVANS—What about the intelligence gathered by, say, the United States? Would you have had access to that material? Or would you rely on that assessment being made by DIO and ONA before it came to you?

Mr Paterson—We do have access to that material. Certainly, there would have been officers working on this subject who would have been reading that material.

Senator CHRIS EVANS—Were they on the task force or working in the international division?

Mr Paterson—It was available both to officers on the task force and in Mr Luck's division.

Mr Luck—Frankly, we have a limited amount of technical expertise available in house. When it comes to understanding and evaluating fragmentary intelligence evidence, we are highly dependent on expert advice from the intelligence community.

Senator FAULKNER—What about legal advice for the Iraq task force, Mr Luck?

Mr Varghese—The legal advice was handled in a different area of the department. In the case of Iraq, our legal adviser worked very closely with Mr Paterson's task force.

Senator FAULKNER—Was the government's legal basis for involvement in the war in Iraq premised on article 51?

Mr Varghese—I think the legal basis for Australia's participation has been the subject of some quite extensive questioning in estimates. The government has tabled the legal opinion that it received.

Senator FAULKNER—That is right. In fact, I think Mr Moraitis was the author of that.

Mr Varghese—He was a co-author of it. The Attorney-General's Department was also actively involved in it. I really have nothing to add to the basis of our legal interpretation in that document.

Senator FAULKNER—I appreciate that; I have read it. Mr Moraitis might be able to assist me on this. It is true, isn't it, that the government's legal basis was premised on article 51? Is that a fair shorthand summary?

Mr Varghese—I think it is very dangerous to have shorthand summaries of legal advice on what is both a sensitive and a complicated matter. I think the legal advice stands. It covers all of the relevant issues from the department's legal advisers' point of view. I would not like to pick out bits of it and give them particular emphasis. I think it should be read in toto.

Senator FAULKNER—A self-defence argument based on article 51 was put forward in that advice, wasn't it?

Mr Moraitis—On the face of that advice, there was no discussion of article 51 as a basis for the use of force.

Senator FAULKNER—Are you saying that that was not a legal premise?

Mr Moraitis—Article 51 relates to self-defence.

Senator FAULKNER—Yes.

Mr Moraitis—No, that was not.

Senator FAULKNER—Not at all?

Mr Moraitis—In fact, if you look at paragraph 3 of our advice—

Senator FAULKNER—I do not actually have it in front of me, so I will take your word for it.

Mr Moraitis—It expressly says that it is not necessary to discuss the question of self-defence.

Senator FAULKNER—It is not necessary?

Mr Moraitis—No, it was not premised on article 51.

Senator ROBERT RAY—Who else is on the Iraq Task Force?

Mr Paterson—The Iraq Task Force is a coordinating mechanism. It includes various areas of the Department of Foreign Affairs and Trade and, obviously Mr Luck's International Security Division and Mr Moraitis's senior legal advice were key elements in that. Also, the Public Affairs and Consular Division were important to that as well. Outside DFAT—I think we provided Senator Faulkner with an answer to this exact question at a previous estimates hearing—we had the Department of the Prime Minister and Cabinet, the Department of Defence, both the civilian and uniform sides of Defence, the Attorney-General's Department,

the Department of Immigration and Multicultural and Indigenous Affairs, AusAID, Austrade, Treasury and AQIS.

Senator ROBERT RAY—It is more a question of who you left out actually.

Senator CHRIS EVANS—The Special Minister of State has got his nose out of joint because he is the only one who did not get a guernsey.

Senator ROBERT RAY—I started this line of questioning and I want to pursue it. I think it is a fair summary of the evidence given by yourself, Mr Paterson, and Mr Varghese that the jury is out in terms of gathering enough evidence about the intelligence material, which was collected from wherever and put on the public record by the government, and whether it is too early to say that it was inaccurate or wrong. But at what point and what methodology will the department use to check those claims? Your minister and others have made claims in good faith about certain matters and, with inspection teams busy in Iraq, at what point in that process do you say, ‘Should we check to see whether that information was inaccurate or not and what lessons we learnt if it turns out to be inaccurate?’ We are not making a presumption that it will, but at what point does the department take that approach? It is very rare that departments go back and evaluate these things, but I think they should do it more often. At what point do you do that?

Mr Varghese—In relation to the intelligence community, they have an annual process for assessing their performance. I would imagine that as part of that annual process they would be paying particular attention to their experience in relation to Iraq and that that is a built-in evaluative process on the intelligence community.

Senator ROBERT RAY—They did not actually make the public statements; you are accountable, your department and your minister are accountable for his public statements on this. As I understand it, some of it did not come directly from the Australian intelligence community; it came from UNSCOM and then the nuclear group et cetera.

Mr Varghese—That is right.

Senator ROBERT RAY—Those statements have been made so at what point do you look back? You are in a unique position—or a fairly unique position—to actually see how accurate they were. You have made the point that it happens over time—I accept that—but when do you actually go back and make that judgment?

Mr Varghese—I would expect we would at least want to wait and see what the survey group produces in terms of its own investigation and analysis before we go back and review too much of this material. Can I point out that that list you read out of Iraqi WMD capability should not necessarily be seen as a specific list of what Iraq had at the time. I think the point that the minister and the government were making at the time was that this was unaccounted WMD capability—unaccounted on the basis of the bookkeeping of UNMOVIC.

Senator ROBERT RAY—I understand that distinction, but you will be in a position, in all probability, to know how accountable it was. You say that agencies—like ASIO, ASIS, DIO, DSD and all the others—are accountable once a year, but how accountable are they to you because you are their agent in some cases? You are the user of their end product. How do you satisfy yourself that the information they supplied was sufficient and accurate enough in this

set of circumstances so that you are certain in the next set of circumstances that there is a level of trust?

Mr Varghese—I think we have to wait for a bit more information, Senator, before we can sensibly answer that question.

Senator ROBERT RAY—I do not want to delay you because you were going to chase up a couple of things over the dinner break, and have dinner.

CHAIR—Thank you.

Proceedings suspended from 6.30 p.m. to 8.06 p.m.

CHAIR—Before we commence questioning on the outputs, I understand Mr Varghese has some answers to questions raised previously.

Mr Varghese—I said I would come back after the break on three issues: firstly, the question of the poll in the *Port Macquarie News*; secondly, the meeting at Parliament House earlier today between the Indonesian justice minister and Australian ministers; and, thirdly, the correspondence we have had from our embassy in Rome in relation to hotel arrangements for a previous visit from the Prime Minister.

In relation to the first question on the *Port Macquarie News* poll, on the basis of what we have been able to establish over the break and just before that, I can confirm that the person responsible was a junior officer in Mr Vaile's electorate office in Port Macquarie. The actions were not undertaken under the minister's instructions or with the minister's authority. The minister was only informed of the incident after it had occurred and after he had been advised of it by the junior officer concerned, who had been approached by the *Port Macquarie News* on the matter. On hearing of the incident the minister reprimanded the junior staff member and warned him not to repeat the behaviour.

Senator FAULKNER—Thank you for that information. I appreciate you finding that information for us over the break. That is helpful. Are you able to say whether any costs were borne by the department in this exercise? I imagine if there were they would be very small. You might let us know.

Mr Varghese—I am not aware of any costs involved. As you say, if there were costs involved they are likely to be quite small. I will check on that.

Senator ROBERT RAY—What I do not understand is that if he is an electorate officer he is employed under the auspices of the Special Minister of State, and all that sort of thing. Did he use a departmental computer rather than a department of finance or Parliament House supplied computer? Is that right?

Mr Varghese—My understanding is that it would have been a departmentally provided computer.

Senator ROBERT RAY—Which department?

Mr Varghese—The Department of Foreign Affairs and Trade.

Senator ROBERT RAY—An electorate officer has access to a departmental computer?

Mr Varghese—In response to an earlier question, Mr Tighe indicated that, in relation to our non-secure computer system, ministerial officers, including electorate officers, have access to it.

Senator ROBERT RAY—Minister, you may be able to assist us here. Is Mr Vaile's office a combined electorate-ministerial office?

Senator Abetz—That I do not know but I would assume so, given his electorate. But that is only an assumption.

Senator ROBERT RAY—Where is the electorate office?

Mr Varghese—Port Macquarie.

Senator ROBERT RAY—So you have a National Party member's staff, presumably voting no to running a Liberal Party candidate in Port Macquarie?

Senator FAULKNER—Yes, but it will please our chairman, I am sure, to realise that there was also a flood of votes coming in from another computer, but that was a Telstra computer.

CHAIR—That is my understanding, too.

Senator FAULKNER—I think we are on the same wavelength, Senator Macdonald. So it was not only the National Party playing up here; the Liberals were having a go from a Telstra-owned—

Senator ROBERT RAY—You would not approve of this internecine warfare, would you, Minister, coming from Tasmania?

Senator Abetz—We do not have that particular problem in Tasmania—

Senator ROBERT RAY—No, you have exterminated them.

Senator Abetz—but having said that—

Senator CHRIS EVANS—Unfortunately, you have exterminated yourself, too, but anyway—

Senator Abetz—I just wonder about the ethics of news outlets having these sorts of polls, inviting people—

Senator ROBERT RAY—It is their fault, isn't it?

Senator Abetz—and then publicly disclosing, by tracing back, who has voted in the poll or where—

Senator ROBERT RAY—Three hundred times.

Senator Abetz—it has emanated from. It could potentially set a precedent, and people that use these polls should be aware that if a media outlet thought it was within their interests, or for whatever reason, they could trace back and then indicate that somebody was involved. I wonder whether there were any privacy or other considerations—

Senator FAULKNER—I think I can help you there—

Senator Abetz—but I am just musing on the basis of a question that was thrown in by Senator Ray.

Senator FAULKNER—It is an important muse and I must say I wondered the same thing myself. As I understand it, in relation to this particular poll conducted by the *Port Macquarie News*—I do not often read the *Port Macquarie News* but I have from time to time; it is published in the state of New South Wales, which I try valiantly to represent well.

Senator ROBERT RAY—They are your constituents.

Senator FAULKNER—They are indeed. From time to time, I see the polls in the paper there. What apparently happens when you vote online in this poll is that the server you vote on sends what is described as a ‘cookie’—I thought that was one of my colleagues for a minute but this is where we get into the IT talk—to your computer to stop multiple voting. What is required, as I understand it, Minister—just to explain this to you—is for a person, such as this particular individual, to delete the cookie each time and vote again. I do not know what expense, if any, is involved. I do not think it would be a large expense; that would be my assumption. That is the evidence we have and basically I accept it. It would take a lot of time to lodge that number of votes.

Senator Abetz—I trust Mr Crean’s office wasn’t involved in sending around an email suggesting that people vote for the TV documentary that was undertaken by Senator Faulkner.

Senator ROBERT RAY—Especially as there were no votes to be had. It was not a voting position. Didn’t you know that?

Senator FAULKNER—If it had been a voting position, things would have been very different.

Senator Abetz—Poor old Simon Crean is trying to gather votes from where he cannot gather them, yet again,

Senator FAULKNER—I am glad you mentioned that Gough Whitlam, in his own words, was nominated for a Logie. Thank you very much, Minister.

Senator Abetz—We now know why!

Senator FAULKNER—I can assure you the nominations were—

Senator Abetz—The emails and other things were undoubtedly going strong at Labor Party headquarters.

Senator FAULKNER—Mr Vaile has got two offices, hasn’t he? One is at Port Macquarie and one is at Taree. That is right, isn’t it, Mr Varghese?

Mr Varghese—I would have to check that.

Senator Abetz—Two electorate offices?

Senator FAULKNER—No, two offices. I have been informed that he has two offices—one at Port Macquarie and one at Taree.

Senator Abetz—If my office is watching these proceedings we might be able to ascertain whether he has a combined ministerial-electorate office in one area and an electorate office, separate, in another.

CHAIR—I think I can be of assistance. I think in the case of the junior staff member involved, Senator Faulkner, Mr Vaile has two electorate offices. One he has in Taree, where

his main ministerial-electorate office is, I think, and he has an electorate office part time, perhaps paid for by himself, in Port Macquarie.

Senator ROBERT RAY—Which raises the question of what a Foreign Affairs controlled computer is doing in an office that he pays for himself. Can we have that explanation?

Senator Abetz—Before we get into all these—

Mr Varghese—I do not have the answer to that. I will take it under consideration.

Senator ROBERT RAY—It is a logical question to follow from the assistance given to us by Senator Macdonald. It does seem a little strange.

Senator FAULKNER—You might indicate to the committee which office this computer was located in, if you do not know.

Mr Varghese—It is the office that is located in Port Macquarie. I understand from Mr Tighe that the reason he has a departmental computer in his Port Macquarie electorate office is to enable him to access his electronic diary with his departmental and other commitments.

Senator ROBERT RAY—I am not sure whether you should be putting computers into an unofficial office. We will have to have a look at that.

CHAIR—It may well be a PC to—

Senator ROBERT RAY—It is not a laptop or a notebook, is it?

Mr Varghese—I can provide you those details once we get them.

Senator FAULKNER—Is there a security issue in relation to that?

Mr Varghese—There would not be a security issue because it would not carry any classified traffic. It is a non-secure connection.

Senator FAULKNER—You can assure us of that?

Mr Varghese—Yes.

CHAIR—Mr Varghese, you had other matters you wished to raise?

Mr Varghese—Yes. The second issue was the visit by Minister Mahendra from Indonesia. The minister was scheduled to have a lunch with the Attorney-General today. That lunch did not proceed. The information I have is based on advice from an officer from the Attorney-General's Department to DFAT, so I should emphasis again that there was not a DFAT person present during any of these events.

Senator FAULKNER—You're in the clear!

Mr Varghese—Thank you. The minister and his party arrived at Parliament House. I understand that there was an issue about security screening, following which the minister left Parliament House. The Attorney-General rang the minister and suggested that they meet later in the day. The Indonesian minister accepted that invitation and a meeting subsequently took place here in Parliament House earlier this afternoon. As I understand it, the issue of the cancelled lunch and the arrangements surrounding it did not arise in that subsequent meeting, and the Indonesian minister also met with Mr Ruddock in Parliament House after the meeting with the Attorney-General.

Senator ROBERT RAY—In relation to that advice given to DFAT, there seems to me, from reading a report of this, to be two separate issues. It seemed to be alleged in an article I read that Mr Mahendra was kept waiting for half an hour, so that is the first issue. The second issue is that there were screening objections. We instituted the screening and even members of parliament now go through all the screening processes, so we insist that everyone does that no matter who they are. That seems to be a second issue that obviously you can resolve quickly. But there is this question of whether a foreign guest was left at the ministerial entrance for half an hour, for whatever reason. Was any information given to you on that?

Mr Varghese—I understand that the person who was meant to meet the minister was a little bit late.

Senator ROBERT RAY—What does that mean—half an hour late?

Mr Varghese—I do not think half an hour would be in any way accurate.

Senator ROBERT RAY—What is an accurate figure?

Mr Varghese—Minutes rather than half an hour.

Senator ROBERT RAY—Where do you get that information from?

Mr Varghese—That is based on what AG's officers have passed on to us. On the second issue, I do not really have anything to add.

Senator ROBERT RAY—That is a separate issue, and that is the procedure here.

Mr Varghese—I should say that there was an officer from the Attorney-General's Department accompanying the Indonesian minister and his delegation throughout this process.

Senator ROBERT RAY—Who was that?

Mr Varghese—I do not know.

Senator ROBERT RAY—So you are saying that the claim of half an hour is not accurate?

Mr Varghese—That is my understanding.

Senator ROBERT RAY—Do you know how long it was?

Mr Varghese—I think it was closer to 10 minutes from what I have been able to establish.

Senator FAULKNER—What is happening at this stage? Is Mr Mahendra just hanging around at the entrance?

Mr Varghese—While he was waiting he would have been at the entrance—that would be my guess.

Senator FAULKNER—In the rain or inside the building?

Mr Varghese—I do not know. As I say, I was not there. No departmental officer was there. I am passing on, to the best of my knowledge, information that has been passed on to us.

Senator FAULKNER—A pretty poor effort.

Senator ROBERT RAY—Obviously, when an overseas dignitary is coming to Australia there must be some liaison out of the post—in this case Jakarta. Would there be some

explanation of what the security requirements would be coming to Australia in relation to airports and Parliament House or other buildings visited? Would there be some advice, through a briefing, to the delegation as to what they might expect?

Mr Varghese—I am not aware of what sort of briefing the minister would have received in Jakarta before he left, so I do not know what might have been conveyed to him in terms of these sorts of arrangements. I would doubt very much that an embassy briefing about his program in Australia would go down to the detail of explaining what the screening procedures were at the ministerial wing of Parliament House, but I am only surmising that it is unlikely to have done that.

Senator ROBERT RAY—This is the second time in 12 months that this sort of issue has arisen in that umbrage has been taken at procedures. The previous time was in Parliament House. It was at both an airport and a hotel, as I understand it. I am wondering whether your department should be giving a bit more thought to it. You have a reputation—or at least there is an expectation—that you are good at protocol and diplomacy and all of these things. I am wondering when you are going to put it into practice.

Senator FAULKNER—You are not going to answer that, Mr Varghese?

Mr Varghese—I really do not have a response to it.

Senator FAULKNER—Perhaps you will have a response to this. The matter was not raised when Mr Williams and Mr Mahendra eventually got together—is that right?

Mr Varghese—That is my advice.

Senator FAULKNER—So you are now saying to us that the Attorney-General of Australia was not only abominably rude in leaving Minister Mahendra either inside or outside a door to Parliament House for at least 10 minutes, but when he did meet him he did not apologise.

Mr Varghese—They are your words, not mine.

Senator FAULKNER—You said it was not raised. I think that is extraordinarily rude.

Mr Varghese—I was referring to your earlier characterisation.

Senator FAULKNER—You said it was not raised at the meeting.

Mr Varghese—That is correct. It was not raised at the meeting.

Senator FAULKNER—It should have been, by Mr Williams. But it was not, which is probably typical.

CHAIR—The only thing I would say is that perhaps, Senator Faulkner, you might have missed—and this is just to remind you—that in fact after the incident the Attorney rang the minister and at that stage agreed to meet him later in the day. I suspect he would have apologised then.

Senator ROBERT RAY—Do we know that?

CHAIR—No, we do not. We can assume it.

Senator ROBERT RAY—So we can assume an apology. Mr Varghese, you have a third issue?

Mr Varghese—The third issue was in relation to the accommodation arrangements in Rome during the Prime Minister's visit. I can confirm that the advice from our embassy in Rome was that the Italian government paid for four nights accommodation. The embassy was billed for six nights. The reason for that longer period is that one night was required for setting up—I will come back to that point—and, because the Prime Minister had a late departure from Rome, the hotel charged an extra night's accommodation since the check-out was after 3 p.m., which I understand is the hotel's standard procedure.

Senator ROBERT RAY—Ten thousand dollars for a shower!

Senator FAULKNER—Eleven!

Mr Varghese—In relation to the setting-up requirements, I am advised that the suite that the Prime Minister occupied also included a dining room and that this dining room was allocated as a delegation meeting room while the rest of the suite was used to accommodate the Prime Minister and Mrs Howard.

Senator FAULKNER—Yes, I don't suppose the delegation could have met in the jacuzzi!

Mr Varghese—The bill that was received from the hotel consequently separated out the costs of the dining room, which was used as the delegation room, and the costs of the accommodation part of the suite. As I say, the Italian government paid for four nights of that accommodation cost, which meant that the Australian government had to pick up the extra two nights and, of course, the costs of the six nights for the use of the dining room as a delegation meeting room.

Senator ROBERT RAY—I think we asked about whether or not you can pass to the committee the email. Have you given that some thought?

Mr Varghese—Actually, Senator, the email is addressed to the Department of the Prime Minister and Cabinet and copied to the Department of Foreign Affairs and Trade.

Senator ROBERT RAY—You did not tell us that earlier.

Mr Varghese—No, we did not. In fact, I think we may have left you with the impression that the email was to the Department of Foreign Affairs and Trade, so I just want to clarify that point.

Senator ROBERT RAY—So it is not your property, in other words.

Mr Varghese—We are not the primary recipient. We are an information addressee.

Senator FAULKNER—But you took the initiative of contacting the post?

Mr Varghese—Mr Ritchie has covered that. Yes, we contacted the post.

Senator FAULKNER—But this was effectively the response to that contact that Mr Ritchie spoke of?

Mr Varghese—That is my understanding.

Senator FAULKNER—Did Mr Ritchie request that the response go to the Department of the Prime Minister and Cabinet?

Mr Varghese—I do not know whether he requested it. I assume that the reason this was addressed to Prime Minister and Cabinet is that they are the department with primary carriage

of it and they were the department that were answering the questions at Senate estimates which had triggered our contact with the post. So I assume that was the reason why the email was addressed to the Department of the Prime Minister and Cabinet.

Senator FAULKNER—It had four rooms, this particular suite, didn't it?

Mr Varghese—It does not say this in the piece of paper I have. I do not know. That is the short answer.

Senator FAULKNER—But you are able to confirm the timing of the Italian government's payment? Mr Ritchie's evidence to the committee that it was paid soon after the visit is accurate?

Mr Varghese—That is my understanding. The Italian government paid the bill directly to the hotel, and I understand that was done soon after the visit, yes.

Senator FAULKNER—So there would be no suggestion of the department or the post waiting around for some further payment from the Italian government after the visit?

Mr Varghese—Unless there was an issue about the amount paid. I do not know.

Senator FAULKNER—You are not aware of any such issue?

Mr Varghese—I am not aware of it but that does not mean there may not be.

[8.31 p.m.]

CHAIR—We will continue with output 1.1.4, South Pacific, the Middle East and Africa.

Senator CHRIS EVANS—Mr Paterson, is the Iraq Task Force still operating?

Mr Paterson—Yes, it is still in operation.

Senator CHRIS EVANS—How long do you envisage that continuing? Is that designed to continue through Operation Catalyst?

Mr Paterson—Not necessarily. That is a matter for decision by the minister and the secretary by consultation between them. The task force, as I mentioned before the dinner break, has reduced in size. I think that over time it will probably reduce further, and the intention is that in due course the Iraq work will be absorbed back into the South Pacific, Africa and Middle East Division, possibly with an enhanced section to deal with that, given the range of issues involved.

Senator CHRIS EVANS—But the lead role of the task force is with the foreign affairs department?

Mr Paterson—In the Iraq Task Force, yes. That is not the only consultative mechanism in government on the Iraq issue.

Senator CHRIS EVANS—Would you briefly outline for me the others?

Mr Paterson—The other principal one is the Iraq coordination group, which is a deputy secretary level body headed by the Department of the Prime Minister and Cabinet.

Senator CHRIS EVANS—Are you able to give me a sense of what they do vis-a-vis what you do?

Mr Paterson—It is at a more senior level of coordination. It brings together the Department of the Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, the Department of Defence, the Attorney-General's Department, ONA and ASIO at roughly deputy secretary level. That group is meeting once a week at the moment. It is intended to keep some policy oversight of the process and, at a senior level, to look at how the coordination of issues involved are tracking.

Senator CHRIS EVANS—The group you are involved in is the working party and the other is the coordination group?

Mr Paterson—It is the task force.

Senator CHRIS EVANS—What is its major role now?

Mr Paterson—It is at a more detailed level of interdepartmental coordination. When it meets—and it is currently meeting twice a week—the task force brings together a wider range of departments and agencies with interests in the Iraq issue than the Iraq coordination group.

Senator CHRIS EVANS—I was asking you before about the treatment of intelligence. Are you aware if you are getting much in the way of Australian based intelligence or is it a matter of mainly relying on American and British intelligence?

Mr Paterson—I do not know that it is appropriate for me to comment on that, but it is fair to say that we draw on a range of intelligence sources which includes material from Australia, the UK, the US and, at times, other liaison partners.

Senator CHRIS EVANS—I am just trying to get an understanding of the difference between raw intelligence and interpretation analysis work. Are you saying that we have raw Australian intelligence as well?

Mr Paterson—Yes.

Senator CHRIS EVANS—What agencies would that have come from?

Mr Paterson—I think that emanates from a range of agencies.

Senator CHRIS EVANS—Very helpful! And they report in the fullness of time, do they?

Mr Paterson—That is correct.

Senator CHRIS EVANS—I am glad we got you along. Seriously, though, I am not after the nature of the intelligence; I am just trying to understand the process. I understand they are joint intelligence arrangements and there would be a lot of shared material, and you spoke to me earlier about ONA and said that their work is more interpretive, analysis work. The raw intelligence would be DIO defence intelligence, would it?

Mr Paterson—I think it is fair to say that my current functions relate purely to the Iraq issue. Mr Luck, who has joined us at the table, actually handles within the department the department's relationship with the intelligence community, so I think it would be more appropriate to ask him to address that.

Senator CHRIS EVANS—That is called a handball, Mr Luck.

Mr Varghese—Can I say that most of the primary intelligence on Iraq is non-Australian. I do not think we would be in a position to go into any more detail about the Australian sourced intelligence than has already been covered.

Senator CHRIS EVANS—Even that is a help. I would have been a bit surprised if much of the original intelligence was Australian intelligence. I would have thought most would have come through the intelligence-sharing arrangements—the Five Power Defence Arrangements. I am just trying to get a sense of that. Are you able to help me any more than that, Mr Luck?

Mr Luck—I do not think I can really say much more than what Mr Varghese has said. My feeling would be that you are right: the majority is not Australian owned or sourced, but there is a sharing arrangement.

Senator CHRIS EVANS—But we would have done our own analysis of that—is that a fair description? Is that mainly ONA?

Mr Luck—ONA and DIO, I imagine, because they do have an assessment capability, would be the primary ones.

Senator CHRIS EVANS—And that all fed into the foreign affairs department's own assessments and advice to the minister? I presume Foreign Affairs provided material for the Prime Minister's speech to parliament. I do not have the date in front of me.

Mr Luck—Indirectly, perhaps Prime Minister and Cabinet would have drawn on our assistance, although probably primarily they would have relied directly on ONA.

Mr Varghese—I think we were consulted in the drafting of that speech, but the primary drafting was obviously done in the Department of the Prime Minister and Cabinet.

Senator CHRIS EVANS—We were talking earlier about the need for assessment, and I think Senator Hill has been quoted talking about these issues in recent days. I think he made a couple of very worthwhile points, and I acknowledge your earlier evidence, Mr Varghese, that more time is required for some of these things. But is there any system in place or has there been any assessment made so far on the intelligence? For instance, one of the things that comes to mind is that there was talk about Scud missiles having the range to reach Israel et cetera. I accept that some of the chemical manufacturing evidence might be hard to find and might have been pushed underground, but it seems to me that the Scud missiles are either there or they are not. Are we in a position to make any judgments about those sorts of things, or is there any evaluation of that occurring?

Mr Luck—I seem to recall before the war that people were uncertain about where the Scud missiles were—that was a problem for the military—and how many still existed. If I remember correctly, that has been one of the outstanding issues from the UNSCOM and UNMOVIC period. I have not seen anything since the fighting stopped to suggest that there has been any evidence of where those Scud missiles are and in what state they are—whether they have been dismantled or whatever. I have not seen anything. Somebody earlier mentioned some examples of things that had been found, but I do not remember any Scud missiles having turned up. But it will no doubt be part of this exercise now to try to fill out the picture as to what is still there, what was there, what might have been hidden and what might have been destroyed.

Senator CHRIS EVANS—As we now know, part of what the SES were sent in to do was to try and deal with that assessment—the threat that that might occur—so obviously there is a direct Australian interest in feedback on what that assessment was but you say that to the best of your knowledge we do not have anything concrete that we can report on at the moment.

Mr Luck—I don't recall seeing anything on the Scuds.

Senator CHRIS EVANS—What about the arguments about nuclear capacity? I see that there is some suggestion now that some of the claims about the South African links are alleged to have been bogus. Is that a conclusion we have reached? What is the department's or the government's assessment of that South African nuclear capacity argument that was around?

Mr Luck—The nuclear picture is obviously addressed by the IAEA as part of the Security Council mandated inspections but initially after the first Gulf War the extent to which the Iraqis had developed a clandestine nuclear weapons program came as a big surprise. There was not much known or anticipated about just how far they had got. The impression I had was that under the inspections of UNSCOM they were able to put together a fairly full picture of that program as it existed by about the mid-nineties and they were pretty confident that it had basically been dismantled and that only a small amount of nuclear material had been left. There is a gap in our knowledge of what happened—bear in mind that a lot of this is intellectual capital in scientists' minds—after the UNSCOM inspection ceased in 1998 and over the four intervening years and the extent to which they might have been able to put that nuclear program together. But my recollection is that the picture that was coming out of the IAEA until quite recently was that there was not a strong basis for thinking that they had made much progress in putting that program back together.

I am not sure about the South African link but I think you may be referring to the suggestion which was raised earlier in the proceedings today as to an allegation that there had been some interest in procurement of natural uranium from Niger.

Senator CHRIS EVANS—Uranium supplies, yes.

Mr Luck—That is now said by the IAEA to be based on fraudulent documentation. That is possibly what you have in mind.

Senator CHRIS EVANS—Yes.

Mr Luck—Unless I have missed something on South Africa I do not recall—

Senator CHRIS EVANS—Sorry, southern Africa, although I am not sure—

Mr Luck—That was something that was believed to be possible but the IAEA said it was based on fraudulent documentation in their view, in the report that the Director General gave at the Security Council, I think, in early March.

Senator CHRIS EVANS—And what was our assessment about that claim earlier, though?

Mr Luck—I am not sure that we had an independent basis for assessing that. It was part of a picture of procurement. It was something that could have been plausible as part of the rather fragmentary intelligence picture we had. But, as I said, the expert advice from the Director General of the IAEA was that it was based on fraudulent documentation.

Senator CHRIS EVANS—And so we accept that judgment now?

Mr Luck—We take it no further. That seems to be where we are. We have heard that advice. We have heard earlier speculation that it was true. We haven't any independent capacity to assess that.

Senator CHRIS EVANS—What about the weaponising of chemical and biological weapons? What is our assessment about that? It seems that there have not been discoveries of weaponising them. I think there was always an acceptance that they had a biological and chemical program and that had been documented. Then there were questions, to put it crudely, about what had happened to a range of the substances and the unaccounted for production. But obviously the real concentration of risk was the question of whether that potential could be weaponised in some way. I have not seen any evidence yet—talking about us uncovering any weaponisation of those programs. Do we have a judgment at the moment about that?

Mr Luck—I think that is still a gap in our knowledge.

Mr Paterson—That is in the recent period. In the period 1991 to 1998 when UNSCOM were conducting investigations in Iraq there was clear evidence of weaponisation, particularly of CW, and obviously evidence of use as well.

Senator CHRIS EVANS—Yes, I am just trying to understand what we think the picture is now.

Senator Abetz—I think Mr Paterson may have given some evidence whilst you weren't in the room, Senator Evans, if I am on the right track, that it would take another few months before we could come to some—

Senator CHRIS EVANS—No, I was here for that.

Senator ROBERT RAY—Weaponisation is a separate question.

Senator Abetz—Yes, but only about 20 per cent of the 1,000 sites have been looked at at this stage, I think, with some of the evidence as well. So there is still a lot more to be done.

Senator ROBERT RAY—Usually with 20 per cent of the votes in we have a rough idea of where we stand, but anyway.

Senator Abetz—There were those two vehicles or trailers that were found.

Senator CHRIS EVANS—I think I should ask Antony Green to give us a reading. I will leave it there. We will come back to that.

Senator ROBERT RAY—Could I go to a slightly different issue with regard to Iraq. There has been a public announcement that we are reopening the Australian mission, and I think we noted earlier that there is provision in the budget for that. Who do we get accredited to there? There isn't a government there. How do we get accredited to Baghdad without there being a government?

Mr Varghese—At the moment we are styling our office there as the Australian representative office and the main reason we are using that rather unusual nomenclature is precisely because there is no Iraqi government to which we could accredit it in the normal way. It has the status of something less than a full embassy at the moment.

Senator ROBERT RAY—Are we are moving back into our previous building?

Mr Varghese—We only retained the head of mission residence from when we had diplomatic representation there and we are using the residence as an office at the moment. We are seeking to find a permanent site for an office.

Senator ROBERT RAY—I see. Did I read somewhere that that residence is in comparatively good order because a caretaker looked after it, compared to a lot of the other residences in the district?

Mr Varghese—Yes, relatively speaking it was quite well maintained. We had a person paid to look after it. There had been occasional visits from Amman, which covered our interests in Iraq, by Australia based officers from Amman visiting there. The caretaker did a terrific job, not only in terms of caretaking but he did an extra terrific job in terms of defending the premises from looters.

Senator ROBERT RAY—That is a good news story.

Mr Varghese—It is indeed, and we recently presented him with an award—

Senator ROBERT RAY—Don't tell me—you gave him a Centenary Medal!

Mr Varghese—No, it was a certificate of appreciation that Mr Downer had the opportunity of presenting to him and we also gave him a special financial bonus.

Senator ROBERT RAY—Excellent. I think that is deserved. In terms of the Iraqi Task Force, have there been any discussions or decisions made, now that there has been a regime change in Iraq and a change of circumstances, about what will happen to asylum claimants in Australia whose claims have been fully explored and rejected?

Mr Paterson—That falls beyond the purview of the work of the task force.

Senator ROBERT RAY—I just noticed that you had DIMIA on your task force. I thought it may have been one of the things that they discussed.

Mr Paterson—No, the reason we have DIMIA on the task force is that they have a number of staff attached to posts in the region and it was more about the welfare of those staff during the period of conflict.

Senator ROBERT RAY—Leaving aside the task force, is this an issue that has come up and been presented to DFAT or not?

Mr Paterson—Not to the Iraq Task Force.

Senator ROBERT RAY—No. I just excluded them. I am sorry; I was looking away from you, Mr Paterson, for a wider answer in the department.

Mr Varghese—I am not aware that it is an issue that has been under any active consideration in DFAT or indeed whether, beyond the task force, it is an issue that has been raised with us by DIMIA.

Senator ROBERT RAY—I was just interested, if it were, with whom you would negotiate in Iraq for the safe return of people?

Mr Varghese—I am sure that would be one issue.

Senator ROBERT RAY—But you do not think it has come up yet as an issue?

Mr Varghese—Not to my knowledge; it has not been raised.

Senator ROBERT RAY—Do you want to take that on notice just in case it has come up somewhere else?

Mr Varghese—Sure. Yes, I will do that, Senator.

Senator ROBERT RAY—Thank you. Could I ask for an update on the status of forces agreements that were being negotiated, probably prompted by the fact that we were involved in the Middle East and Iraq? Can you tell me with what countries we have made those arrangements, always with the proviso that I am not stepping on any toes by revealing the information?

Mr Varghese—Do you mean in relation to countries in which we may have based some of our personnel who were involved in the Iraq campaign?

Senator ROBERT RAY—Yes. We often negotiate a status of forces agreement with those countries.

Mr Varghese—Yes.

Senator ROBERT RAY—I understand there might be some sensitivity in one or two countries around the globe, so you can omit those as you see fit.

Mr Varghese—I am not sure. Mr Paterson has some information.

Mr Paterson—Senator Faulkner asked me exactly this question at the last hearing of the Senate estimates committee at which we appeared. The answer is: we negotiated a status of forces agreement with Kuwait. We negotiated two others, which are confidential between the parties; therefore, I am not able to reveal publicly with whom we negotiated them, at the request of those particular countries.

Senator ROBERT RAY—So it is Kuwait plus two in that region?

Mr Paterson—That is correct, Senator.

Senator ROBERT RAY—Thank you. Do we have one with the United States, incidentally? Does anyone know that?

Mr Paterson—My understanding, from my previous job, is that yes, we do have a status of forces agreement with the United States.

Senator ROBERT RAY—I have no further questions on that area.

Senator FAULKNER—I was going to move to the Pacific.

Senator ROBERT RAY—So was I.

Senator FAULKNER—Mr Varghese or Mr Wells—whoever can assist us—could you provide a very brief report to the committee on where the Solomon Islands conflict is at, as we meet?

Mr Wells—I am afraid it will be a very brief report. The law and order situation in the Solomon Islands continues to deteriorate. The most recent manifestation of that general lawlessness was in the tragic death of an Australian missionary. That is, if you like, a very

stark indication of the sorts of lawlessness problems that the Solomon Islands face. The effect on the economy on the islands continues to grow. You will probably have read about recent threats to the security of the personnel of banks in the Solomons, including Australian banks, as a result of which personnel were withdrawn and the banks closed for a short period. They have now reopened but, understandably, there is a high level of concern that these threats might re-emerge.

Extortion continues, as a result of intimidation at the level of organs of the Solomon Islands government. Police protection has been withdrawn from the Prime Minister of the Solomons, so he is concerned about his own security. In short, as I said, it is an extremely worrying picture of a decline into further lawlessness.

Senator FAULKNER—Thanks for that, Mr Wells. Obviously it confirms much of what we read in the media about the situation in the Solomons. I think the committee would be interested to hear what assistance the Department of Foreign Affairs and Trade has been able to provide to the Solomon Islands. I am thinking here of financial assistance, diplomatic assistance or any other sort of assistance to see whether this very difficult situation can be addressed. I am not sure of that aspect. You might outline any assistance the department has been able to give.

Mr Wells—The government as a whole is certainly providing what assistance it can to the Solomons. We have a substantial aid program. With respect to those details, you would probably get a more complete answer from my AusAID colleagues.

Senator FAULKNER—I appreciate that. I was thinking about some other areas.

Mr Wells—Certainly, in terms of law and order, there is a substantial whole-of-government program in the Solomons—AusAID, the AFP and even Defence, through the defence cooperation program, are all working in the very slow task of rehabilitating the Solomons' police, which everyone seems to agree is going to be a crucial element in reducing lawlessness in the Solomon Islands. That is the most substantive contribution the government is making to deal with the problem.

Senator FAULKNER—Are there any actual departmental resources, apart from what is happening on your desk, that you are aware of, given the particularly difficult situation at this time?

Mr Wells—In terms of departmental resources in the Solomon Islands, if that is what you mean, Senator, there is a departmental officer who I think is funded by AusAID, but I would have to check that, who works in the office of the Prime Minister to assist in the provision of policy advice.

Mr Varghese—Senator, you would be aware, of course, that the minister, supported by the department, has over the last several years been very active in terms of trying to facilitate a political settlement in the Solomon Islands. The department provided the leader for the monitoring team that flowed from the peace agreement that was negotiated with very active Australian involvement. I should also mention that, specifically in the area of police and judiciary and strengthening law enforcement, there is a \$17.2 million program over 3½ years to strengthen the Solomon Islands in those areas—not paid for by the Department of Foreign

Affairs and Trade but flowing from our overall development assistance commitment to the Solomons.

Senator FAULKNER—What departmental resources, Mr Wells, do you have in your branch—how many desk officers and so forth—looking at the Solomons in a dedicated sense?

Mr Wells—I can only give you an average idea, Senator. As you would appreciate, different people work on different subjects. At any one time, probably about three officers will be focusing on the Solomon Islands. Their branch head would, at a very rough guess, be spending more than half of his time on the Solomons. It takes up a reasonable amount of my time, too. It is hard to be more quantitatively precise than that.

Senator FAULKNER—No, I am just trying to get an understanding of the sorts of resources that are going in at a departmental level.

Senator ROBERT RAY—In terms of taking up your time, have you had to spend much time with the banks? I understand they shipped a lot of families out and moved a couple more. If that doesn't work, they are going—with disastrous consequences.

Mr Wells—The consequences would certainly be disastrous and that is our concern. If the security situation does not improve, the banks would very properly look at closing down altogether.

Senator ROBERT RAY—And getting out altogether is my understanding. I think we have finished with the Solomons.

Senator Abetz—And the Pacific?

Senator ROBERT RAY—Not quite; we are still on the Pacific. You will be able to wash this issue right out of your hair in a minute. I notice DFAT is claiming that it is giving high priority to supporting the PNG government's attempts to restructure the PNG Defence Force. I understand that there is an agreement with PNG about the disbursement of a \$20 million package to support restructuring. Did the bulk of that money go towards retrenchments in the PNGDF?

Mr Wells—Yes, it did. I cannot remember the precise proportions. Some of it went to immediate payments to retrenched individuals; some of the money went into their pension entitlements.

Senator ROBERT RAY—Does the figure of 200 ring a bell for retrenchments?

Mr Wells—\$200 million?

Senator ROBERT RAY—No, 200 individuals.

Mr Wells—I am sorry. I need to check, but I think the target for the first tranche of retrenchments was about 300.

Senator ROBERT RAY—I am not talking about the target; I am talking about the achievement.

Mr Wells—The most recent advice is that we are close to that 300 figure.

Senator ROBERT RAY—I just have one last area which I want to have a very quick glance at: there have been a number of newspaper articles about Nauru of late and about US

views put to the Nauru government very staunchly, mostly about the lax financial arrangements allowed for people in banking and the view that Nauru may well be used as an entity through which terrorism could be supported in a financial way. Have the Australian government and the Department of Foreign Affairs and Trade been involved in any of these representations to the government of Nauru?

Mr Wells—No, we have not been involved in the United States representations that you have referred to. However, we have been involved in broader international efforts to work towards encouraging the Nauruan government to deal with those problems. Australia has also set aside a sum of money to assist South Pacific countries, including Nauru, to develop appropriate legislation. We have been actively involved in trying to deal with the problem.

Mr Varghese—I should add that we of course share those US concerns. They are also our concerns and we have raised that issue with the government of Nauru in the past. We remain concerned about what we consider to be insufficient checks and controls on Nauru's passport scheme, for instance—

Senator ROBERT RAY—Yes, in particular.

Mr Varghese—and we welcome Nauru's foreshadowed intention to close that particular scheme down. We will continue to pursue this issue with the new government once it is formed. They are having a bit of difficulty forming the government. More broadly, of course, we are concerned at the vulnerability that the South Pacific region has to transnational crime. That applies to Nauru as it does to some of the other island countries. We will continue to raise this issue with Nauru and urge them to take further action. They have passed legislation abolishing their shell bank system, which is a welcome step, but we think that there is more that can and should be done, basically.

Senator ROBERT RAY—Is there any evidence that Australian ex-pats are exploiting the defects in their current legislation?

Mr Varghese—I haven't seen any to that effect but—

Senator ROBERT RAY—I am just asking.

CHAIR—Have you finished your questions on 1.1.4?

Senator FAULKNER—I believe so.

[9.05 p.m.]

CHAIR—We now move on to output 1.1.7, international organisations, legal and environment.

Senator FAULKNER—I was interested in asking some questions in relation to the Ambassador for People Smuggling Issues, to give it its correct title—is that right, Ms Millar?

Ms Millar—That is right, Senator.

Senator FAULKNER—Can you indicate what the main role of the Ambassador for People Smuggling Issues is, please?

Ms Millar—As you will know, Senator, ministers agreed to establish this position in February 2002. The ambassador is responsible for promoting a coherent and effective

international approach to combating people-smuggling—I am drawing on the words of the press release issued at the time—particularly in the Asia-Pacific region, and to assist as appropriate in the negotiation of high-level return, readmission and resettlement arrangements.

Senator FAULKNER—At what level is the ambassador?

Ms Millar—He is a SES band 2 colleague.

Senator FAULKNER—What resources or support staff are there for the Ambassador for People Smuggling Issues?

Ms Millar—The ambassador has a personal assistant and otherwise draws on the resources of my division.

Senator FAULKNER—So there is one dedicated staff member—one dedicated PA—is that right?

Ms Millar—That is right, Senator, although I should point out that for the recent Bali ministerial conference we set up a small task force for a short period to assist the ambassador in running that conference, but those resources were absorbed within the department.

Senator FAULKNER—Now tell me this: when was he actually appointed?

Ms Millar—He was appointed just after the first Bali ministerial conference on people-smuggling, trafficking in persons and transnational crime, which took place in April 2002.

Senator FAULKNER—So it was pretty soon after that.

Ms Millar—Pretty soon after that, yes. The position was announced in February 2002 and Mr Buckley took it up, I understand, just after the conference.

Senator FAULKNER—So, as you said before, April 2002 is about right—or thereabouts.

Ms Millar—Yes.

Senator FAULKNER—I assume that most of the ambassador's work is outside Australia. Would that be right?

Ms Millar—He has travelled extensively in the region, primarily to promote the Bali process.

Senator FAULKNER—Can you say to us which countries he has visited?

Ms Millar—Yes, I can. I have a substantial list which I am happy to make available to the committee or I can read the names out—

Senator FAULKNER—I would be happy for you to make it available to the committee. Does this list include the dates of the ambassador's trips?

Ms Millar—Yes, it does.

Senator FAULKNER—That would be very helpful. I would be more than happy, Minister, if the information is just tabled—if you are happy, Mr Chairman. I think we will save committee some time. Thank you indeed.

Senator Abetz—It is part of a brief so it will have to be photocopied—

Senator ROBERT RAY—And cleansed!

Ms Millar—We will give it to you first thing in the morning.

Senator ROBERT RAY—We would not want the footnotes to be left—

Senator Abetz—That happened once before, as I recall.

Senator FAULKNER—Is there a travel budget for this new position?

Ms Millar—Part of the travel costs have been absorbed within the department. I understand also that DIMIA provided some money over a two-year period for travel for this position.

Senator ROBERT RAY—How much?

Ms Millar—\$50,000 over two years is my understanding, Senator.

Senator FAULKNER—So DIMIA are making a contribution of \$50,000. What is the DFAT contribution to the travel budget for the ambassador?

Ms Millar—I do not have a precise breakdown of that.

Senator FAULKNER—You are going to make that list available but you have not actually made it available at this stage. Is that so?

Ms Millar—I have it with me and I can make it available in a few minutes. I just have to copy it for you.

Senator FAULKNER—I would be very interested if you could explain to the committee the areas of responsibility in relation to people-smuggling the ambassador has both in Australia and overseas. I would be interested to see how this fits into a broader picture in terms of countering people-smuggling.

Ms Millar—Primarily, his role over the past year since he was appointed has been to promote the Bali process, which was a process in the region. It started with a ministerial conference last year in April 2002 and culminated for the first year of its operation with a further conference at ministerial level this year. He was a member of a steering group with other regional countries to work on these issues during the year and he also travelled to help lead and participate in a number of regional workshops and meetings on people-smuggling issues during the course of the year. I am certainly happy to provide details of those to the committee either now or in writing if you would like them.

Senator FAULKNER—You are saying that you would be happy to provide copies of meeting schedules and the like?

Ms Millar—I would be happy to give you those if you would like them. They are on the public record.

Senator FAULKNER—When you say they are on the public record—

Ms Millar—There is a web site set up for the Bali process which details all that information. I think it has been talked about publicly before.

Senator FAULKNER—Is the information on that web site an exhaustive picture of the ambassador's activities?

Ms Millar—That is the web site for the Bali process so it details all the activities of the Bali process under which there are two working groups, one led by Thailand and one led by New Zealand. There are a number of operational and technical activities that took place under the auspices of those workshops. All that is detailed on the web site—which countries participated and so on.

Senator FAULKNER—I am trying to understand whether access to the web site gives someone a fair picture, a broader picture, of what the ambassador has been doing or whether it is an element of the ambassador's work, if you understand the distinction.

Ms Millar—It would give you a sense of the Bali process. Of course, the ambassador has been the principal person driving that for the Australian government. He does undertake other work in Canberra as well.

Senator FAULKNER—What other work would that be?

Ms Millar—We also have quite a lot of details of his activities on the DFAT web site, as my colleague has pointed out to me.

Senator FAULKNER—You have tabled this document, and it seems like a very exhaustive travel itinerary that has been undertaken until the end of April, so I appreciate having that information available. Mr Varghese, how does the department make an assessment of the effectiveness of this new role? I am not suggesting in asking that question that it has not been effective; I am just wondering what performance indicators you have, how you make that sort of assessment.

Mr Varghese—I suppose we would judge the effectiveness of the role by the results that we have achieved to date in terms of stronger regional cooperation to address the question of people smuggling and illegal people movements. The reason why the Bali process has been such a prominent part of Mr Buckley's job is that the convening of that meeting and the working groups that flowed from it has been a very significant step forward in terms of the capacity of regional countries to address this issue in a cooperative way. That was what we were shooting for right from the beginning. Our evaluation of it would be a very positive one. We have made substantial progress in regionalising and internationalising this issue. The ambassador has made a significant contribution to that outcome.

Senator FAULKNER—In this quite exhaustive travel itinerary would the ambassador be meeting with the intelligence services in the region and so forth? Would it go to that sort of level?

Mr Varghese—I don't have before me the details of his programs. I don't think meetings with the intelligence community as such would have been a high priority in his visits. I think his focus has been very much on working with those line agencies that are responsible for border controls. I guess he has had quite a bit to do also with police forces in the region, because they have a very important border control function, as well as immigration departments and foreign ministries. I am not saying that he would not have had contacts with intelligence agencies as well. In terms of my understanding of the work that he is doing, I did not see that as being very likely to be his first priority when he goes abroad.

Senator FAULKNER—At what sort of level is the ambassador able to interface with these agencies?

Mr Varghese—His access has been very good. He has had access at a very senior official level. From time to time he has probably also met with ministers in the region. Overall, I would say his access is very good.

Senator FAULKNER—Is there an end point with this position?

Mr Varghese—The government has not taken a decision about an end point. I think now that the Bali process has been well and truly consolidated, we would need to review the medium-term future of the position. As I say, that was clearly the first priority that we placed on the job. I think that has been done. I imagine this is something that the minister would want to think about in the not too distant future.

Senator FAULKNER—That sounds ominous.

Mr Varghese—It was not meant to sound ominous.

Senator FAULKNER—Well it did.

Ms Millar—Perhaps I can add that. What the Bali process is trying to do, from the perspective of our department, is to set up a framework in which a lot of the technical cooperation can take place through line agencies working with counterparts. I think we have seen quite a lot of progress in that respect over the past year.

Senator FAULKNER—Is there a clear statement of objectives for that position that you can point me to? You have talked about the Bali process, but can we be any more specific about that? Have specific objectives been set down that the government wants to achieve or wants to see achieved by the ambassador?

Ms Millar—As I said earlier on, the government's objectives with respect to this position were set out in the media release issued by Mr Downer at the time. I have a copy here.

Senator FAULKNER—What were they again?

Ms Millar—Basically to promote a coherent and effective international approach to combating people-smuggling, particularly in the Asia-Pacific region, and to assist as appropriate in the negotiation of high-level return, readmission and resettlement arrangements. The ambassador was also tasked to follow up the results of the First Regional Ministerial Conference on People-Smuggling, Trafficking in Persons and Related Transnational Crime. That is basically the broad mandate of his work.

Senator FAULKNER—Then my question goes to: how do you measure effectiveness in those two or three key areas? Has there been an attempt to measure the effectiveness of the role? I am not suggesting that it has not been effective, but I wonder how you can make an objective assessment of these things.

Mr Varghese—I think one effective assessment is the fact that, through the Bali process, we now have had not only a much stronger element of regional cooperation addressing these issues but also two specific working groups established under the Bali process that have looked at issues such as legislation to deal with people-smuggling, the policy issues involved and a number of the practical implementation issues that are involved. As Ms Millar has

suggested, we now have a network of officials who are carrying all of this forward. From our point of view, they are very specific achievements that have flowed since that position was created. Not of all of it is a result of that position, but the position made a substantial contribution to it.

Senator ROBERT RAY—Thank you for giving us this list of travel. It can be slightly deceptive: it looks like an awful lot of trips but I notice that with a lot of them one flows on to the other. So there might be four visits in the one trip.

Ms Millar—That is right.

Senator ROBERT RAY—Have you done a calculation of what the cost involved with that travel is—airfares, accommodation and other associated costs—for the financial year up until about 30 April?

Ms Millar—I do not think I have the exact figure for all the travel here.

Senator ROBERT RAY—There is no hurry. Would you like to take on notice the question of travel, and the associated travel costs, from 29 June 2002 to 30 April 2003?

CHAIR—We might just have a discussion.

Senator FAULKNER—Tea break time.

Senator ROBERT RAY—Just before we do that, could I ask one question? Do we deal with the United Nations under output 1.1.7, International organisations, or does it come up somewhere else?

Mr Varghese—This is the right place.

Senator ROBERT RAY—I will come back to it.

CHAIR—The bad news is there is no smoko and the good news is that by agreement the committee will rise at 10.15 this evening.

Senator Abetz—What will that do to tomorrow's agenda? I do not need the details, but do you believe you will be able to deal with it all tomorrow?

CHAIR—DFAT questions will continue through what remains of the outputs—

Senator FAULKNER—If not, we'll come back on Saturday.

CHAIR—Order! Questions to DFAT will continue along the output line until lunch tomorrow and at 1.30 we shall proceed with questions of Trade and Austrade.

Senator ROBERT RAY—So I think what we are saying is that we should finish 4.2 by 12.30 tomorrow. That is right, isn't it?

Senator FAULKNER—That is what we are aiming for.

Senator Abetz—As I understand it, Senator Hill can do it tomorrow afternoon when we are going to do the trade section. I am just concerned that if you were to possibly bring things forward—

CHAIR—The intention is not to bring trade forward.

Senator FAULKNER—There is no way things will be brought forward; they might slip a little, but not a huge amount.

Senator Abetz—Thank you.

CHAIR—If for some reason there was a problem, we would attempt to bring AusAID in before lunch to fill the gap, but unfortunately that is not likely to occur.

Senator Abetz—Right. Let's keep going.

CHAIR—Proceed.

Senator Abetz—Where were we?

CHAIR—We were with 1.1.7.

Senator ROBERT RAY—With regard to the United Nations, there is an issue current at the moment about how we deal with proscribed organisations. As I understand it, one of the provisions in the legislation is that we are able to proscribe organisations that are so regarded by the UN, but the question of Hezbollah has come up. It is not proscribed by the UN yet both sides of politics believe, even though we may differ in our approach on how it is done, that it should be a proscribed organisation. What steps are the Australian delegation at the United Nations taking to pursue proscription of Hezbollah at the United Nations?

Senator FAULKNER—Listing.

Senator ROBERT RAY—I think the word is 'listing'—the listing of this as a proscribed organisation there.

Ms Millar—I am not aware of any steps that have been taken in New York but I am happy to try to get back to you tomorrow or to take it on notice and get more details for you.

Senator ROBERT RAY—Let me express a bit of surprise at that. It is a very current issue and I would have thought that there would have been some consideration somewhere of this issue being raised. You may not be aware because you are not informed or you may be saying that you are not aware because you believe no steps have been taken. I need a little further guidance on the level of you not being aware here.

Ms Millar—Certainly. I don't believe it has happened but again I would need to check for you. The only issue of that kind in which we have been actively involved is with respect to Jemaah Islamiah. It is not something that I have personally been working on.

Senator ROBERT RAY—Which committee or subcommittee of the UN would this normally be raised at?

Ms Millar—The Security Council.

Senator ROBERT RAY—So it is a Security Council matter?

Ms Millar—That is right.

Senator ROBERT RAY—What is our entitlement to put matters on the Security Council agenda?

Mr Varghese—I think the short answer to that is that, since we are not a member of the Security Council, we do not have the capacity to put an agenda item on to the council's deliberations.

Senator ROBERT RAY—What I am trying to get to, Mr Varghese, is this: having seen an organisation we think should be listed that is not listed and then have to take action here, what action could we have taken, by whatever method, at the United Nations to have it listed? Can you assist me on that?

Mr Varghese—Only to the extent that I will have to take that on notice and get back to you as soon as I can. One difficulty that I could see—and I am not able to answer your question as to what we have done until now—is that obviously there is a question about whether there would be a sufficient political consensus amongst UN members to be able to achieve that listing. I think that would be very problematic at the moment.

Senator ROBERT RAY—If that is the reason we have not attempted it, I would not mind an answer—not at the moment, because you are only speculating. I would like to know, if we have not attempted it, whether that is the reason. You don't have to beat your head against a brick wall for no good reason; I understand that. I would just like to know. With respect to the other organisations that are proscribed in this country that were listed there, there is a degree of unanimity in the parliament on them. But this one has to be dealt with either by a broader proscription regime or by specific legislation.

Mr Varghese—One of the constraints also is that under the existing Security Council resolution listing has to flow from a connection to the Taliban and al-Qaeda related entities. You would get a bit of a debate there about whether Hezbollah would fit that category.

Senator FAULKNER—Isn't there a committee of the United Nations Security Council called 'committee established pursuant to resolution'—

Mr Varghese—1373.

Senator FAULKNER—I was going to say 1267.

Senator Abetz—It has four numbers in it.

Senator FAULKNER—Yes, it has four numbers—those creatively named UN committees. You may be right; what did you say the number was?

Mr Varghese—1373.

Senator FAULKNER—That is, if you like, a standing committee of the UN Security Council, isn't it?

Mr Varghese—It is the counter-terrorism committee, established under a Security Council resolution.

Senator ROBERT RAY—What is the membership of that committee?

Mr Varghese—I do not have that information with me, Senator.

Senator ROBERT RAY—Do you know how big it is?

Mr Varghese—We will have to get back to you on that as well, Senator.

Senator FAULKNER—And that is the relevant committee that has listed al-Qaeda, the Taliban, their derivatives and so forth, is it?

Mr Varghese—That is correct; that is my understanding.

Senator FAULKNER—If a government is keen to have an organisation so listed, there is a process that can be undertaken, isn't there?

Mr Varghese—I think we need to get back to you on just what that process is.

Senator FAULKNER—What happened in relation to JI, for example?

Mr Varghese—I think JI is considered under the terms of the relevant Security Council resolution to be an al-Qaeda related entity.

Senator FAULKNER—I am asking about the process here. The Australian government took an initiative in relation to JI, didn't it?

Mr Varghese—That is right.

Senator FAULKNER—To that committee?

Mr Varghese—I think we were involved in having JI listed.

Senator FAULKNER—But what does that mean for a member state? When you say we were involved, I know that to be the case; I understand that to be the case. What course of action does a member state of the United Nations like Australia take if they want to take such a course of action?

Mr Varghese—To have the organisation listed?

Senator FAULKNER—Yes.

Mr Varghese—Again, Senator, I will have to take that on notice. The point I was making was that because JI is considered without dispute to be an al-Qaeda related entity it falls squarely under the relevant listing provision of the Security Council resolution. Hezbollah, on the other hand, is in a different category.

Senator FAULKNER—Yes, but Hezbollah has been listed, hasn't it, under part 4 of the Charter of the United Nations—under the United Nations Act? How does that work? These are organisations listed for the purpose of asset freezing. That is correct, isn't it—under part 4? Correct me if my terminology is wrong; I think it is the Charter of the United Nations Act—that is right, isn't it?

Mr Varghese—Yes.

Senator FAULKNER—How is that done?

Mr Moraitis—Resolution 1373 spells out the requirement for states to list entities for the purpose of terrorist asset freezing. The definition in 1373 does not specify organisations as a generic description of terrorist organisations. On that basis you can list entities such as Hezbollah for terrorist asset freezing purposes.

Senator FAULKNER—Yes.

Mr Moraitis—That is my understanding. I do not have the resolution in front of me, so I can't recall the details.

Senator FAULKNER—That is broadly my understanding.

Mr Moraitis—That is my general understanding.

Senator FAULKNER—But it is listed as a terrorist entity?

Mr Moraitis—For the purposes of asset freezing.

Senator FAULKNER—Yes, for the purposes of asset freezing.

Mr Moraitis—Yes.

Senator FAULKNER—It is not more broadly listed by that committee which had that extraordinary name—the Committee Established Pursuant to Resolution 1373.

Mr Moraitis—‘The CT committee’ is the shorthand name.

Senator FAULKNER—I am glad it has a shorthand name.

Senator Abetz—It would not be a UN committee without an acronym.

Senator FAULKNER—Can you explain the difference in terms of processes for the listing of a terrorist organisation by the CT committee and the listing as a terrorist entity for the purposes of asset freezing? I understand the difference in terms of outcomes, and I think I might even understand the difference in processes, but are you in a position to explain the two process differences to the committee?

Mr Moraitis—My general understanding of the processes is that 1373, which is, as we referred to, the counter-terrorism committee process, pertains to asset freezing. There is a generic description which empowers member states to list organisations for asset freezing purposes. That allows states wide discretion if they are satisfied that the definition is met. My understanding is that there is a separate resolution—I do not recall the number of the resolution—which relates to the proscription of terrorist organisations, and they need to be specifically listed, I understand.

Senator FAULKNER—That is what I thought was 1267.

Mr Moraitis—It could well be; I just haven’t—

Senator FAULKNER—Which, when I said that, Mr Varghese assured me that that was not the—

Mr Varghese—Senator, I think it is probably better for us to give you a considered response on notice, because just in the briefing notes I have here there are at least three UN resolutions that are mentioned, including 1267, and it is not clear to me just what their respective competencies are. So, rather than mislead you on any of that, I would rather take it on notice and give you a clean and considered response.

Senator ROBERT RAY—It is not clear to you. Is it clear to anyone else at the table who would have more specialist knowledge of this?

Mr Moraitis—My understanding is as I conveyed to the committee a while ago, that pursuant to 1373 that provides member states of the United Nations with the capacity to list specific organisations for the purposes of asset freezing. Proscription of organisations, in this case Hezbollah, would require specific listing under a separate resolution. I do not recall the exact resolution and its terms; I do not have them in front of me.

Senator FAULKNER—I would hazard a guess and say it is 1267.

Mr Moraitis—You may well be correct.

Mr Varghese—I think that is right. The other one that is listed here is 1333.

Mr Moraitis—They are related, I think, to al-Qaeda related entities. That is my general recollection of the process and the distinction between the two.

Senator FAULKNER—Was the Australian government involved in any action under 1373 in relation to asset freezing for Hezbollah?

Mr Moraitis—My understanding is that it has been listed.

Senator FAULKNER—It is listed. Yes.

Mr Moraitis—I do not have that information.

Senator FAULKNER—In terms of the initiative taken at the UN level as opposed to what occurs domestically or in Australia.

Mr Varghese—My notes say that listing Hezbollah under the Charter of the United Nations Act was done in fulfilment of Australia's obligations under Security Council resolution 1373 to freeze without delay funds and other financial assets or economic resources of persons or entities who commit terrorist acts.

Senator FAULKNER—Do you know when that happened?

Mr Varghese—I do not have a date for that.

Senator FAULKNER—You might indicate that to us.

Mr Varghese—We will take that on board as well.

Senator FAULKNER—What you are offering to do is just outline these two separate processes, or are you even suggesting it may be three separate processes?

Mr Varghese—I am suggesting that we need to give you a bit of clarity on it, which we do not currently have. Those regulations that you asked for the date on: it was 21 December 2001.

Senator ROBERT RAY—We are expected to make decisions about legislation on areas that you cannot even clarify. That is a bit of a worry.

Mr Varghese—I am sure we can clarify it. We are just not in a position to do it at the table at the moment.

Senator FAULKNER—But you have assured Senator Ray that there have been no approaches made to the United Nations Security Council in relation to the listing of Hezbollah under 1267 or the committee established pursuant to resolution 1267?

Mr Varghese—I think I said that I would like to take that on notice and get back to you on it.

Senator FAULKNER—I think you may have evolved to that position, was more my understanding of it.

Senator Abetz—Let's not worry how we got there. It has been taken on notice.

Senator ROBERT RAY—It is an iterative process, as the department of finance would say. Has the department in the last three or four years turned its attention at all to reform of the UN? It was a very popular thing around 1996, 1997 and 1998, but I am wondering

whether in the last three or four year we have looked at reformed aspects of the UN. First of all, do you know how far behind the United States is now in its payments?

Ms Millar—I cannot give you advice on the payments of the United States but I can talk to you, if you like, about the initiatives Australia has taken on the reform of the United Nations.

Senator ROBERT RAY—Yes, Ms Millar.

Ms Millar—Australia has been very active for many years, as you referred to in your comments on UN reform. In particular, in the last few years the government launched a high-level diplomatic initiative on reform of the UN human rights treaty body system. We have been working on that actively since it was launched in April 2001. The key aspects of that initiative were: to host workshops to look at practical ways of reforming the treaty body system; to seek election for the Commission on Human Rights for 2003-05—which we were successful in doing and we are currently a member of the commission—and a number of other operational issues to try to improve the function of the treaty body system and encourage adherence to the human rights conventions.

Senator ROBERT RAY—Have we done anything about the geographical groupings?

Ms Millar—As I am sure you know, we have been concerned about those groups for some time. At the moment, the efforts to try to reform them have not got very far. There are so many vested interests in the United Nations in the status quo. We look at it periodically but, at the moment, we are not actively pursuing that.

Senator ROBERT RAY—So we still just get ignored by the western European group, do we, in essence?

Ms Millar—In what sense?

Senator ROBERT RAY—It is a long while since they have given us a run on the Security Council, for a start.

Ms Millar—We have not run for the Security Council for while, Senator.

Senator ROBERT RAY—Not in the last few years. Out of the western European group, when were we last on it?

Senator Abetz—In the mid-eighties was the last time we were on the Security Council.

Ms Millar—Yes, in the mid-eighties.

Senator ROBERT RAY—It is a good group to be in then. Has any thought been given to arguing for a more transparent voting system in the United Nations for positions? They are into position futures over there. The last ballot I watched there were 180 votes cast but 300 promised. Surely, if we had a transparent voting—

Senator FAULKNER—It sounds like a preselection.

Senator ROBERT RAY—It is worse than a preselection, let me assure you of that—much worse. No-one is accountable for the votes they promise. It does not engender a system of trust—it is getting closer to preselection as we further develop this, I understand—whereas everyone should be accountable for their vote. On some votes on the board of the UN, Australia presses a button and its vote comes up.

Ms Millar—For voting on resolutions—

Senator ROBERT RAY—Why shouldn't it do that for positions on committees; sometimes they elect judges, as you know, or other things. Why shouldn't every country be accountable and cut all his enormous double-dealing, lies and hypocrisy out of the UN.

Ms Millar—I think the government would strongly agree on the need for people to honour their commitments in a more transparent voting system, Senator. I can only agree.

Senator Abetz—We might appoint you as the ambassador for reforming the United Nations, Senator Ray.

Senator ROBERT RAY—We did a bullet voting exercise when I was there that was very successful, Minister. Going back to my very first question, one stage very early this year the United States was putting pressure on the Security Council to deliver and to do its duty, all of which I supported them on, but there was always a reciprocal thing for the United States to do its duty and pay its way. You cannot indicate to me whether it has done so or not?

Ms Millar—I do not have figures with me but, whatever is available publicly in the UN, we can provide those to you—but I do not have them with me today.

Senator ROBERT RAY—My understanding is that they are still many years behind in their subscription—their levies.

Ms Millar—I am not sure of the exact state of that but I am happy to provide what we can tomorrow, if you like.

Senator ROBERT RAY—Just one final question, because I did not want to spend much time on this: do you know how up to date the UN are in paying for their commitments to peacekeeping and other related activities? They were several years behind at one stage. Have they made up any of that ground?

Ms Millar—I do not have any figures on that. Again, I can get them very quickly for you. I am happy to take them under consideration and provide them tomorrow, if you like.

Senator ROBERT RAY—Thank you.

Senator FAULKNER—Mr Varghese, did you see an article in the *Australian* newspaper dated 24 February this year headed, 'Canberra backflips again on dead spy'? This is an article in part about the Merv Jenkins issue, but part of the article mentioned a looming court case. Before I ask some questions on this, I just want to be clear about the status of any court action in relation to this. This is in your section, isn't it, Ms Millar?

Ms Millar—It is probably more a matter for our colleagues from Mr Tighe's division.

Senator FAULKNER—I thought it was output 1.1.7. Is that wrong?

Senator Abetz—I think we can deal with it now.

Senator FAULKNER—Really it is a legal question, so Mr Moraitis might be the best person to answer this for me. I would just like to be clear before I ask a range of questions on this issue. Obviously my questions will be informed by the status of what is described as a looming court case in the article that I refer you to. My first question is: can one of the

witnesses at the table provide the committee with an indication whether there is any court action under way and, if so, what is its status?

Mr Moraitis—I have a general understanding of where the proceedings are at. I understand that the proceedings are still pending. There is a stage involving discovery of documents—

Senator Abetz—From what I have got, all proceedings must be under way if there has been a request for discovery.

Mr Moraitis—My understanding is that it is primarily being run by the Department of Defence but Mr Tighe can correct me—

Mr Tighe—Mr Moraitis is correct.

Senator FAULKNER—So you are saying that in relation to this action the agency defending this case is the Department of Defence.

Mr Tighe—That is correct.

Senator FAULKNER—I will refer you to the first paragraph of the article mentioned in the *Australian* newspaper on 24 February. It states:

The federal Government has performed another embarrassing backflip in its claims about a senior Australian spy who killed himself after a botched investigation.

It goes on outlining details of the case and certainly mentioning the fact that there is possible court action. I was wondering whether the Department of Foreign Affairs was, firstly, aware of this media report. I assume you do keep a weather eye on these sorts of things, Mr Moraitis or Mr Tighe?

Mr Tighe—Yes, I have seen the report.

Senator FAULKNER—Is anyone able to indicate whether this report that the federal government has changed its position on claims about Merv Jenkins relates to the department or is this outside the involvement of Foreign Affairs?

Mr Tighe—The action, as I understand it, has been taken by Mrs Jenkins against the Commonwealth as represented by the Department of Defence. The query really belongs with the Department of Defence.

Senator FAULKNER—I understand that from the evidence you have given. Is there any involvement in this case for your department?

Mr Tighe—We have received—and forgive me if I do not get the legal jargon correct—what I understand to be called a discovery request, which we are complying with.

Senator FAULKNER—So that discovery request is of the Department of Foreign Affairs and Trade and perhaps other agencies as well obviously.

Mr Tighe—Yes.

Senator FAULKNER—But it includes the Department of Foreign Affairs and Trade.

Mr Tighe—That is correct.

Senator FAULKNER—I think in the circumstances that I am pretty limited in what I can ask about this. I appreciate that you probably won't be able to assist, but do you have any feeling for the likely time frames involved here? You may not be able to assist me on that.

Mr Tighe—Frankly, Senator, I do not think I can give you an answer.

Senator FAULKNER—We will leave that to a future estimates round when this court action has concluded. I don't think I have any other matters to raise on 1.1.7.

[10.00 p.m.]

CHAIR—We will move now to output 1.1.8, Security, nuclear, disarmament and non-proliferation.

Senator FAULKNER—I thought the questioning we were undertaking in relation to Hezbollah was probably under 1.1.8.

Senator Abetz—I was getting my hopes up.

Senator FAULKNER—What do you mean—hopes about what?

Senator Abetz—That you had in fact done 1.1.8 as well.

Senator FAULKNER—I think the questions that Senator Ray and I asked in relation to the Hezbollah terrorist organisation probably came under 1.1.8, but I have been informed by the secretariat that there are other senators who want to ask questions in that area. However, they are not here. What are you going to do about them?

Senator Abetz—That is why we have questions on notice.

Senator FAULKNER—I do not have any further questions for 1.1.8.

CHAIR—You don't have any questions on 1.1.8?

Senator FAULKNER—I think I have asked the questions I wanted to ask.

Senator Abetz—That is why I was getting my hopes up high and it looks as though they have been rewarded.

[10.02 p.m.]

CHAIR—We move to output 1.2, Secure government communications and security of overseas missions.

Senator FAULKNER—Mr Tighe, as I understand it, there has been some increased funding received since October last year for enhanced security at overseas missions. Is that correct?

Mr Tighe—The funding was authorised in October last year and received in additional estimates.

Senator FAULKNER—So there is no additional funding provided in this budget?

Mr Tighe—Not for physical security overseas, no.

Senator FAULKNER—Are you able to indicate to us now, in relation to the funding of October last year, on a post-by-post basis precisely what the disaggregation is? I am not going

here to actual measures, as you would appreciate, I am just going to the broad funding pattern across posts.

Mr Tighe—As I think we have mentioned before in the committee, the priority posts for the allocation of that funding were a number of posts predominantly located in the Middle East and in South-East Asia. I don't think we have ever gone on to a public record of having ascribed a particular figure to a particular post and, again, I would be reluctant to do that.

Senator Abetz—I don't think you were asking that, were you?

Senator FAULKNER—I did not want to go to measures; I wondered if it was possible to deal with a post by post breakdown. I am not pressing this; we have had this discussion, if you like, at previous estimates committees.

Senator Abetz—But if the actual figure were mentioned, I would imagine—I will be guided by the officials—that may well give a pretty strong indication as to what measures or indeed lack of measures may have been taken at a particular post.

Senator FAULKNER—At this stage all that is on the public record is a disaggregated figure—is that right?

Mr Tighe—It is an aggregated figure for all posts.

Senator FAULKNER—Sorry, an aggregated figure.

Mr Tighe—That is right.

Senator FAULKNER—There has been no public provision of that figure disaggregated in any way in relation to type of security measure, posts or any other—

Mr Tighe—That is correct.

Senator FAULKNER—Has any thought been given in this circumstance, because I think most of us understand the sensitivities, of providing a private briefing to the shadow minister for foreign affairs about these measures? I do not know whether he has sought such a briefing; I do not know whether such a briefing has been offered. Has there been any consideration given to that? Are you aware of that, Mr Tighe?

Mr Tighe—He has not sought a briefing. In fact, a very similar question was asked at Senate estimates last time. At the time the response we gave was that, from our perspective, we operated this issue on a need-to-know basis and there was no obvious case, from where we stood, to provide such a briefing. I think we did say at the time that, were one to be requested, we would be happy to look at it according to the normal procedures. Subsequently no request has been submitted from the—

Senator FAULKNER—It was not encouraged; that is my recollection.

Mr Varghese—Senator, that would be a decision for the minister to make—firstly, if a request was received, whether a briefing would be provided or not.

Senator FAULKNER—Yes, it is a decision for the minister. Sometimes we all understand that raising certain matters in a public forum like this is not to anyone's benefit. You would expect that senators on this side of the table would have some of those sorts of concerns uppermost in their minds. I am sure you would appreciate that, Mr Varghese.

Mr Varghese—I do indeed, Senator.

Senator FAULKNER—Hence at times there can be a freer flow of information in some sort of private discussion. I have not, as a result of the last estimates round, taken this issue up with Mr Rudd but I may consider doing that given where we find ourselves now. Can I ask this in relation to the funds for security upgrade at overseas missions: Mr Tighe, is there only DFAT funding involved in that upgrade?

Mr Tighe—DFAT has responsibility for physical security at overseas posts. The funding is provided to our portfolio. It is used at overseas posts and it obviously protects all the attached agencies that are represented at those posts.

Senator FAULKNER—I just wondered, because of the co-location of some of those agencies in these posts, whether there was any funding coming from any other agencies outside DFAT.

Mr Tighe—Austrade, as I understand it, funds security measures at Austrade managed posts.

Senator FAULKNER—That is the only case you can point to?

Mr Tighe—It is the only obvious one. I understand there are a couple of places in the world where, for example, the Australian Federal Police are represented in, if you like, stand-alone premises and they provide their own physical security for those.

Senator FAULKNER—The figure that was announced in October was \$32 million over five years, from memory. Is that right?

Ms Hazell—\$31.7 million over five years.

Senator FAULKNER—Excuse me for being so imprecise, Ms Hazell.

Senator Abetz—We will.

Senator FAULKNER—How is the process going in terms of identifying those posts that require security upgrades? This is a process question.

Mr Tighe—The genesis of the request for the new money related to the developments in the international security environment after September 11 and also after Bali. One of the issues we were particularly conscious of at that stage was an increase in the use of bombing tactics. I should point out that the physical security we provide to our posts covers a whole range of security threats—not only from politically motivated violence or terrorist but also from civil disorder and crime. We had at the time we proposed the money last year a program of works that we were going to carry out in what we regarded as the highest-threat posts, and that is what we have set about implementing since the end of last year.

Senator FAULKNER—Are you able to say how much of that \$31.7 million has been expended so far?

Mr Tighe—The distribution of the money was so that the capital money was all front-loaded into the first year. We will spend the bulk of that this financial year. The rest of the money is largely in operating expenses, which will be spent over the subsequent four years.

Senator FAULKNER—Yes, but are you able to say at this stage how much has been expended?

Mr Tighe—In round numbers, it will be about \$10 million this financial year.

Senator FAULKNER—Nearly a third.

Mr Tighe—Yes. That is because, clearly, we needed to implement the capital works early.

Senator FAULKNER—I appreciate the point you make about capital expenditure, so I assume there will be large expenditure over this next comparatively short period of time in relation to these sorts of capital works and so forth.

Mr Tighe—That is right.

Senator FAULKNER—Who works out the criteria for the identification of need?

Mr Tighe—We have a process within the department where we look at the threats which exist at our various overseas locations and we look at our capacity to address those threats through either the physical security that already exists at those locations or the security measures that are provided by the host government. This process is informed by discussions with the host government, by very close consultation between ourselves here in Canberra and our missions overseas and also consultations with marker missions and the various Australian intelligence agencies which provide threat assessments at different points around the globe. We reach a judgment then on where the priority should be for the allocation of funding on a needs basis to reduce the risks to the extent that we can.

Senator FAULKNER—Weren't you going to stop me at this point, Chair?

CHAIR—Yes.

Senator Abetz—You have got 20 seconds to go, but if we could finish 1.2 that would be great.

Senator FAULKNER—It is possible we could finish 1.2 if I put some questions on notice.

Senator Abetz—What a great idea.

CHAIR—That would be good, Senator Faulkner. We will reconvene at 9 a.m. tomorrow. Thank you.

Committee adjourned at 10.15 p.m.