



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION  
COMMITTEE

ESTIMATES

**(Budget Estimates Supplementary Hearings)**

THURSDAY, 6 NOVEMBER 2003

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**SENATE**

**FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE**

**Thursday, 6 November 2003**

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

**Senators in attendance:** Senator Sandy Macdonald (*Chair*), Senators Bartlett, Conroy, Faulkner, Ferguson, Ferris, Harradine, Hogg, Marshall and Payne

**Committee met at 9.11 a.m.**

**FOREIGN AFFAIRS AND TRADE PORTFOLIO**

**In Attendance**

Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs

Senator Minchin, Minister for Finance and Administration

**Department of Foreign Affairs and Trade**

**Portfolio overview**

Mr Doug Chester, Deputy Secretary

Ms Penny Williams, Acting 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-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*)**

Mr Bill Paterson, First Assistant Secretary, South and South East Asia Division

**1.1.3—Americas and Europe**

Mr David A 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 John Quinn, Assistant Secretary, Iraq Task Force

**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, Acting Head, Asia Trade Taskforce

**1.1.7—International organisations, legal and environment**

Ms Caroline Millar, First Assistant Secretary, International Organisations and Legal Division, and Ambassador for People Smuggling Issues

Mr Chris Moraitis, Senior Legal Adviser

Mr Christopher Langman, Ambassador for the Environment

Ms Tracy Reid, Director, Administrative and Domestic Law Group, Legal Branch

**1.1.8—Security, nuclear, disarmament and non-proliferation.**

Mr John Buckley, First Assistant Secretary, International Security Division

Mr Les Luck, Ambassador for Counter-Terrorism

Mr Peter Shannon, Assistant Secretary, Arms Control Branch

Mr John Carlson, Director General, Australian Safeguards and Non-Proliferation Office

Mr Andrew Leask, Assistant Secretary, 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 Ralph Hillman, First Assistant Secretary, Trade Development Division

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

Mr Glenda Gauci, Head, Aichi Expo Unit

**Output 2.1—Consular and passport services****2.1.1—Consular services****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 4.2—Contract management**

Mr Peter Davin, Executive Director, Overseas Property Office

**Enabling services**

Ms Penny Williams, Acting First Assistant Secretary, Corporate Management Division

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

Mr Bill Huber, Acting Assistant Secretary, Staffing Branch

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

**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**

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

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

Mr Peter Versegi, Assistant Director General, Corporate Policy Branch

Ms Stephanie Copus-Campbell, Director, Strategies and Program Planning Section (PNG Branch)/Acting Assistant Director General, Papua New Guinea Branch

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

**CHAIR**—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I welcome Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, representing Minister Hill, the Minister representing the Minister for Foreign Affairs and the Minister for Trade; and officers from the Department of Foreign Affairs and Trade and from AusAID.

The committee will consider the budget supplementary estimates nominated topics for the Department of Foreign Affairs and Trade and AusAID in that order. At approximately 5.30 p.m., the committee will begin its examination of trade outputs 1.1.5 and 1.1.6 and continue until approximately 9.30 p.m. This will conclude the Foreign Affairs and Trade program. The committee will now consider the nominated topics for the Department of Foreign Affairs and Trade, beginning with the portfolio overview. We will then move to outputs and enabling services. The committee notes that output 1.1.7, international organisations, legal and environment, will be heard after 12.30 p.m.

I remind officers that, when written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions and 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 Thursday, 11 December 2003. Senators should have their questions on notice to the secretariat by close of business tomorrow. Witnesses 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.

I remind witnesses that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. Minister, do you or any officers wish to make an opening statement?

**Senator Vanstone**—Other than to say that it is a pleasure to be here and I hope this morning's committee is conducted in the same way the other two committees I have been at have been—namely, an absolute indication that civility is not a sign of weakness on either side.

**CHAIR**—I agree, Minister. You will go a long way with good manners. I call Senator Faulkner to begin questions.

[9.14 a.m.]

### **Department of Foreign Affairs and Trade**

**Senator FAULKNER**—I think we have indicated that, as far as output 1.1.7 is concerned, officers relevant to that output will be available to the committee after lunch?

**CHAIR**—They will be available after lunch. They were going to be available in the middle of the afternoon, but Mr Chester indicated—

**Senator FAULKNER**—I just wanted to check the timing on that, please, Mr Chester, to get the logistics out of the way.

**Mr Chester**—That is correct. Officers from the international organisations and legal division and our senior legal adviser will be available after the lunchbreak.

**Senator FAULKNER**—Thank you for that. I think that most of my questions this morning will involve either output 1.1.8 or output 1.1.4. I think we have flagged the broad areas with you. Are you aware of that?

**Mr Chester**—Yes, we are aware of the broad areas that you have indicated.

**Senator FAULKNER**—It was a slightly courageous assumption on my part but it was the best advice we could give you in the circumstances. There are one or two other small areas but my questions mainly involve those outputs. I do not know about other senators but most of my questioning will be involved there. There may be other senators who have other areas flagged or reserved that they are keen to deal with before we move to those—if that assists the committee?

**CHAIR**—Unless there are other questions on the portfolio overview, Senator Faulkner, we might proceed immediately to your questions.

**Senator FAULKNER**—Some of these questions may go across those two outputs. It is impossible, in fact, for me to determine quite which output is relevant. Do we have that level of flexibility?

**Mr Chester**—We have representatives from the department of both those areas here at the moment.

**Senator FAULKNER**—It might be useful for the committee to understand, if you could explain to us, Mr Chester, is there a difference between completed stockpiles of chemical and biological weapons on the one hand and WMD capacity on the other?

**Mr Chester**—I will ask the officials from those divisions to come forward.

**Senator FAULKNER**—Thank you.

**Mr Shannon**—The question, as I understood it, goes to the difference between capability and completed stockpiles of weapons. This goes to what constitutes a weapon in chemical and biological terms. I am not an expert in this area but my understanding is that a weapon consists of agent plus delivery system, although that is not a complete answer because technically, under the chemical weapons convention for example, an agent is defined as a



weapon. A similar definition, although not exactly the same, applies under the biological weapons convention. Capability, I guess, is the ability to produce weapons.

**Senator FAULKNER**—I am trying to understand what the significant difference is in the statements that have been made by senior members of the executive. On 18 July 2002, Mr Downer said:

I don't think there's any doubt about Saddam Hussein having stockpiles of biological and chemical weapons.

Do you recall that?

**Mr Shannon**—I do not recall exactly but I am sure that is the case.

**Senator FAULKNER**—On 4 February 2003, the Prime Minister said:

The intelligence material collected over recent times, to which Australia has contributed, points overwhelmingly to Saddam Hussein having ... maintained his stockpile of chemical and biological weapons ...

That was in a very major statement that you would recall was made prior to the war in Iraq. Do you recall that Mr Shannon?

**Mr Shannon**—Yes, I do.

**Senator FAULKNER**—Then on 11 June this year, the Prime Minister said:

... there was a WMD capacity before the war started.

What does that term 'capacity' mean? Are you able to assist me with that?

**Senator Vanstone**—It might be appropriate, if you want to know what a member of the executive meant when they said something, to do as you have had plenty of opportunity to do—that is, to put the question to the member of executive. I think you can ask a range of questions but to ask what is in the mind of a minister or the Prime Minister when the use a particular word is asking the officers to do things that, as experienced and talented as they are, might be stretching it.

**Senator FAULKNER**—That is reasonable point but I am trying to understand what the term 'capacity' means in DFAT language. Some of this material, as you are aware and as I think can be shown, does not originate with the minister or Prime Minister themselves. A lot of this material is drafted in the department.

**Senator Vanstone**—If you believe the minister has said something that has been drafted in the department, I would then say that that is a matter of advice that has been offered to the minister by the department. They do not usually discuss what advice they offer and that, in the end, as you also know and have experienced, it is the minister who takes responsibility for what they say.

**Senator FAULKNER**—That is true but these are differences in language. What I am trying to get to is whether the term 'capacity' involves WMD research programs, while not necessarily meaning that such programs have got the stage of completed and ready to use chemical and biological weapons? That is the point I think Mr Shannon can assist us with—the language that is used in this area. Is that right or not?

**Mr Shannon**—I would only bring a commonsense understanding of these words. I am not a technical expert. I would think ‘capacity’ means having the wherewithal to produce weapons.

**Senator HOGG**—You said though that there was a definition under a treaty?

**Mr Shannon**—The chemical weapons convention.

**Senator HOGG**—In respect of the chemical weapons convention, how would the term ‘capacity’ sit?

**Mr Shannon**—I do not have that information at my fingertips. It is generally accepted that ‘weapon’ is defined there as the agent itself; it does not necessarily mean the agent plus delivery system. It has always been problematic distinguishing between programs capability and weapons. Those terms are used quite interchangeably by people who have spoken on these matters. The ability to produce an actual weapon in a matter of months is not much different from the weapon itself, in a sense.

**Senator FAULKNER**—But what I am trying to understand—you may or may not be able to assist me—is whether having a stockpile of weapons is different to having a WMD capacity. I am talking here about a stockpile of chemical and biological weapons. Is having a stockpile of chemical and biological weapons different to having a WMD capacity?

**Mr Shannon**—Taking a commonsense approach to this issue, yes, it is.

**Senator FAULKNER**—I appreciate that. Are you able to explain what that difference might be?

**Mr Shannon**—I think that a capacity is the ability to produce the actual weapon that is going to do the damage. A stockpile would be either a collection of agents or a collection of shells or artillery rockets. That is commonsense.

**Senator FAULKNER**—I accept that. Does this represent a significant watering-down from mid-2002 and early 2003 when there was talk of stockpiles to mid-2003 when the talk is of a capacity? This is quite a significant change in language, isn't it?

**Mr Shannon**—This bears on the question of pre war intelligence. I am not in a position to comment on that. The role of my division was not to make independent appreciations of the pre war intelligence; that was left to the Australian intelligence community.

**Senator FAULKNER**—Let me ask you about that. Was the Department of Foreign Affairs and Trade aware of the reporting by the United Kingdom Joint Intelligence Committee in 2000? I am sure you have heard this. The committee reported:

... there was clear evidence of continuing Iraqi biological warfare research and the production of biological agents. There was less evidence of continuing Iraqi chemical warfare activity and there was no evidence of munitions being filled with chemical agents since the first Gulf Conflict.

Was DFAT aware of that?

**Mr Shannon**—I could not say confidently whether or not it was. DFAT took notice primarily of the assessed material coming from the Australian intelligence community.

**Senator FAULKNER**—Let us not talk about that particular report specifically; let us talk about process issues in the broad. If the United Kingdom Joint Intelligence Committee makes

a report, would you often receive that directly through the high commission in London or through intelligence liaison officers in London, or are you saying that if this does come across the desks in DFAT it comes via Australian intelligence agencies? I would be surprised by the latter, but I am often surprised.

**Mr Buckley**—I do not think you can make a generalisation like that. We receive material from everywhere and we rely on other agencies to assess that material for us in most cases.

**Senator FAULKNER**—But surely someone in the department, Mr Buckley, could say to me in the case of an important United Kingdom Joint Intelligence Committee report whether those are provided directly to the department or not. It does not seem unreasonable for me to ask you what the normal practice is.

**Mr Buckley**—What I am saying, Senator Faulkner, is that there is not a normal practice. If you are asking us whether a particular document was received, that is another matter, but there is not a general thing like that. We receive material from allies and from a number of countries and I do not think we could make a particular generalisation.

**Senator FAULKNER**—I moved to the general question because I did not get an answer to my more specific question about a particular report. You have invited me to ask my particular question again, so I will in relation to United Kingdom Joint Intelligence Committee report in 2000. It talked about clear evidence of Iraqi biological warfare research and production of biological agents, less evidence of continuing Iraqi chemical warfare activity and no evidence of munitions being filled with chemical agents since the first Gulf contact. The specific question is: did that come to you via your High Commission in London or your intelligence liaison officers in London? Surely someone could assist me with that.

**Mr Buckley**—Mr Shannon has answered that by saying that we do not know, and we do not know.

**Senator FAULKNER**—Could that be checked? Is there someone who you could check that with in the department? It seems to me to be quite straightforward. Why don't we know that?

**Mr Shannon**—Perhaps I could answer that. It depends on which communication system it was conveyed through.

**Senator FAULKNER**—If it was received, would you know? Am I asking the right officers in the department? Can you help you with that, Mr Chester?

**Mr Chester**—I think I can say that we can check whether we have received that document. I think that is the best we can do at this stage.

**Senator FAULKNER**—But I am asking, Mr Chester, whether these would be the relevant officers to ask these questions of?

**Mr Chester**—Yes, they are, and they have answered the question.

**Senator FAULKNER**—Well, they have said that they do not know.

**Mr Chester**—That is right.

**Senator FAULKNER**—So my question is: are there are other officers who might be able to assist me?

**Mr Chester**—No, these are the right officers to answer these questions.

**Senator FAULKNER**—So you will check that for me and perhaps come back to me?

**Mr Chester**—Yes.

**Senator FAULKNER**—I appreciate that. The 2001 UK Joint Intelligence Committee report had reported since 1998 that their knowledge of Iraq's WMD programs was—and I use the term contained therein—'patchy'. Are you aware of that 2001 UK Joint Intelligence Committee report?

**Mr Shannon**—Yes, I am aware of comments along those lines. I cannot recall the precise report.

**Senator FAULKNER**—Are you able to say to me when the department received that report?

**Mr Shannon**—No, it is in the same sort of category. It depends on which communication system it was transmitted—whether it went directly to ONA or came through another communication system.

**Senator FAULKNER**—Could we also try to establish that, please, Mr Chester? I would like to know when the department received these reports, whether the department made an assessment of the reports, whether there was broad agreement within the department with those reports and whether the substance of those reports as assessed by DFAT was made available or brought to the attention of either the Prime Minister or Prime Minister's office or foreign minister or foreign minister's office? If you could check that for me I would appreciate it, Mr Chester.

**Mr Chester**—Senator, as you would appreciate, the department gets a wide range of material, a vast amount of material, and obviously we do not have with us here or in our heads when we received each piece of material.

**Senator FAULKNER**—Yes, but some material that is received is obviously given particular significance, I would have thought, in assessments that are made before a country goes to war. I appreciate the amount of material that is flowing in to the department, but you would also accept, wouldn't you, that some of this sort of reporting is absolutely crucial if military action is taken against another country?

**Mr Chester**—I would accept that material we get is of varying importance.

**Senator FAULKNER**—I would respectfully suggest these particular reports may well have that level of significance. You would recall Dr Blix's statement to the United Nations Security Council on 27 January, when he said:

While UNMOVIC has been preparing its own list of current "unresolved disarmament issues" and "key remaining disarmament tasks" in response to requirements in resolution 1284 (1999) we find the issues listed in the two reports as unresolved, professionally justified.

You are aware of Dr Blix's statement of 27 January to the United Nations Security Council? This is very contemporary and, I would have assumed, very important as far as the department is concerned. Could I have that level of confirmation?

**Mr Buckley**—Yes.

**Senator FAULKNER**—What was the department's view about Dr Blix's statement? Did the department have its own assessment as to whether UNMOVIC's view as of late January 2003 that there were still unresolved disarmament issues in relation to Iraq did not necessarily mean that stockpiles of completed WMD remained in Iraq as of that time?

**Mr Shannon**—We accepted at face value what Dr Blix was saying, of course. That was largely a factual statement.

**Senator FAULKNER**—And the foreign minister and the foreign minister's office and the Prime Minister and his office were briefed on this matter, I assume, by the department? You briefed your own minister on this?

**Mr Shannon**—I would defer to the Iraq Task Force on that particular point.

**Mr Quinn**—As Mr Shannon has mentioned, there was obviously constant dialogue on this subject. But, as has also been said, the intelligence assessments were not made by our department; they were made by other agencies. As you know, there was a lively debate about what was happening in Iraq, but the context was a long history of deception and denial. I think there was a *prima facie* concern that there was a lot we did not know, and history had suggested that that deception and denial had been pretty effective. That is the historical context of the debate that took place.

**Senator FAULKNER**—Dr Blix has made some pretty recent statements on this matter, hasn't he—in other words, post Iraq war statements?

**Mr Quinn**—That is right.

**Senator FAULKNER**—Are you able to sum those up quickly for the benefit of the committee?

**Mr Quinn**—There are a number of statements that have been made. I would have to check with the record. Clearly, Dr Blix's position was somewhat conditioned by his experience running UNMOVIC. We would say that the more recent developments, including the Kay report, would confirm our concerns. As you know, the Kay report has produced evidence of substantial programs being undertaken and substantial deceptions. I think we need to look at the overall context. Dr Blix is one player in an overall debate.

**Senator HOGG**—Mr Quinn, from what Mr Shannon, Mr Buckley and you have said today, am I to understand that you do not make any independent assessments yourself within your division—you rely on outside assessments in these matters? Is that a fair way to characterise it?

**Mr Shannon**—If I could talk in particular about the pre-war intelligence, the position in the International Security Division, which followed these issues, was that we relied on the intelligence assessments of the Australian intelligence community and did not attempt to produce an independent stream of advice because we did not have the expertise or the capability. Our role is as a policy advising department, not as an intelligence assessment agency, unlike the State Department, for example, which maintains its own independent capacity to make intelligence assessments.

**Senator HOGG**—Given that that is the stance that you adopt, what happens in a circumstance where you get advice that, in your own assessment, is contrary to the advice that you have been provided with? Do you test that advice?

**Mr Buckley**—As I think I said previously, advice comes from a lot of places so there is no one piece of advice that we take note of. We take note of the assessments which we get from the intelligence agencies. We take account of press reporting and of particular reports like, as Senator Faulkner drew attention to, Dr Blix's report. All of those go into the process of developing policy. It is not that we disregard one particular report or that we give credence to a particular report against another one. It is a process of getting as much information as we can on a particular issue and then giving the best advice possible that we can to the minister.

**Senator HOGG**—But you do not go out independently and try to test where you think something might be wrong in terms of advice that has been provided to you?

**Mr Buckley**—We do not go out and test it, if you like.

**Senator HOGG**—Do you challenge the provider then?

**Mr Buckley**—It depends on the situation but, yes, we do in certain circumstances. That is why we have a whole series of posts. They go and talk to these people and ask them what was meant by a particular word, phrase or whatever it is. It is not that we would go out and try and second-guess them, but we are trying to get the best information possible.

**Senator FAULKNER**—We were just talking about Dr Blix and his post Iraq war statements. Are you aware of his statement on 17 September in which he said:

I'm certainly more and more to the conclusion that Iraq has, as they maintained, destroyed almost all of what they had in the summer of 1991.

Has the department made any assessment of Dr Blix's 17 September statement?

**Mr Quinn**—As I mentioned, work is progressing through the Iraq Survey Group headed by Dr Kay on investigation. Our view is that we need to see how that process unfolds. We have an interim report which clearly contains a number of disturbing interim conclusions about what has been going on. I guess I should also say that, in terms of history, the real concern we had was that Iraq had the opportunity in December to put a declaration on the table for the UN Security Council, explaining a volume of evidence of programs. For some reason, they provided a totally defective declaration at that stage. Our concern was that the onus was squarely on Iraq to explain a whole series of programs that basically had not been explained. In a sense, I just underline the historical context of this. We had a regime that was constantly denying and deceiving. The international community had been constantly surprised by the bad news that had come out of Iraq in terms of WMD. They failed to put a declaration on the table that explained away a whole series of programs. That is the context of the debate in January and subsequently. As I said, the Kay interim report does contain disturbing interim conclusions about a range of activity that reinforces our concern. That is the context of the debate at this moment.

**Senator FAULKNER**—I would like to be clear about this. Has the Iraq Survey Group found stockpiles of chemical and biological weapons?

**Mr Quinn**—I go back to the public record of what has been said by the Survey Group. My understanding is that they have not done that to date. They have been very judicious about the way they phrase their conclusions.

**Senator FAULKNER**—That is a ‘no’?

**Mr Quinn**—To date—interim—but the work progresses.

**Senator FAULKNER**—I am not asking you to rub a crystal ball; I wouldn’t do that. To date, have the Iraq Survey Group found any stockpiles of biological or chemical weapons?

**Mr Quinn**—Not that I am aware of.

**Senator HOGG**—Have they found a capacity to make biological or chemical weapons?

**Mr Quinn**—Going back to the public record again—it would not be appropriate to get into other detail; I am not privy to the detail—I think they have discovered significant evidence of continuing activities in violation of the resolutions: dozens of undeclared WMD research related activities and deep involvement of the intelligence services in an undeclared network of laboratories suitable for chemical and biological weapons research. There is certainly evidence of WMD chemical programs continuing but as you say the concrete evidence of the physical munitions has not yet been uncovered.

**Senator FAULKNER**—Thanks at least for that definitive statement. How long has the Iraq Survey Group now been working on this? I would have thought it was about six months but I might be wrong about that. I think it is in that order, but you can no doubt tell us, Mr Quinn.

**Mr Quinn**—I think that is right—around that period.

**Senator FAULKNER**—About six months?

**Mr Quinn**—Let me check.

**Mr Buckley**—Dr Kay told the intelligence committee in the United States that his ‘snapshot’ was in the context of ongoing investigations of where we are after the first three months of work. So his report was after three months of work.

**Senator FAULKNER**—When is that report dated?

**Mr Buckley**—It is dated 2 October.

**Senator FAULKNER**—When did the Iraq Survey Group start its investigations on the ground?

**Mr Shannon**—I think it was around May or so. Dr Kay was appointed subsequently, if you remember, and there was some slowness in getting the WMD teams up to full strength.

**Senator FAULKNER**—But the Iraq Survey Group has been on the job for five or six months. I think that is right, isn’t it?

**Mr Shannon**—Of that order, yes.

**Senator FAULKNER**—A month or so ago Dr Kay presented an interim report. That is correct, isn’t it? I do not want to use the wrong terminology.

**Mr Shannon**—Yes.

**Mr Buckley**—Yes, an interim report.

**Senator FAULKNER**—It was an interim report on the previous three months. We know that the Iraq Survey Group has been on the go for five or six months, we know an interim report has been presented and in relation to any stockpile of chemical or biological weapons we can say at this stage that they have found nothing. That is correct, isn't it, Mr Quinn?

**Mr Quinn**—I would qualify that on the basis that Dr Kay was very careful in his phrasing to assert that they apply very rigorous tests to any evidence that comes to hand. There clearly is evidence of the programs continuing. I mentioned a few of the specific examples of the intelligence services being involved in activities. Going back to your earlier question, this is one of the challenges in this particular field. Because of the dual use nature of the weapons involved and the 'just in time' nature of putting the components together, some of these distinctions about capability and actual weaponry are somewhat artificial, I think, in the context of a dozen years of deception and denial.

The second point I would make, Senator, is that clearly the environment in Iraq is difficult. Dr Kay underlined the security problems and the scale of the issue. Over 100 huge arsenals have been discovered at weapon sites and there are thousands of scientists to interview. This is a gargantuan undertaking. There are kilometres of documents and clear evidence of the destruction of large volumes of documents. The scale and the difficulty of this task is something we need to keep in mind, given this history of denial and deception and the dual use character of the challenge that we face. It is a very complex undertaking, and we have seen that through the history of UN involvement in weapons inspections.

**Senator FAULKNER**—How many people in total are involved in the Iraq Survey Group?

**Mr Quinn**—I would have to check. I think it is something like 1,200 or 1,300. But a number of those are involved in conventional and other activity as well.

**Senator FAULKNER**—There are 1,200 or 1,300 people, it has been going for five or six months and as far as stockpiles of chemical or biological weapons go, they have found nothing. The question is: doesn't this seem to very strongly reinforce what Dr Blix was saying all the way along the line?

**Mr Quinn**—The jury is very much out until we have that more definitive work done by the Iraq Survey Group. The report is disturbing if you read the detailed public commentary. There is a lot of evidence there of the ongoing determination to develop WMD. That is clearly of major concern. Certainly Iraq is a puzzle and Saddam Hussein is a puzzle. We cannot get into his mind as to what his strategy was. But I think there is sufficient in that survey group report to reinforce the concerns that we have had all along.

**Senator FAULKNER**—You point a range of difficulties, which I certainly accept—a range of serious logistical difficulties that Kay is facing in his work. Dr Blix faced the same sorts of difficulties, didn't he?

**Mr Quinn**—Indeed.

**Senator FAULKNER**—It is not dissimilar, is it?

**Senator Vanstone**—With respect, that is the same question, just as a matter of interest.



**Senator FAULKNER**—Are you pulling me up on the basis of a tautology, Senator Vanstone? I will plead guilty and get on with it.

**Senator Vanstone**—No, I think a tautology is when one word follows another. But it does seem to me to be the same question.

**Senator FAULKNER**—I plead guilty of a tautology. I am sure Mr Quinn will forgive me.

**Senator Vanstone**—He does not look like he is going to bowl over and die like Louie the Fly.

**Senator FAULKNER**—I would hope not. Please accept my most humble apologies for my tautology, Mr Quinn. I knew Senator Vanstone was concentrating on what I was saying. But could you answer the first of the two tautological questions I asked?

**Senator Vanstone**—Now he has probably forgotten what they were.

**Mr Quinn**—You could say that the challenge of the UN process was that it required cooperation from the Iraqi government. Saddam Hussein refused to provide that, and, as I said, the declaration in December was defective. Many questions remained unanswered, as I think you mentioned yourself. So, in a sense, the context was different. Post conflict there were different challenges, obviously. There was no Saddam in place, but there were issues of the scale of the task, a clear pattern of destruction of documentation, deception and denial, and security problems—some of the survey group staff have come under attack. There are many challenges out there. But as someone said—I cannot recall who it was—the evidence that you would need, in a concrete sense, of these programs might fit in a small garage. A lot of these programs have quite a small physical presence. When you think of a country the size of Iraq, with 130-plus huge arsenals of conventional and other weaponry, you see that this is a really complex job.

**Senator FAULKNER**—I do not doubt that at all. I accept the complexities that you speak of and the amount of time it takes. How much time was Dr Blix given prior to the Iraq war—can you tell me that? We have already got Dr Kay facing this enormous task. You have told us he has not found any stockpiles of chemical or biological weapons—and he has had five or six months on the job—and how complex a task it is. How long did Dr Blix have actually prior to the war? Was it that long?

**Mr Quinn**—I would have to check in detail. It was several months. I am not sure exactly how long.

**Senator FAULKNER**—So we are giving Dr Kay a lot more rope than we gave Dr Blix. The only trouble is that what has intervened is a war.

**Mr Quinn**—As I mentioned, the difference was that cooperation was required from the Iraqi government, from Saddam Hussein's regime, that was not forthcoming. It was quite clear that, despite the 18 Security Council resolutions, the contempt remained. The opportunity was there in December to account for all of these programs that had been very carefully documented under the UNSCOM and UNMOVIC arrangements, but that response was not forthcoming. That was the nub of it, I guess: would Iraq ever cooperate under Saddam Hussein with those UN processes?

**Senator FAULKNER**—Maybe I have a faulty memory, Mr Quinn, but I recall Dr Blix asking for more time. That is right, isn't it?

**Mr Quinn**—Indeed, yes.

**Senator FAULKNER**—He did.

**Mr Quinn**—Yes.

**Senator FAULKNER**—Did he get it?

**Mr Quinn**—I come back, Senator, to—

**Senator FAULKNER**—Did he get it?

**Mr Quinn**—Obviously no, Senator, in the context of the developments.

**Senator FAULKNER**—That was before the war. But now Dr Kay needs more time too, doesn't he? He is going to get it, isn't he?

**Mr Quinn**—As I mentioned before, there are two different contexts. There was a context of cooperation being required from a regime, and now basically it is a different environment altogether.

**Senator FAULKNER**—You talk about a lack of cooperation from Iraq. There was some cooperation from the former Iraqi regime, such as the destruction of the al-Samoud missiles. There was some—that is fair to say, isn't it?

**Mr Quinn**—That is right, but we would say pretty much token gestures.

**Senator FAULKNER**—But what did Dr Blix say?

**Mr Quinn**—About that cooperation?

**Senator FAULKNER**—He said he needed more time. You are now saying to me at this committee hearing that because no stockpiles of chemical or biological weapons have been found Dr Kay needs more time. I see a logical inconsistency in this.

**Mr Quinn**—I just go back to my point before, that the environment pre conflict when the Saddam regime was in power is quite a different context. Cooperation of the government was requested. It was not forthcoming, and history suggested it would never be forthcoming, given the nature of that regime. The government has made clear its position on that. We are in a totally different environment now, where a meticulous effort is being made to account for all these programs that were comprehensively documented by the UN. We do not know, obviously, all the ins and outs of what Saddam did with these programs, but the survey group is working on that in a meticulous way.

**Senator FAULKNER**—Are you aware of the speech that Dr Blix made to the Council on Foreign Relations on 23 June 2003?

**Mr Quinn**—I recall it vaguely.

**Senator FAULKNER**—Can you confirm that in that speech he said, 'It is sort of puzzling that you can have 100 per cent confidence about WMD existence but zero certainty about where they are'? Does the department have any view on that comment? It seems to sum up what we are dealing with.

**Mr Quinn**—It sounds like a rhetorical flourish, but when you actually examine the nature of the challenge it seems to me to be a glib comment in terms of the complexity of the task involved. As I said, the international community unanimously adopted resolution 1441 late last year. There was genuine general international concern about the WMD problem, so I think that comment is a bit glib. That would be my personal reaction.

**Senator FAULKNER**—A bit glib? On 17 September, Dr Blix said:

The more time that has passed, the more I think it's unlikely that anything will be found. In the beginning they talked about weapons concretely, and later on they talked about weapons programs ... maybe they'll find some documents of interest but that should have been surfaced and, I think, explained.

He went on to say:

I'm certainly more and more to the conclusion that Iraq has, as they maintained, destroyed almost all of what they had in the summer of 1991.

Could it be that that is actually right, Mr Quinn?

**Mr Quinn**—Again, let us await the work of Dr Kay's survey group. I think it is premature to draw any conclusions along those lines, certainly.

**Senator FAULKNER**—But we have had a war, Mr Quinn. It is okay to give Dr Kay as much time as possible, but how much time did Dr Blix get again? Can you just tell me that?

**Mr Quinn**—I guess you have to look at the issue in its historical context. We had a dozen years of sanctions, we had an exhaustive UN process and that process failed to secure the cooperation of Saddam Hussein's regime. I think you have to look at the Blix period in that historical context of a decade plus of rigorous attempts to try to get to the bottom of programs and clear documentation on a series of very disturbing WMD programs documented by the UN.

**Senator FAULKNER**—I would like to think I was looking at the whole picture. I would like to think I was looking at it as objectively as possible. I also saw a *Washington Post* article on 30 October 2003 that reported that staff in the Iraq Survey Group may be reassigned to counter-terrorism activities rather than solely look for Iraqi WMD. I do not know if you saw that media report or not—and you might confirm whether you did actually see it.

**Mr Quinn**—Yes, Senator, I saw it.

**Senator FAULKNER**—That is helpful. The issue I have goes to the substance of that claim. Is there anything you are able to say to the committee about whether that is in fact accurate or not?

**Mr Quinn**—All I would say on that is that, as I mentioned before, the challenge of these 130-odd huge arsenals, hectares of weaponry, is to secure and disarm those arsenals. So I guess there is an internal discussion within the ISG about how people are allocated tasks. As I said, the conventional dimension of the ISG is very important. These weapons dumps are obviously a source of munitions for those undertaking attacks against the coalition. There is probably some internal debate going on about how people spend their days, but certainly from the Australian point of view we regard the WMD element of the ISG's activities as fundamentally important.

**Senator FAULKNER**—Sure, but I am not clear on what your answer actually means, Mr Quinn. I am not being critical there; I am just trying to nail down whether it is true that there is a reassigning of staff, as far as your department is aware—and I would hope you would have some knowledge of this and I would expect you to have some knowledge of this if it is accurate. Can you say to me whether there has been any reassigning of staff in the Iraq Survey Group specifically away from examination of Iraqi WMD activities?

**Mr Shannon**—We cannot say that definitely; we do not know. However, I do draw to your attention in relation to that article in the *Washington Post* that a Pentagon spokesman was quoted as saying that there is no change to the mission of the Iraq Survey Group.

**Senator FAULKNER**—The mission?

**Mr Shannon**—That is what he said.

**Senator FAULKNER**—I am sure there is no change to the mission. What is the mission of the Iraq Survey Group?

**Mr Shannon**—It is very broadly based. One element of it is the pursuit of WMD and establishment of the facts.

**Senator FAULKNER**—That is fair enough, Mr Shannon, but frankly that is meaningless. I am not suggesting that in the broad the mission has changed. It is a question of what sort of resources are being applied to the Iraqi WMD program. That is what I am focusing on. I am not suggesting that the mission has changed. Can you help me on that, Mr Shannon?

**Mr Shannon**—I am not aware that there has been any public announcement. I have not seen anything that has been in the non-public domain about a change in the deployment of staff within the Iraq Survey Group.

**Senator FAULKNER**—Fair enough; there has been no public announcement. There has just been this reportage in the international media. That is what I am basing my question on—trying to nail down whether Australia's department of foreign affairs has any awareness of this change in focus or priority or possibly what the resource implications of this might be, if there is any truth to it.

**Mr Shannon**—As of today, no.

**Senator FAULKNER**—I am not sure whether this goes to you, Mr Shannon, or to Mr Quinn. Perhaps it is best if I direct this to you, Mr Chester; you might be able to assist me with it: does the department on a regular basis receive assessments from the United States State Department? In particular I want to focus here on the INR, the Bureau of Intelligence and Research.

**Mr Chester**—Yes, as far as I am aware we do receive reports from the State Department, from INR, along with, as I said earlier, a range of other material.

**Senator FAULKNER**—Are you aware of an individual by the name of Mr Greg Thielmann, who I believe is a former intelligence analyst with INR?

**Mr Chester**—I am aware of that person, yes.

**Senator FAULKNER**—Can you explain to the committee, Mr Chester, what sort of contact the department would have had with Mr Thielmann?

**Mr Chester**—I will ask one of my colleagues to answer that.

**Mr Buckley**—I could not be sure of this because we do not know and we have not asked, but the liaison with Mr Thielmann was primarily with ONA, as Mr Jones explained a couple of nights ago. I cannot say categorically that no-one from DFAT has ever spoken to him; I do not know that. But that is not the regular channel of communication. The regular channel of communication, as Mr Jones said, is with ONA.

**Senator FAULKNER**—While you have an awareness of his role and activities, you cannot confirm to me whether the department has had any contact with him. Is that what you are saying?

**Mr Buckley**—Directly, apart from the ONA contact, I cannot confirm that, no.

**Senator FAULKNER**—If it is ONA contact I accept that that is indirect contact, obviously.

**Mr Buckley**—Yes.

**Senator FAULKNER**—It is not direct contact with your department. Can I ask when your department became aware that former US Ambassador Wilson had travelled to Niger to investigate claims that Iraq had sought uranium from Niger?

**Mr Buckley**—As I understand it, we were not aware of that until it came into the public domain.

**Senator FAULKNER**—So when did you become aware of it?

**Mr Buckley**—I do not have a particular date that we knew.

**Senator FAULKNER**—When you say the public domain, you did not know about this until it was in the media?

**Mr Buckley**—Yes. That is my understanding, and Mr Quinn says he thought that was about July of this year—July 2003.

**Senator FAULKNER**—I see. Are you now aware that INR sent a memo to Secretary of State Powell on 28 February 2002 specifically disputing the Niger claim? Are you now aware of that?

**Mr Shannon**—Yes.

**Senator FAULKNER**—So when did you become aware of that?

**Mr Shannon**—Personally, when it became a matter of public record.

**Senator FAULKNER**—Can you tell me when that became—

**Mr Shannon**—In my case, it was the *Four Corners* report.

**Senator FAULKNER**—I did hear at the ONA estimates from the Department of Prime Minister and Cabinet—and I did try to listen to Mr Jones's evidence when he provided some—Mr Jones talked about the contact between Mr Thielmann and the ONA liaison officer in Washington. You, Mr Buckley, at least are aware of that background. Is that correct, from the evidence?

**Mr Buckley**—From your questioning, yes—

**Senator FAULKNER**—Yes, from the evidence that was given. Sometimes these officers have joint responsibilities, don't they?

**Mr Buckley**—Yes, they can have.

**Senator FAULKNER**—Are you aware of whether the ONA liaison officer in Washington had any joint responsibilities? In other words, did he have any responsibilities that might have also—

**Mr Buckley**—No.

**Senator FAULKNER**—related to your department?

**Mr Chester**—Perhaps I can answer that. Yes, the—

**Senator FAULKNER**—I am sorry; Mr Buckley said no.

**Mr Buckley**—You asked me if I had any knowledge about it, and I said no.

**Senator FAULKNER**—So you are not aware of it. That is why it is always important to get the record straight so we do not have any misinterpretations.

**Mr Buckley**—I said no and looked to Mr Chester.

**Senator FAULKNER**—Understood. I thought you were saying no, he did not have any—

**Mr Buckley**—No, I do not know.

**Mr Chester**—The ONA liaison officer in Washington has some responsibility. Some of his work cuts across the work of the Department of Foreign Affairs and Trade in Washington. So in a sense I think the position has been described as 80 or 90 per cent ONA work and 10 to 20 per cent work for the political area of the embassy in Washington.

**Senator FAULKNER**—That is not that uncommon though, is it?

**Mr Chester**—It depends what you mean by uncommon. There are only two of these positions that we have. We had one in London—we do not anymore—and there is the position in Washington.

**Senator FAULKNER**—What is the home department of the ONA liaison officer in Washington?

**Mr Chester**—It is an employee of the Department of Foreign Affairs and Trade.

**Senator FAULKNER**—So it is a DFAT officer? So in fact Mr Thielmann was having contact with a DFAT officer?

**Mr Chester**—That is correct.

**Senator FAULKNER**—What about the reporting on these matters?

**Mr Chester**—That I cannot—

**Senator FAULKNER**—I accept that he is a DFAT officer and you are saying that he is also the ONA liaison officer in Washington—we know that.

**Mr Chester**—Perhaps I can explain a little more.

**Senator FAULKNER**—That would be good.

**Mr Chester**—The position is one that can be filled by a DFAT officer or an ONA officer. At the moment a DFAT officer is filling that position. In a sense it is a shared position. The bulk of the officer's time is spent on ONA issues as an ONA liaison officer, with some backup work for the political area of our embassy. As far as how the reporting is done is concerned, some reporting comes through the normal diplomatic channels. I do not know whether other reporting comes through the system.

**Mr Buckley**—Reading the record, Mr Jones explained how the contact was made in the evidence he gave the other night. That was the channel of communication—through ONA.

**Senator FAULKNER**—Are you saying that DFAT pays this officer's salary?

**Mr Chester**—That is correct.

**Senator FAULKNER**—So he is a Department of Foreign Affairs and Trade officer.

**Mr Chester**—That is correct.

**Senator FAULKNER**—What does this mean in relation to reporting requirements? That is what I am trying to understand. Mr Buckley tells me that he reports to ONA. Is he also reporting to DFAT?

**Mr Chester**—On that element of his work that relates to the normal work of the political section of the embassy in Washington, yes.

**Senator FAULKNER**—When did the Department of Foreign Affairs and Trade become aware of the INR conclusion about the Niger uranium claim?

**Mr Buckley**—Which conclusion?

**Senator FAULKNER**—They disputed it.

**Mr Buckley**—I think in early February 2003.

**Senator FAULKNER**—My recollection is that the INA first raised their concerns in a formal way in February 2002. Can you confirm that?

**Mr Buckley**—I cannot confirm it, but going to Mr Jones' evidence the other night, ONA was aware of it in January 2003, as I understand it, and we were aware of it in February 2003.

**Senator FAULKNER**—How did you become aware of it in February 2003?

**Mr Buckley**—I do not know.

**Senator FAULKNER**—Can we try to find out?

**Mr Buckley**—Probably ONA passed us that information.

**Senator FAULKNER**—We need to be a little tighter. I appreciate your assistance to the committee but we need to try to get rid of that word 'probably'—the qualification on that. Can we be clear on that? You think that in February 2003 the Department of Foreign Affairs and Trade became aware. Can we be certain about that, and can we be clear how you became aware of it? This is important, and it is reasonable that we nail this one down.

**Mr Quinn**—I understand that the document came to us through the state department. It was a long document in relation to WMD issues. There was one sentence in an annex to that 86-page report that referred to this particular doubt from INR as a minority view. This was

buried in a much longer document. I did not see the document myself but in the context of huge volumes of material that is not surprising. We make the point that seeking uranium from Africa was only one small element in a much wider picture.

**Senator FAULKNER**—When were doubts or concerns about the Niger uranium claim passed through to your minister? When were they flagged with the minister, Mr Downer?

**Mr Quinn**—The short answer is that I do not know but clearly, when the 7 March announcement came through Dr El Baradei and the Security Council, that is when the issue became public, and that is when most people were aware of it. Otherwise, it was one sentence in a very long document that did not receive much attention, for obvious reasons, given other pressures and other material on the table at the time.

**Senator FAULKNER**—I try to be reasonable about these things—and Senator Vanstone has implored us all to be reasonable, and I think we have all been reasonable—but with respect an ‘I don’t know’ answer on this one I do not think is acceptable. Can you try to do a little better than ‘I don’t know’?

**Senator Vanstone**—If he does not know, he does not know.

**Senator FAULKNER**—I accept that he does not know. I wonder whether someone else knows and they might help us. I accept that Mr Quinn does not know. That is fair enough. By the way, I am sure that if he did know he would tell us. Let us see whether we can nail it down.

**Mr Quinn**—I suspect that there is no-one at the table who knows, but we will check and get you an answer.

**Mr Shannon**—Perhaps I can clarify the point. We received the documents in which the state department’s doubts were expressed about the veracity of the Niger documents in early February. We did not become aware that the actual documents were forgeries until early March when that became a matter of public record, when Dr ElBaradei made his statement on 7 March, I believe.

**Senator FAULKNER**—Do you understand that the CIA had told British intelligence that they doubted these claims. I think they did that in September 2002. Are you aware of that background?

**Mr Shannon**—No, we were not aware of that.

**Senator FAULKNER**—Not even now?

**Mr Shannon**—We are aware now but we were not aware at the time. Yes, it is a matter of public record.

**Senator FAULKNER**—When did you become aware that the CIA had so informed British intelligence? Can you help me there?

**Mr Shannon**—Only when it became a matter of public record. I think it was around July when this issue became an issue.

**Senator FAULKNER**—Was that George Tenet’s public statement of 11 July 2003?



**Mr Shannon**—There may have been some press prior to that, but it was around that time, yes.

**Senator FAULKNER**—I am aware of the 11 July statement by George J. Tenet to the effect that:

... in the fall of 2002, our British colleagues told us they were planning to publish an unclassified dossier that mentioned reports of Iraqi attempts to obtain uranium in Africa. Because we viewed the reporting on such acquisition attempts to be inconclusive, we expressed reservations about its inclusion but our colleagues said they were confident in their reports and left it in their document.

That is a very well-known statement.

**Mr Shannon**—That is right.

**Senator FAULKNER**—I am just trying to establish how you became aware of that statement?

**Mr Shannon**—From the media.

**Senator FAULKNER**—Just the media?

**Mr Shannon**—Yes.

**Senator FAULKNER**—What about the background to that statement? I am just trying to find out—

**Mr Shannon**—I do not recall any reporting that came in as background.

**Senator FAULKNER**—Let me go back a step. Did the department advise its minister that there were doubts about the Niger uranium claim? I think I am using a mispronunciation here, because I here you say ‘Nigere’. I was very impressed, so I think I will pick that up and try to use it in future.

**Senator Vanstone**—Do you think it is a nice affectation? I always thought Chile and Chilé was a thing people did—

**Senator FAULKNER**—Do you think I should stick with Niger? I am happy to. I will take your advice on that, Senator.

**Senator Vanstone**—I am not big on affectations myself, but suit yourself.

**Senator FAULKNER**—You have talked me out of it. My pronunciation might be poor, Senator Vanstone, but at least Mr Shannon knew what I was talking about. I suppose that is—

**Senator Vanstone**—The critical issue.

**Senator FAULKNER**—The critical issue. And phonetically it sounded okay. Did you brief Minister Downer about concerns about the inaccuracies of the Niger uranium claims?

**Mr Quinn**—We would need to check on the detail. Material is continuously going up to the minister on all sorts of issues, including directly from other relevant agencies. But, as I mentioned before, when the issue became public on 7 March, I am sure there would have been some discussion at that point. Whether there was earlier advice, I really could not tell you. I would have to check on that. The other point to make is that clearly this discussion continues about Africa and uranium. As you know, the UK committee has basically said that the assessment still stands from the British that those transactions were discussed and that the

intelligence was reasonable. I think the debate still continues on this particular issue but, as I said before, from our point of view this is a very small point, which is part of a much wider picture.

**Senator FAULKNER**—That might be your view and obviously you are entitled to it. There was also, of course, the US National Intelligence Estimate of Iraqi WMD of October 2002 that contained State Department doubts about the same claims. That is true isn't it, Mr Shannon?

**Mr Shannon**—That is right.

**Senator FAULKNER**—Let us talk about that document. When did DFAT first obtain a copy of that document?

**Mr Shannon**—On 3 February 2003.

**Senator FAULKNER**—Where did that come from?

**Mr Shannon**—ONA.

**Senator FAULKNER**—Do you have any knowledge of when the Australian Embassy in Washington first became aware of the contents of that document?

**Mr Shannon**—No.

**Senator FAULKNER**—Did not Mr Downer make a comment on 23 June in the *Sydney Morning Herald* saying that the claim in relation to Niger was erroneous? Didn't the minister say that?

**Mr Buckley**—23 June 2003?

**Senator FAULKNER**—Yes.

**Mr Buckley**—This is after El Baradei had said that it was—

**Senator FAULKNER**—I am coming back to Mr Quinn's comments about the status of these claims at the moment.

**Mr Quinn**—Perhaps I could just clarify—

**Senator FAULKNER**—Yes, we had better because I am sure you will get a quick phone call from Mr Downer.

**Mr Quinn**—I think Mr Shannon explained that there were two issues. There is the broad question of whether there was discussion between Niger and Iraq on procurement but also the question of the fraudulent documentation. There are two issues there and we would have to check, but clearly when Mr El Baradei makes a judgment about fraudulent documents we take that with the appropriate gravitas. The wider question of what else went on between those two countries is still an open question.

**Senator FAULKNER**—You had better go and check what Mr Downer said. He may have been quoted wrongly, but I doubt it.

**CHAIR**—Thank you, Senator Faulkner.

**Proceedings suspended from 10.29 a.m. to 10.52 a.m.**

**Senator FAULKNER**—You were indicating to me, Mr Buckley, before the break that the department became aware of the National Intelligence Estimate report on Iraq WMD, the report dated October 2002. This first came into the Department of Foreign Affairs and Trade on 3 February 2003.

**Mr Buckley**—That is our understanding, yes.

**Senator FAULKNER**—That is the day before the Prime Minister's statement to the parliament, which effectively was the case for a war on Iraq. That was made on 4 February this year. You would be aware of that?

**Mr Buckley**—Yes.

**Senator FAULKNER**—Did the Department of Foreign Affairs and Trade have a great deal of input into the Prime Minister's speech? I assume you had some. Could you explain to the committee what input the department had?

**Mr Buckley**—I think the officers at the table at the June estimates hearing spoke about this and said that it had been referred to us but we had not cleared it. I am paraphrasing; I am not sure exactly what was said, but as far as I know that is what Mr Varghese said. I can find the quote if you like.

**Senator FAULKNER**—I congratulate Mr Varghese; he has gone on to a bigger and better future, hasn't he? He actually works for the Prime Minister now, so we should congratulate him on that, if you would pass that on, Mr Chester, on behalf of the committee. So I note that.

**CHAIR**—I wrote to him personally, you would be pleased to know, Senator Faulkner, to congratulate him.

**Senator FAULKNER**—On behalf of the committee?

**CHAIR**—Unfortunately not. I should have but I did not.

**Senator FAULKNER**—No doubt we will catch up on one of my regular visits to the Prime Minister's office. I have actually been there once in the last eight years, so some time in the next eight years, if I am still around and still kicking, I will congratulate him myself.

**Mr Buckley**—It says we were consulted in the drafting.

**Senator FAULKNER**—When?

**Mr Buckley**—But the primary drafting was obviously done by the Department of the Prime Minister and Cabinet. I am not aware of exactly when we were—

**Senator FAULKNER**—There is a great deal of similarity, isn't there? Just as background, you would be aware, Mr Buckley, that I know about the NIE—National Intelligence Estimate—on Iraq of October 2002, because it is public, isn't it?

**Mr Buckley**—Yes, I presume so. I presume that is how you know.

**Senator FAULKNER**—I am always ferreting around the CIA web site, and that is where you can find it. I commend it to you. Were you aware of that—that you can find the NIE October 2002 report on the CIA web site?

**Mr Buckley**—Yes.

**Mr Shannon**—It is only the key conclusions of the report.

**Senator FAULKNER**—Yes, that is a very important intervention. It is the unclassified document. I accept that. But, you see, there is a remarkable coincidence in language, isn't there, between the NIE report that we find now on the CIA web site and Mr Howard's speech? That is true, isn't it, Mr Buckley?

**Mr Buckley**—I have not analysed the speech in those terms, so I could not comment on it.

**Senator FAULKNER**—You would be disappointed if I had not analysed the speech in those terms. Let us go to some of the detail. Can you confirm that in parliament, in putting forward the case for war with Iraq, Mr Howard said:

The analysis provided by the Director of the US Central Intelligence reached similar conclusions, namely:

·Iraq is reconstituting its nuclear weapons program ...

And can you confirm that the NIE October report said:

... in the view of most agencies, Baghdad is reconstituting its nuclear weapons program.

That is very similar language indeed, isn't it? And fair enough. On that occasion Mr Howard is indicating that that is an analysis provided by the director of the CIA. That is right, isn't it?

**Mr Buckley**—I could not—

**Senator FAULKNER**—You cannot confirm that?

**Mr Buckley**—No. We cannot confirm it. We did not write the speech. I do not know how it was—

**Senator FAULKNER**—But you have a copy of the NIE October 2002 report there, haven't you?

**Mr Buckley**—Apparently, yes.

**Mr Shannon**—As a point of clarification here, the director of central intelligence produced a public dossier in October 2002. In addition, there was the classified national intelligence estimate, which was produced around the same time. Subsequently, in July, the key judgments of the national intelligence assessments were unclassified and made public.

**Senator FAULKNER**—That may be so, but I am pointing out the similarity of language that is used. On another matter, in his 4 February speech, Mr Howard said:

... it has begun renewed production of chemical warfare agents, probably including mustard, sarin, cyclosarin and VX ...

The NIE October 2002 report says:

We assess that Baghdad has begun renewed production of mustard, sarin, GF (cyclosarin), and VX ...

That is almost identical wording, isn't it?

**Mr Shannon**—Yes, but I think the unclassified DCA October 2002 report uses similar language, if I am not mistaken.

**Senator FAULKNER**—This is the unclassified document. I am quoting from the CIA web site—the 2002 report. Mr Howard's speech on 4 February says:

... all key aspects—R&D, production and weaponisation—of Iraq's offensive biological weapons program are active and most elements are larger and more advanced than they were before the Gulf War in 1991.

The NIE (CIA) October 2002 report says:

We judge that all key aspects—R&D, production, and weaponization—of Iraq's offensive BW program are active and that most elements are larger and more advanced than they were before the Gulf war.

Again, it is almost identical language. I am not necessarily accusing the Prime Minister of plagiarism. Others might; I am not. What I am drawing your attention to, for you to confirm, is the similarity of language between the NIE (CIA) October 2002 report and what was said by Mr Howard in the parliament as the justification for going to war in February 2003.

**CHAIR**—Senator Faulkner, you have to be careful of asking the officials to give an opinion. They are not here to give opinions.

**Senator FAULKNER**—Can the officials confirm that those words that I have quoted are direct quotes from the October NIE 2002 report?

**Mr Buckley**—No, we cannot. What we can say is that the introduction to that section in the Prime Minister's speech was that he was quoting the director of the US Central Intelligence Agency. He said 'reach similar conclusions', and then the bits that you have read out are the bits that he was quoting from. That is what he said in the speech. He was quoting the director of central intelligence.

**Senator FAULKNER**—He said he is quoting the director of central intelligence. But the key point is this: what did the director of central intelligence say about uranium from Niger in the same report quoted extensively by Mr Howard in the parliament? Can you tell me that, Mr Buckley?

**Mr Buckley**—No, because I have not got it.

**Senator FAULKNER**—Someone has it there.

**Mr Shannon**—Again going back to October 2002, there was a very public dossier produced at the time that drew on, it would appear, in retrospect, the classified NIE. That was the DCI—director of central intelligence—public dossier of October 2002.

**Senator FAULKNER**—Mr Shannon, in the same NIE October report—

**Mr Shannon**—That is the classified report.

**Senator FAULKNER**—I do not have access to the classified report. I now have—as does any other person who cares to access it—access to an unclassified version of the report courtesy of the CIA's web site.

**Mr Shannon**—That is right. They are the key judgments published in July.

**Senator FAULKNER**—Yes. So I am now able to depend on that for my questioning before this committee. And there is an extraordinary similarity of language used between Mr Howard's speech on 4 February and what appears in that unclassified version of the NIE October 2002 report on the CIA web site. I am not accusing the Prime Minister of plagiarism. The point is that the same October NIE report in 2002 said, in relation to the other issue that

we have been talking about, uranium from Niger—again, you can access it on the web site of the CIA just like me:

Finally, the claims of Iraqi pursuit of natural uranium in Africa are, in INR's assessment, highly dubious.

But that is not in the 4 February speech by Mr Howard to the parliament. He has cherry picked. That did not suit the argument. He has gone to another source—hasn't he, Mr Chester?—in relation to that issue, which is the British Joint Intelligence Committee, because it was a different view. This is the point. On at least three occasions—possibly more; I have not had time to go through it all in great detail—Mr Howard, in his speech on 4 February, has depended very closely—with almost identical words used—on the NIE report. But the doubts on the Niger uranium issues expressed in the NIE report are not there. Mr Howard's speech, in relation to that matter, is very different. How do we explain that?

**Mr Chester**—I could make the point that we were not the authors of the speech. From the evidence given at an earlier Senate estimates hearing, we saw a draft of the speech. But they are questions that have to go to the authors and to the Prime Minister, who gave the speech.

**Senator FAULKNER**—This is the department. You looked at Mr Howard's speech before its delivery. You have carefully said, 'Oh, well, we didn't clear it; we only looked at it.' You did look at it, didn't you, Mr Chester?

**Mr Chester**—That is the evidence, yes.

**Senator FAULKNER**—You would have noted, wouldn't you, that a lot of the material that Mr Howard depended on was drawn from the NIE report?

**Mr Chester**—I would expect so.

**Senator FAULKNER**—Yes, I would too. And if all this material is taken word for word from the INR report, why weren't the same doubts in relation to the Niger uranium issue taken into account in the February speech? That is what I am asking. Can someone assist me?

**Mr Chester**—I do not think anyone here can assist you. They are questions for the authors of the speech, not for the Department of Foreign Affairs and Trade.

**Senator FAULKNER**—But you can confirm—because you have a copy of it in front of you in relation to the NIE report—that that incorporates the INR doubts, doesn't it? The NIE report incorporates the INR doubts about Niger and uranium. Please confirm that for the benefit of the committee. They said it was highly dubious, didn't they?

**Mr Shannon**—Yes, it does, but I do think there is a confusion here. You will recall that in September the British produced a public dossier. In October the United States produced a similar public dossier. Then, in July this year, there was published the key judgments of the classified NIE. The October public dossier that was produced by the US was called the report of the director of central intelligence. So there are two different public documents.

**Senator FAULKNER**—There may be. There are any number of public documents. But I am pointing out the extraordinary similarity of language used in one document that is now public—an unclassified version—and elements of Mr Howard's speech. I have read them into the *Hansard* transcript of this hearing and asked you to confirm that they are sourced from the NIE document. We also know, because of your evidence, that the INR doubts were also

incorporated into the NIE document, don't we, because it is described as highly dubious? That is correct, isn't it?

**Mr Shannon**—That is the July key judgments document, that is right.

**Senator FAULKNER**—And this is a document that you had in your possession—your department. I am not talking about Mr Howard's office or the Department of the Prime Minister and Cabinet or anybody else. You as a department had this in your possession the day before Mr Howard gave his speech. But what does Mr Howard say in his speech about this matter? He says:

On the basis of the intelligence available, the British Joint Intelligence Committee judged that—among other things—

Iraq continues to work on developing nuclear weapons—uranium has been sought from Africa that has no civil nuclear application in Iraq ...

That seems to me to be a remarkable situation. In other words, it is cherry picking material. If it suits the case, put it into the speech; if it does not suit the case, ignore it and find something else that might come from a different source. How do we justify that?

**Mr Quinn**—As I said before, as far as we understand it, DFAT became aware of this doubt about this particular issue in one line of an 86-page document—an annex. Before that stage, we were not in the picture on this particular problem. As we explained before, when Mr El Baradei went public in March on the fraudulent documentation issue, it became public but up until that point there was one line in an 86-page classified document that led us to understand there was a problem here. I guess the second point that Mr Chester has underlined is that the matter of the Prime Minister's speech is a matter for Prime Minister and Cabinet. It is not our speech; we cannot go into the detail of how it was prepared—we do not know.

**Senator FAULKNER**—This is Australia's department of foreign affairs. You did have input into the Prime Minister's speech, didn't you?

**Mr Quinn**—As far as I know we were consulted.

**Senator FAULKNER**—All right, you were consulted on the Prime Minister's speech. Given that you had this material from reports from overseas agencies in your hands, did anybody in the department of foreign affairs point out the concerns about the Niger uranium issue? Are we able to say that, Mr Chester? Did anyone bother, prior to the Prime Minister making his speech in parliament, to point these concerns out?

**Mr Chester**—I do not know the answer to that.

**CHAIR**—I do not think officials can be asked about what advice they gave to the minister.

**Senator FAULKNER**—I was not asking what advice they gave. I asked whether the problem was identified—in other words, that there was cherry picking of this sort of material before the Prime Minister went into the parliament to make his speech. Who in the department was consulted, Mr Quinn? Who ran their eye over it?

**Mr Quinn**—I would have to check. I am not sure.

**Senator FAULKNER**—What effort went into the consultation process? Surely you would treat a prime ministerial speech on such an important issue as the case for war with Iraq with

the seriousness it warranted? You would acknowledge, Mr Chester, that this is a very serious issue and it warrants serious, thorough, proper consideration from your own department?

**Mr Chester**—I am sure that when the speech came into the department for us to look at, it was looked at very carefully. I do not think we can answer at this stage who looked at the speech.

**Senator FAULKNER**—I would appreciate you checking that for me; I would like to know. I do know you had input into Mr Howard's speech, I do know that you were in possession of the NIE report, and I do know about what appears to be directly lifted from the NIE report—but I also know what was not lifted from the NIE report. What I want to know, Mr Chester, is why.

**Mr Buckley**—Perhaps I could clarify the situation a little bit. In the ONA press release of 10 July, it is clearly stated there that ONA's reporting to the government did not refer to the State Department view—the INR review—and the ONA did not inform the government of its awareness of State Department view. If ONA did not, I think it is highly unlikely that we did—in fact, I am almost certain that we did not.

**Senator FAULKNER**—I know now from evidence at this estimates committee that you had the NIE report. I know from evidence at this and a previous estimates committee that the department was at least consulted on the Prime Minister's speech. Can I ask specifically: were you consulted on those matters that related to the NIE report? Can someone help me there?

**Mr Chester**—I do not know the answer to that. I suspect it is highly unlikely that that was the case.

**Mr Buckley**—This is essentially a dispute between intelligence organisations, and it is not our job to assess that intelligence so we would take advice from ONA. ONA are saying that it did not tell the government. Although I cannot be categorical, I think if ONA did not tell the government then we certainly did not tell the government.

**Senator FAULKNER**—It is not a dispute between intelligence agencies at all as far as I am concerned, Mr Buckley. It is not a matter for me to raise directly with you; I can do that directly with the minister at the table at a later stage if I wish. In my view it is a matter of what the Australian people were told on 4 February 2003 by the Prime Minister and the basis for that claim. You are entitled to that view but that is not something I intend to canvas with you. You are an official of a Commonwealth department. I could have an interplay with you about but I do not do that sort of thing. I will have that with the minister; I will have my political discourse with the minister. But you are certainly entitled to a view about whether there were competing intelligence agencies arguing the case.

**CHAIR**—I think what Mr Buckley means when he talks about competing intelligence agencies is that our source of intelligence is multi-sourced.

**Mr Buckley**—I am saying there were differences of view; it is not our job to judge the veracity of each of those particular pieces.

**Senator FAULKNER**—There are other agencies in the Commonwealth that are involved in the analysis of intelligence—

**CHAIR**—I think many foreign intelligence agencies as well.



**Senator FAULKNER**—and I am aware of what the department of foreign affairs does in relation to these issues. The issue that I am addressing here, Mr Chairman, goes to why certain elements of a report that the Prime Minister thinks favour the government's case are picked up and other elements are not. They are good questions and they are appropriate questions but I am not putting them specifically to Mr Buckley, Mr Chester or any other official at the table. They are political questions that warrant an answer, and I have no doubt they will be prosecuted in other forums as well as this. I am not going to have a debate with the officials that the table about those matters because, as you know, I am consistent on these issues and, where I believe we go past the question of matters that are appropriate to deal with with officials, I will not go there. I am always consistent on that.

**CHAIR**—I know, I understand that, Senator Faulkner.

**Senator FAULKNER**—I would hope you would appreciate it.

**CHAIR**—I do. But the multi-sourcing of our intelligence information—the JIC report about the Niger reports still say the jury is out. They have not changed their view on that, so it is a multi-source—

**Senator FAULKNER**—If the jury is out then how do you explain Mr Downer's statement on 18 June in the *Sydney Morning Herald* that denies that the Niger claim was erroneous? If you want to become the de facto minister at the table, you might explain that. But if you do not know the answer, I would just be quiet and we will get on with something else.

**CHAIR**—Point taken.

**Senator FAULKNER**—Very wise. Let us move to another issue, if we can. I do want to briefly come back to this issue of Mr Thielmann's conclusions. I think it was Mr Buckley who indicated to me that the department had first become aware of certain statements made by Mr Thielmann on the *Four Corners* program last week. That is right, isn't it, Mr Buckley?

**Mr Buckley**—I do not think it was me but it could have been.

**Senator FAULKNER**—Was it you, Mr Chester?

**Mr Chester**—No.

**Mr Shannon**—It was me.

**Senator FAULKNER**—I knew it was someone. You would now be aware, Mr Shannon, that Mr Thielmann, formerly of the INR—

**Mr Shannon**—That is right.

**Senator FAULKNER**—with respect to conclusions reached by allied intelligence agencies, including Australia, had this exchange with a reporter from the *Four Corners* program:

And at that time, mid-2002, we had a very strong feeling that there was a growing consensus within not only the US intelligence community but also among our close allies with whom we shared a lot of the results, and the consensus was that this was not bound for the nuclear weapons program.

He was asked by a journalist:

And those close allies would include Australia?

Thielmann said:

That's right.

Just for the record we ought to indicate here—you would be aware of this, Mr Shannon—that this related to the broad issue of the reconstitution of Iraq's nuclear capability around the issue of aluminium tubes. You are aware of that?

**Mr Shannon**—That is right.

**Senator FAULKNER**—I ask whether the department would be aware of the statement that the Minister for Foreign Affairs made on 10 September—and I quote:

But, there is no doubt that they—

I interpolate that 'they' is the Iraqi regime—

have been endeavouring to purchase equipment which could be used for the building of plants to produce enriched uranium ...

Are you aware of those statements that the minister made on 10 September 2002?

**Mr Shannon**—It sounds right, Senator. I do not know specifically.

**Senator FAULKNER**—I can assure you that it is right, but I appreciate the qualification you make. As far as your department is concerned, Mr Shannon, can you indicate whether your department was aware of the doubts as per Mr Thielmann's claim of the US doubts in mid-2002, as effectively Mr Thielmann is claiming? Was Foreign Affairs and Trade, your department, aware of those doubts, as per Mr Thielmann's claim?

**Mr Shannon**—Yes, we were aware that there were differences of view.

**Senator FAULKNER**—Were those doubts passed up the chain to your minister?

**Mr Shannon**—That is really a matter for the intelligence community and we left it at that at the time. That was a judgment that we deferred to the intelligence community.

**Senator FAULKNER**—You have told me that the department was aware of the doubts. Thank you for that; I appreciate that. You are saying, with respect to briefing the minister, that it is a matter for somebody else. Is that what you are saying?

**Mr Shannon**—It is a technical issue and we were not competent to make that judgment.

**Senator FAULKNER**—So the answer to my question is: no, the department did not brief the minister on those doubts.

**Mr Shannon**—No, it was not our practice to brief the minister on intelligence matters.

**Senator FAULKNER**—I appreciate understanding that. This is a matter, you are indicating, that is left to other agencies.

**Mr Shannon**—That is right.

**Mr Quinn**—If I could add something, Senator: absolutely, in terms of intelligence judgments, DFAT is not an intelligence agency, as we have said. Clearly, Mr Downer was aware of this debate, because as you know he chose his words very carefully on 17 September, talking about 'may be part of a pattern of acquisition of equipment'. Clearly, that caveat indicated that there was a debate and he was very conscious of that debate. It seems to

me also worth saying that the government was very careful in its commentary about the nuclear program. Clearly, the focus was on CW, BW and missiles. We obviously had concerns on the nuclear front but the government was very careful in its commentary because there was a lot of debate about the status of the nuclear program. Again, I come back to the Kay report, which has confirmed indications of a clear determination on the part of Saddam to continue with those activities. Again, that debate continues, but the focus of our commentary was very much on CW, BW and missiles, with a real concern about nuclear in the longer term because of the huge implications that would flow from Saddam having nuclear weapons.

**Senator FAULKNER**—I would have thought that the Foreign Minister's statement of 10 September 2002 was unqualified. He said:

But, there is no doubt that they have been endeavouring to purchase equipment which could be used for the building of plants to produce enriched uranium ...

That is pretty unqualified language. I think the premise of your statement is pretty questionable. It sounds unqualified to me.

**Mr Quinn**—I should have mentioned that I was talking about Mr Downer's comments in parliament subsequently. Whether Mr Downer was quoted accurately, I do not know, but he made very clear in parliament on 17 September—a few days later—that it 'may be part of a pattern'. I think there were many other issues bouncing around in terms of procurement. The issue of the aluminium tubes was one of many, so there was a much wider picture there as well.

**Senator FAULKNER**—Can you tell the committee in relation to this issue of the aluminium tubes whether there was an INR report on the matter that you are aware of?

**Mr Quinn**—I do not recall but, as Mr Shannon has mentioned, the debate was well known within the intelligence community. These are difficult matters of judgment and the debate continues.

**Senator FAULKNER**—Could you take that on notice for me? I would appreciate knowing if there was an INR report on that matter—that is, if there is no official at the table who can assist us on that, Mr Chester.

**Mr Chester**—No, Senator, I do not think there is. We will take that on notice.

**Senator FAULKNER**—I would appreciate that and if it were possible for you to come back to us at some stage today it would be helpful. Was there an INR report on that matter; if so, when was it produced—what was the date; and when was it made available to DFAT? I can only ask you these questions in relation to your own department and of course it is possible there was such a report that did not come through to your department. I appreciate that and I am asking this in the context of the estimates for this department. If you could provide that information, that would be useful.

Are you able to tell the committee whether—beyond the INR and the State Department—the United States Department of Energy also had doubts about the importation of aluminium tubing as being applicable to the gas centrifuges as part of any reconstruction of an Iraqi nuclear weapons program?

**Mr Quinn**—I do not think it would be appropriate for us to trawl through all the intelligence material. The point I make is that there is no mystery in this controversy. Secretary of State Powell told the Security Council, ‘We all know there are differences of opinion on this subject.’ This issue was basically in the public domain so there may well have been different opinions within the US system on this subject, but I do not think it is really appropriate for us to comment on that intelligence or provide detail. The issue was pretty well known.

**Senator FAULKNER**—You referred to the Minister for Foreign Affairs’ statement to the parliament as being qualified on these matters. Could you just point me to the timing of that statement you referred to, please?

**Mr Quinn**—Yes, Senator. I think on 17 September Mr Downer said to the parliament: Iraq’s attempted acquisition of very specific types of aluminium tubes may be part of that pattern of acquisition of equipment that could be used in a uranium specific enrichment program. So he was clearly lodging a caveat there in terms of that advice.

**Senator FAULKNER**—Could you just read that to me in context—perhaps the sentence or two before that?

**Mr Quinn**—I am afraid I do not have the *Hansard* with me but we will check if we have it.

**Senator FAULKNER**—Well, I do, so let me read it to you in context. This is what Mr Downer said in parliament on 17 September:

As with chemical and biological weapons, the Australian government has no reason to believe that Saddam Hussein has abandoned his ambition to acquire nuclear weapons. All the circumstances suggest the opposite. Australian intelligence agencies believe there is evidence of a pattern of acquisition of equipment that could be used in a uranium enrichment program. Iraq’s attempted acquisition of very specific types of aluminium tubes may be part of that pattern—

I think you would appreciate, Minister, that, if we are to quote what parliamentarians say in parliament, it is important to fully quote, to quote in context. You would agree with that, I am sure?

**Senator Vanstone**—Yes.

**Senator FAULKNER**—And it is a very different picture when quoted in context. That was more of a formal statement to parliament on 17 September, wasn’t it, Mr Quinn? Or was it in answer to a question without notice?

**Mr Shannon**—It was a formal statement, a speech.

**Senator FAULKNER**—It was a formal speech. So that would be prepared in the department, wouldn’t it, Mr Quinn?

**Mr Quinn**—I assume so, Senator.

**Senator FAULKNER**—No, let us go back a step. I do not like being pedantic, but let us not make assumptions, let me just be clear. Can someone tell me whether that statement was prepared in the department please?

**Mr Shannon**—I cannot recall specifically if that was the case, but I am very familiar with the language being used deliberately. That reference to May was a deliberate insertion.

**Senator FAULKNER**—Are you saying that it was prepared in the department? It is totally unremarkable if it was prepared in the department; I would expect it to have been prepared there, or at least vetted and cleared.

**Mr Shannon**—The final version of the speech was prepared in the minister's office. Certainly, my division contributed points to the speech.

**Senator FAULKNER**—Points?

**Mr Shannon**—Sentences.

**Senator FAULKNER**—Sentences?

**Mr Shannon**—Yes.

**Senator HOGG**—You said that that was a deliberate contribution in the speech. Why did you use the word 'deliberate'?

**Mr Shannon**—It reflected the doubts at the time about the aluminium tubes.

**Senator FAULKNER**—Was the statement in its final form cleared by the department?

**Mr Shannon**—I cannot be specific about that.

**Senator FAULKNER**—I think you would agree, Mr Chester, that that is a very reasonable question in these circumstances. I think we are entitled not only to an answer but to an answer now from the officials of the department. It is an administrative matter: either it was cleared by the department or it was not. I think that is not unreasonable.

**Mr Chester**—Senator, I am sure you would appreciate that we would not have knowledge of everything that we have cleared over the years.

**Senator FAULKNER**—You know that I do not expect you to have knowledge of everything, but I do expect the department to have knowledge of whether a ministerial statement has been cleared in the department, because it would be done at a high level. It would not be done by someone who has just walked in off the street and has spent two days as a junior officer in the department; it would be done at a very high level, wouldn't it, Mr Chester?

**Mr Chester**—It would be done at an appropriately high level.

**Senator FAULKNER**—Yes, so I think someone ought to be able to answer that question.

**Mr Chester**—We cannot answer that question at the moment.

**Senator FAULKNER**—When do you think you will be able to answer that question for me? All I want to know is whether Mr Downer's ministerial statement of September 2002 was cleared in the department.

**Mr Quinn**—Perhaps I could just make the point that obviously the minister makes his own statements and uses advice as he sees fit. The normal process would be that a draft would be prepared by the department with our input and it would be the minister's call as to what we wanted to say to parliament. Obviously, we do not clear the minister's statements.

**Senator FAULKNER**—Of course. I am not asking you to step up to the plate and to take responsibility for every mistake Mr Downer makes. I am only asking about the process of whether it was cleared, and that might be a way of saying no. Either it was or it was not.

**Mr Quinn**—There is a standard process of a draft being prepared by the department for the minister's consideration. That is the standard procedure, and I think in this case the procedure was followed as usual. The final call, of course, is the minister's call—appropriately.

**Senator FAULKNER**—So a draft speech was prepared in the department?

**Mr Quinn**—That is my recollection, yes.

**Senator FAULKNER**—We have been told by Mr Shannon that sentences were added here and there. When was the sentence that you helpfully read out to the committee—not in the context of the paragraph it was included in—added?

**Mr Quinn**—I do not think it is really appropriate for us to provide a detailed explanation of our relationship with the minister and the advice we provide. That does not seem to me to be an appropriate thing for us to comment on. These procedures are standard procedures and they were followed.

**Senator FAULKNER**—Are you able to say, Mr Chester, if reservations were conveyed by the department to Minister Downer and his office about these specific suggestions contained within the speech about the aluminium tubes? Are you able to say that to me?

**Mr Chester**—Again, it is not our role to divulge to you what advice we give to our ministers.

**Senator FAULKNER**—But what would happen in this situation if a rogue statement about aluminium tubes appeared in the speech? You are just saying, 'Oh well, the department doesn't know anything about it. We shoot over a draft, the minister adds in whatever bits he likes, and hope like hell it's okay.'

**Mr Chester**—That is not what I said. I said I would not divulge what advice we give to our ministers.

**Senator FAULKNER**—Are you aware, Mr Chester, of whether the department raised concerns with Mr Downer about this issue of aluminium tubes after the speech?

**Mr Chester**—I think it is fair to say that the appropriate officers of the department have regular discussions with the minister on these and similar issues.

**Senator FAULKNER**—Yes, I am sure it is fair to say that. Is that a yes?

**Mr Chester**—No, it is saying that it is not appropriate for me to divulge the nature of the discussions we have with our ministers.

**Senator FAULKNER**—Is the department aware of when the issue of the supposed acquisition of aluminium tubes by Iraq was no longer used as part of the evidentiary basis of the reconstitution of Iraq's nuclear weapons program? Could someone nail down a time when we dropped off that claim?

**Mr Quinn**—I guess this line of questioning is moving very much into the other committee that is doing this work on intelligence. I do not think it is really appropriate for us to—

**Senator FAULKNER**—I am trying not to. I am focusing absolutely on the Department of Foreign Affairs and Trade. I think you have a critical and central role in this and I am only interested in this from the perspective of your own department, not other agencies. You would be aware that your own department is not of primary concern to the other parliamentary committee that is undertaking its investigations and looking at intelligence agencies. Apart from those that it has direct responsibility for under the statutory provisions of the committee, I think DIO and ONA are also involved. That is correct, isn't it, Mr Quinn?

**Mr Quinn**—Yes.

**Senator FAULKNER**—But not DFAT. DFAT may have some peripheral interest. I am happy to assure you that my question here only goes to DFAT's role.

**Mr Quinn**—I repeat the point that I think the government has been careful in presenting the case on the nuclear side of things, for obvious reasons in that the debate continues. I mentioned before that the Kay report clearly reinforces concerns on that front. But, given the gravity of the risk of the nuclear dimension, we cannot dismiss that. The government was very careful in its phraseology all the way through on that. I will leave it at that by way of comment. We did not overstate the case in that regard; we were very careful not to do that.

**Senator FAULKNER**—Others will make a judgment about whether the case was overstated or not. My question only goes to the issue of when the department dropped off such claims. Can you tell me precisely when that was—in other words, when you realised that these claims could no longer be sustained?

**Mr Quinn**—Again, not wanting to trespass into the intelligence area, at no stage did we make bald claims. We always understood that the debate continued. The debate continues to this day. To suggest we suddenly dropped off or changed strategy is an inaccurate representation of our position on that issue.

**Senator FAULKNER**—Do you take a close look at the work of the committees of the US Congress and the United Kingdom Parliament? Does the department keep a close watching brief of those events, Mr Chester? I assume you would, in relation to matters where DFAT has an interest and responsibility.

**Mr Chester**—I am sure the department gets reports of the deliberations of those committees.

**Senator FAULKNER**—Has the department had an opportunity to examine the United Kingdom Parliament's Intelligence and Security Committee report entitled *Iraqi weapons of mass destruction – Intelligence and assessments to parliament*?

**Mr Shannon**—Yes, we received that and reviewed it.

**Senator FAULKNER**—What sort of departmental resources, Mr Shannon, go into having a close look at a report like that? It was quite a significant report out of Westminster, wasn't it?

**Mr Shannon**—That is right. I can only speak for my division.

**Senator FAULKNER**—I appreciate that. That is all I would ask you to do.

**Mr Shannon**—It was considered by me and a junior officer, only in a very preliminary way, to prepare material for the minister to respond to if there were media inquiries.

**Senator FAULKNER**—Would you be able to confirm that paragraph 125 of that report says:

The 27 November 2002 intelligence update reported that although there was no intelligence to indicate that Iraq had considered using chemical and biological agents in terrorist attacks, it could not rule out the possibility.

**Mr Shannon**—I am sure that is in the report.

**Senator FAULKNER**—It is in the report. So you can confirm that. As far as this 27 November 2002 intelligence update goes, can you, for my benefit, explain what that refers to?

**Mr Shannon**—No, I cannot be precise about that. Was the Intelligence and Security Committee referring to a joint intelligence committee report?

**Senator FAULKNER**—It is described as an intelligence update.

**Mr Shannon**—That is a British internal report, presumably.

**Senator FAULKNER**—I am asking you. I do not know. If I did know, believe it or not I would not ask you. I just wondered if you could help me.

**Mr Shannon**—No, I cannot.

**Senator FAULKNER**—In the broad, we are talking here about the issue of weapons of mass destruction falling into the hands of terrorists. I am sure that has been a matter of some significance, a matter of real importance.

**Mr Shannon**—That is right.

**Senator FAULKNER**—So you would be getting UK and US report assessments on this issue all the time, wouldn't you?

**Mr Shannon**—Not me personally.

**Senator FAULKNER**—It does appear from the Intelligence and Security Committee report that this is the subject of some UK reporting.

**Mr Shannon**—Internal reporting?

**Senator FAULKNER**—It is internal reporting, yes. Their reporting, I assume, is internal reporting. But that internal reporting, I also assume, would be shared across agencies and with security partners. That would be right, wouldn't it?

**Mr Shannon**—I could not comment on that.

**Senator FAULKNER**—In relation to this broad issue of the possibility that WMD would fall into the hands of terrorists, as far as DFAT is concerned that is a matter that would come across your desk, isn't it?

**Mr Buckley**—We could not make an assessment about that. We are not in a position to make those assessments.



**Senator FAULKNER**—I am not asking you about assessments. It has been one of the issues, Mr Buckley, that has been raised as a real and genuine concern in relation to the regime in Iraq. That is true, isn't it?

**Mr Buckley**—Yes.

**Senator FAULKNER**—I am just trying to establish which part of the department is dealing with those issues. I am assuming the three officers at the table have got a primary responsibility in that area, but if I am wrong please correct me. Well, do you?

**Mr Buckley**—I do not quite understand what the question is. We are responsible for various aspects of the department's activities. There are general things which we have different responsibilities for, so I cannot give a blanket answer.

**Senator FAULKNER**—This same report from the UK parliament's Intelligence and Security Committee says:

In their assessment *International Terrorism: War with Iraq*, dated 10 February 2003, the JIC reported on 27 November 2002 that there was no intelligence that Iraq had provided CB materials to al-Qaida or of Iraqi intentions to conduct CB terrorist attacks using Iraqi officials or their agents. However, it judged that in the event of imminent regime collapse there would be a risk of transfer of such material, whether or not as a deliberate Iraqi regime policy.

Is that a matter that your own department has given some consideration to? Have you made similar assessments?

**Mr Quinn**—Perhaps I could answer that question. Clearly, we were aware of the ISC report and our intelligence community looked at a whole range of issues in the context of prudent contingency planning. The elements of WMD and terrorism were part of that assessment process. As you know, from Mr Downer's statements and other statements from the government, that while the short term risk was accepted the government as a matter of judgment weighed up the risks and benefits and saw that the benefit of disarming Saddam outweighed those risks. I think that is all on the public record in terms of statements by Mr Downer and others. In a sense there was nothing new in that JIC assessment. That particular risk was obviously well known with all sorts of other risks as well. I think it is also worth noting that the committee made no recommendation of that particular issue; it just made a descriptive comment on that subject. As I have said, I think the minister has made clear the government position on that particular issue.

**Senator FAULKNER**—The minister said in his statement of 10 March:

... that there is a real risk of weapons of mass destruction being transferred from rogue states ... into the hands of terrorists.

Minister Minchin, I ask you: does the government stand by that assessment still?

**Senator Minchin**—I would prefer to allow the officials to seek to answer your question first before I enter into that. It is reasonable for them to attempt to answer that.

**Senator FAULKNER**—That is fine. I appreciate that.

**Mr Shannon**—The government has said numerous times that it is concerned about the risk of weapons of mass destruction from rogue states falling to the hands of terrorists.

**Senator FAULKNER**—Yes and one of those occasions was the one I quoted on 10 March. I am asking what, if any, evidentiary basis or support you can point to for these concerns?

**Mr Shannon**—As a general matter, not Iraq specific?

**Senator FAULKNER**—We can start as a general matter, yes. We will get to Iraqi specific matters in moment.

**Mr Shannon**—In the case of North Korea and other states, which are considered to be rogue states—the government tends not to use expression rogue states frequently but people know what we are talking about when we talk about rogue states—there is a risk because they operate outside legitimate international frameworks. They tend to be engaged in what we refer to as secondary proliferation that is to say outside the norms of the international regimes. There is a risk when these materials are not safeguarded, unprotected and unregulated by the international community of them falling into the hands of terrorists.

**Senator HOGG**—So how widely does that apply?

**Mr Shannon**—As a general proposition?

**Senator HOGG**—What about places like Pakistan and India. They are not part of the normal club.

**Mr Shannon**—There is a track record in the case of some of those countries as secondary proliferators. That is to say they transfer materials outside international norms. We are talking about risk here.

**Senator HOGG**—I understand that we are talking about risk. That is why I asked about those two in particular because they are not part of the normal nuclear club if one can refer to the club in that sense.

**Mr Shannon**—That is right.

**Senator FAULKNER**—Let us move along to Iraq. We have moved from the general or the broad; let us move to the specific. Effectively you have the relevant committee of the United Kingdom parliament finding no basis for these claims in relation to Iraq. As I understand it—you can tell me if I am wrong—that committee heard evidence from all the relevant security and intelligence agencies in the preparation of its report to the parliament. It did that, didn't it?

**Mr Shannon**—I believe so.

**Senator FAULKNER**—I believe it did too. It could not find any evidentiary basis for this at all, could it?

**Mr Shannon**—Evidentiary basis for what precisely?

**Senator FAULKNER**—For the claims about the risk of WMD falling into the hands of terrorists.

**Mr Shannon**—From Saddam's regime—is that right?

**Senator FAULKNER**—Senator Hogg has asked a question or two about this issue in the broad. I just want to focus now on Saddam's former regime. In other words, what is the basis for the sort of statements that Mr Downer made on 10 March, when he said:

... there is a real risk of weapons of mass destruction being transferred from rogue states ... into the hands of terrorists.

We have had a full report from a committee of the United Kingdom parliament and not found a skerrick of evidence to support that claim. Are you able to provide any? Was there any evidence at the time? According to this United Kingdom parliamentary report, they could not seem to find any. If you have some, can you provide it to us?

**Mr Shannon**—These are really matters of pre war intelligence. It is the responsibility of the Australian intelligence community to make a judgment about the risk of Saddam.

**Senator FAULKNER**—It may be in part the responsibility of the Australian intelligence community, I accept that. But it was not the Australian intelligence community who told the parliament on 10 March that ‘there is a real risk of weapons of mass destruction being transferred from rogue states into the hands of terrorists’. It was none other than your minister, Mr Downer—he is the one who said it.

**Senator Minchin**—With respect, Senator Faulkner, I think this does go back to the original issue of what advice goes to Mr Downer. Unfortunately, you cannot question Mr Downer here. Your colleagues in the lower house can. He reached that conclusion and made that statement on behalf of the government based on the myriad sources of advice available to him—

**Senator FAULKNER**—You name one then.

**Senator Minchin**—We have an intelligence network that, as you know, is not restricted only to Australia, and we reached that conclusion. It is a bit difficult for these officers to then start down the track of the basis of that advice. As you know, that is a difficulty for them. I would just add that, in relation to the British parliament, my recollection is that the Labour Prime Minister of Britain on behalf of his Labour government has already rejected that finding of that British parliamentary inquiry, as I understand officials here say that our government would continue to reject such a finding.

**Senator FAULKNER**—Why do you reject it?

**Senator Minchin**—I am saying that my understanding is that the position of officials here—

**Senator FAULKNER**—Why do you have that understanding?

**Senator Minchin**—Because there has been no retraction of that by Mr Downer on behalf of the government.

**Senator FAULKNER**—Mr Downer never retracts any of the inaccurate statements he makes.

**Senator Minchin**—That is unfair to Mr Downer. Despite what that British parliamentary inquiry found, both President Bush and the Labour Prime Minister of Great Britain have stood by their positions—

**Senator FAULKNER**—Mr Downer is exposed as a wally on a daily basis. He never retracts his statements.

**Senator Minchin**—that it was reasonable for all those governments to operate on the basis of a reasonable assessment of that risk. Assessment of risk is always a matter of judgment based on all the advice available to governments. You reach a conclusion on balance based on that advice. All I am saying is that, with regard to this committee, it is difficult for them, given their constraints in relation to the advice that they provide to ministers, to go much further down this path.

**Senator FAULKNER**—You do not want me to ask the department, so I am more than happy to ask you, Minister. In fact, I started asking you about these issues—and I thought it was a very deft flick pass you made to the officials in the first instance, hoping that we would forget that you were there sitting at the table. But there you are; you have popped up.

**Senator Minchin**—I am sure that pleases you no end, Senator Faulkner.

**Senator FAULKNER**—It is nice to see you. If you could provide the committee with a skerrick of evidentiary support for Mr Downer's statement, I would be pleased to hear it, and no doubt my colleagues on the committee will be waiting with bated breath to hear it.

**Senator Minchin**—All I am prepared to do is to say, on behalf of officials, that they cannot go behind the veil of the restriction on discussion and advice they give to you. All I can say is that Mr Downer, as I understand it, made that statement properly on behalf of the government based on the extraordinary range of advice that is available to the government on these matters.

**Senator HOGG**—Minister, does the government still hold the view that Mr Downer expressed previously?

**Senator Minchin**—It is my understanding that we still do. I have seen no statement to the contrary. Just as Mr Blair has said in relation to his parliamentary committee inquiry that he rejects it and he stands by the position that he adopted at the time, my understanding is that so does Mr Downer.

**Senator FAULKNER**—So if we do not see a retraction, we assume that the minister or the Prime Minister stand by a statement. Is that what we are to understand?

**Senator Minchin**—In relation to this matter, my understanding—and remember that I am the minister for finance, not foreign affairs—

**Senator FAULKNER**—You're lucky.

**Senator Minchin**—My understanding is that the Prime Minister and the Minister for Foreign Affairs stand absolutely behind the statements they made at the time.

**Senator FAULKNER**—Thanks for that information. Do they stand absolutely behind the statements they made in relation to the Niger uranium issue or have they given that one away?

**Senator Minchin**—I would need to take further advice on that.

**Senator FAULKNER**—Yes, take some advice on that. Do they stand behind the statements they made on the aluminium tubes or have they given that one away?

**Senator Minchin**—That is what I just said to you. If you wish me to take that on notice, I will.

**Senator FAULKNER**—Take that on notice. And while you are at it—

**Senator Minchin**—Ministers can only operate on the advice they receive at the time and make considered decisions based on the advice they receive at the time. You have been a minister; you know that.

**Senator FAULKNER**—While you are checking out the aluminium tubes and the Niger uranium issue, which everybody else has debunked, and whether there has been a public statement that they got that wrong, can you also take on notice, with respect to any apologies that have been forthcoming from Mr Downer and the Prime Minister, when these public apologies were made, so that we can all carefully go and look it up. While you check on those things, you can also check whether Mr Downer has decided to withdraw his statement about WMD falling into the hands of terrorists.

Moving to another issue, Senator Minchin, while we are at it, given that we are on a roll with these things, perhaps you would care to make a comment on the statements that were made pre-war about the impact of a possible war with Iraq on the overall threat of terrorism. Are you able to assist us with that issue?

**Senator Minchin**—Senator Faulkner, I am not going to give a running commentary, as minister for finance, on matters relating to the detail of foreign affairs. But I am not going to have you hassle officials on the question of advice they give to ministers, because you know that is not something they are able to do at this committee.

**Senator FAULKNER**—You would be aware, Minister, it has never been my practice to hassle officials.

**Senator Minchin**—Of course, not, Senator.

**Senator FAULKNER**—I don't even hassle ministers.

**Senator Minchin**—Forgive me for suggesting that.

**Senator FAULKNER**—So why don't you give another hospital pass down the table there and we will get on with things. I ask the officials at the table, given that the minister does not appear to be able to assist us—but you have taken those matters on notice, Minister?

**Senator Minchin**—Of course, Senator Faulkner.

**Senator FAULKNER**—Thank you very much; I appreciate that. I look forward to the answers. I ask the officials, through the minister, whether the department was aware of—this was made public in the United Kingdom parliamentary report—the JIC's 10 February 2003 assessment, and I quote:

The JIC assessed that al-Qaeda and associated groups continued to represent by far the greatest terrorist threat to Western interests, and that threat would be heightened by military action against Iraq.

Is the department aware of that JIC assessment reported by the UK parliamentary committee?

**Mr Chester**—Again, I think this is getting into areas that are being covered by the joint parliamentary inquiry into intelligence.

**Senator FAULKNER**—Mr Chester, I am interested in understanding the role of your department. Your department is not central to the joint intelligence services committee work here in Australia. It is true that that committee is undertaking important work and is currently

in progress. I acknowledge that; any sensible person would. Has your department made a submission to that committee?

**Mr Chester**—No. That committee is—

**Senator FAULKNER**—Hang on. Are you planning to appear before that committee?

**Mr Chester**—I do not believe we are, at this stage.

**Senator FAULKNER**—I think we are probably best off not running that up the flagpole as an excuse for not answering my questions that are relevant to this department. I think that is drawing a very long bow. You have not made a submission and you do not think you are going to appear before the committee so the only forum available to interested senators is to ask a few broad questions here. As you would appreciate—you have been attending hearings of this committee for some time—I never trample into areas that need to be dealt with more appropriately in another committee in camera. I have never done that; I never will. I am just interested in the DFAT response. I think you have made it very clear that we will not be hearing from DFAT at the other committee. Having established that, I want to understand if the department had received the JIC assessment that I referred to.

**Mr Shannon**—I cannot tell you precisely if we received it and when we received it. We can take that on notice.

**Mr Quinn**—As I said before, I think this line of argument is not new. There has been a lot of discussion about this implication and, as I mentioned before, Mr Downer made a very clear statement on 30 September that our intelligence community advised the government, on the basis of their assessments, as to what potential risks were involved in conflict. This was one element of that process. Mr Downer made very clear that it was a matter of judgment for the government to weigh up the risks and benefits of military action and the government took the view—and rightly so—that the longer term proliferation and terrorism risk of leaving Saddam's WMD in place outweighed the short-term risks.

I think the government has been very clear about its position and it was also very clear about the risks. You mentioned this yourself. You referred to a comment made by Mr Downer in parliament. I think the government has been very open about that potential difficulty in the short term but the judgment was that the longer term benefit outweighed those risks. I think the government's position is very clear on that.

**Senator FAULKNER**—It was reported in the UK parliament that the JIC assessed that the threat of terrorist activity would be heightened by military action against Iraq. We have comments from the Prime Minister and senior ministers here that that was not the case. I am just trying to get to the bottom of it.

**Mr Quinn**—As I was saying, on a number of occasions Mr Downer referred to the potential risks involved. But the clear decision of the government, on the balance of judgment, was that the risks of failing to deal with the problem of WMD in Iraq outweighed other risks.

**Senator FAULKNER**—I have seen statements referred to from a Mr Paul Bremer. Do you know who this is?

**Mr Quinn**—Yes, of course. Ambassador Bremer is the head of the Coalition Provisional Authority.

**Senator FAULKNER**—He has made some statements about this issue of increased terrorist threats, hasn't he?

**Mr Quinn**—Yes.

**Senator FAULKNER**—Let me be clear. I think his comments really go to threats post the Iraq conflict.

**Mr Quinn**—That is right. I think he has made it very clear that the No. 1 priority for the Coalition Provisional Authority is security. He made some comments on 1 November, too, on this subject.

**Senator FAULKNER**—Can you briefly share with the committee what he said on 1 November? I do not expect you to quote him directly, but broadly outline what he said the current situation is.

**Mr Quinn**—Just to paraphrase, he basically underlined that, as I said, the coalition's preoccupation was to deal with the current security challenges in Iraq, which, as you know, are very much focused around Baghdad and the Sunni triangle area. Much of the country is quite stable and calm, but there has been a spike-up in incidents over recent weeks. I think the Prime Minister also made some comments recently underlining the hazards that still face everybody in Iraq. Mr Bremer's comment was that he was very concerned that the coalition accelerate the process of handing responsibility for security to the Iraqis, and he made some comment about having 200,000 Iraqis in place performing police and other functions by September next year. He made the comment that there may be some requirement to adjust the tactics that were used in managing the various bombings and other recent incidents, but that the strategic approach would remain unchanged. He also made the comment that political transition was very important in terms of the medium-term security challenge and economic reconstruction. Clearly they are self-evident points, but I think he expressed them in a crystal clear and very helpful way.

**Senator FAULKNER**—Thanks for that. As I understood it, basically he said there has been an increased terrorist threat, including from al-Qaeda, in Iraq since the end of the war. I think that is what he said, isn't it?

**Mr Quinn**—Not quite. I think he made the point that security incidents have spiked up over recent weeks in Baghdad. We have seen a very calculated campaign to impede the rehabilitation process. We have seen attacks, as you know, from August onwards on the United Nations headquarters, the ICRC and Iraqi police stations. A campaign is clearly being undertaken to destabilise, deter and intimidate. Our view, and I think the view of the coalition's Ambassador Bremer, is that Iraqis have to assume more responsibility for security. That is the way forward. In terms of who is responsible for the attacks, I think the jury is still out. There is some circumstantial evidence of foreign involvement in some incidents, but of course no-one really knows at this stage. Incidents could be the acts of former regime loyalists, FRLs, as they are called; foreign Mujaheddin fundamentalist terrorists; or paid criminals—as we know, Saddam Hussein let out large numbers of criminals late last year. So at this stage no-one can say decisively who is responsible for which bombing outrage. It could

be a combination of all three. At this stage no one can say that al-Qaeda or other organisations are decisively implicated.

**Senator FAULKNER**—Mr Bremer has certainly announced publicly that there are 248 al-Qaeda suspects in detention in Iraq. It was a comparatively recent statement; I think it was made in September. Can you confirm that that statement was made?

**Mr Quinn**—I do recall that, but I will have to double-check.

**Senator FAULKNER**—Have you got any indication of what the current situation is in relation to al-Qaeda suspects in detention in Iraq?

**Mr Quinn**—Not recently. There are a number of detainees—

**Senator FAULKNER**—Of course.

**Mr Quinn**—of different calibre and the documentation is uncertain. So it is probably a rather muddy picture.

**Senator FAULKNER**—So you do not have any more recent information than what was public, I think, in September about 248 al-Qaeda suspects in detention.

**Mr Quinn**—Not that I can recall.

**Senator FAULKNER**—Mr Quinn, are you able to provide the committee with a current assessment of the state of al-Qaeda's presence in Iraq?

**Mr Quinn**—I could not undertake such an assessment again. That is probably more a matter for intelligence agencies. All I can say is that, as far as I am aware, there is still an investigation continuing into the various incidents and there are different theories as to who is responsible in terms of modus operandi. As I say, there are some recent indications of some foreign nationals being involved, but that is as far as I know in terms of action in Iraq on the terrorist front. The situation is still pretty unclear. That is my latest understanding.

**Senator FAULKNER**—Is the assessment that the risk of terrorism in Iraq is now greater or higher than it was before the war?

**Mr Quinn**—I think I would put it in rather different terms. Clearly there is a hard core of loyalists to the previous regime who have basically made very clear their implacable opposition to the coalition. We have seen a number of incidents which I think underline that point. That is, in a sense, domestic terrorism. That is not international terrorism, which I guess was more the focus of the international commentary. But I think at this stage you could say that there is clearly a campaign. The degree of coordination is also a matter that is being debated, but there are clearly incidents that use a terrorist modus operandi that is designed to attack key parts of the rehabilitation process, to undermine the rehabilitation process itself. To call that terrorism is, I think, a fair description, but it is also part of the flow on of a very rapid and successful military campaign to act against Saddam Hussein. In a sense, the terrorism definition could be also interpreted as opposition internally to the coalition, which is a different issue to international terrorism, if I could put it in those terms.

**Senator FAULKNER**—Do you think the answer to my question stands and falls on the definition of 'terrorism'?



**Mr Quinn**—I guess under Saddam there was one form of terror—state terror. He had a monopoly on that. So, in a sense, levels of crime were low and other issues under a totalitarian government were handled differently. But clearly we have a number of security incidents. Whether you call them terrorism or resistance post a major phase of conflict, they are a real concern.

**Senator FAULKNER**—I appreciate that information. One of the issues is the risk of terrorism in Iraq post the Iraq conflict and the risk of terrorism in other places possibly as a result of the Iraq conflict. Mr Chester, perhaps you could give a current assessment of Australia's terrorism profile in South-East Asia as a result of our participation in the conflict in Iraq. One of your officials may be able to assist us with that. It may not directly fall to the three officials at the table.

**Mr Chester**—I will ask Mr Luck, our Ambassador for Counter-Terrorism, and Mr Bill Paterson, the division head for South and South-East Asian Division, to come to the table.

**Senator FAULKNER**—Thank you. I would appreciate Mr Luck or Mr Paterson giving me a response on that.

**Mr Luck**—I understand that you asked about an assessment of the Australian profile?

**Senator FAULKNER**—Mr Quinn has given us a very brief picture of the situation in Iraq in relation to terrorist activity. I had asked what the current assessment was from the department of Australia's terrorism profile in South-East Asia as a result of the war in Iraq, if you could assist us with that.

**Mr Luck**—Do you mean the threat to Australian interests in South-East Asia?

**Senator FAULKNER**—Yes.

**Mr Luck**—That is very much a matter for ASIO to assess, and we rely very much on their advice.

**Senator FAULKNER**—Are you able very briefly to give us a broad picture of your understanding of what the current environment is, from your perspective as Ambassador for Counter-Terrorism?

**Mr Luck**—The threat environment in South-East Asia from international terrorism?

**Senator FAULKNER**—Yes.

**Mr Luck**—Certainly. Again, I stress that there is a very big quotient of intelligence in terrorism work and in the counterterrorism work, so we do rely to a high degree on those kinds of assessments. But the picture I gain from my own contact with the intelligence community and from reading their reports is that over the last couple of years there has unfolded a very worrying picture of the extent of terrorist activity and terrorist organisations in South-East Asia. Our knowledge of it is relatively recent, but the extent of that activity and the extent of those networks and their links back to what might broadly be called Middle Eastern terrorism, but in some cases al-Qaeda in particular, actually go back some years.

Unfortunately, it was only very much through the tragedy of Bali and the very successful investigation that was done after that by the Indonesian authorities, with some assistance from our authorities, that we were able to expose a greater knowledge of those networks and so on.

But you will have your own appreciation, including through the public trials, of just how extensive some of these networks are and what their capabilities are. Frankly, there is a continuing concern, and that is reflected in the public advice that is put out by the department in the case of Australians travelling to those regions or who are residents of those regions, that there is a continued risk of attack from these groups. So it is a worrying picture; there is no doubt about that. As Australians, we have to face the fact that one of the frontlines of international terrorism is very much in our neighbourhood.

**Senator FAULKNER**—Are you able to say anything about the terrorism profile—whether that has changed or been raised as a result of our participation in the conflict in Iraq?

**Mr Luck**—I would not feel qualified to make that kind of assessment. It is not my job; it is not the department's role.

**Senator FAULKNER**—But others are making that assessment, aren't they?

**Mr Luck**—I have read a debate about it, yes.

**Senator FAULKNER**—I am surprised about this because I would have thought this would be absolutely central to your own work as Ambassador for Counter-Terrorism.

**Mr Luck**—It is not central to my work. It is very much the responsibility, as I said at the start, of the Australian intelligence community, particularly ASIO. They have the formal statutory responsibility for the assessment of the threat to Australian interests, whether they are here in Australia or whether they are offshore. I obviously take a great interest in that, as do other areas of the department—for example, using that information in the preparation of travel advisories which, of course, address a whole range of questions other than security. So, no, it is not something that I would claim to have any particular capacity for—that is, assessing the way the threat moves. The way the threat moves, in my reading of it, can be at a macro level or it can be quite specific to particular timings or to particular localities. Again, that is something that the department follows very carefully because of its responsibilities in alerting the public, but it is not something that is a core focus of my own work. It is very relevant to my work in the sorts of representations I make to foreign governments to work with us in a cooperative way to defeat this problem, but it is not germane to my own personal responsibilities.

**Senator FAULKNER**—Is the Iraq Task Force still operational, Mr Paterson?

**Mr Paterson**—The Iraq Task Force continues in operation. Mr Quinn, on my left, is the head of the Iraq Task Force.

**Senator FAULKNER**—So you have moved back to your more traditional responsibilities?

**Mr Paterson**—That is correct, Senator.

**Senator FAULKNER**—Mr Quinn, just very briefly: what is the status now of the Iraq Task Force? Is it the same size?

**Mr Quinn**—The current size of the task force is eight members, including me. Obviously, the numbers have reduced from those in the crisis period, but there is still a lot to do. The task force continues its role as an interagency policy coordination and information exchange

mechanism. We meet weekly, and obviously we are still very focused on following through in our role of support for the rehabilitation of Iraq.

**Senator FAULKNER**—When did you step down from that responsibility, Mr Paterson?

**Mr Paterson**—In mid-July, Senator.

**Senator FAULKNER**—Is the Iraq Task Force looking at this issue? I assume that all the threat assessments from ASIO are matters that would be being digested by the task force, Mr Quinn?

**Mr Quinn**—Absolutely, Senator; it is our top agenda item. Security is our major focus.

**Senator FAULKNER**—Are you able to add to the picture that Mr Luck has given to us? Does the Iraq Task Force consider issues relating to terrorist activities or the terrorist profile outside Iraq itself, or are you very much concentrated within Iraq and that region? Can you briefly tell us whether your remit extends beyond that to perhaps other knock-on consequences? For example, I have been asking specifically about South-East Asia.

**Mr Quinn**—Our focus is very much on Iraq. Obviously the task force is a temporary structure designed to deal with a major surge of work, but we do talk to our colleagues in the Middle East area and to our colleagues who work on terrorism. So there is a lot of dialogue, but our focus is squarely on Iraq.

**Senator FAULKNER**—Does the reduction in numbers on the task force also mean a change to the agencies that are represented?

**Mr Quinn**—No, Senator. The representation continues as before. The involvement of agencies fluctuates, of course, depending on what is on the agenda in any particular week. But, no, we have an ongoing interdepartmental process that functions smoothly.

**Senator FAULKNER**—How regularly are you meeting?

**Mr Quinn**—As I mentioned, Senator, we have a weekly interagency meeting, plus ongoing daily and other contact between agencies.

**Proceedings suspended from 12.29 p.m. to 1.34 p.m.**

**CHAIR**—The estimates is now back in session. I understand Senator Bartlett has some questions on nuclear disarmament and related matters.

**Senator BARTLETT**—I am interested in the aspect of nuclear disarmament, weapons of mass destruction, non-proliferation et cetera in terms of the international treaties side of things, rather than the other aspects. I am wondering about the Australian government's approach. As I understand it, we are a lead sponsor of a resolution to do with the Comprehensive Nuclear Test Ban Treaty. Is that correct?

**Mr Buckley**—That was won within the last couple of weeks.

**Senator BARTLETT**—Is it correct that the only country that voted against that resolution was the United States?

**Mr Buckley**—I do not have that information in front of me, so I cannot tell you.

**Senator BARTLETT**—Is it correct that the United States voted against it? Don't worry about whether anybody else did.

**Mr Buckley**—Again, I do not know.

**Senator BARTLETT**—Given the importance that the government rightly puts on nuclear disarmament and reducing weapons of mass destruction, how much focus are we putting on this aspect of that goal in terms of international treaties and pursuing disarmament through those mechanisms?

**Mr Buckley**—We are extremely active in Vienna, in the IAEA and in the First Committee of the United Nations General Assembly.

**Senator BARTLETT**—What is your assessment of the progress there with the Comprehensive Nuclear Test Ban Treaty? How is that progressing?

**Mr Buckley**—There is a review conference on the NPT in 2005, and we are working along with a whole lot of other countries in preparation for that.

**Senator BARTLETT**—If my information is correct and if you are able to get back to me and tell me whether or not I am wrong, it would be useful. But if the US voted against that resolution to do with the Nuclear Test Ban Treaty and, as I understand it, does not support it and will not become a party to it, are we working with the US in trying to get them to change their approach? Wouldn't an attitude such as that, whether it is the US or any other country, cut across our efforts to get disarmament in that area?

**Mr Buckley**—I think that in general we are quite active with a range of countries, including the United States. What we do is to work together with these countries. We see what is possible and how the agenda can be moved forward. It is done very closely in relation to the United States but also with a range of other countries about what can be achieved, given the particular interests of Australia and the other countries.

**Senator BARTLETT**—Is the agenda moving forward? Is there progress? If so, what sort of progress?

**Mr Buckley**—Mr Luck was previously in on this, so he has a better feel for the historical process.

**Mr Luck**—It is not currently my responsibility but, as Mr Buckley says, I had some close connection with this work in my former responsibility as head of the international security division. It has not been a very propitious time over the last few years for making a lot of progress on arms control. We have been very energetic as always to try and pursue our interests and our commitment to the goals that are enshrined in various treaties including, most importantly, the Nuclear Non-Proliferation Treaty, which, as Mr Buckley said, is going to be reviewed, as part of a regular review process, at a major conference in 2005 for which there is a preparatory meeting in the first part of next year. That is a very comprehensive treaty on the nuclear dimension of this work.

There are areas where it has been hard going. We have had differences, as I think we have explained before to this committee, with the United States on the Comprehensive Nuclear Test Ban Treaty which you raised. We have urged them to take a more forthcoming approach to that, while at the same time we have understood some of the reservations they have had about it. I think that probably goes to the point you made earlier about the vote I think you had observed.

In a tough environment we are making some progress. You probably will have noticed that we have also had to look to additional means to get an international handle, if you like, on the continuing proliferation of weapons of mass destruction. We have been closely associated with the so-called Proliferation Security Initiative, which was an initiative of the United States and some 11 other countries to try and find ways for dealing with the continuing trafficking by certain countries in these kinds of weapons and the materials that go into them.

**Senator BARTLETT**—Has there been any reduction in the overall number of nuclear weapons globally in the last couple of years?

**Mr Luck**—I do not have the numbers in my head; I have not come prepared for these questions. But there has been a continuing process of reduction in nuclear arsenals, principally between the former superpowers—the United States and the Russian republic-former Soviet Union—over quite some years now. Levels have been reduced. They were in the thousands but they have been reduced under a bilateral agreement between those two countries to levels considerably below what they were at the time of the Cold War. It is an ongoing process.

**Senator BARTLETT**—Have we raised any concerns with the United States in relation to their talk of developing the so-called mini-nukes?

**Mr Buckley**—I think it is all premature. I would have to check but I do not know if we have raised concerns. My understanding is that these things are simply being talked about and considered at the moment, so I think it is premature to do that.

**Senator BARTLETT**—Better to get in while they are still being considered than after they start building them, I would have thought.

**Mr Buckley**—Yes, but there are so many different possibilities that are being considered that you cannot comment on every one of them as they come up.

**Senator BARTLETT**—Are there any avenues apart from through the Nuclear Test Ban Treaty that we are pursuing in relation to disarmament and non-proliferation?

**Mr Buckley**—There was Canada's resolution on the Fissile Material Cut-off Treaty, which we have supported, and a number of other practical ones, the details of which I do not have here. Essentially our policy is that we are supporting any practical, realistic proposals on nuclear disarmament which are capable of winning wide support, including the support of the major nuclear weapons states.

**Senator BARTLETT**—Is our strengthened alliance with the US in recent times giving us any greater opportunity to improve the chances for fruitful outcomes on things like the Nuclear Test Ban Treaty?

**Mr Buckley**—I think it gives us the opportunity to discuss a range of issues and for our opinions to be taken notice of. That is what is done at the embassy in Washington and what is done here with the American embassy. We have plenty of opportunities to actually be speaking to them, yes.

**Senator BARTLETT**—Is any specific attention being paid to the nuclear weapons that are on high alert? Are they a special category?

**Mr Buckley**—I could not answer that, I am sorry.

**Senator FAULKNER**—Can someone assist me with the definition of ‘occupying power’ under the Hague convention and the fourth Geneva convention and the related optional protocol.

**Mr Moraitis**—You mentioned the Hague regulations of the early 20th century and the Geneva conventions of the late forties. Occupying powers relate to forces which have control of a territory following armed conflict, in general terms. I do not have the provisions of the conventions in front of me, Senator, but that is my recollection.

**Senator FAULKNER**—Are you able to say to the committee what criteria are applied to establish whether a country is an occupying power or not?

**Mr Moraitis**—There are a variety of criteria. The essential criterion is occupation of territory following armed conflict.

**Senator FAULKNER**—That is the essential one. Are you able to say what other criteria apply?

**Mr Moraitis**—That would be the essential criterion, Senator.

**Senator FAULKNER**—On 10 April this year the Prime Minister said, in response to a question:

Well, we would be there—

that is, in Iraq—

in terms of the conditions of the Geneva Convention, I think, of 1907.

Are you aware of the Prime Minister’s statement of 10 April?

**Mr Moraitis**—Yes.

**Senator FAULKNER**—You would probably also recall that on 17 April the Prime Minister said:

Well there are a lot of obligations we have. We have obligations in relation to protection of people, we have obligations in relation to their general well being ...

Are you aware of that statement?

**Mr Moraitis**—I am familiar with that comment.

**Senator FAULKNER**—That is a fair description of Australia’s obligations, is it?

**Mr Moraitis**—In so far as Australia is part of the Coalition Provisional Authority, the Australian government has said that it would abide by the elements of the Coalition Provisional Authority and share the responsibilities of fulfilling those obligations, and that is consistent with that policy.

**Senator FAULKNER**—The foreign minister has also made a comment on this. He said:

There is an obligation on the part of the so called Occupying Powers or the Coalition Administration here and that is completely dominated by the Americans. The British play a very important role in as well and of course Australia plays a role, so collectively there is an obligation. There is not an individual obligation ...

Can you confirm that that is the situation—that it is a collective obligation, not an individual obligation?

**Mr Moraitis**—I will not go into the nature of any legal advice but I refer you to the resolution of the Security Council of 22 May 2003—resolution 1483, which explicitly spells out which countries are occupying powers in Iraq.

**Senator FAULKNER**—You can read the relevant part of that, if you like.

**Mr Moraitis**—The preambular paragraph of that resolution 1483 refers to letters from the UK and the US:

... recognizing the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command (the 'Authority').

And also there is a further reference to:

... other States that are not occupying powers are working now or in the future may work under the Authority ...

**Senator FAULKNER**—That was Security Council resolution 1483?

**Mr Moraitis**—Yes.

**Senator FAULKNER**—You are making the point that it specifically identifies or singles out the USA or the United Kingdom. Is that the point?

**Mr Moraitis**—That is correct.

**Senator FAULKNER**—Was there a letter of 8 May from the United States and the United Kingdom governments to the United Nations Security Council president stating that the Coalition Provisional Authority was created by the US, the UK and the coalition partners acting under the existing command and control arrangements through the commander of coalition forces?

**Mr Moraitis**—I cannot recall the specifics of that letter but I do refer to that reference to the resolution that I just mentioned in a letter of 8 May so I assume that is probably the same letter that you are referring to. I do not have that letter in front of me.

**Senator FAULKNER**—Were you aware of a letter dated 8 May from the United States and United Kingdom governments sent to the UN Security Council president? I would have thought you would have been.

**Mr Moraitis**—Yes, I am because there is a reference to it in the resolution itself.

**Senator FAULKNER**—Yes. But does the letter actually say that the Coalition Provisional Authority was created by the US, the UK and coalition partners acting under the existing command and control arrangements through the commander of coalition forces.

**Mr Moraitis**—I cannot recall the specific details of that letter, Senator.

**Senator FAULKNER**—The problem is that there is half a brief there, is there?

**Mr Moraitis**—I am sorry.

**Senator FAULKNER**—Can you advise whether Australia was a coalition partner in the military conflict in Iraq?

**Mr Moraitis**—That is correct.

**Senator FAULKNER**—Are we therefore not legally an occupying power?

**Mr Moraitis**—That is spelled out, as I said, under the terms of resolution 1483. The UK and the US are specifically mentioned as occupying powers; no other coalition member is mentioned as such. That is a chapter 7 resolution of the Security Council.

**Senator FAULKNER**—So you are saying that we are not legally an occupying power?

**Mr Moraitis**—Correct. We are technically not an occupying power.

**Senator FAULKNER**—Can you tell us when the coalition transitional authority was established?

**Mr Moraitis**—Did you say when the Coalition Provisional Authority was established?

**Senator FAULKNER**—Is it provisional or transitional.

**Mr Moraitis**—It is the CPA—the Coalition Provisional Authority. That is my understanding. I cannot recall the date.

**Mr Quinn**—I think the order promulgating the establishment of the CPA was issued on 6 May.

**Senator FAULKNER**—It is 10 May?

**Mr Quinn**—That is right. There was a previous structure called the Office of Rehabilitation and Humanitarian Assistance, ORHA, which was headed by retired General Garner.

**Senator FAULKNER**—Thank you for that. Is the authority still in existence?

**Mr Quinn**—Yes.

**Mr Moraitis**—It is called the authority.

**Senator FAULKNER**—Thank you. Does Australia have a role in that authority?

**Mr Quinn**—Yes. We have provided advisers in some key sectors to assist the CPA in the performance of its duties.

**Senator FAULKNER**—How many staff do we have working with the provisional authority?

**Mr Quinn**—Currently we have six civilian Australians working for the CPA. I think there are four ADF officers in different jobs and there are some other people doing related work in areas like training the new Iraqi army. We have had some 18-odd people doing different short-term missions through the CPA, so a number of experts have provided advice in key areas.

**Senator FAULKNER**—The current figure is approximately 18?

**Mr Quinn**—It is 10—six civilians and four military officers in line positions in the CPA.

**Senator FAULKNER**—I do not expect you to have this information with you at the moment, but what are the specific roles of those staff?

**Mr Quinn**—As you know, the government's policy post conflict was very much to focus on niche areas where we could add value and where the national interest was engaged. The



main role has been in relation to providing technical assistance in agriculture. We have a small team working very closely with the agriculture ministry in rehabilitating that sector. We are making very good progress in passing responsibility back to the Iraqis for that particular area. We have had two colleagues working very actively on donor coordination, including the Madrid conference preparations. We have had a Treasury colleague working with the CPA advising on economic issues, working on a national payments system and developing the budgets for this year and next year. We have had staff working on water and sanitation. There are a number of key areas where we have really tried to make a difference to the rehabilitation process.

**Senator FAULKNER**—Thank you. Could you take the specifics of that on notice?

**Mr Quinn**—Indeed. We have not been keen to advertise the specific names of the individuals for security reasons but I can provide the detail of the work they have been doing.

**Senator FAULKNER**—I do not want to compromise any security considerations. If you could provide the role of the people without identifying the individuals, it would be of assistance. You would be aware, Mr Quinn, of the Prime Minister's statement of 17 April when he said:

We have the obligation of an occupying power under the Geneva Convention.

**Mr Quinn**—Yes.

**Senator FAULKNER**—You would also be aware of that, Mr Moraitis?

**Mr Moraitis**—As I mentioned previously, yes.

**Senator FAULKNER**—What does that mean?

**Mr Moraitis**—As I mentioned previously, my understanding is that that is consistent with the government's policy that as a member of the Coalition Provisional Authority it has assumed responsibilities consistent with obligations that flow from the Geneva Convention that are similar to obligations it is under. That does not necessarily mean there is an occupying power, per se.

**Senator FAULKNER**—You are saying that we have the obligations of an occupying power but—I want to be clear on this—we are not an occupying power. Is that the distinction?

**Mr Moraitis**—That is not the distinction I made. The distinction I was trying to make—perhaps I could express it more clearly—is that the Australian government as a matter of policy says it will assume the responsibilities associated with that. That is the statement of the government. That is expressed through the activities of the Coalition Provisional Authority. As Mr Quinn has mentioned, there are a number of Australians involved in providing various services through the Coalition Provisional Authority to the people of Iraq.

**Senator FAULKNER**—You mentioned ORHA, and that Australians were involved in ORHA.

**Mr Quinn**—Indeed. A smaller number of individuals were providing advice from the beginning.

**Senator FAULKNER**—Can you say how many?

**Mr Quinn**—I will have to check the detail but it was a small number—I think three. When the CPA process unfolded we could then deploy more individuals in key tasks.

**Senator FAULKNER**—Are you able to give me a similar outline of staff roles for ORHA as you have for CPA?

**Mr Quinn**—I remember two staff. One colleague was operating basically as a chief of secretariat for General Garner's operation and coordination processes within that office. The other officer was from AusAID—a specialist in development assistance. Clearly he had a twofold function: looking at the humanitarian requirements immediately post conflict and the longer term reconstruction issues. One of those colleagues is still there with the CPA. The other colleague left a month or so ago, having served about nine months in the field. Another defence colleague was involved in the Baghdad regional government side of things, providing advice on logistics and other matters, so there were some specific niche roles we contributed to in relation to ORHA.

**Senator FAULKNER**—You might provide that information for me in terms that are similar to the information you are going to provide on the Coalition Provisional Authority.

**Mr Quinn**—Sure.

**Senator FAULKNER**—There was no transitional body between ORHA and the Coalition Provisional Authority?

**Mr Quinn**—That is right. The ORHA office morphed into the CPA process, which was a more elaborate structure under a new leadership, of course.

**Senator FAULKNER**—I vaguely recall one of these bodies being described as a transitional body or transitional authority. I might be wrong.

**Mr Quinn**—All these structures are transitional. Obviously the aim of the game is to transfer authority back to the Iraqis, so the occupation process is a transitional one. As we discussed earlier, the process of setting up the governing council and interim Iraqi ministry has been accelerated under Ambassador Bremer and we obviously support the process of transferring as much authority as practicable back to the Iraqis. So the CPA process now runs with the Iraqi processes, which is obviously welcome.

**Senator FAULKNER**—In answering my questions about the Coalition Provisional Authority, are you at all drawing a distinction between staff working directly for or in the CPA as opposed to staff working under its auspices? Is there a distinction here or do you see such a distinction?

**Mr Quinn**—I guess it is a fine distinction. In the case, for example, of the defence personnel working on training a new Iraqi army, they are working under the auspices of the CPA and the Interior Ministry under the umbrella of the CPA, but they are not actually advisers within the CPA headquarters. It is a fine distinction. You could count them as well if you wanted to.

**Senator FAULKNER**—I just want to be clear that the figures you have given me of the current 10 are 10 officials working actually in the CPA itself.

**Mr Quinn**—In the CPA headquarters, that is right, or in branch offices of the CPA. I think two of our defence colleagues are in the central south region.

**Senator FAULKNER**—So we also have another category of people working under the auspices of the CPA? They are my words; you might want to define it somewhat differently.

**Mr Quinn**—Absolutely. It is a fine distinction. You could count them as part of the CPA structure. As you know we have a number of ADF deployments in niche areas and all of those ADF colleagues work broadly under the umbrella of the CPA, but whether you can call air traffic controllers at the Baghdad airport CPA staff or say that they are performing a niche military role, I think is really an arbitrary distinction.

**Senator FAULKNER**—So with that second category that we are talking about—it is not the 10 working in the CPA—are you able to give me some detail about numbers and roles of that second category?

**Mr Quinn**—Defence would be better able to answer this. I think there are six colleagues working on training the new Iraqi army, there are two civilians and four uniformed colleagues. I think you are familiar with the numbers involved in the individual ADF deployments—the security detachment and the staff at the airport. So all those numbers are on the public record but I could certainly provide those if you wanted those. But there is no-one else that I am aware of that you would say was working under the CPA umbrella.

**Senator FAULKNER**—I appreciate that information. Given you are taking those other issues on notice, perhaps you can provide more precise information to the committee. That would be helpful. Could I ask you about the approach of the department at the time Security Council resolution 1483 was agreed? Did Australia put any views about this issue of whether or not Australia was an occupying power to the UN or to our coalition partners, the US and UK? I am not sure who that is best directed to.

**Mr Quinn**—I may be corrected by my colleagues, but I do not recall any formal input of views on that subject. Obviously we were very supportive of a further Security Council resolution that re-engaged the UN Security Council on the Iraq issues, so there were intensive consultations about that resolution. But of course we are not a member of the permanent five club which basically drives the Security Council processes. There would have been input there; obviously through the CPA process we would have injected views. On the specific point of occupying power, I think as Mr Moraitis has pointed out, there is a specific reference in that resolution to those two countries. We have always seen our role as a proportionate role. I think we have more than pulled our weight in that proportionate role. We do not occupy territory and we do not have stabilisation forces on the ground, but I think we have made a substantial contribution to the rehabilitation process. We take that obligation seriously under the Geneva convention.

**Senator FAULKNER**—That is helpful, Mr Quinn, but it is not actually an answer to the question that I asked, which went to what input there was from Australia in the lead-up to Security Council resolution 1483 and whether views were expressed about whether or not Australia would be defined as an occupying power.

**Mr Quinn**—As I said, I cannot recall any formal representations, but the issue may have been canvassed in this intensive negotiation on the resolution.

**Senator FAULKNER**—I have heard you use that terminology twice—‘formal representations’. Were there informal representations?

**Mr Quinn**—Not that I can recall. I would have to check. I do not recall the detail of the negotiation. A lot of issues were canvassed in a short space of time.

**Senator FAULKNER**—I would have thought whether or not Australia was an occupying power would be pretty much front and centre. It is a pretty central issue, isn’t it?

**Mr Quinn**—I will have to check what happened at the time. I cannot recall the detail.

**Senator FAULKNER**—Can you help us with that one, Mr Moraitis?

**Mr Moraitis**—I am trying to recall. I cannot recall anything formal as such. Obviously in the lead-up to something like that there would have been some discussions concerning our role in the emerging CPA, but I cannot recall the details. I will have to take that on notice and check.

**Senator FAULKNER**—Let me ask a different question: did Australia specifically or explicitly request the UK and the USA not to list Australia as an occupying power?

**Mr Quinn**—Again, as far as I can recollect, no. I think the bottom line is that we regard those obligations as applicable in the broad sense, so in a sense it does not make a material difference to our role, the proportionate role. Certainly I do not recall any representations to exclude Australia from that category.

**Senator FAULKNER**—I find this a little remarkable. I would have thought that this would be something that the key officers involved in this in DFAT would be able to provide the committee with precise information on. It is a pretty fundamental issue of whether this country is an occupying power or not. I am asking whether this was the extent to which this issue was raised with our coalition partners—specifically, I have asked, in the lead-up to consideration of UN Security Council resolution 1483? I am surprised at the qualifications that I am hearing in these answers.

**Mr Quinn**—I make the point again, to all intents and purposes we are abiding by that legal framework of the Geneva Convention. We do not see a material difference. The P5 process is a P5 process. I cannot recall any specific discussion of this subject, but I think it is clear enough from our responses that we do regard that legal framework as appropriate in terms of the legal position we are in at this stage. We are not specified as occupying powers under that resolution.

**Senator FAULKNER**—How many countries are involved in the provisional authority?

**Mr Quinn**—The question of involvement needs to be clarified, I suppose. I recollect something like 16 or so countries have staff deployed in line positions. Some 30-odd countries either have provided military or police support or are discussing that with the coalition. So the coalition is a fairly broad beast in terms of the number of countries involved in this process.

**Senator FAULKNER**—How many countries are in the ORHA?

**Mr Quinn**—The number was smaller and it was a more informal process. I was there in late April, and I met staff from maybe eight or nine countries deployed to the ORHA or about to be deployed at that stage.

**Senator FAULKNER**—How many coalition partners were there?

**Mr Quinn**—I guess all the countries who were supportive of the coalition endeavour are regarded as coalition countries. As I mentioned, there are countries with staff in the CPA, there are countries who are providing military or police support and there are countries that have provided declaratory support for military action and the rehabilitation process. The coalition is ever-growing—I think 70-odd countries were in Madrid and pledged funding. So, in many ways, a number of those countries one could regard as coalition members as well.

**Senator FAULKNER**—I see. Is the coalition currently formally defined as a coalition of X number of countries?

**Mr Quinn**—I do not think so. Clearly, our view would be that the internationalisation of the rehabilitation effort is a desirable thing—the broader the coalition, the better in terms of getting this critical work done.

**Senator FAULKNER**—At the time of the invasion of Iraq by the coalition of the willing, as it was then described, how many countries comprised the coalition of the willing?

**Mr Quinn**—Again, I would have to recall the detail. Quite a number of countries came out in support of military action, but they did not have forces on the ground. I am basically guessing, but I would think that certainly more than a dozen countries came out quite robustly in support of the action that had to be taken.

**Senator FAULKNER**—How many countries had troops on the ground?

**Mr Quinn**—Basically, a much smaller number than that—four or five.

**Senator FAULKNER**—Yes, I know that, but it is getting so small I am sure we are going to be able to actually name them very soon. We are slowly but surely whittling the number down. Can we actually identify the countries that were part of the coalition who had troops on the ground at the time of the invasion? It is a pretty small number, as you have said.

**Mr Quinn**—It is, yes.

**Senator FAULKNER**—What is the actual number.

**Mr Quinn**—Obviously, there are the three countries—the United States, the UK and Australia.

**Senator FAULKNER**—Yes.

**Mr Quinn**—I think also Poland has indicated publicly that it had a small contingent doing useful work. There were some other countries who were engaged in other activity, including in the Gulf. I am not sure whether they wanted to be named as part of the coalition or not, so I would prefer to take that on notice and double-check those extra country names. There was some controversy about a couple of countries, I recall, where they actually corrected the record subsequently, saying they were actually involved in interdiction in the Gulf rather than being involved in military action against Iraq. So I would like to take that on notice.

**Senator FAULKNER**—As this thing has moved through from the time prior to or at the time of the invasion to the present day, has there ever been an attempt to put on paper in the department of foreign affairs who actually comprises the coalition?

**Mr Quinn**—In the early days there was a lot of focus on who was contributing, but the list is now sufficiently long that it is not really a material question of detail. As I said, there are 30-odd countries that have committed or want to commit to the military and police effort. There are a number of countries with staff in the CPA. We have just had the Madrid conference, which clearly indicated strong international support for the rehabilitation process. In a sense, I think that issue is no longer really germane. The main issue is really how to get the job done on rehabilitation. That coalition is expanding.

**Senator FAULKNER**—The issue of whether you are an occupying power does not really go—or in your view does it?—to the question of the extent of a country's involvement. Obviously everyone is aware—I am certainly aware, and everyone in this room is aware—that Australia's military commitment was very small compared with that of the United States of America. You would acknowledge that, wouldn't you, Mr Moraitis?

**Mr Moraitis**—Yes.

**Senator FAULKNER**—Does the question of determining whether a country is an occupying power go to those sorts of issues or is it in fact a legal obligation?

**Mr Moraitis**—Without getting into the specific legal points, as I said at the beginning, occupying power status emanates essentially from the occupation of territory per se. That is the starting point in general terms. That is the general proposition.

**Senator FAULKNER**—Is it an objective test? For it to be determined if a country is an occupying power or not, is that an objective test?

**Mr Moraitis**—It is hard to say.

**Senator FAULKNER**—It is a subjective test?

**Mr Moraitis**—No, it depends on the circumstances. In this case, the Security Council has made clear explicitly who is an occupying power.

**Senator FAULKNER**—Who does make the decisions about this? Does Australia itself determine whether it is an occupying power or not, for example?

**Mr Moraitis**—In these circumstances, it has been determined by the Security Council.

**Senator FAULKNER**—And you cannot tell me about that 8 May letter from the US and UK governments at the time of this decision which stated that the Coalition Provisional Authority was created by the US, the UK and coalition partners acting under the existing command and control arrangements through the commander of coalition forces? No-one has any knowledge of that letter?

**Mr Moraitis**—I have knowledge of that letter, as I mentioned, from the reference in the Security Council resolution. I cannot recall the specific terms of that letter.

**Senator FAULKNER**—Surely if it is mentioned in the Security Council resolution—has Australia ever sighted a copy of this letter?

**Mr Moraitis**—I am sure there is one available and we have sighted it. I just cannot recall the details of this letter. That is all I am saying.

**Senator FAULKNER**—A letter cited in a UN Security Council resolution about a matter in which Australia was literally one of a very small handful of countries involved in a military coalition I would have thought would be something that you would expect Australia's department of foreign affairs to take a vague interest in.

**Mr Moraitis**—I am sure at the time we would have seen the terms of such a letter. I am just saying that at this moment I cannot recall the terms of that letter and the fact that it is referred to in resolution 1483 obviously confirms that that letter is there and that it exists.

**Senator FAULKNER**—In this calendar year, have you sought legal advice from outside the department on this question of definitions of occupying powers?

**Mr Moraitis**—As you may recall, during the work of the Iraq Task Force, there was a whole-of-government approach to this, and agencies were involved in discussing issues, including legal issues.

**Senator FAULKNER**—So the issue of whether Australia was an occupying power or not was a matter for the Iraq Task Force, was it?

**Mr Moraitis**—It was a matter for the agencies involved in and associated with the Iraq Task Force, yes.

**Senator FAULKNER**—Was the matter discussed at the Iraq Task Force, Mr Quinn?

**Mr Quinn**—Yes, I recall there was discussion, obviously, about the implications post conflict, but, as Mr Moraitis has indicated, the Security Council stepped in and clarified the position through resolution 1483. But, as I think I said before, to all intents and purposes, whether we are an 'Occupying Power', with a capital 'O' and capital 'P', under the terms of the resolution or not, the broad framework applies. Similarly, there is a reference in the resolution to states that are not occupying powers working with the authority. Our view is that those countries too are working in the broad framework of the Geneva Convention. That resolution in a sense displaced the earlier legal position of a more general character. There was a specific UN Security Council resolution on the topic which cleared the air in a way. But the framework of the Geneva Convention still applies. As I said before, we have discharged our obligations proportionately by making a substantial contribution post conflict.

**Senator FAULKNER**—Thank you for that. I am just trying to get a bit of background as to how the Iraq Task Force dealt with this issue of Australia possibly being an 'Occupying Power'—uppercase 'O', uppercase 'P'. This was considered at the Iraq Task Force prior to the commencement of hostilities in Iraq, was it?

**Mr Moraitis**—I would have to recall the detail, but, as you may recall from previous testimony here, we had a legal group consisting of lawyers from our department, Attorney-General's and the defence department. They basically looked at any legal implications of the crisis from the first days through. That group would have been looking at this question and would have referred the matter to the wider task force and provided advice. I cannot recall the timing or detail of how that advice came forward.

**Senator FAULKNER**—Why don't we ask Mr Paterson to come to the table. He might be able to assist us on this. You never know your luck in a big city. Someone might remember.

**Mr Paterson**—I am not briefed on this matter and, as you appreciate, I have been out of the Iraq Task Force for something like three months now, but my recollection is that this was not a major issue discussed by the task force—that, where legal issues were discussed, they were principally discussed in the legal subgroup of the task force and they would be referred back to the task force if there was a particular set of issues on which we were required to provide advice to ministers.

**Senator FAULKNER**—But the legal subgroup of the task force reported back to the task force, didn't it?

**Mr Paterson**—Where necessary, yes.

**Senator FAULKNER**—Did the legal subgroup of the task force report back to the task force on the broad issue of whether Australia might be or would be considered or was an occupying power?

**Mr Paterson**—Given the passage of time and that I am no longer involved, I would want to take that on notice.

**Senator FAULKNER**—We are now dealing with a case of collective amnesia on this. Just take me back a step and tell me who were the DFAT representatives on the legal subgroup for your task force. Can someone remember that?

**Mr Moraitis**—I could answer that. I was in the legal subgroup, including officers from—

**Senator FAULKNER**—Did you go to all the meetings of the legal subgroup, Mr Moraitis?

**Mr Moraitis**—I went to many of them. If I was not available, colleagues of mine attended.

**Senator FAULKNER**—Are you able to tell me whether the legal subgroup reported to the Iraq Task Force on this question of Australia being an occupying power?

**Mr Moraitis**—I will not go into the specifics but I can certainly say that issues pertaining to the question of legal issues arising in Iraq were touched upon by the subgroup and, as appropriate, passed to the task force.

**Senator FAULKNER**—Are you able to say whether the issue of Australia being an occupying power was reported by the legal subgroup to the Iraq Task Force?

**Mr Moraitis**—I cannot recall specifics but I would be surprised if there was not a reference to that issue in general terms in the lead-up to the adoption of that resolution 1483.

**Senator FAULKNER**—You cannot recall that either?

**Mr Moraitis**—Specifics?

**Mr Quinn**—I think clearly we came to a view—

**Senator FAULKNER**—Just wait a minute, Mr Quinn. You are in charge of the task force, Mr Quinn. Mr Paterson was in charge of the task force at the time of the Iraq conflict and beyond. Mr Moraitis is the key legal honcho in the Department of Foreign Affairs and Trade and is the key person in the legal subgroup of the task force from Foreign Affairs and Trade but no-one can remember about this crucial issue—we have been given very vague



recollections at best—and I find it very disappointing and quite disconcerting that no-one can remember.

**Mr Moraitis**—As I said, given the lead-up to the adoption of resolution 1483 there would have been some consideration of issues associated with that resolution. I cannot recall the specific details. As I mentioned, this would have been almost six or seven months ago.

**Senator FAULKNER**—Did officials have a practice session with Ms Jane Halton before coming to the committee today after her efforts in the CMI committee? Surely someone can remember this. We can do better than this.

**Mr Quinn**—There are two stages. You were asking before about whether there was a legal discussion about our legal position post conflict. Yes, there was—and I recall very clearly a discussion about that. The conclusion was that the Geneva conventions were applicable in terms of the broad legal framework and hence certain policy decisions were taken to assist the CPA: we had proportional obligations. So that was done and that framework was there.

The second issue was how the language of 1483 was developed. That is the area where I cannot recall the detailed process. My recollection is that we received the letter that you referred to, unilaterally—this letter said, ‘This is the view of the United States and the British.’ That is my recollection but I cannot be sure about that. So in a sense it was a fait accompli. But, as I said, for the purposes of our legal position there was really no practical difference. We interpreted our obligations as being under the Geneva Convention in a proportional way; hence, we did a number of things in terms of aid and providing expert assistance within that framework.

So I think there clearly was a view as to what legal regime was applicable. There was some debate, as Mr Moraitis has said, about whether you needed to occupy territory and whatever. But the rule of thumb was that the sensible legal position was that the Geneva Convention should be applicable. It remains our view, even for countries who are not occupying powers under that resolution, that the broad legal framework remains the Geneva Convention. I do not think there is any ambiguity in our position in that regard.

**Senator FAULKNER**—I accept that that is a fair reflection of the position you have come to. I am asking what occurred at the time when these issues were front and centre for the Department of Foreign Affairs and Trade, the Australian government and, for that matter, the Australian people. There was prospective military involvement and, after that, military involvement in a war against Iraq. I would have thought there would be a better recollection than we have had today from officials about these important issues. I think it is pretty concerning that that is the best we can do—the vaguest of recollections about this issue of Australia as an occupying power. No-one can remember whether we had any input from the United Kingdom or the United States governments. No-one can really remember whether it was discussed by the legal people or the task group had a look at it. Maybe they did; maybe they did not; we can’t really be sure. That is not good enough. That is a pretty miserable effort in the circumstances.

**Senator Minchin**—There is no need to be gratuitously insulting to officials. They have given you the best of their recollections, and I do not think you need to insult them. You can pursue your line of questioning—

**Senator FAULKNER**—Yes, but these recollections are on such an important matter.

**Senator Minchin**—You think they are. You are entitled to think that—

**Senator FAULKNER**—I think most people would think they are.

**Senator Minchin**—But there is no need to insult the officials in your line of questioning—that is all.

**Senator FAULKNER**—I am saying that it is not good enough in the circumstances, and I am surprised that you do not agree.

**Senator Minchin**—That is your opinion, but do not insult the officials.

**Senator FAULKNER**—I am not insulting the officials.

**Senator Minchin**—You are. You have been quite rude.

**Senator FAULKNER**—I am making a clear point that I think a reasonable person would say, ‘These answers are not good enough. They have given us the worst of their recollections.’ I will continue to press this at a later stage, because we have a range of issues to deal with today. Mr Quinn, perhaps you could provide the committee briefly with a current report on the security situation in Iraq as it exists as we meet.

**Mr Quinn**—As I mentioned this morning, clearly the situation in Iraq is complex. We have had a difficult week in terms of security, and that has been freely acknowledged by all concerned. As you know, our travel advice remains that Iraq is a dangerous place. There are groups who are implacably opposed to the rehabilitation process and have shown their true colours by attacking the UN and the ICRC and others. The coalition has been very keen to demonstrate resolve in response to that challenge, but it is also important to keep these attacks in perspective.

Most of the country is relatively stable. Steady progress is being made on rehabilitation in a number of areas, and I think it is fair to say that the perpetrators of these attacks are not supported by the majority of Iraqis—and most of the casualties are of course Iraqi civilians. So, as I said this morning I think, our view is that the key is that the Iraqi security forces should assume more responsibility for security. They are doing that. Some 60,000 Iraqis are already deployed in the field, performing a range of security functions. Ambassador Bremer has foreshadowed a target of 200,000 such individuals by September next year. The participation of about 30 countries in stabilisation efforts is also very welcome. It shows that the international community has a stake in this process.

To cut a long story short, the situation is of concern but needs to be seen in perspective. A lot of the problems are the consequence of 25 years of Saddam Hussein’s regime. The corrosive effect of that regime has been underestimated in terms of the dilapidation of infrastructure, the release of prisoners and the damage to the social fabric. That is a major challenge, but our hope is that the Iraqi people are tough and resilient. A public opinion survey suggests a degree of pragmatism about the need to move forward, and we are hopeful that the security situation will stabilise and move forward. Clearly the targeted attacks are designed to upset the rehabilitation process, and it is important that we look at them in that context.

**Senator FAULKNER**—Could I ask you specifically about the food situation in Iraq?

**Mr Quinn**—As you probably know from our previous testimony, there were a lot of concerns post conflict about a humanitarian crisis. That did not eventuate, due to a lot of hard work. Food in Iraq is an unusual commodity in that, because of the central planning nature of the process, about 60 per cent of the population depends on a public distribution system. That system has continued to operate pretty effectively. It is obviously not a long-term solution to the country's food needs, but part of our contribution in the CPA has been designed to keep that public distribution system operating. That system has continued and the food supply situation has not been too bad. There are obviously difficulties in some areas, but the central mechanism to distribute food in the country is that state controlled system that has been taken over by the CPA.

**Senator FAULKNER**—What about electricity and power?

**Mr Quinn**—Again, it is a complicated story. Our understanding is that power levels are up to about the same level as pre-war but that in many parts of the country they are better because the CPA has corrected the bizarre system under Saddam where all the power was grided into Baghdad. So while Baghdad's power remained pretty good through the Saddam years, Basra and other cities suffered. My understanding is that the power system has been regularised so that the power situation in Basra now is much better than it was pre-war. But, overall, we are about back to pre-war levels. As you know, there has been some sabotage of infrastructure and also looting—knocking down pylons and melting down the copper wire to sell the copper. It is extraordinary, but that is what has been happening. That process has been a challenge, but the CPA has engaged some 7,000 Iraqis to patrol infrastructure routes and I think progress is being made there.

**Senator FAULKNER**—And health—the medical and hospital situation?

**Mr Quinn**—As far as we understand it, pretty much all hospitals and clinics are back open again. Interruptions to power supplies are a problem, and the low health standards, the legacy of Saddam, are still an issue. There are problems like infant mortality and other issues which are of concern. Life is tough. I do not want to guild the lily. Life in Iraq is tough, but people are going about their business in a normal way. The schools have reopened, the streets of Baghdad are full of traffic and the markets are full, but there are these security challenges and I think Iraqis, particularly in Baghdad and the Sunni triangle, are edgy about security and crime. But in most of the south the situation is very stable, and the north is pretty stable too.

**Senator FAULKNER**—Is one of the officials able to provide the committee with a list of ministers who attended the Madrid donors' conference and the countries they represented?

**Mr Quinn**—I have a list, Senator. I was there myself. I have a list in my office and I can provide that.

**Senator FAULKNER**—Did you say that you were there yourself?

**Mr Quinn**—Yes, Senator.

**Senator FAULKNER**—That would be helpful. Are you aware why Australia did not send a representative of ministerial rank to the conference?

**Mr Quinn**—Yes, Senator. I think that question has been answered in parliament. Quite clearly, we had the two major state visits during that period—President Bush and President Hu Jintao—and I think it has been made clear on the public record by ministers as to why our minister could not attend.

**Senator FAULKNER**—Who did represent the minister?

**Mr Quinn**—Mrs Gallus, the parliamentary secretary whose responsibilities include the aid program, and of course that is singularly appropriate since the aid program has funded most of our rehabilitation contribution.

**Senator FAULKNER**—What do we think of the World Bank and, I think, the UN assessment about the level of funding that is needed for the period 2004-07—something else that I think has been raised in parliament—of \$US36 billion? I think I have accurately recalled that, haven't I, Mr Quinn?

**Mr Quinn**—That is right, Senator.

**Senator FAULKNER**—Do we agree that that is a reasonable assessment?

**Mr Quinn**—I think that is right, Senator. Clearly, that document was prepared in very difficult circumstances, and I think we should acknowledge the huge effort that was made. A number of the staff involved were actually injured in the bomb attack, so it was an awkward time. What I should say about the Madrid conference is that the \$13 billion figure of pledges exceeded expectations, and with the US now having approved the financial year 2004 extra appropriation I think the funding situation is looking pretty good. There are challenges, though, in terms of absorption of those funds and implementation, and a lot of work is being done now post-Madrid in trying to work out the mechanics of the process and the need to engage the Iraqis themselves in priority setting and in marrying their domestic budget with international contributions. Again, two of our colleagues are working very hard on that subject within the CPA process. The \$US36 billion figure is a ballpark figure, but I think the general conclusion from Madrid is that we are not in bad shape in terms of the actual cash but that the problem is going to be implementation—and security, of course, is a major constraint there. This is more a question for AusAID, I should say. It is really more their issue, so you may want to talk to AusAID in more detail.

**Senator FAULKNER**—I do not need a detailed response. With your work on the Iraq Task Force, I assume you have the broadest picture of this, and you were at the Madrid donors' conference, so you seem like the appropriate victim for these questions. Is the department able to provide—and we can take it on notice for AusAID if you are not—the actual breakdown of what individual countries pledged?

**Mr Quinn**—I think AusAID is working on a document. It is not totally straightforward. Some pledges were in kind—loans, grants—so there is work to be done. But I think there is a draft that could be polished up.

**Senator FAULKNER**—Can I ask that question on notice, Mr Chester, without revisiting it on AusAID? I appreciate the point that Mr Quinn makes here that some of the pledges are loans and some are grants and so forth.

**Mr Chester**—We will ask AusAID to provide that document to you.

**Senator FAULKNER**—Do you have a broad understanding, Mr Quinn, of the actual patterns here in terms of loans and grants—what proportion of that \$13 billion is loans and what proportion is grants?

**Mr Quinn**—I would have to defer to AusAID. I have a vague recollection that it is something like \$5 billion or \$6 billion for grants and the rest are loans. I understand that the challenge for the first year is to get grant aid running. The World Bank and IMF loan processes kick in in the subsequent years, and the hope is that oil revenue will kick in as well. I think the estimate is for \$5 billion in oil revenue coming on-stream in 2005. So 2004 is where you really want to frontload the grant assistance as much as possible. Given Japan's contribution of \$1.5 billion in grant assistance, the US funding, I think—again, it is not my area of expertise—the money flow is not too bad for that first year. But the challenge will be implementation of projects, given security and other constraints.

**Senator FAULKNER**—Has Saddam Hussein been located yet?

**Mr Quinn**—No, not yet.

**Senator FAULKNER**—Have we nearly got him?

**Mr Quinn**—Again, I really cannot comment on the detail of the intelligence, but it is obviously a priority task to deal with the legacy of Saddam. A number of his acolytes have been apprehended, as you know. I do not recall the number—whether it is 42 or 43 out of 50—but there has been quite a good strike rate in terms of the senior players. Obviously Saddam is a critical person.

**Senator HOGG**—That is the deck of cards. You are saying how many out of the 50?

**Mr Quinn**—It think it is around 40, but I cannot recall the latest figure. It has been gradually notching up in ones and twos.

**CHAIR**—I think there are 10 left.

**Senator FAULKNER**—On a somewhat related matter, has the department ever received a copy of the ONA report *Iraq: humanitarian dimensions*?

**Mr Chester**—Yes, the department did.

**Senator FAULKNER**—That would, I assume, be a standard arrangement with ONA on reports such as that. Would that be the case, Mr Chester?

**Mr Chester**—Yes, that is correct.

**Senator FAULKNER**—Thanks for that. Are you aware of the author of that particular ONA report? You may well not be.

**Mr Chester**—Yes, I believe I am aware of the author.

**Senator FAULKNER**—Can you share that with the committee, please?

**Mr Chester**—It was an ONA report. I believe the author was Andrew Wilkie.

**Senator FAULKNER**—I ask in relation to ONA documents: I assume that ONA documents that come to the department of foreign affairs have a distribution list that would include the office of the Minister for Foreign Affairs and particular distribution points within the department of foreign affairs. I draw the distinction between the minister and the

minister's office as opposed to the department. I assume that copies that go to the minister or minister's office go direct from an agency like the ONA and do not go via the department of foreign affairs. I just want to be clear on that.

**Mr Chester**—That is my understanding, but I will ask Mr Buckley to explain the process.

**Mr Buckley**—Yes, that is correct. They go directly to the minister's office.

**Senator FAULKNER**—In relation to the report entitled *Iraq: humanitarian dimensions*, are you able to say how many copies of that particular document there were with Department of Foreign Affairs and Trade destination points?

**Mr Tighe**—Fifteen copies of the report went to the department.

**Senator FAULKNER**—Thank you. Are you able to say how many copies of the report went to the minister's office?

**Mr Tighe**—As Mr Buckley explained, distribution of the report from ONA is direct from ONA to the minister's office.

**Senator FAULKNER**—Thank you, I did hear that. I was just asking if you are able to say—and you may not be—how many went to the minister.

**Mr Tighe**—No, I am not able to say.

**Senator FAULKNER**—That means you do not know?

**Mr Tighe**—No.

**Senator FAULKNER**—We heard from ONA earlier in the week that these documents are most often transmitted electronically. Sometimes there are secure fax arrangements and the like. Is anyone able to say whether copies of this particular document were transmitted electronically on the usual system?

**Mr Tighe**—No, not exactly. ONA would be able to answer that question for you, but I cannot say what their distribution was precisely, other than what went to the department.

**Senator FAULKNER**—Do you have arrangements within the department for documents such as these for when they are received, lodged or accepted—some sort of cataloguing or noting mechanism of some description.

**Mr Buckley**—Yes, we do.

**Senator FAULKNER**—Can you please explain in the broad to the committee how that works?

**Mr Buckley**—They are brought into the department in a hard copy by courier. They go to a particular part of the department in my area. They are then receipted, and a receipt is given back to ONA. Then the list of who gets them is collected by that area and they are distributed by hand around the department. They are returned to that area, again, by hand. I think one copy is then filed and the rest are destroyed.

**Senator FAULKNER**—So they actually come from ONA as multiple copies of, effectively, a very similar or identical document.

**Mr Buckley**—Yes, by courier.

**Senator FAULKNER**—That means they do not come mainly in electronic form.

**Mr Buckley**—They can come in electronic form. I was talking about the hard copy ones. We do receive some in electronic form.

**Senator FAULKNER**—What is the receipting process for an ONA document in electronic form? I assume there is a receipting process for that too?

**Mr Buckley**—Yes, that is what I said. When the courier brings them to us—

**Senator FAULKNER**—But that is hard copy, isn't it?

**Mr Buckley**—Yes. But, for any electronic copy, there is a list of where it goes. That is done electronically when it is transmitted.

**Senator FAULKNER**—Is there any part of your internal procedures that limit the amount of time an ONA classified document can be held by an officer in the department?

**Mr Buckley**—I do not think formally, but the expectation is that in the vast majority of cases they would be read and passed back immediately. We handle a tremendous amount of classified material, and we want that material back as quickly as possible. The great majority of it comes back that same day or the next day. But in some cases people will keep material.

**Senator FAULKNER**—Is distribution limited to security vetted officers?

**Mr Buckley**—Yes.

**CHAIR**—Why do you have 15 copies? Why not 16 copies? Who determines that?

**Mr Buckley**—I am not sure.

**Senator HOGG**—That is a very good question.

**Senator FAULKNER**—You are worried about what happened to the 16th.

**Mr Chester**—It is determined essentially on a need-to-know basis. For that particular document there was a number of around 15 people who it was felt needed to see it.

**CHAIR**—Were they 15 hard copies?

**Mr Chester**—That is my understanding, yes. It is the same for the distribution of any document, whether it is a hard copy or electronic. The distribution changes on a need-to-know basis.

**Senator FAULKNER**—I assume there is an appropriate level of security clearance for staff who are able to receive or sight classified documents.

**Mr Buckley**—Yes. The general principle is that the higher the classification the fewer the people that see it, but they are security cleared.

**Senator FAULKNER**—Are there established protocols in relation to how these particular documents are dealt with around the department? You have explained the system in general terms, which I am sure the committee appreciates. Is there a set of written protocols or procedures?

**Mr Buckley**—Yes, there is. It is the *Commonwealth Protective Security Manual*.

**Senator FAULKNER**—So in all instances these departmental procedures are consistent with the procedures of the *Protective Security Manual*?

**Mr Buckley**—Yes. As far as I am aware, they are consistent.

**Senator FAULKNER**—Can you identify any differences?

**Mr Buckley**—No. They are consistent.

**Senator FAULKNER**—There are no additional requirements, then, above and beyond those of the PSM?

**Mr Buckley**—We have additional procedures for the way that we handle those documents and transport them around the department, but that is for the department itself. That is what I was saying before—they are moved by hand, distributed by hand, collected by hand and then destroyed.

**Senator FAULKNER**—But you do not return copies of these documents to ONA for destruction; that is actually done in-house or within ONA. It is not clear to me.

**Mr Buckley**—They are destroyed in-house. We have received advice from the agencies that that is acceptable to them. We have an agreement with those agencies that we will destroy them because we have the correct procedure to be able to destroy them.

**Senator FAULKNER**—But is the destruction process centralised? Let us assume that a document like that goes around different divisions and branches, which is perfectly understandable. If there is to be destruction of any such document, it comes back to a central location for those processes?

**Mr Buckley**—That is correct.

**Senator FAULKNER**—I assume that means there can be a full accounting for all copies of any particular document.

**Mr Buckley**—When the documents come back to us they are destroyed in a central place.

**Senator FAULKNER**—Are you not able to give me any more detail on the timing of this, on the time delay between the distribution of such a classified document and its return? Is there a formal pattern in this?

**Mr Buckley**—No, there is not a formal pattern. But, as I said, the expectation is that they will be returned as quickly as possible, and then they will be destroyed.

**Senator FAULKNER**—Let us say there are a few copies of a document out in the department for three or four months. Do you have some sort of flagging mechanism?

**Mr Buckley**—No. As I said, the expectation is that people will read them. The amount of material we are talking about is voluminous—I have to make that point.

**Senator FAULKNER**—I assumed that.

**Mr Buckley**—It is not possible for people to hold onto them because of the amount of material that they are receiving, so they basically get rid of it as quickly as possible.

**Senator FAULKNER**—So what is a typical pattern? What would be the average—a week?



**Mr Buckley**—No. I said previously that for the vast majority it would be the same day or the next day.

**Senator FAULKNER**—If any classified document is in the distribution process, outside your central registry of the document—what do you call the central registry?

**Mr Buckley**—It is not really a registry. It is a secure room that they come back to.

**Senator FAULKNER**—The secure room? I just want to use the right terminology.

**Mr Buckley**—It is just called the special room.

**Senator FAULKNER**—The special room! That is lovely.

**Mr Chester**—I think it would be best to call it the top-secret registry, or something like that, rather than the special room.

**Senator FAULKNER**—I thought my ‘central registry’ was better than the ‘special room’.

**Mr Chester**—We will call it the registry.

**Senator FAULKNER**—No, I like special room, Mr Chester.

**Mr Chester**—It has some other connotation.

**Senator HOGG**—Can you elaborate on that?

**Mr Chester**—No, Senator.

**Senator FAULKNER**—In terms of your procedures, if it is outside the special room or registry for a particular amount of time beyond the expected day or two, does the system flag that that is the case? Do you get a pointer to the fact that that is the case?

**Mr Buckley**—No. As I said, the amount of material is voluminous so we would not follow up on a thing like that.

**Senator FAULKNER**—In relation to this particular report, Mr Tighe was able to say to me how many went to the department, which was 15. Are you able to say that 15 were distributed around the department?

**Mr Tighe**—Yes.

**Mr Buckley**—Yes.

**Senator FAULKNER**—Are you able to say that 15 were returned?

**Mr Buckley**—No.

**Senator FAULKNER**—Why not?

**Mr Buckley**—That is why I did not want to say it is a registry. Basically, they are sent out and when they are returned we destroy them. That is the point.

**Senator FAULKNER**—So are you saying that with any classified document in the department of foreign affairs, you know where they are going—

**Mr Buckley**—We know who is responsible for them, yes.

**Senator FAULKNER**—You know who is responsible for them but you do not know whether they ever come back from that person. Is that what you are saying?

**Mr Buckley**—It was too broad what you said when you said ‘any classified document’.

**Senator FAULKNER**—It might be best, instead of me asking these questions, if you could just explain the situation in relation to the return of the documents, Mr Buckley.

**Mr Buckley**—I think I have explained it.

**Senator FAULKNER**—I don’t understand why you don’t know whether 15 documents have been returned or not. I am obviously missing something here. You may be missing a document but I am a little lost, and so are my colleagues here on the committee, in relation to the return of the documents. Can you explain that to us again so that we understand it.

**Mr Buckley**—We are saying that, with respect to all the documents that come back, we know exactly all the documents that go out. When the documents come back, they are destroyed.

**Senator FAULKNER**—But you don’t mark off the fact that they have been returned?

**Mr Buckley**—It would be impossible for us to do that. The number of documents, as I said, is voluminous. We would have to have a major staff number to be able to do that.

**Senator FAULKNER**—And this is for all documents?

**Mr Buckley**—No.

**Senator FAULKNER**—Or just documents of that particular security classification?

**Mr Buckley**—I do not want to go into this in more detail, but basically the security system we have is based on a number of layers.

**Senator FAULKNER**—I appreciate that; that is what I am asking. You are talking about the arrangements for this particular security classification.

**Mr Buckley**—Yes, and the higher the classification of something, the more closely it is guarded and the more detailed are the procedures for handling it.

**Senator HOGG**—Handing it back as well as handing it out?

**Mr Buckley**—Yes.

**Senator HOGG**—So you have a check-off system—

**Mr Buckley**—For some documents but not for all documents.

**Senator HOGG**—The higher the classification, the more likely it is that there is a check-off system when those documents come back?

**Mr Buckley**—Yes.

**Senator HOGG**—Where does this ONA report that Senator Faulkner has been referring to fit there? Does it fit into that category?

**Mr Buckley**—I prefer not to talk about the classifications.

**Senator FAULKNER**—Mr Buckley and Mr Tighe, you may or may not be aware of this but the committee has made some informal arrangements to enable Senator Harradine at this stage of our proceedings to ask some questions that he is interested in. Can I flag with you both that we will be returning to this issue following the afternoon tea break.

**CHAIR**—Senator Harradine, you have some questions.

[3.03 p.m.]

**Senator HARRADINE**—Thank you, Chair. I have questions in regard to output 1.1.7, International organisations, legal and environment. The cloning vote comes before the United Nations this evening, does it not?

**Mr Moraitis**—You are referring to a vote in the Sixth Committee concerning resolutions on human cloning—is that correct?

**Senator HARRADINE**—That is correct.

**Mr Moraitis**—I understand that there may be a vote tonight on a possible request by a group of countries to defer consideration of this. That is my understanding. There are also a couple of resolutions that have been tabled in the United Nations Sixth Committee on this matter.

**Senator HARRADINE**—I am sorry, I do not understand you. With respect to the Belgian proposal and the Costa Rican proposal, are you saying they will not be voted upon this evening?

**Mr Moraitis**—That is my understanding, yes. I understand from our delegation in New York that there will probably be a request by a group of countries to defer consideration of this issue in New York by the Sixth Committee this evening. I do not have details of the level of support for that deferral request. I understand that it has been pursued by the Organisation of Islamic Countries, which is a group of about 60 countries that represents certain shared interests. I am not suggesting that all 60 countries would support that push, but that is the starting point for consideration of this proposed deferral. That was my understanding as of this morning.

**Senator HARRADINE**—Do you not have the details of that proposal?

**Mr Moraitis**—The only detail I have is that the proponents of that proposal to defer would propose to the Sixth Committee that there be a deferral for two years of consideration of this issue, given that there are two conflicting resolutions in play.

**Senator HARRADINE**—Does that proposal have a moratorium attached with regard to cloning?

**Mr Moraitis**—No, it simply calls for a deferral of consideration of the issue for two years. My assumption—it is an assumption because I do not have any details—is that this is in the hope that the two prevailing views in the Sixth Committee on this issue can be brought closer together in the hope of reaching a unified position.

**Senator HARRADINE**—Is it a fact that that proposal to defer consideration for two years will enable a virtually open slather approach as far as the international community is concerned for the next two years? Has there been no suggestion of a moratorium until that time?

**Mr Moraitis**—The element of a moratorium is not part of that proposal.

**Senator HARRADINE**—What will Australia's delegation do?

**Mr Moraitis**—Our delegation has been instructed to vote against a deferral for two years. Our view is that deferring for two years would not achieve our objective, which is to ensure the entry into force of a convention.

**Senator HARRADINE**—How will Australia's delegation vote on the Belgian proposal and the Costa Rican proposal when they come forward?

**Mr Moraitis**—I would have to take on board what happens in the next 24 hours in New York. If the deferral proposal is supported by a majority of states it will be adopted and how the Sixth Committee considers these issues will become a moot point. But, as I said, our instructions to our delegation are to vote against that deferral for two years. Once we know what has happened in New York we will be able to see how the Sixth Committee will consider the other proposals.

**Senator HARRADINE**—As I understand it, the proposal to defer for two years does not have the support of all of the Islamic countries.

**Mr Moraitis**—That is what I just said. My understanding is that there are about 58 or 60 members of that group, and I would not assume that all of those members would support that push. That is not necessarily to say that there are not other countries that are not members of that grouping that would support that deferral. So it is hard to say exactly—

**Senator HARRADINE**—If the deferral goes down, what happens then?

**Mr Moraitis**—If the deferral is defeated, the Sixth Committee would then reconsider the various resolutions. That could take some days. Then we would have to consider where the two co-sponsors wished to proceed from that point. But it is hard to conjecture at this stage what will happen overnight in New York on that proposed deferral, given that there are about 60 states, some of which might not support the proposal. That is not necessarily indicative of the total number of states that will support that resolution. It could well be that there will be a majority of states. I cannot tell you at this stage what the outcome will be.

**Senator HARRADINE**—Your advice from New York, provided to the Department of the Prime Minister and Cabinet, has been that the Belgian proposal could well be adopted by the committee?

**Mr Moraitis**—No, the consistent advice from our mission has been that it is too close to call. We know the number of co-sponsors of both resolutions. They generally increase as the timing for the vote gets closer.

**Senator HARRADINE**—I will put it more directly: your advice to the Department of the Prime Minister and Cabinet was that the Costan Rican proposal would not be supported by the majority?

**Mr Moraitis**—That is not my understanding. Our mission in New York has consistently reported that it is a pretty close call. There are two opposing views on this issue: there is the Costa Rican resolution, which has quite a number of co-sponsors; and there is the Belgian resolution, which was originally a Franco-German idea that was picked up by the Belgian delegation, which has quite a few co-sponsors. Our assessment has consistently been that it would be too close to call.

**Senator HARRADINE**—I am just asking the question because, if you have a look at the *Hansard*—

**Mr Moraitis**—Yes, I have read the *Hansard*.

**Senator HARRADINE**—Are you denying what PM&C said?

**Mr Moraitis**—I am not denying it; I am saying that the consistent advice from our mission has been that there are two conflicting resolutions for which support is pretty much hard to fathom and that neither have a clear lead in terms of who would win out in a vote. We know the number of co-sponsors in general terms for each of those two resolutions, but that is not necessarily indicative of how many countries will vote for those two resolutions. You could have a resolution which has 30 co-sponsors and might have 90 countries that would vote for it; you could have a resolution with 65 co-sponsors and only 67 countries may vote for it. That is just the nature of international—

**Senator HARRADINE**—Let us get to the vote. Which of those two proposals is Australia going to support?

**Mr Moraitis**—As we have indicated in discussions in the Sixth Committee, our delegation has indicated that, at this stage, they have a preference for the Belgian proposal, subject to how the two proposals are developed in the course of the deliberations in the Sixth Committee.

**Senator HARRADINE**—The Belgian resolution proposes, amongst other things, national legislation which would enable the development of procedures for the creation of human embryo clones.

**Mr Moraitis**—If I may quote from the resolution, Senator?

**Senator HARRADINE**—I have got it here; I do not have to hear it.

**Mr Moraitis**—The Belgian resolution provides for an obligation on all states to ban ‘reproductive cloning’, which is the term they use, with no reservations being made to such a convention and, secondly, an obligation on all parties to that proposed convention to take action to control so-called ‘other forms of human cloning’, which is the term used in the resolution. It provides for a menu of options, including a ban, a moratorium and forms of regulation by national legislation.

**Senator HARRADINE**—That is right. That is clear—the Belgian proposal will, then, enable national regulation which would approve of the creation of human embryo clones?

**Mr Moraitis**—The resolution provides for options, including that, yes, and including a ban and a moratorium, which are other elements of that proposal. As I said, there are at least three.

**Senator HARRADINE**—I asked you the question: does it include national legislation or regulations which will enable the creation of human embryo clones?

**Mr Moraitis**—Yes, as I said, it is one of the three options.

**Senator HARRADINE**—And you are supporting that?

**Mr Moraitis**—Yes, we are supporting it at this stage, pending—

**Senator HARRADINE**—Don’t you know about the prohibition of cloning legislation?

**Mr Moraitis**—Yes, I am aware of that legislation.

**Senator HARRADINE**—Isn't it perfectly clear there that, under the legislation, in Australia, a person commits an offence if the person intentionally creates a human embryo clone—punishable by imprisonment for 15 years.

**Mr Moraitis**—Yes, I am aware of that.

**Senator HARRADINE**—Yet you are proposing to support a proposition by Belgium that will enable that to occur?

**Mr Moraitis**—We are supporting a proposition by Belgium at this stage, depending on how the two resolutions work out in the course of deliberations, which *inter alia* includes that element but also includes a ban which is consistent with our legislation. It also achieves what is for us a matter of urgency, ensuring entry into force of a convention which bans—

**Senator HARRADINE**—Some of the co-sponsors of the Belgian proposal, including China, are already preparing the way for the creation of human embryo clones.

**Mr Moraitis**—If you say so, Senator.

**Senator HARRADINE**—Can you not see that there is a conflict between your action in New York and the expressed, unanimous view of the parliament to ban the intentional creation of human embryo clones?

**Mr Moraitis**—The legislation applies to Australia. These are deliberations by the international community, which provide for a variety of states to pursue two aspects of this issue including, as I said, a ban on reproductive cloning but also a ban on other forms of human cloning as well as regulation by national legislation.

**Senator HARRADINE**—Are you making a distinction between so-called reproductive cloning and therapeutic cloning?

**Mr Moraitis**—No, I am not making that distinction. I am just saying what the resolution prescribes as being—

**Senator HARRADINE**—But the Belgian proposal does? Does it not?

**Mr Moraitis**—That is correct. It talks about—

**Senator HARRADINE**—And you are supporting that. Where in this legislation does it mention anything about reproductive or therapeutic cloning?

**Mr Moraitis**—It does not make mention of those as far as I know.

**Senator HARRADINE**—That is because it does not make any distinction. Are you aware of why it does not make any distinction?

**Mr Moraitis**—That is not my area of expertise.

**Senator HARRADINE**—Isn't the process of human cloning for whatever purpose theoretically the same process?

**Mr Moraitis**—As I have said, I am not an expert on these matters.

**Senator HARRADINE**—Is it not the enucleation of an egg from a woman? The nucleus is taken out and a somatic cell from an adult or whoever replaces that nucleus and there is an electrical charge which—

**Mr Moraitis**—I am not an expert on these matters.

**Senator HARRADINE**—Are you advising our people in New York?

**Mr Moraitis**—Because the issue is considered in the so-called Sixth Committee of the United Nations General Assembly, which deals with legal issues, our department takes a coordinative role in ensuring the Australian government's position is reflected in our deliberations and our approach to those issues as they are considered in the Sixth Committee. This department would not have the policy expertise to make decisions on issues such as this. This is why we consult with the Department of Health and Ageing, the relevant division of the Department of the Prime Minister and Cabinet and other agencies.

**Senator HARRADINE**—You were the coordinating agency—

**Mr Moraitis**—For the purposes of the Sixth Committee, yes.

**Senator HARRADINE**—Which were the other departments—Prime Minister and Cabinet?

**Mr Moraitis**—Yes, the Department of the Prime Minister and Cabinet, the department of health and I understand the National Health and Medical Research Council also provides expertise on this issue.

**Senator HARRADINE**—So you have had a number of meetings? What has been the process to develop Australia's attitudes?

**Mr Moraitis**—My understanding is that this has been an issue that has been considered in the General Assembly now for two years. In the course of that there have been deliberations between us to define our position regarding the proposed convention as it is being formulated in the working group and then in the Sixth Committee.

**Senator HARRADINE**—From what areas did you obtain advice besides the departments?

**Mr Moraitis**—Which areas?

**Senator HARRADINE**—Yes.

**Mr Moraitis**—As I mentioned—

**Senator HARRADINE**—I am asking from what outside areas, for example, did you receive advice when formulating these policies?

**Mr Moraitis**—We, as I said, coordinate agencies that have line responsibility for these issues, which is normal practice. We have the social policy division of the Department of the Prime Minister and Cabinet. There is a health branch there that deals with this. There is also the Department of Health and Ageing, which has a portfolio strategies division, which is consulted and has a policy role in this as well as the NHMRC. They are the three main policy areas of agencies involved in this.

**Senator HARRADINE**—Was the attitude finally adopted about supporting the Belgian proposal cleared, for example, by the minister responsible for issues relating to cloning at that time?

**Mr Moraitis**—My understanding is that the Prime Minister wrote to Mr Downer setting out our position on this.

**Senator HARRADINE**—I asked you whether it was passed under the eyes of the minister responsible for issues relating to cloning.

**Mr Moraitis**—I cannot answer today. I assume that the relevant agency consulted their minister but I cannot speak on behalf of the other agencies.

**Senator HARRADINE**—Can you seek advice and let us know?

**Mr Moraitis**—Yes.

**Senator HARRADINE**—Thank you. You mention a letter from the Prime Minister. According to the Department of the Prime Minister and Cabinet you were providing them with advice which was then transmitted to the Prime Minister.

**Mr Moraitis**—Advice concerning the deliberations of the Sixth Committee? Yes.

**Senator HARRADINE**—Did you use the term ‘reproductive cloning’ in that advice?

**Mr Moraitis**—I am not familiar with the details of what was provided in that advice. The terminology used by the Sixth Committee includes such terminology, and that would be for the sake of convenience. It could possibly have been used.

**Senator HARRADINE**—Are you aware that the statutory authority, namely the Australian Health Ethics Committee, has repudiated those terms—‘therapeutic cloning’ and ‘reproductive cloning’? Are you aware that the National Health and Medical Research Council has expressed quite firmly in writing their repudiation of the terms?

**Mr Moraitis**—Yes, I am aware of that from comments you have made to me in the past.

**Senator HARRADINE**—Why then did the Department of Foreign Affairs and Trade, when advising the Department of the Prime Minister and Cabinet, use that term? It is a misleading term. According to the Australian Health Ethics Committee, the more recently coined term ‘therapeutic cloning’ collapses both the distinction between therapeutic and non-therapeutic research on embryos and the distinction between destructive and non-destructive experiments on embryos. That is a serious matter.

**Mr Moraitis**—If any terms or phrases such as ‘reproductive cloning’ or ‘therapeutic cloning’ were used it was reflecting the terminology used by the members of the Sixth Committee, which were from a variety of countries. They were not necessarily our terms.

**Senator HARRADINE**—You are supposed to reflect the views of Australia, are you not? If they are using the words ‘therapeutic cloning’, did your officer at the United Nations attempt to clarify this matter, particularly as it really undermines the basic rule of research on humans that the interests of the human subject should take precedence over the objectives of science and society?



**Mr Moraitis**—In terms of trying to convey our position to the members of the United Nations Sixth Committee, we try to employ terms which they can understand on what is being considered by that committee. In the most recent statement, we have avoided using the term ‘therapeutic’, for that very reason, and tried to reflect the terms of the Belgian resolution so that the 192 countries sitting around listening to our statement can understand what we are referring to.

**Senator HARRADINE**—I come to the question of who spoke at the committee. Is it the fact that the National Health and Medical Research Council spoke twice to the committee?

**Mr Moraitis**—Sorry, I did not hear the full question.

**Senator HARRADINE**—Did the National Health and Medical Research Council represent Australia in making two statements to the committee?

**Mr Moraitis**—I understand that the National Health and Medical Research Council made a statement on 30 September. I cannot recall any previous statement or subsequent statement. I was referring to a statement of 20 October or 21 October by our representative to the Sixth Committee, Michael Bliss, who, as far as I can tell from his statement, which was published, did not use that terminology and, as I said, reflected the terminology of the Belgian resolution in trying to explain these concepts to other members of the committee.

**Senator HARRADINE**—I notice that the CEO, Professor Pettigrew, was representing Australia on 23 September 2002 and on 30 September 2003. Is it usual for heads of statutory authorities to represent the Australian government at the UN? Is not a statutory authority supposed to be at arm’s length from the government?

**Mr Moraitis**—The Sixth Committee covers a wide variety of issues on legal and other matters, as you can see on this occasion. In that context, many specialists are brought into the deliberations of the committee, take part in deliberations and on occasions make statements. I do not think there is anything inappropriate about that.

**Senator HARRADINE**—I am just wondering.

**Mr Moraitis**—I do not know the statutory basis on which statutory agencies do it, but, given that in this case it has been done, it is a reflection of the fact that that person was a member of the delegation for that deliberation.

**Senator HARRADINE**—What is the problem with the Costa Rican proposal? Isn’t it more in conformity with our own legislation? It proposes to have a further meeting of the committee next year to develop the text of a draft convention to ban human cloning. Isn’t that—

**Mr Moraitis**—As I said, the government position has been to prefer at this stage, as drafted, the Belgian proposal.

**Senator HARRADINE**—Why?

**Mr Moraitis**—Because on balance it more strongly reflects—

**Senator HARRADINE**—But why? I asked you a question about the Costa Rican proposal. Why is the Costa Rican proposal less in conformity with our own legislation than the Belgian one?

**Mr Moraitis**—My understanding of the legislation is that, under section 24 or 25 of that act, there is a provision for review.

**Senator HARRADINE**—I thought we would get to that. I was hoping we might. Keep going.

**Mr Moraitis**—Looking at the totality of that legislation and the totality of the two resolutions, the view has been expressed by the agencies that the preference is for the Belgian proposal as currently drafted.

**Senator HARRADINE**—Do you want to break now?

**CHAIR**—Yes, thank you.

**Proceedings suspended from 3.30 p.m. to 3.48 p.m.**

**Senator HARRADINE**—Mr Moraitis, I asked you why the proposal was not put to the government to support the Costa Rican provisions and whether they are not more in line with our legislation, which has a total ban on the creation of a human embryo for whatever purpose.

**Mr Moraitis**—Looking at the totality of the legislation and the totality of the two resolutions, the agencies involved in deliberating on this issue felt that the Belgium proposal more closely reflects, on balance, the Australian government position at the moment as reflected in the act. The Belgium proposal specifies, as I said, two elements: a ban on productive cloning—and I am just using the terminology of that resolution for the purposes of this discussion—and a second element of other forms of cloning, which includes a ban, a moratorium and other forms of regulation through legislation. The fact that it includes a ban is, in our view, consistent with our legislation. It allows a country such as Australia, which has a total ban, to be in conformity with its legislation. Also, I note that there is this provision for a review in two years time by the parliament, and I am not in a position to pre-empt how that will be considered in two years time.

**Senator HARRADINE**—What do you mean by that? Isn't it a fact that the Belgium proposal indicates two states? They can adopt national regulations which will approve of the development of a human embryo clone. That is against what our legislation says.

**Mr Moraitis**—Yes, that is correct, but the Belgium proposal also expressly specifies that countries can impose a ban, which is totally consistent with the Prohibition of Human Cloning Act.

**Senator HARRADINE**—The Costa Rican provision does not make any bones about it. It says 'a total ban on the creation of the human embryo clone for whatever purpose'. Isn't that more in line with our legislation than what you are saying? The Belgium legislation puts a ban on so-called reproductive cloning and enables the development of national laws which would provide for the creation of a human embryo clone. Isn't the Costa Rican proposal closer than the Belgium proposal to that? It clearly is because we have the total ban and that is what the Costa Rican proposal proposes.

**Mr Moraitis**—Yes, the Costa Rican proposal does have a total ban. But as the legislation specifies it will be reviewed in two years.

**Senator HARRADINE**—I see that Mr Bliss made some comment about that, too. He said, ‘However, the act is subject to an independent review at 2004 which will further consideration of human cloning for non-reproductive purposes.’ Even that statement is incorrect. There is no distinction at all in the legislation between the creation of a human clone for transfer to a woman and the creation of a clone for destructive experimentation. There is no difference. If you believe what you are saying, why would you support a ban on reproductive cloning? It does not say anything about this. Why only reproductive cloning? If you are putting your eggs in that basket of the review of the act, the review will also include a review of cloning for the purposes of creating a child.

**Mr Moraitis**—My understanding of the review provision, as spelt out in section 25(4), is that it must consider and report on the scope and operation of the act, including a series of specific issues. I am not an expert on the policy of the act. I am just telling you this is the position that has been agreed by government agencies, and we as an agency—

**Senator HARRADINE**—Until then, it is a crime.

**Mr Moraitis**—In Australia, yes.

**Senator HARRADINE**—Which is reflected in the Costa Rican proposal but not in the Belgium proposal.

**Mr Moraitis**—As I said, the Belgium proposal provides for countries which wish to do so to impose a ban, which is consistent with the act. So Australia has an option—

**Senator HARRADINE**—We can argue backwards and forwards on this. What you are proposing that Australia votes for is these other things but also for national regulation which would enable the creation of a cloned human embryo. That is clear.

I want to ask you a question about the Belgium proposal and the advices that were given to PM&C and the Prime Minister. Who actually signed off on the advice that ultimately went to the Department of the Prime Minister and Cabinet that the Franco-German and now Belgium proposal was the appropriate position for Australia to support?

**Mr Moraitis**—I am not aware of who would have signed off on that. I understand that the Department of the Prime Minister and Cabinet would have advised the Prime Minister of that.

**Senator HARRADINE**—But we were told yesterday by Prime Minister and Cabinet that you advised them.

**Mr Moraitis**—We advised them on the deliberations of the Sixth Committee process, as to how it is going in the Sixth Committee, not on the substance of the issue.

**Senator HARRADINE**—You advised this committee that you were the coordinating agency.

**Mr Moraitis**—For the purposes of Sixth Committee deliberations on this subject and how to vote, yes; and eliciting views of the line agencies which deal with this matter, as part of their portfolio interests, and what the policy should be. Then we reflect that in our instructions to New York to vote on appropriate resolutions on various issues including, in this case, two competing resolutions which, as I said at the start, also now include a proposal for a deferral for two years.

**Senator HARRADINE**—I again ask you, in your coordinating role, who actually signed off? You are saying your department did not sign off on that advice. Where did the advice come from?

**Mr Moraitis**—Advice concerning the position of the government?

**Senator HARRADINE**—Yes, on which proposal would be supported.

**Mr Moraitis**—I expect the agencies which have line responsibility for such an issue: Health and Prime Minister and Cabinet.

**Senator HARRADINE**—You mean the National Health and Medical Research Council?

**Mr Moraitis**—No, the Department of Health and Ageing and the Department of the Prime Minister and Cabinet's health branch.

**Senator HARRADINE**—So there was never present a member or representative of the National Health and Medical Research Council?

**Mr Moraitis**—I am not aware of whether there was or not. There could well have been.

**Senator HARRADINE**—Were you present?

**Mr Moraitis**—No, I have not been present at any of these discussions.

**Senator HARRADINE**—Who is the responsible officer? Who in the department was there?

**Mr Moraitis**—Colleagues from my branch have been there coordinating recent discussions on these resolutions. That would have been a few months ago, I understand.

**Senator HARRADINE**—You do not know whether the National Health and Medical Research Council was there. Can you find that out?

**Mr Moraitis**—I will do that for you.

**Senator HARRADINE**—Thank you. On whose advice was the position taken by Australia to support the Belgium proposition?

**Mr Moraitis**—The advice, I assume, of all the agencies involved in those deliberations to develop a whole-of-government position on this. Obviously Foreign Affairs and Trade does not have line responsibility for dealing with this issue. As I said, we assume a coordinating role for the purpose of deliberations in the United Nations Sixth Committee. There are a myriad of issues that come across the various committees of the UN. We are not the policy agency for many of these issues, including this one.

**Senator HARRADINE**—Given that you said that the consistent advice of the Department of Foreign Affairs and Trade was that there would be a very close vote between the Costa Rican and Franco-German-Belgian proposal, why was the Department of the Prime Minister and Cabinet telling me on Monday that there was much stronger support for the Belgian proposal?

**Mr Moraitis**—You would need to ask Prime Minister and Cabinet that, Senator.

**Senator HARRADINE**—I have.

**Mr Moraitis**—As I said to you before, the advice of our mission in New York has consistently been that there are two competing resolutions and it is too close to call as to which would win. That is why both resolutions have sustained themselves to this point, because neither of the two groupings are prepared to concede that they do not have the upper hand.

**Senator HARRADINE**—But your department advised the Department of the Prime Minister and Cabinet that the Costa Rican proposal would not get up.

**Mr Moraitis**—No, we have not advised anyone to that effect. As I said, we have always advised that there are two competing texts and it is too close to say which one will prevail. As I said, the Costa Rican proposal has many co-sponsors; the Belgian proposal has fewer co-sponsors. Those numbers vary, but the number of co-sponsors does not reflect how many countries will vote for which resolution.

**Senator HARRADINE**—So if the Department of the Prime Minister and Cabinet said to the Prime Minister that the Belgian proposal had much stronger support than the Costa Rican proposal, that advice would have been wrong?

**Mr Moraitis**—I am not aware of what advice they gave to the Prime Minister.

**Senator HARRADINE**—They told us yesterday that the department gave the advice to them in respect of this whole issue—that they were relying on your department.

**Mr Moraitis**—Senator, it is clear, even from the face of the resolutions, that there are many co-sponsors for the Costa Rican proposal. We have always consistently said, including from our mission in particular, who are on the ground, that there are two competing resolutions and it is a hard call to make. That is why this has still not been resolved after two years of deliberations. That is why, as I said to you at the beginning, there is a proposal by the Organisation of Islamic Countries to defer this for two years.

**Senator HARRADINE**—Are you still suggesting that the Belgian proposal has a chance?

**Mr Moraitis**—That is my understanding.

**Senator HARRADINE**—Could you give me details of that? What sort of chance does the Belgian proposal have?

**Mr Moraitis**—According to my understanding from New York, there are at least 23 co-sponsors for that—not as many, of course, as for the Costa Rican proposal. But from the deliberations of delegations in the corridors of the UN, it is hard to say that there is no chance of the Belgian proposal winning out, and that has been our position all along. That explains why there has been this push for a deferral, because obviously there is a sharp division between countries and many prefer to defer this for two years. The premise for that is that there is a clear feeling amongst member states in the sixth committee that this has polarised views; it is hard to say which one of those two resolutions will prevail; and there is a body of nations, starting with the OIC, the Islamic countries, which are pushing for a deferral for two years. As I said, Australia's instructions are not to support that deferral because we do not want to have it deferred for two years. We would like to have a convention up and running as quickly as possible.

**Senator HARRADINE**—The Prime Minister's letter to the foreign minister was based on advice provided by PM&C and, in turn, PM&C's advice was provided by the Department of Foreign Affairs and Trade. Can I be absolutely clear that you had regularly updated the Department of the Prime Minister and Cabinet about this matter?

**Mr Moraitis**—About the process in the United Nations?

**Senator HARRADINE**—Yes, about what was going on.

**Mr Moraitis**—That is my understanding, yes. As I said, on the face of the draft resolutions that are floating around in the United Nations, it is clear that there are two competing groups of countries supporting alternative texts. It is not a very fortunate situation to be in, of course. Everyone seeks consensus in such a forum. That has not been the case on this occasion.

**Senator HARRADINE**—And you did not give advice to the department as to the likelihood of the Belgian proposal being successful?

**Mr Moraitis**—As I said, our consistent position has been that both resolutions are very close in terms of support and it is hard to say which would prevail. And again, as I said, that is reflecting the fact that there is a third push now to defer this because there is such a polarisation of opinions in the Sixth Committee and it is hard to say which of the two resolutions will prevail, to be honest with you. As I said, there are many co-sponsors for the Costa Rican and a great number for the Belgian, but the number of co-sponsors does not add up to the number of states that will vote. There are over 190 states that will vote.

**Senator HARRADINE**—I am aware of that.

**Mr Moraitis**—I do not know how they will vote on the day.

**Senator HARRADINE**—Do you see any significance in China being co-sponsor to the Belgian proposal, since China is very anxious to get going on the development of processes for the creation of human embryo clones?

**Mr Moraitis**—I would assume the fact that China has co-sponsored this resolution means that it supports this resolution and its terms.

**Senator HARRADINE**—Quite. Thank you, Mr Moraitis.

[4.06 p.m.]

**CHAIR**—We will now return to 1.1.4, South Pacific, the Middle East and Africa.

**Senator FAULKNER**—Thank you, Chair. We were canvassing the issue of departmental procedures in relation to the distribution of classified documents within the department before Senator Harradine commenced his questioning, and I would like to come back to that issue.

**Mr Chester**—Mr Buckley was going to give a run-through of how we handle, in a generic sense, some of these classified documents. I should remind everyone that the specific document is the subject of a police investigation and obviously we would not want to get into the handling of that specific document within the department.

**Mr Buckley**—There is nothing here that is particularly unusual, but let me explain the system—and I am sorry that I have not done that so far. We receive voluminous amounts of material, as I said. It is all logged into the department. That material comes to us in either hard

copy or electronic form. If it is in electronic form, there is a clear audit trail of what happens to it—we know who opened it, who printed it and who did anything with it. The hard copy—and this I really have to stress—is logged in when it comes in and then it is distributed to a very small number of specially cleared senior people in the department on a need-to-know basis. It is taken out to them by hand from this registry and it is returned to that registry by hand. It is then destroyed. We do not, as I said, keep a record of all we destroy. Because of the volume, that would be impossible for us to do, but we do keep a record of some, depending on its classification. With very highly classified things, we do keep a record of what we have destroyed. So keeping a record of what we have destroyed is dependent upon the classification.

**Senator HOGG**—Are there sufficient copies of a particular document for the number of people that you want to issue that document to, or could it be that there are not enough copies of that document and therefore it may be distributed to a multiple number of people? In other words, if you want to distribute it to 18 people and you get 15 copies of that document, do you get it back from someone and then redistribute it to someone else?

**Mr Buckley**—Usually we would write on the document that it was going to person A and person B. If we wanted to send 15 documents to 18 people, three of those documents would have two people's names written on them.

**Senator HOGG**—So it is possible that a document could be distributed to multiple people?

**Mr Buckley**—Yes. But they would be required to sign off that they had received it and passed it on to the next person. It would go to person A and, unless they signed it off, it would still be with person A.

**Senator HOGG**—Could that also happen electronically?

**Mr Buckley**—I am not 100 per cent sure, but I do not think there is the facility.

**Senator HOGG**—The distribution list is determined before it is sent. Is that what you are telling me?

**Mr Buckley**—Yes, before it is distributed.

**Senator HOGG**—It seems to me that in the other instance the hard copies go strictly to the rugby team—as I would call it—the 15 people.

**Mr Buckley**—It depends on the issue, because people receive the documents on a need-to-know basis. It does not go to the same 15 people all the time.

**Senator HOGG**—I understand that, but you seem to be limited to 15 copies. Is that correct?

**Mr Buckley**—I am not sure. I could not give a categorical answer on that. The next point to mention is that this system is accepted by all the agencies. They all know and accept what our system is.

**Senator FAULKNER**—You have checked that with them?

**Mr Buckley**—Yes, we have written to them.

**Senator FAULKNER**—When?

**Mr Buckley**—I am not 100 per cent sure, but I think we do it every year.

**Senator FAULKNER**—You might check that for us on notice.

**Mr Buckley**—When the last time we wrote to them was?

**Senator FAULKNER**—No, check whether you do it every year and when the last time that you wrote to them was.

**Mr Buckley**—That is what I said—that we would check when we last did it. That is basically the system we operate. As Mr Chester said, we cannot talk about this particular document because, firstly, it is the subject of a police investigation and, secondly, these systems—as I said—depend on classification. We cannot talk about the classification of this document.

**Senator FAULKNER**—How do you know it is the subject of a police investigation?

**Mr Tighe**—I would have thought that was fairly common knowledge.

**Senator FAULKNER**—It might be. So you just know from the rumour mill, because it is common knowledge?

**Mr Tighe**—There is that, as well as the fact that there has been contact between the ONA, the AFP and us about it.

**Senator FAULKNER**—Is it the subject of a current police investigation?

**Mr Tighe**—That is certainly my understanding.

**Senator FAULKNER**—It has been asserted. I just want to be sure that that is the case.

**Mr Tighe**—I think Mr Jones from the ONA has actually confirmed that, has he not?

**Senator FAULKNER**—That was a couple of days ago. It could have concluded by now, for all I know.

**Mr Tighe**—Perhaps it has. But, if it has, we are unaware that it has concluded

**Senator FAULKNER**—You just picked it up on the rumour mill. How do these procedures work with an electronic document that is printed off, Mr Buckley? I appreciate the point you made about the audit trail—you can audit whether a document has been printed. What happens to an electronic version that is sent to a person and printed off? What are the procedures in relation to return and burn for those documents?

**Mr Buckley**—They are the same as those for hard copies. It is printed on them who got the electronic copy. When it comes back it is destroyed.

**Senator FAULKNER**—There is obviously a requirement that they be returned and so forth.

**Mr Buckley**—Yes. Just to clarify the question you asked before about whether most of them come back—they go out by hand and if they are not returned then the next lot do not go out. That is made clear to all recipients. You cannot have a filing cabinet full of material. One lot goes out—or maybe it is two; it is certainly a small number—and if it is not returned then the next lot does not go out.



**Senator FAULKNER**—Have the police been interviewing people about this in the department, Mr Tighe?

**Mr Tighe**—The AFP have a policy of not commenting on the operational aspect of their inquiries. I think that is a question you would more appropriately put to them because I do not think we are in a position to comment on how their inquiries are going. What I can say is that the department has told the ONA and the AFP that we will cooperate fully with their inquiry, and that is what we will be doing.

**Senator FAULKNER**—Are you able to say in relation to this particular document, *Iraq: humanitarian dimensions*, whether any further copies were requested by ONA from the department?

**Mr Tighe**—Again, I think that is a question that the AFP will be looking into and it is not one that we would be at liberty to answer here.

**Senator FAULKNER**—You might tell the committee how the department became aware that there was a problem in relation to this possible unauthorised disclosure or leak of this document. In other words, were you formally advised of that?

**Mr Tighe**—We were contacted by the ONA, who informed us that they had requested an inquiry on this document. We were asked to tell them about the distribution of the document within the department, and then it was referred to the AFP.

**Senator FAULKNER**—So the ONA was the agency that contacted you?

**Mr Tighe**—That was the initial point of contact.

**Senator FAULKNER**—Can you say when?

**Mr Tighe**—I do not have that in front of me.

**Senator FAULKNER**—Could you take that on notice, please? This obviously proceeds the police investigation. Could you indicate what action the department of foreign affairs took as a result of that contact from ONA?

**Mr Tighe**—We provided the ONA with whatever information they sought from us.

**Senator FAULKNER**—Can you indicate to the committee what information the ONA sought?

**Mr Tighe**—Again, given that the information is being inputted into the AFP investigation, I do not think it is appropriate to comment.

**Senator FAULKNER**—The ONA were able to comment on this in relation to their agency. It would seem to me to be perfectly reasonable that you would be able to, given that the ONA are the primary agency in relation to this and were able to answer a similar questions without concern.

**Mr Tighe**—I have seen the transcript of the ONA evidence and I do not recall it going to any particular detail on what information there was about the distribution of the document.

**Senator FAULKNER**—The ONA indicated to the Finance and Public Administration Legislation Committee what action they took prior to the instigation of the police inquiry, which is all I am asking you. I am not asking what you did subsequent to the police inquiry.

**Mr Tighe**—I thought I made it clear that our contact with the ONA made it clear to us that an AFP inquiry had been instigated, so we have not taken any action prior to the inquiry.

**Senator FAULKNER**—Did the Department of Foreign Affairs and Trade report to the minister that these concerns were about?

**Mr Tighe**—No, and I am not quite sure what you mean about ‘concerns’.

**Senator FAULKNER**—You are the one who is flagging the concerns about a possible AFP inquiry or contact from the ONA.

**Mr Tighe**—I am not flagging concerns about it; we have been contacted about the distribution of the document that originated in ONA as, I suspect, have every other agency that had the document distributed to it.

**Senator FAULKNER**—I do not know whether or not we can suspect that, but it is certainly a logical conclusion to come to. Did you or did you not inform your minister about these developments?

**Mr Tighe**—No, Senator.

**Senator FAULKNER**—Why not?

**Mr Tighe**—Because it is a fairly standard sort of event, frankly. If an AFP investigation into a suspected unauthorised disclosure of a document is launched, you would expect the AFP to contact people who had the document distributed to them. It is quite unexceptional.

**Senator FAULKNER**—Are you able to indicate whether the department received a request from the foreign minister’s office to acquire the ONA report *Iraq: humanitarian dimensions*?

**Mr Tighe**—I am not aware of any such request, no.

**Senator FAULKNER**—So you are able to give me that information but not answer some of my other questions?

**Mr Tighe**—Yes.

**Senator FAULKNER**—Are you able to indicate whether the department received a request from the Prime Minister’s office trying to acquire the report?

**Mr Tighe**—As I think it was explained earlier, documents are distributed to ministers’ offices directly by the ONA. There would be no reason for the department to be involved in obtaining a copy of a document from the ONA. Those issues are a matter for direct contact between the ONA and the entity to which they are providing the document.

**Senator FAULKNER**—Have you initiated any internal departmental inquiries about these issues? I appreciate the point that is made about a police inquiry, although its status or its priority is not clear, but I accept that that is the situation.

**Mr Tighe**—No, we have not sought to set up an independent inquiry.

**Senator FAULKNER**—So that is the only inquiry that you are aware of?

**Mr Tighe**—Yes, that is right.

**Senator FAULKNER**—Have you had any indications of when these matters might be finalised?

**Mr Tighe**—No, I could not say.

**Senator FAULKNER**—It is not the only leaks inquiry we have had in the Department of Foreign Affairs and Trade of late, is it? How many leaks inquiries are ongoing at the moment?

**Mr Tighe**—One, Senator.

**Senator FAULKNER**—And what is that?

**Mr Tighe**—That is the inquiry in respect of a record of conversation between the New Zealand High Commissioner and Mr Downer.

**Senator FAULKNER**—Is that ongoing?

**Mr Tighe**—That matter was also referred to the Australian Federal Police and has not yet concluded.

**Senator FAULKNER**—It is ongoing, then?

**Mr Tighe**—That is correct, yes.

**Senator FAULKNER**—Where are we up to on the Trent Smith matter? I know that you are very involved in that, Mr Chester.

**Mr Chester**—As you are aware from the last estimates hearings, Dr Peter Kennedy was appointed as the investigating and determining officer, and he is proceeding with his investigation and determination. He has not finished that process.

**Senator FAULKNER**—He is a consultant, isn't he? Is it Mr Kennedy or Dr Kennedy? I cannot recall.

**Mr Chester**—I believe it is Dr Kennedy.

**Senator FAULKNER**—Is Dr Kennedy acting as a consultant to the department on this?

**Mr Chester**—I am not sure what the right terminology is here.

**Senator FAULKNER**—He is contracted to the department.

**Mr Chester**—He has been appointed to undertake this task, and we are paying a consideration for doing this task.

**Senator FAULKNER**—What is the consideration total at this stage?

**Mr Chester**—I believe it is a little over \$7,000 or \$8,000. Somebody else here may have the exact amount.

**Mr Moraitis**—Yes, that is the approximate figure, at this stage.

**Senator FAULKNER**—I did not hear a word of that. Did you hear that?

**Senator HOGG**—I must say I did not understand one word.

**Mr Chester**—I am sorry—

**Senator HOGG**—Not you, Mr Chester.

**Mr Chester**—I do have the answer in front of me. The invoices total \$9,229.

**Senator FAULKNER**—As of what date?

**Mr Chester**—For work completed until the end of October.

**Senator FAULKNER**—What is Mr Smith's status?

**Mr Chester**—Mr Smith is suspended from the department.

**Senator FAULKNER**—On full pay?

**Mr Chester**—Yes.

**Senator FAULKNER**—How long has he had that?

**Mr Chester**—Since 20 February this year.

**Senator FAULKNER**—The only review that has been conducted since we last addressed these matters is Dr Kennedy's?

**Mr Chester**—That is the only code of conduct review that has been undertaken.

**Senator FAULKNER**—So that is a code of conduct review? What other reviews have we had since we last met on this?

**Mr Chester**—I do not believe there have been any new events since we last met. As you may recall, at the last hearing we indicated that a review of the revalidation of Mr Smith's security clearance was being undertaken.

**Senator FAULKNER**—Has that concluded?

**Mr Tighe**—No, it has not.

**Senator FAULKNER**—That is a long review, isn't it? How long do these sorts of reviews of security clearances take? When did that kick off?

**Mr Tighe**—The officer you mentioned was informed about the review towards the end of May.

**Senator FAULKNER**—That is helpful, but I did not ask when he was informed. When did it start?

**Mr Tighe**—The information we sought from the officer was submitted at the beginning of July. We have begun to process that information.

**Senator FAULKNER**—But when was the security clearance review initiated?

**Mr Tighe**—I would regard it as having been formally initiated when we contacted the officer about it.

**Senator FAULKNER**—I would have thought it was initiated when a decision was made to have it undertaken. At what level of the department was the decision made? Was it made in the department?

**Mr Tighe**—Yes.

**Senator FAULKNER**—Who made it?

**Mr Tighe**—The decision would have been made within the Diplomatic Security Branch.

**Senator FAULKNER**—That is your branch, isn't it?

**Mr Tighe**—It is a branch within my division.

**Senator FAULKNER**—When was it made?

**Mr Tighe**—Shortly before we sent the letter to the officer.

**Senator FAULKNER**—But when? I accept that it was shortly before, but can we have a date?

**Mr Tighe**—It would have been on that date.

**Senator FAULKNER**—And that date was?

**Mr Tighe**—20 May.

**Senator FAULKNER**—Do you have any regular reviews of whether or not an officer should remain suspended?

**Mr Chester**—Yes, we do.

**Senator FAULKNER**—How has that worked in Smith's case?

**Mr Chester**—A review of his suspension was undertaken in the August-September period, and on 19 September the delegate who looked at it made a decision that the suspension should be continued.

**Senator FAULKNER**—For how long has he been suspended on full pay now?

**Mr Chester**—As I said earlier, he has been suspended since 23 February 2003—around nine months.

**Senator HOGG**—How much longer will this go on?

**Mr Chester**—I do not think I can answer that. Dr Kennedy is proceeding with his investigation and determination and, until such time as he has finished that, Smith will remain suspended.

**Senator HOGG**—What determines the pace at which Dr Kennedy can proceed? Is it his availability to do that?

**Mr Chester**—No. There are a number of issues. I do not know precisely what he is doing day by day on this, but in a general sense there is communication between him and Smith or through the legal representatives. There has been a need for Dr Kennedy to get legal advice on a number of issues that have come up as he has been proceeding with his investigation.

**Senator FAULKNER**—Who did he get the legal advice from?

**Mr Chester**—I believe AGS is providing the legal advice.

**Senator FAULKNER**—So that is further money expended on that. Were further moneys expended on those legal advices?

**Mr Chester**—That is correct.

**Senator FAULKNER**—Let's hear it.

**Mr Chester**—Maybe I can give you the aggregate amount and then we can break it up. I believe so far, on legal advice, Smith's salary and Kennedy's costs, it is around \$265,000.

**Senator FAULKNER**—What is the total amount?

**Mr Chester**—\$265,000.

**Senator HOGG**—That is for legal advice?

**Mr Chester**—There is about \$180,000 for legal advice, Smith's salary of around \$50,000, about \$11,000 for Kennedy and—

**Senator FAULKNER**—I thought you said it was \$9,000.

**Mr Chester**—Sorry, my apologies, \$9,229. And the remainder is the cost of departmental resources on this issue.

**Senator FAULKNER**—As of what date are those figures?

**Mr Chester**—I believe until the end of October—a week ago.

**Senator FAULKNER**—You are really throwing the chequebook at this one, aren't you?

**Mr Chester**—The allegations that have been made against Mr Smith are serious allegations and they go to the heart of the professionalism that is expected of public servants. They impact on the professional standards that this department likes to aspire to. We would be remiss if we turned a blind eye to allegations of this nature.

**Senator FAULKNER**—You lost the court case about this, didn't you?

**Mr Chester**—I would not describe it as a lost court case.

**Senator FAULKNER**—What was it?

**Mr Chester**—I believe there was a settlement.

**Senator FAULKNER**—Is that settlement included in these figures?

**Mr Chester**—Almost entirely. There are still negotiations going on between Smith and AGS on his legal costs.

**Senator FAULKNER**—So it could be higher than \$265,000?

**Mr Chester**—You asked how much had it cost the department so far. I have not included that—

**Senator FAULKNER**—My recollection is—but I am a bit hazy on this, and I admit it—that the department agreed in the Federal Court to pay Mr Smith's legal expenses as part of the settlement.

**Mr Chester**—That is correct.

**Senator FAULKNER**—Has the department paid up yet or not? I think you are saying no—or maybe you are saying in part.

**Mr Chester**—Agreement has not been reached on the quantum of those costs.

**Senator FAULKNER**—Is any element of that included in this \$265,000?

**Mr Chester**—I think the cost of counsel is included in that \$265,000.

**Senator FAULKNER**—What is not included? That is the barrister's costs, is it?

**Mr Chester**—That is my understanding.

**Senator FAULKNER**—So solicitors' costs are disputed, are they? Is that right, Mr Moraitis?

**Mr Moraitis**—That is correct.

**Senator FAULKNER**—We are pushing \$300,000, I suspect. Is that the argument about the solicitors' costs?

**Mr Moraitis**—Yes.

**Senator FAULKNER**—Anything else?

**Mr Moraitis**—No.

**Senator HOGG**—What were the departmental costs so far? Is it \$26,000? That is roughly what I make them.

**Mr Chester**—It is something of that order. That is just the salary cost for those who are dealing with this issue. Most of this is being handled directly by Kennedy and AGS rather than by departmental officers.

**Senator FAULKNER**—What is Dr Kennedy's remit? Is this an open-ended appointment? Is there an end date for his work?

**Mr Chester**—The end date is when he finishes his work. His remit is—

**Senator FAULKNER**—I assumed it was when he finished, but do you have any idea when that might be?

**Mr Chester**—He has not been given a date. The guidance that has been given to him is to proceed—and I think the words are—'with as little formality and as much expedition as a proper consideration allows'.

**Senator FAULKNER**—Really? How expeditious has it been? When did he start?

**Mr Chester**—He was appointed on 16 May. He contacted Smith soon after that. I believe it was probably 19 May. I guess you could say he started at that point.

**Senator FAULKNER**—Are you satisfied this has been expeditious?

**Mr Chester**—Yes, I am.

**Senator FAULKNER**—How have you satisfied yourself of that, Mr Chester?

**Mr Chester**—In my knowledge of the issues that have been raised and that have had to be dealt with by getting legal advice.

**Senator FAULKNER**—You are not directly involved in this because you are a party to this, aren't you? You are an aggrieved party.

**Mr Chester**—Personally, I am not. No, I would not describe myself as a party to it.

**Senator FAULKNER**—What would you describe yourself as—a complainant?

**Mr Chester**—No, I am part of the senior management of the department.

**Senator FAULKNER**—So, you have no idea how long this might take?

**Mr Chester**—No, I cannot give an end date.

**Senator FAULKNER**—Is this matter referred to in your annual report?

**Mr Chester**—That I do not know, Senator.

**Senator FAULKNER**—Someone should. This is a question about the department's annual report. Let us find somebody who can assist us. If it is not in there—I could not find it—can somebody tell me why?

**Senator HOGG**—Whilst that is being done can I ask: are there further legal costs involved in the investigation being conducted by Dr Kennedy currently?

**Mr Chester**—Are there further legal costs?

**Senator HOGG**—Are there legal costs other than those that might have been outlined already?

**Mr Chester**—Not that I am aware of. I believe the only outstanding cost is the solicitor's fees. That needs to be settled. I should say that I really do not know. There may well have been points where Dr Kennedy has sought advice from AGS and an invoice has not come in on that. That is the extent of the invoices we have so far.

**Senator HOGG**—Would it be fair to say that all of the preliminary work has now been cleared up by Dr Kennedy? Is there still more basic work that needs to be done before he can arrive at a decision?

**Mr Chester**—I do not know the answer to that. I suspect that Dr Kennedy still has some legwork to do on his process.

**Senator HOGG**—Are you getting progress reports from Dr Kennedy as to where this matter is at?

**Mr Chester**—Yes, the department is.

**Senator HOGG**—How often are they provided?

**Mr Moraitis**—They are provided once a month.

**Senator HOGG**—Basically, what do they say? Do they give some sort of indication as to where to next?

**Mr Moraitis**—It is basically an invoice of work done and he spells out in general terms where he is progressing, how he is progressing with the other party, and what his aims are in the immediate future.

**Senator HOGG**—So it gives some sort of prospect as to what might be achieved before the next invoice comes in?

**Mr Moraitis**—Not really, he just spells out what he is seeking to achieve in the future.

**Senator FAULKNER**—Mr Chester, you said to me that you were not a party to this; you were just a senior officer of the department. My memory might be faulty, but weren't you the determining officer in this case?

**Mr Chester**—That is correct, Senator. In the past I was a party: I was a party to the court action but that was not—



**Senator FAULKNER**—That is right. It was your determination that got knocked over by the Federal Court.

**Mr Chester**—It is not correct, Senator.

**Senator FAULKNER**—It is correct, Mr Chester.

**Mr Chester**—It is not correct, Senator.

**Senator FAULKNER**—It is not reasonable to say that you are not a party to this. I do not have full recollection of all the detail of this when we have discussed it previously at estimates but I do have some recall of it. Is this normal practice for the department to have these sorts of open-ended inquiries like this?

**Mr Chester**—It is not an open-ended inquiry.

**Senator FAULKNER**—Then what is the end date of it?

**Mr Chester**—It is an inquiry until the determining officer makes their determination. It depends what one means by open-ended.

**Senator FAULKNER**—Just the usual dictionary definition, the common usage, is my intention here. Where do I find this in the annual report please? I suppose it is that dot point there:

An applicant discontinued legal proceedings in the Federal Court of Australia against the department arising out of an employment decision. Consent orders were agreed.

Is that it?

**Mr Chester**—I suspect that is it. That is the only one that anyone has been able to indicate to me.

**Senator HOGG**—That is real code isn't it?

**Senator FAULKNER**—That is a terrific description. Do you think that is an adequate description of this case?

**Mr Chester**—I think it is an adequate description of an element of this case, yes.

**Senator FAULKNER**—With all due respect, I do not. I think that is a very poor effort from whomever. If that is the case being referred to, that is an abysmal performance. I am disappointed that the department could not do a bit better.

**Senator HOGG**—I would think you would find out the name of the person who drafted that and give them a severe reprimand.

**Senator FAULKNER**—I want to nail down what the AGS has cost in relation to this. What were the costs of the legal advice that Dr Kennedy sought from the AGS?

**Mr Chester**—I do not have the breakdown between advice sought from AGS pre the appointment of Kennedy and post the appointment of Kennedy.

**Senator FAULKNER**—What is the AGS figure then in totality please?

**Mr Chester**—I believe the total AGS advice is around \$160,700. Somebody down the end will correct me if I am wrong.

**Senator FAULKNER**—Has someone down the end got the breakdown we are looking for?

**Mr Moraitis**—No, Senator.

**Senator FAULKNER**—That is handy. Why wouldn't someone have that breakdown? Why wouldn't we know these amounts sought in advices by Dr Kennedy from AGS?

**Mr Chester**—I am sure we have that figure, we just do not have it with us. The only thing I can say to help is that of that \$160,000 I think well over half has been expended post Dr Kennedy's appointment.

**Senator FAULKNER**—Where do I find in your annual report the detail of legal contracts, AGS contracts and the like? Most annual reports have this. Is that the sort of thing you put in your annual report? I do not have a copy of the annual report with me but I assume it is.

**Mr Chester**—I do not know the answer to that but I am sure it will be there in the financial statements.

**Senator FAULKNER**—I would not be too sure but I will take your word for it. What we have seen of the annual report so far is disastrous.

**Mr Chester**—Our chief finance officer may have the answer.

**Ms Hazell**—The details of the contracts with the Australian Government Solicitor for provision of legal services are actually on our Internet site and they are tabled as part of what is commonly known as the Murray report, the twice annual tabling of contracts in the department of over \$100,000.

**Senator FAULKNER**—Are they in the annual report, Ms Hazell?

**Ms Hazell**—No, this contract is tabled and made public there. Because the contract was signed quite some time ago and it is a contract for a number of years, it does not necessarily appear in each annual report. It is a contract for services, not a consultancy contract.

**Senator FAULKNER**—Which contract are you now talking about?

**Ms Hazell**—I am talking about the contract with the Australian Government Solicitor, which is what you asked for—the contract for legal services.

**Senator FAULKNER**—But other departments put this information in their annual reports. Isn't there a best practice guide to annual reports?

**Mr Chester**—I believe there is.

**Senator FAULKNER**—Has anybody even bothered to open it up lately?

**Mr Chester**—I am sure the department has.

**Senator FAULKNER**—What does the best practice guide to annual reports say about the publication of this sort of material in an annual report?

**Mr Chester**—I do not know the answer to that.

**Senator FAULKNER**—I gathered you did not know. Does someone from the department know?

**Ms Hazell**—The annual report guidelines require publication—not necessarily in the annual report anymore but in a reference to the web site—of consultancy services that are entered into in the year that is relevant for the annual report. There is a dollar limit of consultancy services over \$10,000.

**Senator FAULKNER**—The annual report's reference to this matter we think is at the sixth dot point in appendix 7 on page 326:

An applicant discontinued legal proceedings in the Federal Court of Australia against the department arising out of an employment decision. Consent orders were agreed.

That is the level of transparency we have in the annual report, we think. Can I just be assured that this actually relates to the Smith case? I hope it does.

**Mr Chester**—We believe it does.

**Senator FAULKNER**—When do we think this business is all going to end? So far we have spent \$265,000 going north.

**Mr Chester**—I would hope that this could be resolved fairly soon for the obvious reason that we have a member of staff who is drawing a salary and not working. Obviously it has an impact on the person that has these allegations made against them. Our normal approach is to try and deal with these kinds of issues as quickly as possible because of that. One would hope that everything can be resolved quickly. We now have someone independent from the department who is looking at it very carefully, again for the reasons I gave earlier.

**Senator FAULKNER**—It might be quicker just to burn him at the stake.

**Mr Chester**—I think that is obviously very unfair.

**Senator FAULKNER**—This is high farce.

**Mr Chester**—I do not agree.

**Senator FAULKNER**—We will follow that up at the next estimates, yet again, and find out how far this farce has developed. Chair, to assist the committee—which, as you know, is my practice—I am happy to place four questions on notice about departmental language skills, and six questions on notice mainly about Afghanistan and specifically about the Tokyo donors' conference. I can provide them to the chair now if that would assist the committee. I am happy to direct the questions to witnesses at the table but I know that time is short. I would also like, if I can, Mr Chester, to ask some questions on the National Threat Assessment Centre. I will need to work them up into a form that I can ask on notice. That might assist the committee.

**CHAIR**—Thank you very much, Senator Faulkner.

**Proceedings suspended from 4.51 p.m. to 5.05 p.m.**

**CHAIR**—Estimates are now back in session. I understand from Mr Chester that we only have Mr Gosper here, so we are starting with questions on multilateral trade. I welcome Mr Gosper.

**Senator CONROY**—Can I get a brief assessment of developments at Cancun? What were the positive developments and what were the disappointing developments? I know we had a chat earlier, but I just thought we could get it on the record.

**Mr Gosper**—The major disappointment from Cancun was the failure to actually agree on a framework for these negotiations. A framework would enable us to progress in particular the market access negotiations for agriculture and industrial products. That was not available to us when the meeting broke down over disagreement on the so-called Singapore issues—that is, the four issues of competition, investment, trade facilitation and transparency in government procurement. This was despite an offer at the last gasp of the meeting from the principle demanders on the Singapore issues—that is, the European Union—to concede ground on two of these core issues. That was a great disappointment. We thought it was particularly important that we reach agreement on some framework for the market access negotiations. On the basis of the preparations for the meeting, we thought that there was some prospect for us to reach a sufficiently ambitious outcome on both agriculture and industrial products as the key parts of that from Australia's perspective.

A couple of dynamics that are relevant to the meeting were: the preparation before the meeting by the US and the EU of an agriculture paper; the opposition of many developing countries, including the Africa block, the ACP preference beneficiaries and the least developed countries, to the Singapore issues; and the emergence of the G20 countries, so-called at that time, seeking an ambitious result on agriculture alongside the Cairns Group.

At the moment, people are acting on the basis of the final agreement reached at Cancun—that is, senior officials would be instructed to go away to resume their work with a view to a further meeting in Geneva on 15 December. In the interim, a number of meetings have been taking place in Geneva to see what further agreement can be reached on the four issues which are now seen as critical to advancing the round: agriculture, industrial products, the Singapore issues and the issue of cotton—that is, the initiative that has been put forward by four West African countries for reform to the world cotton regime. Those discussions are continuing. At this stage, it is very unclear where they will lead us and whether they are going to result in enough further momentum in the negotiations to have some opportunity to conclude a framework at the 15 December meeting. But Australia is doing all it can to encourage countries back to the table and to maintain a high level of ambition.

**Senator CONROY**—Were there any positive developments at all?

**Mr Gosper**—The most positive development of all was confirmation from many members that they sought a very ambitious outcome on agriculture. In other words, they wanted a result that fully met the Doha mandate, one that provided very substantial improvements to market access, cuts to domestic support and export subsidies, and I think that came through loud and clear at the meeting. That was probably the principal positive development—that in fact the course of support for reform of world agriculture has been strengthened, if anything.

**Senator CONROY**—It is a pretty thin positive in terms of an outcome. Are we sure we can hold that in place? I am not quite sure what the trade phrase is. Is that position still on the table if negotiations resume?

**Mr Gosper**—Ministers agreed at the end of the conference that they would capture all the existing work, which includes the various proposals that have been brought to the table and the text that was presented on 13 September by the chair of the meeting, Dr De Brez. In our view, that presents a reasonable platform and a starting point for us to resume negotiations

and see whether we can ratchet them up to a level that is fully consistent with the Doha mandate. These sorts of meeting, as you say, often do not result in big outcomes. Of course, that is nothing new in the multilateral system, and we saw during the Uruguay Round that it is not unusual to have these large meetings that fail where there are setbacks of some sort or another. For an endeavour of this magnitude, you can expect setbacks from time to time. The important thing, when you have such a large organisation dealing with such complex and important issues, is that you persist with the effort, and that is precisely what we are doing.

**Senator CONROY**—Does that work—you describe it as ‘capture the work’—include the EU’s proposals on the last day about the Singapore issues? I understand the text was presented and that would fall within the definition of the work captured. But, with regard to the proposal from the EU, which was, as I think most people would identify, a significant shift in the EU’s position, is that captured?

**Mr Gosper**—It is not clear. In some of the internal deliberations of the European Commission with the member states—the European member states now—they have taken the position that, as their offer to withdraw two of the four Singapore issues was not accepted at Cancun, it is no longer on the table. It is not quite clear to us, while they are still going through this process of internal reflection amongst the member states, whether the EU will keep in play the position that it put on the table at Cancun for the negotiations. We hope that that is clarified very soon, and we will be making clear to the commission and to the individual member states that the sooner that is done the better.

**Senator CONROY**—To be fair, though, there are still very widely divergent views on agriculture. I know some progress has been made but there are still some fairly widely divergent views.

**Mr Gosper**—We were not within a short distance, certainly, of agreement on agriculture texts. We thought we were within an achievable distance within the course of the meeting—the final discussion that we needed on agriculture, the final green room type discussion that is usually required to resolve these more difficult issues. It is true to say that there were many areas where we were seeking improvement. But, again, we considered that, if we had had the opportunity to have that final discussion—in other words, if the meeting had not broken on the basis of the Singapore issues and had continued with the discussion on agriculture—we would have had some prospect of bridging the gaps.

**Senator CONROY**—What is next? Where does Doha go from here? In your view, are we still on track to meet the 2005 deadline?

**Mr Gosper**—Realistically, it is going to be very difficult to meet the end of 2005 deadline. Much will depend on what we are able to achieve in the December meeting and whether we can set a work program in place that will allow us to agree these difficult issues of agriculture and industrial products sometime early in the new year. If we cannot do that then I think meeting the end of 2004 deadline for this very ambitious three-year time frame will be very difficult to achieve. I think most members would concede that now, although many like us think that there is some prospect and are seeking to do their best to meet their deadline.

**Senator CONROY**—I note that Minister Vaile said after Cancun that it would require divine intervention to meet the 2005 deadline. Are we still committed to achieving divine intervention?

**Mr Gosper**—I am not quite sure how we achieve it, Senator, but it would not hurt.

**Senator CONROY**—There have been some fairly sulky comments from the US and the EU. Do you think they are still committed to the 2005 deadline?

**Mr Gosper**—The US was one of the signatories to the declaration that recently came out of the APEC leaders meeting, where all APEC members reconfirmed their intention to move the negotiations forward, to do their best meet the Doha mandate and the time line, and that they were prepared to work on the basis of the De Brez text as a starting point. In most of our representations around the globe with developing and developed countries, we get similar expressions of commitment to resuming the negotiating process and, on the part of many, to regard the De Brez text as a starting point. The EU though, as I have said, is going through a period of internal reflection and has not yet made clear when it will be able to fully return to the table. We see some positive signs but not yet a clear enough signal.

**Senator CONROY**—So they have not quite retrieved the dummy yet?

**Mr Gosper**—Not yet, Senator.

**Senator CONROY**—What has Australia done specifically? Are we approaching the other nations to try to get the negotiations back on track? Have we got a positive agenda?

**Mr Gosper**—Absolutely. We have been very active, for instance in encouraging the APEC declaration and made early representations with all APEC members to that effect. We have made representations around the globe about re-engaging the negotiating process. We have made representations to the European Commission and to all the individual European member states. We have had a number of meetings of the Cairns Group in Geneva which have been very positive. They have included the full membership of the Cairns Group, including those who are also members of the G20. We have done a lot of further work in Geneva on the specific issues that are the subject of consultation now, with a view to trying to get the best possible result we can from this meeting in December.

**Senator CONROY**—What do you see is the purpose of the mid-December meeting?

**Mr Gosper**—The purpose of the mid-December meeting from our perspective is—

**Senator CONROY**—What I mean is who will be there? Will all trade negotiators be there?

**Mr Gosper**—Senior officials from all the WTO members—all 148 WTO members. No doubt there will be range of other meetings that will occur immediately before and on the margins of this of various other groups of one sort or another, but the main meeting will be a meeting of the General Council that will involve all WTO members.

**Senator CONROY**—Mid-December is when?

**Mr Gosper**—It is 15 December.

**Senator CONROY**—Do you think, given the collapse with the trade ministers and their equivalents—whatever the other nations call their trade negotiators at the political level—much can be achieved in Geneva without the presence of the Mark Vailes and the equivalents?

**Mr Gosper**—The judgment of most members is that ministers will need to be involved at some point to make the crucial decisions but, for the moment, the main need is to re-establish the process, to bring people back to the negotiating table. That is best done in Geneva amongst the permanent representatives in the lead-up to this 15 December meeting.

**Senator CONROY**—Given the sticking points that caused the breakdown in Cancun, I cannot see the trade representatives being able to go any further than the ministers and equivalents were able to in Cancun. But, as you say, it is not really trying to resolve anything; it is about putting the process back on track. Is that how you would describe it?

**Mr Gosper**—Of course they cannot make the final details, but they can play an important role in putting the process back on track. It is very clear that, because of the way the Cancun meeting unravelled and eventually folded, there is much misunderstanding of what issues were on the table and how they were being advanced and, indeed, there is a lot of second-guessing now about whether people made the right call in deciding on the basis of the Singapore issues that the meeting should be concluded. So I think clarifying some of those issues and re-establishing confidence in the negotiating agenda is the primary need at this point.

**Senator CONROY**—When is the next formal ministerial meeting or mini-ministerial meeting planned?

**Mr Gosper**—There is no mini-ministerial meeting, as you have put it, which is an informal process that has been done some half-dozen times over the last couple of years on the initiative of a specific WTO member.

**Senator CONROY**—Montreal was a mini meeting.

**Mr Gosper**—Montreal, Sydney, Tokyo, Sharm el Sheik and so forth. There is no formal meeting. The next full meeting—formal ministerial meeting—of the WTO will be hosted by Hong Kong, presumably towards the end of 2004.

**Senator CONROY**—Would it be fair to say that you would not anticipate much progress unless ministers got together some time before Hong Kong?

**Mr Gosper**—Political engagement will be essential to move the process along, but at the right time. The judgment is basically that it would be premature amount to bring ministers together because you are only bringing together a small group of ministers. It is best to deal with the full membership and ensure that there is mutual confidence in the negotiating agenda before such mini-ministerial meetings are convened.

**Senator CONROY**—What approach have the US taken following Cancun? Do you think they are still committed to the multilateral system of trade negotiations?

**Mr Gosper**—The US have made public statements to indicate that they are still committed to the multilateral system and the Doha Round. That is evidenced by their endorsement of the APEC leaders' statement, which made references to that. They have also made quite clear that they have alternative or other options that they are pursuing in the interim, including

negotiation of the FTAA with South America and other bilateral trade agreements, including the one with Australia.

**Senator CONROY**—I want to try to pin down a little bit more the breakdown at Cancun. Do you think it was only the Singapore issues and that, if there had been a negotiated outcome on the Singapore issues that was acceptable to everybody, the prospects for making progress on agriculture and non-agriculture market access were such that we could have got there?

**Mr Gosper**—There were three big issues that were left, aside from Singapore issues: the industrials text, which still had a long way to go, including from our perspective; agriculture; and the cotton initiative. So there were those three quite big and quite difficult issues. But as our minister, Mr Vaile, said at the conclusion of the meeting, we were disappointed that the meeting ended in the way it did because we thought we had some opportunity in that last 24 hours to reach or at least break the back of those three issues. So there was some prospect. There will be mixed views on that, of course, but we prefer to take a more optimistic view. We were certainly committed to reaching agreement if we could.

**Senator CONROY**—Who are the pessimists?

**Mr Gosper**—Some are pessimistic on the basis of the Singapore issues, including the African countries and some of the least developed countries. Some, such as India, took a very hard view on both agriculture and industrial tariff negotiations and what they were being asked to do. On the cotton issue there was still a very big gap between the position of many developing countries and the US on exactly what could be delivered there. So on each of those issues there were signs that it would be very difficult to bridge the gap.

**Senator CONROY**—What role did the Cairns Group play in the lead-up to Cancun and at Cancun?

**Mr Gosper**—It played its normal role—in other words, it was a key player in setting out agriculture negotiating positions, including, of course, dealing with the major players. In Cancun it met daily at senior official or ministerial level. It met with the EU. It met with the US. It included meetings that involved all those countries that were members of the G20. It was involved in all the key discussions on agriculture, so it played very much the normal role that you would expect of the Cairns Group—that is, right at the centre of action on agriculture issues.

**Senator CONROY**—I want to probe a little further on this. When was the last meeting prior to Cancun of the Cairns Group of Ministers?

**Mr Gosper**—There are, of course, occasions where groups of Cairns Group ministers meet together, taking the opportunity of other international meetings and so forth. The last full meeting of the Cairns Group, as I recall, was in Bolivia earlier this year. I do not have the specific timing here.

**Senator CONROY**—Was it February, March, April?

**Mr Gosper**—Early in the year, yes. The Cairns Group, for a number of years, has been meeting once-yearly at full ministerial level. Of course, those meetings are supplemented by frequent direct conversations, telephone conversations and correspondence, particularly from the Chair of the Cairns Group, Australia, with all the members of the Cairns Group.



**Senator CONROY**—You mentioned there were sometimes other gatherings.

**Mr Gosper**—For instance, there may be FAO meetings or APEC meetings or meetings that Australia has with the ASEAN countries where you would get three, four or five Cairns Group ministers together.

**Senator CONROY**—If I could call that a partial caucus, for simplicity of language, when were there some partial caucuses between Bolivia and Cancun?

**Mr Gosper**—I would have to take that on notice, Senator. I do not have the details.

**Senator CONROY**—None of them leap to mind?

**Mr Gosper**—Nothing specific leaps to mind at the moment, no.

**Senator CONROY**—I accept the point you make about the informal contact by telephone or perhaps even when passing through an individual nation and catching up.

**Mr Gosper**—Of course, the main day to day contact of the Cairns Group is amongst all the Cairns Group ambassadors in Geneva, who meet very regularly—weekly, if not more frequently.

**Senator CONROY**—Did the Cairns Group members come to an agreed position on agriculture prior to the ministerial meeting in Cancun?

**Mr Gosper**—The Cairns Group has come to positions on agriculture prior to Cancun; in fact, it has made a large number of negotiating proposals on each of the three pillars and on other elements of the agriculture negotiations. Those have been joint proposals that have been made over the last year or so.

**Senator CONROY**—Was there a reconfirmation at Bolivia?

**Mr Gosper**—Yes, there was a statement.

**Senator CONROY**—So Bolivia was the last time that people formally signed off?

**Mr Gosper**—Formally, with ministers discussing negotiating proposals together in such an annual format, yes.

**Senator CONROY**—At Bolivia did everybody signed up again?

**Mr Gosper**—I believe that was the case. I was not there myself. I would have to check that. Certainly there was a joint statement released by Cairns Group ministers at the end of the meeting.

**Senator CONROY**—If I used the phrase ‘formal consultation’ what would that mean to you? If I said what formal consultation was undertaken between the Australian Minister for Trade and Cairns Group counterparts prior to Cancun, would that have a different connotation from the partial caucus situation? I am trying to make sure that I am asking the questions in language that we both understand.

**Mr Gosper**—I am not sure that it has much meaning in the Cairns Group context. The Cairns Group is not some legal entity or anything like that; it is a coalition that has been in existence since 1987 of countries that consult and coordinate with each other in the agricultural negotiations of the WTO. It is not a unique coalition—there are many other such coalitions that operate in Geneva—but it is a coalition of consultation and coordination.

**Senator CONROY**—You might need to take this question on notice, because it is a bit more specific. How many meetings took place between the Australian Minister for Trade and his Cairns Group counterparts in the three months prior to Cancun?

**Mr Gosper**—I would have to take that on notice.

**Senator CONROY**—As I said, I thought you might say that. Was there any correspondence between the Australian Minister for Trade and his Cairns Group counterparts prior to the ministerial meeting in Cancun?

**Mr Gosper**—There was, Senator, but I will take on notice the specific dates, if that is what you are asking.

**Senator CONROY**—Yes. I guess I am not entitled to ask what was in it?

**Mr Gosper**—The correspondence, in general, dealt with the specific negotiating issues that the group was facing, including the lead-up to the Cancun meeting and the position the group would take at that meeting.

**Senator CONROY**—Could you take on notice when the correspondence occurred—and just isolate it to the three months—and, if possible, a summary of the main points in the correspondence?

**Mr Gosper**—Of course. You will appreciate that the Montreal mini ministerial, just a few months before Cancun, was a particular focus both for direct face-to-face contact and for communication with other Cairns Group members.

**Senator CONROY**—When was Montreal?

**Mr Gosper**—It has slipped from my mind, I am sorry; I will take that on notice.

**Senator CONROY**—Sure. Was it before or after the EU-US joint statement?

**Mr Gosper**—It was before. In fact, the EU-US paper resulted from that meeting. It was at the end of July, I am told.

**Senator CONROY**—So the Montreal meeting was at the end of July?

**Mr Gosper**—That is right.

**Senator CONROY**—And the US and the EU go away as a result of that meeting to draft a text?

**Mr Gosper**—They came back in August with such a text, yes.

**Senator CONROY**—Was any consideration given to pulling together a discussion among Cairns Group members, to have a formal get together to discuss the EU-US text?

**Mr Gosper**—There was, as soon as the text was available.

**Senator CONROY**—There was a meeting?

**Mr Gosper**—In Geneva, yes.

**Senator CONROY**—I was talking about ministers.

**Mr Gosper**—There was consideration, but getting 17 ministers together at the drop of a hat is not always the easiest thing to do.

**Senator CONROY**—A partial caucus—correspondence?

**Mr Gosper**—Of course they met in Montreal.

**Senator CONROY**—The point, though, is that that was prior to the EU-US text.

**Mr Gosper**—Of course, and there was correspondence and contact after the EU-US text was released, including on the nature of our message back to the EU and the US on the shortcomings of its approach.

**Senator CONROY**—Was there a formal communique on behalf of the Cairns Group to the US?

**Mr Gosper**—Not a formal communique, no, but there was certainly—

**Senator CONROY**—You mumbled quietly?

**Mr Gosper**—No, we do not mumble quietly. We made direct representations to both.

**Senator CONROY**—Is it possible to get a copy of those—or the date and a copy?

**Mr Gosper**—We can give you some details, yes.

**Senator CONROY**—Did any Cairns Group members express any concerns about the agreed position of the Cairns Group prior to the ministerial meeting in Cancun; and, if so, which members and what concerns were expressed?

**Mr Gosper**—Maybe in answering this question I should make clear that it is always difficult to get agreed positions on agriculture amongst 17 countries that include both developed and developing countries. So on almost any issue that the Cairns Group addresses there will be a range of views, and there is often disagreement of one sort or another—whether we are talking about market access, domestic support or export subsidies.

**Senator CONROY**—You said that in Bolivia they all recommitted.

**Mr Gosper**—They recommitted to the Doha mandate, but we are talking also about very detailed negotiating positions that are put forward by the Cairns Group on each of these three pillars that go well beyond the Doha mandate in detail. There is always a range of views and differences of opinion on one issue or another, but I think most members—in fact, all members—considered that the EU-US paper was significantly short of what was required to deliver the Doha mandate.

**Senator CONROY**—Isn't it fair to say though that some members of the Cairns Group did not just think it was short, they felt particularly aggrieved by it?

**Mr Gosper**—There was a particular sense of that, in particular, on the part, for instance, of Brazil which saw a specific provision of the text as being targeted at large, competitive, agricultural, developing countries—in reality, seeking a different approach to according special and differential treatment to large, competitive, agricultural, developing countries. Brazil certainly felt aggrieved by that, as did Argentina.

**Senator CONROY**—Okay, it was Brazil and Argentina in particular. I appreciate that running a group of 17 with many different personalities, individuals and perspectives is always a tricky task. We are the recognised leader of the Cairns Group. It is our job to keep

everybody in the camp. Is that a fair way to describe it? You have to massage them, keep them happy—

**Mr Gosper**—We are the chair of the Cairns Group. From Australia's perspective, what we are looking to do is to ensure that the group is effective in seeking what we all think should be the end point and that is an appropriately ambitious outcome to the agriculture negotiations.

**Senator CONROY**—Going back to the Cairns Group position for a moment, did any Cairns Group member, which is a developing country, express concerns about the agreed position of the Cairns Group prior to the ministerial meeting in Cancun?

**Mr Gosper**—Again, it depends on what you mean by the position of the Cairns Group. The group was united in making its negotiating proposals but—

**Senator CONROY**—It was in Bolivia. I am trying to find out whether or not everyone was still in the cart going into Cancun.

**Mr Gosper**—Absolutely.

**Senator CONROY**—All 17 nations were still behind the Cairns Group going into Cancun?

**Mr Gosper**—That is right and they still are now.

**Senator CONROY**—No member expressed concerns about the position?

**Mr Gosper**—No member expressed concerns about Cairns Group support for an ambitious outcome to the agriculture negotiations consistent with the Doha mandate.

**Senator CONROY**—I am sure we can be a little more specific than 'an ambitious outcome'. Cairns Group did not propose the words 'an ambitious outcome'; they proposed a package.

**Mr Gosper**—Cairns Group members have signed up to a number of joint negotiating proposals that were made to other WTO members. No Cairns Group member has stepped back from any of those negotiating proposals.

**Senator CONROY**—So nobody in the Cairns Group expressed any concerns about these joint proposals going into Cancun?

**Mr Gosper**—Some of them were hard negotiated amongst the Cairns Group itself but no member had—

**Senator CONROY**—That was back in Bolivia though?

**Mr Gosper**—No, that has been over the last couple of years. These negotiating proposals are done over a long period of time and at different stages of the negotiations. No member has stepped back from the specific negotiating proposals that the Cairns Group has made.

**Senator CONROY**—What I am confused about and I am trying to get my head around is that we had an existing position that was reaffirmed in Bolivia. A significant development takes place at the end of August, I think you said, with the EU and US coming up with a joint text.

**Mr Gosper**—Yes.

**Senator CONROY**—We did not seem to do anything at a formal level. We made representations I think you said. Was there any push by any Cairns Group members to have a Cairns Group response to the EU-US text on agriculture?

**Mr Gosper**—There was consideration given to the possibility of a Cairns Group position but—

**Senator CONROY**—Who was agitating for that?

**Mr Gosper**—All members of the Cairns Group considered that, but the view was taken that the group had put a number of negotiating proposals on the table and they would stand by those proposals.

**Senator CONROY**—Did Australia take a position on whether we needed to have a response to the EU-US text?

**Mr Gosper**—I take it that you are talking about a specific countertext that would stand there in opposition—

**Senator CONROY**—Or counterproposal. I do not want to be trapped by being imprecise in my words.

**Mr Gosper**—Sure. That would stand there in contrast to the EU-US paper. My point is that we had made a number of such proposals over a long period of time. The process then was not that this EU-US paper would be accepted as the negotiating document on behalf of all members—and that was a specific point of representations by the Cairns Group. The point was that it was then in the hands of the chair of the general council and the chair of the agriculture negotiating group to come up with a specific negotiating proposal that would incorporate in our view a proposal for a negotiating mandate that was consistent with the Doha mandate.

**Senator CONROY**—Mr Gosper, you are an expert in this and I am a beginner, but it seems to me that we had our existing text—Boliva. Maybe it was refined a little on the way. We put that on the table. We have done it consistently, as you have described. That took us into Madrid. That was our position in Madrid. The US came up with a text after Madrid. I would have thought that the thing to do next was to come back with a further proposal. In negotiations you do not just say, ‘That is what we have said for the last 12 months; we are not going to look at your position and refine our existing position following the production of that text.’

**Mr Gosper**—We could have gone on for a long time doing this. The fact is that we put negotiating proposals on the table. The EU-US put a joint proposal on the table. We made it quite clear that it did not meet our required level of ambition. We could have responded to that, as could many other members. A number of other members put negotiating proposals—

**Senator CONROY**—I am talking about a Cairns Group response to it.

**Mr Gosper**—A number of other members put proposals on the table, such as Japan and Korea, who repeated their position on multifunctionality. We had a position on the table. The point was that the EU-US paper was not going to be the basis of negotiation. The specific negotiating text would be one that would be produced by the chair of the agriculture

negotiating group and the chair of the general council and it was that on which the focus had to be put.

**Senator CONROY**—I appreciate Cancun was a much broader membership than traditionally, but the US and the EU have tended to pretty much dominate the outcomes. Is that a fair description? In the past, if those two blocs of world trade came up with a joint position maybe there is a bit of haggling around the edges but that has tended to be a pretty dominant position in the WTO. Am I being unfair?

**Mr Gosper**—I do not think you are being unfair. Together they still account for a large proportion of world trade so they are fairly dominant. The important development out of the Uruguay Round was a more assertive further voice on agriculture, namely from the Cairns Group. A more recent development at Cancun and since the Doha ministerial two years ago has been the fact that the Cairns Group has been joined by many other countries, in particular developing countries seeking a strong result on agriculture. That is making it much more difficult for the EU and the US to have their way on agriculture, as we saw at Cancun.

**Senator CONROY**—The Cairns Group has been the third force. We have proudly been the sponsor and the secretariat, as I understand.

**Mr Gosper**—We have effectively acted in that role.

**Senator CONROY**—In terms of negotiations—and I have been involved in a couple over the years, not trade agreements but just negotiations—

**Senator FERGUSON**—In Victoria, Senator Conroy?

**Senator CONROY**—It is life in Victoria, Senator Ferguson. You put your proposition on the table and the person you are negotiating with puts their proposition on the table. You respond by putting another proposition on the table. It goes on like that trying to hopefully iterate towards a common point. Is that a fair way to describe it? We have put a proposal on the table and the major traditional dominating forces have put a proposal on the table and we have said, ‘Oh, we already have a position.’

**Mr Gosper**—In this sort of process what we are trying to do is make our negotiating proposals and, through those, see emerge a text which reflects as much as possible the positions we have taken in the crucial negotiations that will need to occur amongst ministers at the end of the negotiations. That is the process we were engaged in in the lead-up to Cancun.

**Senator CONROY**—I think I had just become our trade spokesman when the EU and the US came out with their joint statements. I thought, ‘Phew, it is going to be difficult to roll this one, because the big players have got together and done a cosy little deal to look after themselves and basically the rest of us can go fish.’ I appreciate that we individually made direct representation but I am trying to understand why we did not find a way to get some sort of gathering together or caucus some sort of agreed position that would represent the views of the Cairns Group at that point.

**Mr Gosper**—I think the views of the Cairns Group were clear. We did not need to caucus to determine that the Cairns Group had a clear view on the unacceptability of the EU-US text. The negotiations at that stage were being undertaken in Geneva amongst our permanent

representatives who were preparing advice for our ministers. The Cairns Group made it very clear in Geneva that the EU-US text was not a basis for negotiation.

**Senator CONROY**—Could Australia live with the EU-US text?

**Mr Gosper**—No.

**Senator CONROY**—So at a Geneva level we were saying to them, ‘No, this isn’t on.’

**Mr Gosper**—Absolutely.

**Senator CONROY**—Given that we did not develop a text to respond to the EU text, why do you think half the Cairns Group went for a walk and did develop one and formed G20—or G21, G22, G16 or whatever number it is currently? Half of our nations walked out and wrote a text in response to the EU.

**Mr Gosper**—The G20 group or whatever we call it now has 17 members. A number of members have left over the past few weeks. I think that the genesis of this grouping really lies in coordination between Brazil, India and South Africa in the context of the UN and political issues. It seems to have jumped over to the economic sphere and coordination amongst developing countries on trade issues, and specifically on agricultural issues at this point. Some members of the group thought that it was important, at least tactically, to respond to the EU-US paper by bringing into play a group of developing countries—bearing in mind of course that the Cairns Group is a developed-developing country coalition—

**Senator CONROY**—It is a mix.

**Mr Gosper**—to focus particularly on developing country perspectives and to involve India and China in a much more explicit and formal way than the Cairns Group has done over the last couple of years. The Cairns Group has had a dialogue with India and China over the last few years, but it is not always easy to reach agreement with their positions on every issue. This group thought that in the current negotiating context there was merit in having a purely developing country coalition that would make quite clear that, as developing countries, agriculture was central to their interests and they needed an appropriately ambitious result. All of the members of that group who are members of the Cairns Group—there are nine G17 or G20 members who are members of the Cairns Group—have made it quite clear to us since then that they remain very committed members of the Cairns Group and want to ensure that the group continues its effective work.

**Senator CONROY**—I appreciate that. I have had also conversations with some of these countries myself, and I understand they are equally committed to staying as part of G20—or whatever they want to call themselves—and remain committed to the objectives of that as well.

**Mr Gosper**—That may well be but, as both groups are committed to seeing fundamental reform of world agricultural trade, that is not necessarily a bad thing.

**Senator CONROY**—Could I isolate it down to what Australia’s position was, as opposed to the Cairns Group’s position? You said that there was lots of discussion inside the Cairns Group about whether to develop a text on agriculture in response to the US-EU approach. What was Australia’s view? What position did we put about developing a further text?

**Mr Gosper**—We saw no point in developing a further text at that point. Our focus was on ensuring that the Geneva process worked—that is, that the relevant chairs produce a text which did not simply replicate the US-EU text but put something in play that had genuine areas of ambition.

**Senator CONROY**—Was Australia at all concerned that, if the Cairns Group responded to this text—and with Australia as the dominant or leadership figure in the Cairns Group—that it could complicate negotiations for Australia's US FTA?

**Mr Gosper**—No, not at all. We were concerned about responses to the US text, which of course have no specific negotiating status, which would just encourage a rash of further proposals from many other members and further complicate the process of seeing produced an acceptable draft text for ministers to consider.

**Senator CONROY**—The gorillas of world trade, the EU and the US—they have been pretty successful in the past in getting pretty much the position they want—produce a text; Australia is opposed to a further text to respond to the US-EU text; and half of the Cairns Group goes off and writes one anyway.

**Mr Gosper**—No, I do not think that is the sequence of events at all. The US-EU put forward a text which almost all members say is not an acceptable basis for negotiations and ask, in fact, that, in producing a draft text for ministers to consider, that draft text more appropriately represent the level of ambition sought by the vast majority of members.

**Senator CONROY**—The US and the EU target Brazil, one of the key members of the Cairns Group, and we argue against responding. Is it a great surprise that Brazil wandered off and were one of the key organisers? I know you made the point about 'political' and the UN, but the EU and the US specifically target—at an economic level; not at a political level—Brazil and Argentina, I think you said, key members of the Cairns Group, and we opposed responding on behalf the Cairns Group?

**Mr Gosper**—We responded in the most effective way possible: we said that the EU-US text was not an acceptable basis for negotiations.

**Senator CONROY**—But we did not want to fashion a response other than to say, 'We don't agree.'

**Mr Gosper**—The point is not to encourage a process of papers which just replicate existing positions; the point is to actually establish a piece of paper—a negotiating proposal—for ministers to consider that has the required level of ambition as a starting point.

**Senator CONROY**—I just get the sense that the US-EU seem to have treated everybody else with a bit of contempt with this proposal, which was seen by everybody else in the world as completely self-serving.

**Mr Gosper**—That may be the result, but the reality is, of course, that all the participants at the Montreal meeting asked the US and the EU to see if they could resolve the differences that they had on market access—that is, the difference between the Uruguay Round and the Swiss based formula for market access. So, to be fair, they were asked to go away and see if they could come up with a piece of paper. The problem is, as you say, they came back with a piece of paper which went much wider than market access and which had an outcome on export



subsidies and on domestic support as well as market access that fell well short of what was required. That is why most members—and certainly Cairns Group members—made it very clear that it could not be an acceptable basis for negotiations and it would not be acceptable for ministers to be presented with this text as a basis for their work.

**Senator CONROY**—But negotiations, I reiterate, are about give and take: they put a proposal on the table and we put a proposal on the table. And particularly given it has targeted some very close allies of ours and members of our group, Australia then says, ‘No, we don’t think we should respond in a formal counteroffer’—or counter-text; call it whatever you will—and so nine members of our group go off and draft a text.

**Mr Gosper**—No, the process in the lead-up to Doha and in the lead-up to Cancun has been the chairs of the negotiating group and the chair of the general council, on their own authority, presenting a text which, in their judgment, best reflects where agreement may lie between members. That was the process that we faced before Cancun.

**Senator CONROY**—I understand that, but unfortunately the US and the EU did not seem to be playing by those rules. They just went off and did their own thing and they have been very successful in imposing their will on everybody else. As I said, my reaction, upon seeing this text and seeing the commentary on it and what people thought of it, was ‘Oh, gawd, how are we going to deal with this?’ Australia’s response was to sit on its hands even though it targeted Brazil and Argentina.

**Mr Gosper**—I do not accept that at all. I cannot accept the assertion that Australia sat on its hands. I made quite clear how Australia and the Cairns Group responded to the EU-US text.

**Senator CONROY**—But clearly a majority of our Cairns Group felt that there was a need for an alternative text. Nine of our colleagues in the Cairns Group went off and did draft an alternate text anyway.

**Mr Gosper**—You could put it as a draft of an alternative text. All it is is a recapitulation of the Cairns Group text, with one small difference, in respect of market access, where it proposed very little if any commitment for developing countries. That text had no particular significance or role in the process. It is just like the EU-US text—one of many proposals that have been made over a period of time.

**Senator CONROY**—Traditionally the Cairns Group has been described as the third force in world trade politics. Do you think we still have that mantle right now?

**Mr Gosper**—Maybe the Cairns Group is one of four significant forces in world trade negotiations at the moment. I think the important point is that the Cairns Group, including those nine members who are also members of the G-20, has been joined by many other countries, including developing countries, arguing for an ambitious agricultural result. I do not see how that is a bad thing.

**Senator CONROY**—Can you name any other fourth forces? I have heard of the phrase ‘third force’; I have just never heard of the phrase ‘fourth force’.

**Mr Gosper**—Maybe I should not have put it that way, but the fact that we have had China, India, Egypt, Pakistan and Mexico—countries which traditionally have not been major

participants in the debate about agricultural liberalisation—now joining the fold as significant developing countries in arguing that there can be no conclusion to the round without an ambitious result on agriculture is a positive development.

**Senator CONROY**—Have any other countries expressed an interest in recent times in becoming a Cairns Group member?

**Mr Gosper**—Over the last few years there have been various expressions of interest from other countries in Cairns Group membership. The Cairns Group has basically decided, over many discussions, not to address this question at the moment. We have, rather, decided that we would have a looser approach to membership—in other words, we would involve a number of other countries in regular meetings of the Cairns Group from time to time. For instance, over the last few years, we have invited a number of other countries to be represented at the annual ministerial meetings—Egypt, Kenya, Uganda, China, Pakistan and so forth. Many of these ministers have actually participated in Cairns Group meetings and have said that they share similar objectives and look forward to cooperation with the Cairns Group.

**Senator CONROY**—Which countries have, in the last few years, expressed a desire to join the Cairns Group?

**Mr Gosper**—I will have to take that on notice.

**Senator CONROY**—You did indicate that a few had and I thought you might know one or two off the top of your head.

**Mr Gosper**—There have been expressions of interest from some of the Central American countries, for instance.

**Senator CONROY**—But we essentially have a position that no-one else is allowed to join the Cairns Group at the moment—is that right? We are knocking back people?

**Mr Gosper**—To be frank, coordination of a group of 17 countries which crosses so many continents and the developed-developing country divide is no easy thing for any of us. I think the viewpoint has been that, for the time being, the Cairns Group is best to maintain its cohesion but to reach out to other countries and involve them in a close cooperation and consultation. That has occurred both at the annual ministerial meetings and also in our Geneva process, where we regularly meet with countries of the sort I have mentioned.

**Senator CONROY**—How many countries have joined the WTO in the last few years?

**Mr Gosper**—We began the Uruguay Round in the late eighties with something like 87 countries; now we have 148. So over the last decade we have had about 60 countries join.

**Senator CONROY**—So it has almost doubled. When was the last time we let someone join the Cairns Group?

**Mr Gosper**—We have had a number of new members over recent years—for instance, Paraguay has joined, Costa Rica has joined—

**Senator CONROY**—When did they join?

**Mr Gosper**—Guatemala has joined

**Senator CONROY**—In what years did they join, Mr Gosper?

**Mr Gosper**—The two Central American economies were a couple of years ago—two or three years ago. If you are interested in specific details, I will get them for you.

**Senator CONROY**—Thanks. You can see the point I am trying to get my head around. WTO membership has almost doubled and we have eked a couple in. Whereas back in the early days we represented a significant proportion of the membership, with some of the recent additions—China obviously being the biggest—the overall membership as nearly doubled, yet we have still maintained a relatively stable number and do not want any more.

**Mr Gosper**—I do not think our main ambition is to increase the Cairns Group; our main ambition is to get the widest possible support for a strong result on agriculture. I think Australia and the Cairns Group have been spectacularly successful on that front.

**Senator CONROY**—I am not being critical of the Cairns Group. It is acknowledged traditionally as the third force—we are probably a fourth force now—but we are universally acknowledged as a very positive driver of trade liberalisation, particularly in agriculture. I do not want you to think I am being critical of the outcomes we have achieved to date.

**Mr Gosper**—I am sure you understand that I believe the Cairns Group is still the third force in agricultural negotiations. The fact that it has been joined by other members in arguing for agricultural trade liberalisation is a very positive aspect.

**Senator CONROY**—I am intrigued by one of the nations that has run up the free trade in agriculture flag: India. It has not been a traditional supporter of agricultural liberalisation, has it?

**Mr Gosper**—No, it has not.

**Senator CONROY**—Are they advocating that they would provide reciprocal access to anybody else? They are demanding a lot of things for themselves. Are they advocating any access to their own markets?

**Mr Gosper**—No, they are certainly not advocating it. That is the weakness in the G20 position. As I said, they argue for little if any market access commitment on the part of the developing countries.

**Senator CONROY**—Given that you still believe we are the third force, which is what I think you said a minute ago, was there any capacity to pull together a compromise text between the US, EU and G20? Would that have been a positive role for the Cairns Group to have played?

**Mr Gosper**—I do not think so because the US certainly made it very clear that, as part of an acceptable outcome for it on agriculture—in other words, an outcome that involved it cutting its own domestic support more deeply—it would need market access improvements from the developing countries. That would include, of course, countries like India.

**Senator CONROY**—When did the minister and trade officials first become aware that key members of the Cairns Group—South Africa, Brazil and Indonesia—were developing an alternative coalition, a G20 or whatever you want to call it, with another approach to agricultural reform?

**Mr Gosper**—It was not another approach to agricultural trade reform; it was basically the same position with an important difference. Shortly after the EU-US—

**Senator CONROY**—It is a fairly substantial difference. We could haggle about the words ‘substantial’, ‘minor’, ‘flawed’ or whatever but it was a difference. When did we first become aware that there was a different position evolving?

**Mr Gosper**—Shortly after the EU-US paper was presented Brazil came to talk to us about a proposal that they had in mind, and that they were talking about at that point with a number of other developing countries, to respond to the EU-US text.

**Senator CONROY**—That was around September?

**Mr Gosper**—Shortly after the EU-US paper was presented.

**Senator CONROY**—Which I think we said was the end of August.

**Mr Gosper**—August, yes.

**Senator CONROY**—So sometime in September Brazil approached us. What was the basis of their approach? Were they asking us to sign up, were they asking for assistance in pulling together a new coalition? What was the tenor of the discussion?

**Mr Gosper**—They were interested to know whether we could support the position they were putting forward. We looked at it hard. We decided we could not because of the one important difference that we have discussed. We made a number of textual suggestions to strengthen that area and some of them were taken up.

**Senator CONROY**—Before Brazil approached us in September, did the department receive advice from a large extensive network of posts that an alternative force to the Cairns Group was developing? You might describe it not quite as an alternative but as complementary—whatever. Were we advised before Brazil knocked on our door that it was happening?

**Mr Gosper**—No, because I think it was not happening before the EU-US paper was presented. There was no particular form on which people—

**Senator CONROY**—No, before Brazil turned up. Between when the paper was issued and when Brazil knocked on our door, we did not pick anything up.

**Mr Gosper**—We are only talking about couple of days between the EU-US paper and that happening.

**Senator CONROY**—That is important.

**Mr Gosper**—A few days—it might have been three or four.

**Senator CONROY**—Did our posts in South Africa, Indonesia, Brazil, Mexico, the Philippines and other member countries of the G20 report on any new coalition in those three or four days?

**Mr Gosper**—Of course there has been reporting about these G3 developments, as I mentioned. I mentioned before that this coordination between Brazil, India and South Africa had its origin in coordination on UN related matters. It has only been very recently—and I think prompted by the EU-US paper—that this coordination has jumped to another area of

international relations: the WTO agriculture negotiations. So it was in response to that that this G20 has emerged.

**Senator CONROY**—I certainly got the impression from my discussions with the US that they were blind-sided completely by the coordination strength and conviction. Is that your impression of the US?

**Mr Gosper**—I think it did happen very quickly and no-one had any particular insight into this group until following the EU-US paper. I think that is true, yes.

**Senator CONROY**—Is one of the key roles of our overseas posts to keep an eye on, monitor and report on the approach of host countries to Cancun?

**Mr Gosper**—Yes, of course.

**Senator CONROY**—So none of our posts detected the lead-up to Cancun before Brazil knocked on our door, even though it was a relatively short period? As you say, in some of these things there were strands that were not trade related. None of our posts or officials, despite us being very keenly interested in and focused on this very issue, advised us that it had moved beyond the political sphere into the trade sphere?

**Mr Gosper**—On the political side, of course that was covered in reporting from posts. If you are asking whether our posts reported on something that was happening in Geneva over a very few days between the release of the EU-US paper and the G20 coordination, no, I do not think that did happen.

**Senator CONROY**—Geneva is a pretty small place. I have not been myself, but it is a small place. Is it hard to hide a conspiracy of this size?

**Mr Gosper**—Our ambassadors do live in each other's pockets, yes.

**Senator CONROY**—That is what I would have thought. It is a small town; it is like Canberra.

**Mr Gosper**—Which goes to my point, Senator, that it happened quite quickly and in response to the EU-US paper.

**Senator CONROY**—So you believe this was coordinated in Geneva, not in the host countries?

**Mr Gosper**—Indeed.

**Senator CONROY**—The G20 was pulled together at a Geneva level, rather than by representations and phone calls.

**Mr Gosper**—Capitals were of course involved.

**Senator CONROY**—Having never been through this process before, I am trying to get a sense of how it works.

**Mr Gosper**—The specific response that was developed by this group was basically coordinated from Geneva with capitals and between capitals.

**Senator CONROY**—You are putting to us that G20 was pulled together in two or three days in Geneva.

**Mr Gosper**—In a very short period of time, yes.

**Senator CONROY**—That is very organised. No-one noticed who was having lunch with who, and who was scurrying around in Geneva?

**Mr Gosper**—As I think I said, Brazil and other members talked to us very early on in the piece.

**Senator CONROY**—Sure, but you yourself have described the problems of keeping a coalition of 17 together over a period. Pulling together 20-odd nations in just a couple of days is a pretty big achievement.

**Mr Gosper**—Of course, they had the benefit of simply being able to replicate, for the most part, Cairns Group positions developed over a number of years.

**Senator CONROY**—Even so, achieving 20 in the cart is, as you attest from trying to keep 17 in the cart, a pretty big effort.

**Mr Gosper**—Perhaps, and probably that is why the group is no longer 23 but 17.

**Senator CONROY**—Zero to 20 in three days: that is not bad. I wouldn't mind an organiser like that in the Labor Party, I got to tell you! Senator Ferguson has probably got one in South Australia.

**Senator FERGUSON**—Not in your league, Senator Conroy!

**Senator CONROY**—He is known as Senator Minchin, I think. You were not involved in Geneva and the G20, were you, Senator Minchin?

**Senator Minchin**—No, unfortunately, I was not.

**Senator CONROY**—It sounds like a very impressive operation.

**Senator Minchin**—I would love to go to Geneva but I was not there on that occasion.

**Senator CONROY**—In some questions that were taken on notice from 17 September we asked about whether or not G20 and Australia were broadly consistent. In the answer, you indicated—I am not sure if it came directly from you—that Australia chose not to sign that paper partly because there was a strong tactical advantage in these developing countries playing a more assertive and independent role separately to the role played by the Cairns Group. Does that answer ring a bell?

**Mr Gosper**—It does.

**Senator CONROY**—Take me through the tactical advantage of having a lot of nations running around advocating a slightly different position to Cairns.

**Mr Gosper**—We have a negotiating position that is set out by a coalition of developed and developing countries which has been very successful, I think, in reaching out to other developing countries and bringing them into the fold. Remembering that this is the Doha Development Round and the emphasis that is put on the development dimension, we saw some value in a purely developing country coalition which sought to essentially send the strong political message to the large Northern Hemisphere subsidisers and closed markets that from a development perspective, from the perspective of key developing countries, a strong result on agriculture was critical to the entire round.

**Senator CONROY**—So we have had a stunning tactical victory here by having G20 running around advocating independent positions?

**Mr Gosper**—A big part of the Cairns Group effort over the last few years has been to build more support amongst developing countries for a strong agricultural result. The fact is that G20 has been part of that, and that has a positive aspect to it.

**Senator CONROY**—Given the outcome in Cancun, it does not seem that the tactic of having this independent voice worked too well in achieving an outcome.

**Mr Gosper**—The outcome was not that we agreed to the US-EU paper, the outcome was—and we did not get to the final discussion—that most WTO members, including Cairns Group and G20 members, were insisting on a very ambitious result for agriculture. That remains their position.

**Senator CONROY**—The outcome of this tactical advantage that you have described was to blow Cancun up.

**Mr Gosper**—Senator, you know that the immediate problem at Cancun was the Singapore issues and we did not get to the final discussion on agriculture. The outcome of Cancun, from the agriculture perspective, was that the interests of most members in a strong result on agriculture was reinforced, and the resistance of most members to the weak position put forward by the EU and the US has been reinforced as well.

**Senator CONROY**—Are we seeking to encourage any Cairns members to withdraw from G20—or G22, or whatever you want to call it?

**Mr Gosper**—No. We have spoken to all those Cairns Group members that are also participants in the G21 and they have all indicated to us that they remain fully committed members of the Cairns Group and have been participating in our meetings since then. So that is the position.

**Senator CONROY**—Surely India's involvement in a pro liberalisation camp is a novel approach for India to take. Given their track record, do you think that assisted their agricultural putsch, as you described it?

**Mr Gosper**—We have also sought from the G20 countries an indication that they themselves remain committed, at some part of the negotiations, to contributing to the reform process by making market access commitments. For the most part, those G20 members we speak to confirm that they will be seeking to make such reform commitments themselves. I am not sure about India, however.

**Senator CONROY**—Do you believe G20 will hang together, going forward?

**Mr Gosper**—I do not know, Senator. I would be speculating.

**Senator CONROY**—You are an expert. I am asking you to give me your considered opinion.

**Mr Gosper**—G20 had a ministerial meeting in Argentina a few weeks ago.

**Senator CONROY**—Did we go as an observer?

**Mr Gosper**—No, but we have had reports on the meeting—including from the participants, of course. It went moderately well. A number of members indicated at that meeting that they were leaving the group. As I have indicated, the membership is now 17. So the further prospects for the group are a little bit uncertain. We cannot be sure, but they may be around for the long term. In that context I think we have to engage them. The Cairns Group has to engage them because they share much of our agenda for agriculture, including the need for a strong result. So we have to assume that they will be around and we will have to find some way to deal with them.

**Senator CONROY**—Considering that you have described, in your answer, I think, ‘strong tactical advantages’ in having them out there, do you think it is in Australia’s interests for G17 to continue? Is it still a strong tactical advantage to us?

**Mr Gosper**—There are strong advantages in these negotiations in having as many WTO members as possible insisting on a strong result in agriculture. The form that that support is expressed in is not one that we would always choose but the reality is that they, and other groups within the WTO, are likewise insisting on a strong result on agriculture.

**Senator CONROY**—Would we consider it a strong result in agriculture if no developed nation had to open up their markets?

**Mr Gosper**—If no developing nation had to open up their markets?

**Senator CONROY**—Would we consider it a strong outcome if the G20 position or G17 position was delivered?

**Mr Gosper**—If there was no commitment for reform on the part of developing countries, no, we would not consider that a strong outcome.

**Senator CONROY**—So we had better pray that this tactical advantage we have got does not work?

**Mr Gosper**—The main problems in agricultural trade are the large subsidies and the closed markets on the part of the big northern hemisphere developed countries. The market access conditions for developing countries are also important but they are not the major problem we face in world agricultural markets.

**Senator CONROY**—Have Cairns Group ministers met following Cancun?

**Mr Gosper**—No, they have not. A number of Cairns Group ministers have had discussions, including about developments, of course.

**Senator CONROY**—I think you indicated that Cairns Group officials have met over in Geneva a couple of times.

**Mr Gosper**—Several times, yes.

**Senator CONROY**—The recent APEC meeting in Bangkok provided the opportunity for a partial caucus, to go back to that phrase. Did the APEC economies that are members of the Cairns Group have a gathering? Did they take the opportunity?

**Mr Gosper**—Mr Vaile hosted a dinner for WTO Director General, Mr Supachai Panitchpakdi, and invited a number of other ministers to that meeting to discuss the negotiations.



**Senator CONROY**—So there was not a gathering of the eight? I am just trying to pin down exactly what that meant.

**Mr Gosper**—I do not think we had every Cairns Group minister in a single meeting, no. But Mr Vaile had the opportunity for discussions with all his APEC colleagues.

**Senator CONROY**—So there were formal meetings between Mr Vaile and the other seven APEC ministers?

**Mr Gosper**—I would have to check specifically on whether he sat down with each of them.

**Senator CONROY**—I appreciate there was the opportunity, I am just trying to find out whether the opportunity was taken.

**Mr Gosper**—The opportunity has been taken up. Whether it was completely taken up, I do not know. In addition, the minister has had a number of telephone conversations with other Cairns Group ministers about the state of play in negotiations.

**Senator CONROY**—Did the Cairns Group officials meet in Bangkok?

**Mr Gosper**—No. The Cairns Group officials that deal with the WTO negotiations are in Geneva and they have met on a number of occasions.

**Senator CONROY**—Is there a proposal to have a gathering of Cairns Group ministers in the near future?

**Mr Gosper**—Ministers have discussed the possibility of such meetings over the next few months and have agreed on some tentative arrangements, which are not yet public. But we will need to further consider it, depending on what is in the negotiations.

**Senator CONROY**—Every March?

**Mr Gosper**—It will depend very much on how the negotiations are progressing. I think we have had a commitment to chair the next ministerial meeting, and the minister will consider the timing of such a ministerial meeting in the light of developments in Geneva.

**Senator CONROY**—Was there some suggestion we would not chair the next meeting?

**Mr Gosper**—Sorry, chair was the wrong word. I meant host.

**Senator CONROY**—So it might be here?

**Mr Gosper**—No, it will not be here. The host will be another Cairns Group member.

**Senator CONROY**—Sorry, I was confused by the language. Would that be in the first quarter next year?

**Mr Gosper**—It could be in the first quarter or earlier, depending on developments in the negotiations.

**Senator CONROY**—Is Minister Vaile planning to go to Geneva for the mid-December talks?

**Mr Gosper**—The mid-December talks involve senior officials. That is how they are scheduled to be held.

**Senator CONROY**—I understand that.

**Mr Gosper**—He has not discounted the possibility of travel. If negotiations were to resume and require ministerial attendance, he would review it at that point.

**Senator CONROY**—Was it a ministerial meeting the G20 held in Buenos Aires?

**Mr Gosper**—It was attended by a number of G20 ministers but not universally so. A number of countries were presented by their local ambassadors or officials.

**Senator CONROY**—So G20 have been able to pull a meeting together subsequently?

**Mr Gosper**—They had a meeting in Buenos Aires, yes. But, as I said, it was not universally attended but attended at various levels.

**Senator CONROY**—Even though a few pulled out when they turned up, they seem to have pulled together their team quicker than we can pull our team together. Is that an unfair observation?

**Mr Gosper**—It is not the case that the Cairns Group has been looking to bring together Cairns Group ministers at this time.

**Senator CONROY**—They seem pretty proactive. They at least tried to pull together the trade ministers and even if everyone could not go there were plenty of representatives and a few ministers.

**Mr Gosper**—They no doubt have their own reasons for that. I do not know what they were.

**Senator CONROY**—But they at least attempted to do it—at relatively short notice. I think it was on 10 October. I think you have indicated that they might have had a couple of meetings.

**Mr Gosper**—Maybe they felt a need to because they do not have the same well-coordinated Geneva coordination or informal contact between ministers at the Cairns Group.

**Senator CONROY**—That would be the group that pulled together 20 members in three days in Geneva—you do not think they are coordinated enough. God help us if they actually get their act together in Geneva.

**Mr Gosper**—To take on board the Cairns Group positions, yes.

**Senator CONROY**—God help us if they pull their act together in Geneva. Do you think a ministerial meeting of the Cairns Group is needed reasonably urgently?

**Mr Gosper**—No, I do not. That would not be my advice. At the moment it is a question of getting people back to the negotiating table to confirm their commitment to move forward in the negotiations. Cairns Group ministers have all confirmed their commitment to that process. There is no specific purpose to be served at this point in the negotiations by ministers meeting.

**Senator CONROY**—You have indicated the difficulties of ‘herding cats’ in the Cairns Group. I would have thought it would have been a good idea, given the stresses and tensions and the fact that Cancun has gone off the rails and half our members are caucusing with another group, to try to get them together subsequent to the Cancun collapse—reasonably

speedily. I do not mean by 10 October. I would have thought it a good idea to help herd those cats a bit tighter.

**Mr Gosper**—I can understand that but the process has resumed in Geneva in a very satisfactory way with all the necessary commitments of support for the Cairns Group. There have been a variety of opportunities for the minister to talk to his ministerial colleagues in the Cairns Group, which have been satisfactory, and they have agreed to keep under review and to meet at an appropriate opportunity in the near future.

**Senator CONROY**—That seems to be the approach that led to this huge tactical advantage of G20 forming and then blowing up at Cancun. It seems to be a continuation of existing policy.

**Mr Gosper**—I do not think that that is the approach that led to the formation of G20.

**Senator CONROY**—I think I have exhausted my questions on the WTO.

**ACTING CHAIR (Senator Ferguson)**—We have allocated until 9.30 p.m. for trade; then at 9.30 p.m. we move to AusAID.

**Senator CONROY**—That is the first I have heard of that. I plan on asking my questions until I am finished.

**ACTING CHAIR**—It is an agreement that was made—

**Senator CONROY**—It is an agreement that I am entirely unaware of and I intend to keep asking my questions, as is my right as a senator, until I am finished.

**ACTING CHAIR**—You should speak to your colleagues about this because I did not arrange this program.

**Senator CONROY**—I appreciate that there may be a notional starting time.

**ACTING CHAIR**—Because there were two days with no spill over days, the segments were split up with a certain amount of time. This was agreed on by the manager of business and your party.

**Senator CONROY**—I am completely unaware—

**ACTING CHAIR**—Could you do some checking up at tea time?

**Senator CONROY**—Frankly, I am not fussed whether there is an arrangement. As a senator I have the right to keep asking questions until I am finished.

**Senator PAYNE**—You might not be fussed, Senator Conroy, but we do have an obligation to deal with the officers in an appropriate manner. As far as I am concerned this committee will most certainly be doing that.

**ACTING CHAIR**—We finish at 11 o'clock tonight. There is a section at AusAID which people from your party have negotiated. I do not know whether you were not here. Perhaps you were at another function during the week.

**Senator CONROY**—The good news is that I can exercise my right as a senator to keep asking questions as long as I like. If I wanted to ask him—

**ACTING CHAIR**—No, you will not. You will be finished by 11.00.

**Senator CONROY**—I accept the constraint of 11.00. I will endeavour to be completed by 9.30 but I cannot give you a guarantee.

**ACTING CHAIR**—You will have to sort that out with your colleagues.

**Senator PAYNE**—Senator Conroy, I do not think it is unreasonable for the chair to suggest that you should speak with your colleagues—who have assisted in the making of these arrangements and in some cases initiated the making of these arrangements—and enable the committee to come to some terms in relation to the officers as well. That is not unreasonable. While you insist on your rights, it is entirely appropriate that other people do too.

**ACTING CHAIR**—I do not think it is feasible, when AusAID have been told that they should be here at 9.30, to make them sit around till 11.00 at night if you exercise your rights and then not call them. They have been told to be here at 9.30.

**Senator CONROY**—I did not suggest that I would do that; I was simply saying that I was unaware of a 9.30 deadline. I will endeavour to cooperate with that but I will keep it under advisement as to whether I can actually complete my questions.

**ACTING CHAIR**—Could you please check with your party as well. They were party to these negotiations, not us. We have not asked questions during the day so as to give you plenty of time.

**Senator Minchin**—In any event, as I understand it AusAID officials will need to be here from 9.30 onwards.

**ACTING CHAIR**—That seems clear.

**Senator CONROY**—I think you can say that if they are currently here they should go home and come back for at least 9.30.

**Proceedings suspended from 6.31 p.m. to 7.32 p.m.**

**Senator CONROY**—The Australia-China Trade and Economic Framework Agreement signed on 24 October by Mr Vaile and Chinese vice-minister for commerce states in paragraph 8 that the two countries will jointly undertake a feasibility study into a possible bilateral FTA, and that a joint decision by the two parties to negotiate an FTA will take account of the results of the study and only follow Australia's formal recognition of China's full market economy status. What is the rationale behind the government's decision to suggest it is willing to recognise China as a market economy if FTA negotiations are to begin?

**Mr McLean**—The government has made no decision to negotiate an FTA. That is made quite clear, I think, in paragraph 8. It is a decision that would take into account the results of the joint study with the Chinese that is about to commence. If the Australian government has decided to recognise China as a full market economy then we would proceed with the negotiation. As to why that is there, effectively, if an economy, a country, is going to negotiate an FTA with another economy, then the expectation would be that each mutually recognises the other as a market economy—in other words, each is on an equal footing in such a negotiation.

**Senator CONROY**—Is that a policy Australia has followed consistently? Is Thailand a market economy?

**Mr McLean**—That is not something that I can respond to.

**Senator CONROY**—It is considered a market economy?

**Mr Chester**—Yes, it is.

**Mr McLean**—It is very logical that, if there were to be a negotiation on an FTA with China, negotiations simply could not proceed if we were still saying that they were an economy in transition or some other terminology. It is simply just a practical step that is nonetheless very important politically for both sides.

**Senator CONROY**—I would have thought there was a definition of what a market economy is. Could you give me your definition of a market economy is?

**Mr McLean**—I might ask Mr Gosper to do that. He is probably more equipped to do that than I since he is a full-time trade policy man.

**Mr Gosper**—We will get you a precise definition as it applies to the provisions that are pertinent here—that is, in relation to antidumping rules. In answer to your earlier question, Thailand is not a centrally planned economy in transition to an open market economy; China clearly is.

**Senator CONROY**—It is a centrally planned economy.

**Mr Gosper**—It is in the transition from an economy that is centrally planned to an open market economy.

**Senator CONROY**—It is one of the biggest economies in the world. In two years time it will have completed that transition?

**Mr McLean**—Minister, we are not making that judgment—

**Senator CONROY**—Thank you for that the promotion; I do appreciate it. I am sure Senator Minchin did not, but I certainly did.

**Senator Minchin**—We'll forgive him—only once though!

**Mr McLean**—Quite directly, the government has made no such decision about recognition of market economy status for China. As to whether that might be the case in two years time, it is purely hypothetical and will be dependent upon, in part only, the recommendations from the joint feasibility study.

**Senator CONROY**—I just want to make sure I get this absolutely right. We are considering them a transition economy at the moment—is that right?

**Mr McLean**—As far as the WTO is concerned and, indeed, in our own legislation—in customs legislation in respect of antidumping—China is referred to as an economy in transition.

**Senator CONROY**—As I am sure you heard earlier, I am a beginner in the trade world. There appear to be a couple of categories and I want to get them straight in my mind. There are LDCs—lesser developed countries?

**Mr McLean**—Yes.

**Senator CONROY**—There are developed countries. Is there something between LDC and DC?

**Mr Gosper**—There are least developed countries, there are developing countries and there are developed countries, but they relate to the stage of development rather than to the nature of the economic planning within the economy in question.

**Senator CONROY**—So there are developing and developed. That must be a tricky acronym: LD.

**Mr Gosper**—Usually we talk about developed economies and LDCs or least developed economies.

**Senator CONROY**—Looking at an order, you start with the least developed, then you have developing. Is transition a type? Is it in between developing and developed?

**Mr Gosper**—If I can illustrate by reference to China, China is a developing economy and an economy that is in transition from a centrally planned economy to an economy that is based on market principles.

**Senator CONROY**—So in transition is in between developing and developed?

**Mr Gosper**—Not strictly. As I said, whether an economy is least developed, developing or developed relates to its overall stage of development, not, strictly speaking, to the way the economy is structured.

**Senator CONROY**—So it is not an economic term? I am at a disadvantage because I am thinking of it in economic terms but there is obviously a trade jargon, and I am trying to make sure I understand the trade jargon.

**Mr Gosper**—China is a developing economy but an economy in transition; Korea, for instance, is a developing economy but a market based economy.

**Senator CONROY**—Can you give me a definition of market based economy?

**Mr Gosper**—That is an economy in which market principles determine the way economic decisions are made to a much larger degree than is apparent in a centrally planned economy, where government decision and fiat often determines allocation of resources and pricing decisions.

**Senator CONROY**—You have explained to me what is not a market economy but you have not quite defined what a market economy is. What are the market principles?

**Mr Gosper**—A market based economy is one in which the decisions of players other than governments are relevant. Governments still have a role in the economy, of course, but individual and private players are also relevant to pricing, allocation of resources and so forth. Clearly, over the last few years—concurrent with, and partly as a result of, the WTO accession process—more of China's economy has been liberalised. In many areas and at many levels of the economy decisions have been placed in the hands of players outside central government. That is a feature of the Chinese economy now, hence the use of 'economy in transition'.

**Senator CONROY**—The government has agreed, in paragraph 8 of the framework agreement, not to apply sections 15 and 16 of the protocol of accession to the WTO during the study. That looks to me like a de facto recognition of market economy.

**Mr McLean**—That is not the case.

**Senator CONROY**—It is not the case that it is a de facto recognition, or it is not the case that we have agreed not to apply sections 15 and 16?

**Mr McLean**—It is the case that we have agreed not to apply during the course of the study articles 15 and 16 of China's accession protocol, in paragraph 242 of the accompanying WTO working party report. These specific articles or sections or whatever they are called were agreed to by China as part of its package of commitments when it joined the WTO at the end of 2001. These particular agreements by China do not directly affect Australia, in the sense that our antidumping legislation and action does not depend on that article 15, which is the first one which relates to antidumping—article 16 relates to certain safeguards in respect of potential import surges. In each case Australia's antidumping legislation, in the event that we were ever to take safeguard action—and I do not know of cases where we have—relies on the respective WTO agreements relating to antidumping and safeguards to take any action that we may need to take.

**Senator CONROY**—Did Australia support these protocols for China's admission to the WTO?

**Mr McLean**—Of course.

**Senator CONROY**—And now we have agreed not to follow through with them, or to dismiss them.

**Mr McLean**—We agreed to China's accession package overall. These provisions were specifically agreed by China as part of its overall package.

**Senator CONROY**—So two years ago we agreed that China would be treated as a developing nation?

**Mr McLean**—An economy in transition, I think, in that sense. This is of course really a matter for the ITR and customs portfolio to get into the detail of, but the antidumping part of the Customs Act specifically lays down market economies and economies in transition as its two categories. China is still regarded as an economy in transition in our legislation.

**Senator CONROY**—Do you agree with Customs in their definitions?

**Mr McLean**—It is not really for us to comment.

**Senator CONROY**—Do you agree with the categories that they place countries in? I am just trying to understand whether Trade have one definition of countries and Customs are running a different definition of countries. I am assuming that is not the case; I am just asking you to confirm that is not the case.

**Mr Gosper**—No, there are no different definitions involved here. Our current antidumping legislation includes treatment for economies in transition and that is what is applied currently.

**Senator CONROY**—We agreed to this and China agreed to it, and we signed up—and two years later we have suspended those provisions.

**Mr Gosper**—No, I do not think that is quite correct. Our antidumping legislation, which includes provisions for how we should treat economies in transition, continues to be applied. It has been applied consistently over the last few years. The provisions that were negotiated as part of the accession protocol with the WTO—in other words, by all WTO members with China—through paragraphs 15 and 16 address the same issue but have not been applied in our antidumping legislation. So we are not applying it; we are not changing the current way in which our antidumping legislation is administered.

**Senator CONROY**—No, but I am trying to understand what it does to our position on the definition of China's development or status.

**Mr McLean**—These undertakings—in other words, to not apply these—are a gesture that essentially acknowledge that China is making quite significant strides towards a market economy.

**Senator CONROY**—What is your definition of 'significant strides'?

**Mr McLean**—You just have to visit China to see how much the place is opening up in terms of both consumer goods available and the growth of the economy generally.

**Senator CONROY**—So economic growth is a determinant?

**Mr McLean**—It is a factor, of course, but not the primary factor.

**Senator CONROY**—I would not have thought it was. You are pointing to it, so I am just trying to get an understanding of what the factors are.

**Mr McLean**—It would be, I would say, one of a whole set of factors that go to judgments about the Chinese economy generally, growth being one.

**Senator CONROY**—Can I get a list of those factors?

**Mr McLean**—I do not think we would have factors laid out.

**Senator CONROY**—You just said there was a list of them.

**Mr McLean**—How we decide an economy is a market economy is ultimately probably a political judgment.

**Senator CONROY**—I thought it might have been an economic judgment.

**Mr McLean**—It was ultimately a political judgment when the United States and the EU recognised the Russian economy as a market economy, for instance.

**Mr Gosper**—All the various provisions that China took on as part of its WTO accession protocol—in other words, accepting all the rules and obligations, such as non-discrimination, transparency, predictability in the way that it administers its trade regulations and those sorts of things—are indicative of an economy that is liberalising and accepting a framework of international rules. It is no longer, clearly, purely a centrally planned economy. It is in transition to a market based economy.

**Senator CONROY**—It is no longer a purely centrally planned economy?

**Mr Gosper**—Clearly.



**Mr McLean**—Of course not, no. To give you an example, 55 per cent of the GDP of the Chinese economy arises from the non-state sector.

**Senator CONROY**—So one of the things on the list is how large the non-state sector is?

**Mr McLean**—That would be a factor, along with all the points that Mr Gosper has referred to. It goes with reform of laws, tariff reductions and whatnot.

**Senator CONROY**—I accept your point that, at the end of the day, the definition will be a political decision rather than a study of the economy. Does it make a bit of a joke of the two-year study if, as you say, at the end of the day it is really a political decision?

**Mr McLean**—Not at all. The study is an opportunity for us to consult widely with business in Australia as well as with state governments and all other interested parties about any particular issues they have and any barriers that they may perceive are obstructing the current trade and investment flows between Australia and China. That is what we will be doing through the course of the two years.

**Senator CONROY**—I will not press you any further on this list you have referred to, but if you could take it on notice to provide the criteria by which you judge a market economy that would be useful to the committee. It will certainly be useful to me so that I can gain a greater understanding of this nebulous concept.

**Mr McLean**—I can take on notice that point, but there is a concluding remark I should just make on this. There are no hard and fast, accepted international criteria is probably the point to make, but there are a number of factors that both Mr Gosper and I have referred to in the course of responses to your questions.

**Senator CONROY**—You can preface the beginning of the list with those words, if you like, and put at the end the bit that says it is a political decision. You can top and tail it with those two sentences and just give me give a rough indication.

**Mr McLean**—Okay.

**Senator CONROY**—You would be aware that there are concerns in the manufacturing industry about competition from China—

**Mr McLean**—Of course.

**Senator CONROY**—not only in Australia but also in the US and the EU and in the rest of our region. Do you agree that this is a significant concession on behalf of the Australian government? I think you have used the word ‘gesture’.

**Mr McLean**—It is a significant gesture, as I say, that I think is a public acknowledgement that China is making significant strides towards opening up its economy towards what is accepted as a market economy. In the sense, making a public gesture like this is also intended to encourage that trend further.

**Senator CONROY**—Two years ago we thought it would take 15 years for that transition to take place.

**Mr McLean**—Not so, Senator. That was the maximum possible period. It did not judge that it would take 15 years.

**Senator CONROY**—What do you think are the implications for Australian industry of this concession gesture?

**Mr McLean**—Actually none specifically, because the specific issues you point to that some of the manufacturing sectors may have in the event that there was a free trade agreement between Australia and China do not currently exist because we still have in place the access to certain trade remedies which can be adopted to manage such concerns.

**Senator CONROY**—So you do not think it will be harder to prove Chinese goods are being dumped in Australia as a result of this agreement?

**Mr McLean**—Nothing will change as a result of this agreement in terms of the operation of the antidumping legislation and measures.

**Senator CONROY**—We are still able to determine a Chinese domestic price irrespective of this agreement? There is no change in how we determine a Chinese domestic price?

**Mr McLean**—This does not change the measures that we can use, such as domestic price issues, and the degree to which there may be an influence on such prices.

**Senator CONROY**—No change at all?

**Mr McLean**—No change.

**Senator CONROY**—Has there been any assessment of the potential impact on Australian industry of granting China market economy status? Is that part of the two-year study?

**Mr McLean**—That is exactly what the study is all about, in part of course.

**Senator CONROY**—Which industries do you think will be the most affected?

**Mr McLean**—We have not started the formal consultations yet with industry. It would be speculative for me to say so but clearly ones that currently have tariffs in place supporting their activities, such as the automobile sector or the textiles, clothing and footwear sector.

**Senator CONROY**—Surely it would not be just the tariff areas if we are defining China as a market economy. If we are going to have free access, I would have thought just about every manufactured good produced in China would be under some increased pressure in the longer term.

**Mr McLean**—Certainly this study will be looking at every industry and every sector of the Australian economy that is already, or potentially could be, involved in trade with China. In other words, we want this feasibility study to be fully comprehensive in its scope.

**Senator CONROY**—You have not had a chance to consult with the industry yet—you are beginning that process?

**Mr McLean**—In terms of the feasibility studies of the FTA, we have actually begun some informal consultation. Some officers, including me, have already been to Sydney and Melbourne to meet with industry groups. That will be done on a systematic basis once the actual feasibility study team gets up and going, which will be very shortly.

**Senator CONROY**—Can I just clarify again this issue of the non-market economy and China's status in the WTO. Is there a process that will determine that it becomes a market

economy sooner than the 15 years? What is the process that China could argue? You set a maximum of 15; we have made it before 15. What is the process there?

**Mr Gosper**—I do not know that there is a specific process. I will take that on notice and come back to you.

**Senator CONROY**—Have we heard from any of our other trading partners in the EU-US about their views on our decision to make this gesture?

**Mr McLean**—I am unaware of any views being expressed by those parties or indeed any other members of the WTO.

**Senator CONROY**—There was a customs legislation amendment bill 2000 coming through parliament that was proposing to give greater clarity and certainty with respect to the treatment of economies in transition. I appreciate this is not your specific area, but you did indicate some general knowledge of it, so bear with me. Would you contend that paragraph 8 of the China agreement means that China is still being treated as an economy in transition for the purposes of dumping?

**Mr McLean**—Yes.

**Senator CONROY**—This was a bill that contained antidumping measures specifically directed at China.

**Mr McLean**—That is not true. It is not specifically directed at China or indeed any particular economy.

**Senator CONROY**—But it would have had an impact on China—is that fair?

**Mr McLean**—That is probably fair to say. China is a country, along with a number of other countries, where some industries have been subject to antidumping legislation, so that would be the case.

**Senator CONROY**—The existing piece of legislation has a definition of economies in transition. We were seeking to amend it and now we have agreed not to apply it—to China or generally?

**Mr McLean**—The non-application relates to the WTO articles 15 and 16 and paragraph 242. It does not apply to our Customs Act antidumping legislation.

**Senator CONROY**—Have we agreed not to proceed with the amendment?

**Mr McLean**—No, we have not agreed to that at all. The amendments, as far as I understand, are proceeding through the course of—

**Senator CONROY**—But have we agreed not to apply the amendment?

**Mr McLean**—No, it has nothing to do with Australian domestic legislation. What we have agreed not to apply are only articles 15 and 16 and paragraph 242. This has no impact at all on Australia's antidumping legislation or the amendments to the legislation that is currently before the parliament.

**Senator CONROY**—The Chinese Embassy, I understood, actually turned up to present an objection to the joint committee process to the customs amendment bill. Are you familiar with that?

**Mr McLean**—I am certainly familiar with that.

**Senator CONROY**—They were taking it very seriously.

**Mr McLean**—Yes, they were.

**Senator CONROY**—As far as you are aware, nothing in this agreement affects the amendment to the bill?

**Mr McLean**—That is correct, Senator.

**Senator CONROY**—So you still anticipate that amendment will be passed?

**Mr McLean**—My understanding is that that is going through the normal parliamentary legislative process at the moment.

**Senator CONROY**—You have seen some speculation that part of the deal was that the government does not proceed with that amendment?

**Mr McLean**—The speculation is wrong.

**Senator CONROY**—Have you seen that?

**Mr McLean**—I am aware of such speculation and I can say that it is wrong. It is going through the normal processes.

**Senator CONROY**—This is a very technical area. Have you had legal advice that paragraph 8 has no implications on Australia's antidumping provisions?

**Mr McLean**—In the course of negotiations that we had with the Chinese we made sure that we had proper legal backing for whatever we agreed to in that framework.

**Senator CONROY**—What I asked was whether you had advice that paragraph 8 had no implication for the antidumping provisions.

**Mr McLean**—That is true, it does not.

**Senator CONROY**—That is what the legal advice said?

**Mr McLean**—That is my understanding, Senator.

**Senator CONROY**—Whilst the study on an FTA is being undertaken, what are the implications of Australia's decision not to apply sections 15 and 16 of protocol on the accession of the People's Republic of China to the WTO and paragraph 242 of the WTO report of the working party on the accession of China? What are the actual implications?

**Mr McLean**—There are no specific implications.

**Senator CONROY**—So why were they so desperate to get it? Why did they view this as a concession?

**Mr McLean**—The point I made earlier right at the beginning was that this was an important gesture publicly made by Australia about these particular provisions of the Chinese accession package, which perhaps has more relevance to some other economies with which China trades.

**Senator CONROY**—Some would argue that this has, in effect, granted market economy status to China during the period of the study.

**Mr McLean**—That is not correct, Senator.

**Senator CONROY**—So it is just completely wrong. It has the effect—

**Mr McLean**—I know what you are saying, no—

**Senator CONROY**—You would reject that completely?

**Mr McLean**—Yes, I would.

**Senator CONROY**—So you do not believe that it will be any harder to prove dumping against China as a result of this for the next two years?

**Mr McLean**—No, Senator. In fact I think it might be more straightforward once the amendments, as I said, that are going through the legislative process at the moment, are through the Senate. It will be much more clear-cut in terms of transparency than ever before.

**Senator CONROY**—Paragraph 242 of the WTO report of the working party on the accession of China refers to the right of a WTO member to restrict imports of textiles from China in the event that increased imports were disrupting the domestic market. Doesn't the suspension of this provision mean that Australia has waived the extra safeguard measures allowed against Chinese textiles?

**Mr Gosper**—We are not suspending application of the provision, Senator; we have never applied those provisions. Of course Australia still has—

**Senator CONROY**—How do you mean, we have 'never applied' them. We have never had the need to apply them, or they have never been in effect for Chinese textiles?

**Mr Gosper**—We have never applied those commitments negotiated as part of the protocol for China—sections 15 and 16 and paragraph 242.

**Senator CONROY**—But there is a difference between them being in force but never applied and their no longer being in force.

**Mr Gosper**—I guess the point I am making is that we have never applied them, so our antidumping legislation does not change at all.

**Senator CONROY**—That is not what I asked.

**Mr Gosper**—Could you clarify it, Senator Conroy?

**Senator CONROY**—I asked about this provision about safeguard measures. I appreciate that we have never applied them, but they are currently in force. If we suspended paragraph 242, it would suggest we have suspended that provision—even though we have never used it. Is it still in force even though we have never used it?

**Mr Gosper**—I do not have the specific provisions here at the moment. If you give me a moment to examine them, perhaps we could come back to that question.

**Senator CONROY**—Please do.

**Mr Gosper**—As I read it—and I will confirm this subsequently—this relates to products that are covered by the ATC, the textiles agreement, which Australia does not apply.

**Senator CONROY**—Again, I am drawing a line between applying them and whether they are still in force. Are they still in force? Have we suspended them even though we have never applied them?

**Mr Gosper**—I am making the point that I do not think they are relevant to us because they refer to textile and apparel products covered by the ATC. This was a provision that was negotiated largely at the request of the US, which still applies textile and apparel quotas as part of arrangements that expire within the next year. We do not apply those quotas so, on my reading—and I will confirm this—this particular safeguards provision does not apply to us. Of course, the normal safeguards provisions that relate to all WTO members are still available under the safeguards agreement.

**Senator CONROY**—Is it your view that, because we have no quotas on the imported textiles even though we have tariffs—and I appreciate they are a different thing—an agreement to suspend a quota safeguard, if you like, has no relevance because we do not have any quotas?

**Mr Gosper**—I think, in effect, that is what I am saying, yes.

**Senator CONROY**—Does this safeguard only apply to quotas and not to tariffs? We do have tariffs?

**Mr Gosper**—It applies to products that are covered by the WTO agreement on textiles and clothing.

**Senator CONROY**—You are assuring me that it is a quota-specific measure?

**Mr Gosper**—I am giving you my reading of this, but I will need to take it on notice, clarify it and come back to you.

**Senator CONROY**—Some of my questions flowed from whether or not we can clarify that, so I am happy to take that on notice and move on to some different sections.

**Mr Gosper**—If there are sequential questions, we would be happy to take them on notice and come back on those questions as well.

**Senator CONROY**—No, I could not possibly tell you my sequential questions. During the visit of the Chinese Premier last month, it was announced that the joint venture of developing the Gorgon gas field off the coast of Western Australia had signed an agreement with the China National Offshore Oil Corporation, which could see China buying up to \$30 billion of LNG from the Gorgon field. Can you provide some more details of that announcement?

**Mr McLean**—This is a non-binding agreement. There is a time frame in there at the end of 2004, but I am sure it could be flexible in terms of whether the two sides wish to take it further. If met, it would see CNOOC, the China National Offshore Oil Corporation, take a 12.5 per cent stake in Gorgon, in return—quite specifically, and they are directly linked, so one would not happen without the other—for delivering large Chinese markets, which could well be up to 80 million tonnes of LNG over a period of up to 25 years.

**Senator CONROY**—I have never heard of a non-binding agreement before. Could you explain to me what one of those is.

**Mr McLean**—Frankly, that is what it is: a non-binding agreement. It is a letter of intent plus.

**Senator CONROY**—It is not in the letter of intent, is it? A letter of intent has a legal meaning. A letter of intent is legally enforceable.

**Mr McLean**—I am sorry, but that is what the—

**Senator CONROY**—Courts in Australia—

**Mr McLean**—First of all, I should say that this is a commercial agreement; it is not a government-to-government agreement. It is an agreement, therefore, where, if they choose to call it an agreement, that is their privilege.

**Senator CONROY**—I appreciate that, but if I offered you a letter of intent to come and work for me, we would have a legally binding contract and you could take me to court if I did not follow through. A letter of intent is not quite what it is. So what is a non-binding agreement? For the first time in my life, I would like to chat with a lawyer in the room. Where is Marise? Where is George Brandis when I need him?

**Mr McLean**—I do not think that getting tied up with the issue of whether it is an agreement or not an agreement is the point. The point really is that this is a statement of clear intent by both sides—it is quite specific in this particular agreement—which has very considerable potential for Gorgon to deliver another very substantial LNG contract to China if and when—and everybody says it will happen—there are more major LNG contracts let by China over the coming few years. Insofar as CNOOC is the purchaser of the first lot of LNG that was the subject of the deal this time last year and already has an established position in the Chinese marketplace as a purchaser and distributor of LNG in China, the fact that Gorgon has been able to negotiate a deal such as this with that party gives them a very good inside running when such tenders or other potential contracts are formally up for grabs.

**Senator CONROY**—Who would be the purchaser in China?

**Mr McLean**—The purchaser would be the China National Offshore Oil Corporation, the party to this agreement.

**Senator CONROY**—So there is an expectation that CNOOC may let a tender.

**Mr McLean**—No, it would be a tender let by either the central government or a provincial government. CNOOC has not necessarily got that tender on the Chinese side, but it is very well placed to get it.

**Senator CONROY**—It is that market economy working. Don't you love Adam Smith's invisible hand?

**Mr McLean**—There would be competition between CNOOC and some of the others.

**Senator CONROY**—CNOOC well placed in a market economy! That is almost an oxymoron, isn't it?

**Mr McLean**—Not in the slightest. They are well placed because they have already proven that they have the ability to handle such a major contract, like the one at Guangdong.

**Senator CONROY**—Could we perhaps more illuminatingly describe this as a joint venture to bid for a future contract?

**Mr McLean**—That is another way of describing it, certainly, but that does not mean to say that they do not have a good chance. That is really the point I am making.

**Senator CONROY**—I am sure that in a market economy they have the same chance as everybody else in the market.

**Mr McLean**—That is true, but what I am saying—

**Senator CONROY**—Hopefully they have someone's brother on the ticket.

**Mr McLean**—What I am saying simply is that they are well placed because there are only two or three potential Chinese companies with the wherewithal to be able to purchase and deliver an LNG contract.

**Senator CONROY**—I appreciate that there might be only one or two or two or three other potential competitors. They have joined a consortium. It is a consortium to bid for a future contract.

**Mr McLean**—That is another possible way of describing it.

**Senator CONROY**—And our expectation is that the central government or a provincial government will let this in in a year or two?

**Mr McLean**—It would normally be let by the central government, because this is a major infrastructure project, probably in conjunction with a provincial government, and all the indications that the industry out there have and that we have separately at a government level are that, having successfully let the contract for Guangdong 1, and also another one for Fujian Province to BP Tangguh, they will continue to do this in other provinces in the near-term time frame.

**Senator CONROY**—Does CNOOC have the capacity to utilise the LNG? By that, I mean the infrastructure?

**Mr McLean**—They would have to build the infrastructure, because there is none existing.

**Senator CONROY**—How long do you think it would take to build that infrastructure? I have no idea myself.

**Mr McLean**—To give you an idea of the Guangdong contract that was let last year, there is a hope that the first LNG might be delivered by the end of the year 2005. It could be 2006, but say three to four years.

**Senator CONROY**—Thank you. I want to turn to the US, Mr Deady. I am hoping that after your torrid walk last week this is just a walk in the park. The fourth round of the US FTA negotiations was held in Canberra last week. Could you give us a brief assessment of how you thought the negotiations went? I appreciate that you did hold a press conference, but unfortunately I could not be there and I am not sure I would have been allowed to ask any questions anyway so I thought I would wait until now.

**Mr Deady**—Yes, we did hold the fourth round of negotiations right through last week in Canberra. I said at that press conference that we made very good progress in the negotiations



during that week. We covered essentially all of the negotiating chapters. There are 23 of those. We did not cover all of them this time; there were a couple that we did not cover. But we covered virtually all of them—certainly all the major issues. Again the focus was very heavily on all aspects of the negotiations, and very much on the legal text of the agreement. That is where I think it is very fair to say we made very significant progress. Both sides approached those negotiations very constructively with a view to trying to find solutions to clean up as much language as we could, to clear away square brackets where that was possible and, where it was not possible, to get a better understanding of the key issues there—either issues of substance between us where we actually differ or, in many cases, areas where there is not a specific difference but, rather, a need to ensure that the legal text does cover off the particular aspects of our policies and programs that we need to ensure are covered off.

We spent three full days on agriculture across all aspects of that. There was market access. The main focus was on the market access discussions. Also, we talked about quarantine, sanitary and phytosanitary measures. On the United States side, there was also a discussion on state trading enterprises. I mention a couple of others quickly. In the area of services and investment, we needed to make some real progress on the legal text, and we did that. We came out of the week with legal texts on both services and investment—still with significant square brackets, still with some articles where both sides are looking at language and still to come forward with some ideas, but essentially those chapters are very well advanced. The situation was similar with telecommunications and e-commerce. And there was very good discussion through the week on the chapter on government procurement.

Overall I came to the conclusion—and, from the discussions I had with Ralph Ives and some of the comments he made at that press conference, I think he thought so as well—that we made the sort of progress that we did need to make to be consistent with trying to achieve the time lines set for the negotiations by the President and reaffirmed by the President and the Prime Minister the week before. That is for the end of the year. I believe we are in a position where we can press for that in the next round of negotiations. Equally, though, on the sensitive issues—the big package on market access for agriculture that we are looking for—there is still a good way to go and a lot of negotiation to get through to achieve that sort of outcome. But both of us agree that we are in a position where this month we can press through discussions with stakeholders, Australian industry and states and territories to refine some positions to take back to Washington for the round beginning on 1 December. I think that is pretty much what I said on Friday.

**Senator CONROY**—Thank you for that very quick summary.

**Mr Deady**—Genuinely, that is where we got to. There is a lot to do. No-one pretends it is easy. But we are in the sort of position we need to be to press for a conclusion.

**Senator CONROY**—You mentioned that agriculture is still a real sticking point from our perspective. Putting aside any of the legal issues—the text matching, the intent of the text—from Australia's perspective what are the major sticking points?

**Mr Deady**—The biggest part of the agriculture deal for Australia is very much the market access outcome that we can achieve from the United States. That is across all of agriculture—comprehensive.

**Senator CONROY**—People talk to me—and I am not an expert on Australian agriculture, as I will clearly demonstrate shortly—about beef, dairy and sugar. Are they the big three?

**Mr Deady**—In the US system, the market access barriers that we face in the United States are, in many areas, traditional tariffs—for example, the wine industry and much of the grains industry. Horticulture faces tariffs. But yes, you are right: beef, sugar and dairy are the three where we face quantitative restrictions on the access to that market—the markets that are limited by quotas. Very clearly, they are the three areas where we need to see a big deal come from these negotiations.

**Senator CONROY**—That is agriculture. Are there other issues that we still have a way to go on from our perspective?

**Mr Deady**—I think there are a number of priorities that we have in the negotiations still. Going beyond agriculture, if you look at industrial products, a number of tariffs there are still quite high. Overall, the US has relatively low tariffs, but certainly there are a few that impact directly on us which are very high.

**Senator CONROY**—Steel?

**Mr Deady**—Steel is not that high. With steel the issue in recent times has been the safeguard action.

**Senator CONROY**—They put in an extra—

**Mr Deady**—That was a safeguard action against steel imports, and in the end Australia was able to negotiate a pretty good outcome in relation to steel.

**Senator CONROY**—Better than we originally got hit by.

**Mr Deady**—But there are tariffs. The one that is often quoted is the 25 per cent tariff on light commercial trucks in the United States. There is also a 35 per cent tariff on canned tuna that we are very interested in doing something about. Fish products are non-agriculture for the purpose of these discussions and negotiations. Then there is the metals and minerals area. There are tariffs in the order of seven or eight per cent up to 13 or 14 per cent. With a number of those tariff lines where we are a competitive supplier, Canada and other FTA partners with the United States already have duty-free entry, so we are at a competitive disadvantage. We are certainly looking to a number of tariffs there. The fast ferry area—the so-called Jones Act—remains a priority for us.

**Senator CONROY**—The President indicated that it is off the table. He said, ‘There is no way we are going to change the Jones Act.’

**Mr Deady**—I never saw any comment from the President like that. In any event, we have made it clear to the Americans. We had a session on this last week at which we repeated that the Jones Act is actually a series of legislation covering a whole raft of cabotage—all aspects of marine transport in the United States. We are not seeking the elimination of that legislation in relation to Australia; we are targeting our demands of the United States in that area. Clearly our priority is the very efficient fast ferries that we produce in this country, and we have made it clear to the Americans that we still have ambition in that area. In the services area there are also a couple of things. There are areas of professional services and there are issues in relation to financial services.

**Senator CONROY**—Is that FIRB?

**Mr Deady**—That is their demands on us, but I am outlining at the moment some of our priorities and, as I say, they are not just in agriculture. It is quite important to register and recognise that, whilst that is very much the essential part of any outcome, it is not the only area where we want some progress.

**Senator CONROY**—In financial services—and I ask you this because one of my other hats, as I am sure you know, is financial services—what are they holding out on?

**Mr Deady**—They are not actually holding out. Again, this is an area where we have had a lot of discussion with the secretary in Australia. There is no particular barrier. There are some aspects of licences which we have looked at to see if we can streamline them, but partly we are looking to see what we can do to deepen the integration of the capital markets between our two countries.

**Senator CONROY**—I thought there was virtual free movement of people and services in this sector.

**Mr Deady**—The movement of people is another issue that we are still pursuing. Professional services is an issue. I mentioned the maritime side but we are also looking at some other aspects of transportation services. So there is a whole raft of other things there that we are pursuing with the United States. I have probably forgotten a few, but broadly that is just to illustrate the size of the package—it is not just ag; 80 per cent of the Australian economy is services and we certainly have some ambitions there.

**Senator CONROY**—Have they accepted a carve-out for, say, Australia Post?

**Mr Deady**—As I mentioned, we have made progress on the legal text you referred to on services and investment. A big task going on in parallel with that process is discussion of the reservations, the exceptions you take against the commitments you enter into in those two chapters. We have had a discussion on the reservations. On something like Australia Post, there is a general carve-out in the actual chapter for any services provided under government authority. The same sort of language which is in the GATS we carry down into the US FTA so that our ability to provide public services, public education and public health is not affected—we do not have to take specific reservations on those. In areas where we do—

**Senator CONROY**—Do they accept that?

**Mr Deady**—They accept that.

**Senator CONROY**—They accept it in health?

**Mr Deady**—In public health and public education—the general exclusion for services provided in government authority, which is defined essentially as where there is no commercial competition—there is a full carve-out for all services. Again, very clearly the United States is not going to do anything in a negotiation with Australia or anyone else to undermine its ability to deliver the public services that it wants to deliver.

**Senator CONROY**—I have already specifically mentioned Australia Post in relation to government authorities because, as you know, that is a sensitive one because of developments in Canada. Do they accept that Australia Post is a government authority?

**Mr Deady**—I would probably have to turn to my experts on that. On something like Australia Post—postal services—we would take out a reservation. As you know, aspects of the postal services in Australia have been deregulated, so there may be commitments we can take there; but the monopoly right of Australia Post to deliver standard envelopes is something we will take a reservation out on.

**Senator CONROY**—Do they accept that?

**Mr Deady**—I think they would accept that.

**Senator CONROY**—There are private universities as well as public universities. How is the issue of funding around public universities dealt with?

**Mr Deady**—Again, there is a general carve-out. Subsidies in the services area are excluded from commitments under the agreement, so there is nothing that restricts the ability of the Australian government to provide subsidies to Australian universities, to breach national treatment or—

**Senator CONROY**—And they have accepted that?

**Mr Deady**—Both sides accept that.

**Senator CONROY**—Even though there are private universities that directly compete with the public universities, they have accepted that?

**Mr Deady**—In the area of subsidies, yes, that is right. Again, we would include some aspects of tertiary education in reservations also. Where we wish to continue some sort of discrimination in favour of Australian universities, we could do that through the negative list approach. But the question of subsidies for education services is outside the scope of the agreement.

**Senator CONROY**—Are subsidies outside the scope because of the WTO language?

**Mr Deady**—Essentially, that is right. As yet, services are not covered in the GATS as goods are in the GATT, and both countries agree that we will carry that down into the FTA.

**Senator CONROY**—I know you had a lengthy discussion with Senator Cook, Senator Marshall and a few others recently, so I apologise for revisiting this a bit. In terms of the carve-out versus negative lists and the words being brought in from GATT—I just want to be clear so that I can make sure I explain to the many people who contact me about this issue in particular—is it the case that the subsidies are not included because of the GATT language?

**Mr Deady**—The subsidies are not included, because both parties agree that subsidies for services will not be covered. As I said, that parallels where we are at in the GATS as well.

**Senator CONROY**—We say ‘both parties’ but, once this agreement is signed, there is going to be hundreds of thousands of parties to this agreement.

**Mr Deady**—To the FTA?

**Senator CONROY**—Yes, due to the number of companies that will be involved in trading in these sectors. For instance, if an American university wanted to open up in Australia, it becomes a party in a sense.

**Mr Deady**—No. Legally, it does not become a party.

**Senator CONROY**—It is not a signatory but it accrues rights.

**Mr Deady**—No. The United States government has rights and obligations and so does the Australian government, but the individual private sector companies and enterprises gain no rights.

**Senator CONROY**—I understand that the Americans have now put the investor-state relations on the table.

**Mr Deady**—Yes. They came last week. I think you might know this. They had not got through the final clearances but, during the course of the week, they did get final clearance and they indicated to us that they wanted to talk to us about including an article on investor-state relations. They still did not have a formal proposal to put to us, but we talked through some ideas.

**Senator CONROY**—They put forward, if not a final proposal, at least a preliminary discussion document, as I will call it.

**Mr Deady**—That is correct.

**Senator CONROY**—If that was agreed to then an American university would have some legal rights that it potentially did not have previously.

**Mr Deady**—To be clear again, the issue here is there being a US investor—if that university had invested in Australia. If it were just delivering a service to Australia from the United States over the Internet—

**Senator CONROY**—Let us say Yale wanted to open a university, a campus, in Australia—not that I can imagine they would—

**Mr Deady**—If they are investing in Australia, yes, they are covered by the investor-state article, if there is an investor-state article. That covers the commitments in the investment chapter, and the investment chapter alone; it does not cover the whole 23 chapters. It covers just one chapter: the commitments in the investment chapter.

**Senator CONROY**—I am looking at, for example, Yale opening a campus in Australia to compete with Bond University, the University of Notre Dame, or any of the publicly run and owned universities. I have read the *Hansard* of your discussion with Senator Cook, and I understand from that that you were at pains to stress that both parties understood what the words meant currently in terms of that carve-out that you are bringing in from the WTO on, say, subsidies.

**Mr Deady**—Yes.

**Senator CONROY**—So there is a common understanding. There was an argument that others were putting and that Senator Cook was repeating: ‘Why don’t you get a tougher definition?’ I think you said, ‘We basically understand the definition.’

**Mr Deady**—There was certainly a discussion. I recall that. I think the actual discussion started in the context of the GATS and whether this language needs more clarification in the GATS. You are right; I recall that.

**Senator CONROY**—You are remembering it. I have inelegantly described it. The thing that is a worry to me is that, while I understand that both our government and the American

government would understand the exact meaning of the words and have an exact interpretation, Yale may disagree with our interpretation. As you know, because you are going through this process where you are trying to get legal text to match intent, lawyers are pretty tricky buggers. How do you stop a lawyer wanting to test the legal parameters in an investor-state situation?

**Mr Deady**—The investor-state article, if there is one, would apply only to the commitments of the investment chapter. Subsidies would not be covered by that investment chapter, so there would not be a subsidies issue there that they could even make a challenge on.

**Senator CONROY**—Let us say Australia Post moved from Yale to UPS.

**Mr Deady**—The Canadian example is often cited of the NAFTA panel case against UPS. I do not pretend to know all the details of that case. What is interesting, I think, is that that is not a challenge to the right of Canada Post to conduct a monopoly in relation to the distribution of letters—small letters, the average mail—where Canada has a reservation in the NAFTA. What Canada has done is open up some other aspects of postal services to competition and national treatment—those sorts of commitments to the United States as part of NAFTA. This is a challenge that Canada Post is somehow cross-subsidising those activities where they have opened up their market to competition. That is what that NAFTA case is about.

**Senator CONROY**—But Australia Post run their courier service. That is in direct competition and, by definition, Australia Post would be cross-subsidising its courier division.

**Mr Deady**—I am not sure. But the issue is that there would have to be a US investment in Australia. It is investment that is challengable under the investor-state dispute settlement, not services commitments. So there has to be a breach of some of the commitments—

**Senator CONROY**—FedEx run around here now. So FedEx could say, if there was an investor-state provision, ‘We are competing directly with Australia Post’s courier service, and it is being cross-subsidised by Australia Post,’ and by definition it is.

**Mr Deady**—I am not sure.

**Senator CONROY**—It is not a separate business entity for the purposes—

**Mr Deady**—If there was to be a case, it would have to be taken by FedEx in this situation that there was some measure being taken by the government of Australia that was a breach of national treatment and that was discriminating in favour of, in your example, Australia Post. If that was the case, that would be something that the US investor could take an investor-state dispute settlement on. Under Australian law now, if they invested in Australia and they believed they were being discriminated against, they could take action in the courts on that matter. What the investor-state dispute settlement article introduces is independent arbitration. It does not create new rights. The only new right it creates is the ability to automatically go to international arbitration. The Australian courts are still there, and action could be taken by a US investor in this country if he felt that his investment somehow had been expropriated by a government measure or that there was discrimination against his investment and he was not getting fair treatment relative to an Australian investor. He would have recourse to the courts.

That is what these investor-state articles have introduced into these trade agreements—a recourse to independent arbitration beyond the domestic courts in both countries.

**Senator CONROY**—I appreciate that, but my point is that Australia Post does cross-subsidise its courier service.

**Mr Deady**—I cannot answer that question. I am not privy to—

**Senator CONROY**—Let us just assume it does, just for the purposes of the discussion.

**Mr Deady**—That is always dangerous, and I would rather not get into too much speculation about what they may or may not do, because I do not know enough about Australia Post, the postal services or the reservations we already have.

**Senator CONROY**—If they did, and this investor-state provision was in, would FedEx be able to take the Australian government or Australia Post to this independent dispute settling?

**Mr Deady**—The way you are describing it, I cannot see a breach of the commitments that we would have in the investment chapter. National treatment and expropriation are the two main ones that we would enter into and they are the main ones that these things apply to. It would clearly also depend on the reservations that we have taken out on the supply of postal services. If we have reservations there and the government introduces a measure that is otherwise in breach of some national treatment, this is a services investment and there would be no case for the foreign investor to make.

**Senator CONROY**—That is my concern. That is what you think the definition would be but you would not be the final arbiter anymore. It would be an independent tribunal, and a very well-paid QC would be arguing something different. Unfortunately you would not be called as a witness to say, ‘No, this is what we really meant.’

**Mr Deady**—This is hypothetical, because we have not agreed to an investor state article with the United States at all, but if we did go down that path and we did have such an article it would apply to commitments in that investment chapter. There have certainly been cases in which the way these things are crafted now—the investor state mechanism as it appears in, say, the US-Chile or US-Singapore agreements—is different from what was done in NAFTA.

**Senator CONROY**—I appreciate that they realise that they perhaps—

**Mr Deady**—They have made some changes, because I think they did identify some—

**Senator CONROY**—That is what well-paid QCs are paid to do: to find logical—

**Mr Deady**—Again, if there is resort to a panel then there is a mechanism for establishing such panels. If you look at and analyse the NAFTA cases that have been taken rather than the public presentation of some of these things, the actual panels have been very diligent in their work and I think the findings have been pretty well accepted. Some of the claims made by lawyers going into cases, as you rightly say, are certainly exaggerated.

**Senator CONROY**—My concern is this fancy QC who comes out and says, ‘I think it means this,’ as opposed to what you, I, Senator Minchin and even the US representatives believed it meant.

**Mr Deady**—If we were to agree to an investor state article, the critical thing for us to do is to determine what obligations Australia has entered into in that investment chapter to which

this investor state article could apply. We would have to craft the language in a way that reflects Australia's interests. That is the task ahead of us. If we go down the path of an investor state article, we obviously have to negotiate that article in itself. Then we would have to negotiate the commitments to which that investor state mechanism applies. It is not just a matter of carrying down NAFTA in any event; it depends on the reservations we take against that investment chapter. If we have carved out postal services altogether in the investment chapter, then there is no recourse for any US investor to take any action against a measure by the Australian government in relation to postal services. There is a whole architecture of treaty level commitments that we enter into. There are checks and balances in this system; it is not a black-and-white situation. We can establish the obligations we enter into and then we can take reservations against them. If we craft an investor state mechanism, that would also be something we would negotiate with the United States.

**Senator CONROY**—It is just that these lawyers are paid to change the legal definition. They are paid to argue that black is white and to mount that case. They frequently argue successfully that black is white.

**Mr Deady**—It is not for me to comment, but they have that right under Australian law now if they want to take action before the courts. If they want to take frivolous cases and people want to pay them—

**Senator CONROY**—As an example, what would a postal service be?

**Mr Deady**—There are definitions—

**Senator CONROY**—Is providing a courier, is providing a package—a postal service or is that not a postal service?

**Mr Deady**—Again, I cannot speculate in—

**Senator CONROY**—But you are potentially going to be defining this.

**Mr Deady**—We certainly are, and we will be defining it very clearly. If you look at our Singapore reservations you will see that we do get down pretty closely to—

**Senator CONROY**—How big is the parcel?

**Mr Deady**—We do define that in the reservations. We define those things in reservations. We say that articles above a certain size may be open for the obligations. Other parts of it, like the standard sized letter, we fully reserved. That is the sort of detail we get into.

**Senator CONROY**—Let me give you an analogy—and it is not an exact analogy. We have antisiphoning laws that were written in the eighties. They say, 'These things shall always be on the antisiphoning list and these sports cannot be stuck on pay.' No-one had ever heard of Super 12. So Super 12 is on pay; it is not on free-to-air. That is because no-one envisaged when they wrote the law that a new competition would arise. The problem here is that while you are able to absolutely define what a parcel is today, any attempt by Australia Post in the future to move into a new form of service will not be allowed because it has not been defined in the year 2003 by Mr Deady, because he could not possibly know what will be in the future and what a postal service will be in the future. That leaves Australia Post in the position of not being able to expand into emerging markets and emerging technologies.



**Mr Deady**—That is certainly not the case. We are taking on commitments in the FTA that we will not discriminate against the postal supply from the United States. So, yes, they would have to compete against that United States supplier. If, however, there is some health or safety reason then there will still be full capacity for a government to intervene to introduce regulations that would discriminate against the United States in that case. There is a whole raft of exceptions to the general rule. We would be making a commitment to open that market to competition, to not discriminate against a US service supplier, just as they are giving that commitment to us. The United States are saying to us, ‘We will not discriminate against you, Australia, if you want to start exporting professional services—maritime services or whatever—to the United States. We will not, because circumstances change, suddenly introduce some new restrictive constraint on you, Australia.’

**Senator CONROY**—That constrictive constraint you are referring to is otherwise known as the sovereign law of the land.

**Mr Deady**—What we are doing with the FTA, though, is taking binding commitments on each other that we will maintain the openness of markets.

**Senator CONROY**—This is an enormous responsibility. You are drawing rings around existing things as best you can define. The incredible thing about a market economy is that invisible hand which makes it evolve. I guess what I am looking at is the same problem that you are facing. I know you are facing a struggle over free-to-air TV and local content—the argument about how you allow a regulation of a future mass medium. Today free-to-air is the mass medium for local content but in 10 years time or even in five years time it may not be. So there is enormous responsibility on you not only to get it dead right today but also to make sure it will still be dead right in 10 years time. That is almost an act of God. I really would not want to be the person with the responsibility on my shoulders of predicting how the world is going to evolve over 10 years.

**Mr Deady**—There is a whole raft of issues, and you have covered a lot of them there. There certainly is a debate—as you well know, a very hot debate—about what commitment, if any, Australia may enter in relation to audiovisual services. That is a genuine debate which we are talking to industry about, talking to the Americans about and trying to negotiate an outcome on. That is something, again, which we will address through this negative list approach in one way or another. That is, through the negative list approach we will take up what commitments the government may or may not be prepared to take. I think it really is a long bow to start talking about a change in the size of packaging in postal services. I do not think they are the same thing. But you are right. If in the free trade agreement we take a commitment on a particular service by saying, ‘No, we will not discriminate against the United States in relation to this type of service,’ and we get those sorts of commitments from the United States, then—like any sort of concession in a trade agreement—that is a binding obligation that both sides agree that they will honour. If circumstances change, new services do get introduced and there is some variation in the delivery of packaging then, yes, that is a commitment we are entering into.

Where we have sensitivities like this one in relation to audiovisual, where things are changing, we are looking to take reservations which will allow us flexibility to deal with those changes in the future. You are right: that is what the debate is about. That is what our

negotiations are about: how we can craft that sort of reservation to meet the objectives that the government has set for that industry while still maintaining flexibility so we can ensure the delivery and development of Australian culture over time. That is certainly the challenge ahead of us.

The Americans have put forward some ideas. Ralph Ives has talked publicly about some of the areas where the United States has indicated they are prepared to accept the current arrangements—for example, on broadcast television, as you would know—and that has been depicted as some sort of standstill commitment. I think it is actually much more complicated than that. That is not what the United States is actually saying. In any event, the critical thing is that that is not the commitment that Australia has said it would accept as part of the FTA. I think there is a whole raft of issues here about services that are very complicated. But what we are dealing with is the very precise reservations that we believe we need to take in order to ensure flexibility for governments in the future in relation to those sensitive areas.

**Senator CONROY**—I have actually chatted with one of the two people that wrote everything down on that anti-siphoning list. I regularly say to them now, ‘Why is Super 12 on Fox and not on free-to-air?’ They say, ‘Sorry, Steve, we didn’t know the Super 12 was going to evolve.’ In 10 years time, people are going to be saying, ‘Why can’t the government do that?’ and ‘That Steve Deady didn’t know it was going to evolve.’

**Mr Deady**—This is probably again outside the scope of the discussion, but we do not accept that sort of measure. There is no breach of national treatment. There is no breach of anything we are negotiating with the United States which would preclude the government from adding programs to the anti-siphoning list, for example.

**Senator CONROY**—I am using that as the analogy for Australia Post and any other government instrumentality. So you can only draw a box around, negatively list or take a restriction on something that exists today. By definition you cannot—

**Mr Deady**—Again, just to be clear so that the negative list is understood, because I think this is important—you are right, there are actually two lists. The first list, annex 1, as we call it, is a standstill commitment. It says, ‘This is the restriction we have now, and we agree with you, the United States, that we will not make it any more restrictive in the future.’ That is a standstill commitment. In annex 2, we can take a reservation and say, ‘We maintain full and complete flexibility to do anything in the area of postal services or whatever service sector we choose.’ So, as I said, there is an architecture to this—there is the general reservation for government authority, and that is carved out through the text, and there are these reservations: annex 1 and 2. In annex 1 we are binding the status quo and saying we will not make it more restrictive than it is now. In annex 2 the government can intervene to make the measures even more restrictive in those sectors. So that is the balance that we have to get right, and that is what we are working to do.

**Senator CONROY**—Now I have strayed far from where I originally intended to go in terms of my questions. I am sure we are going to come back to some of those issues. I do not want you to think that I do not want to go into some depth on those issues. At a general level, before I go into specifics—as these negotiations have proceeded, I expect the parameters of the negotiations have continued to evolve for you, and the realms of what may be possible or

not possible in the outcome have probably changed a little bit along the way. In the light of these developments, have the government's instructions or negotiating mandate for you and your team changed since the negotiations first began?

**Mr Deady**—The government set out the broad objectives for the negotiations back in February or March, I think.

**Senator CONROY**—Have you received any new orders?

**Mr Deady**—We have been in very close dialogue, obviously, with Mr Vaile, and he has been in close dialogue with his ministerial colleagues—as you say—as the negotiations have evolved. We have sought from time to time some further refinement of the mandate that we have been given and we will continue that process as we go forward. But effectively, the broad objectives set in March very much remain the mandate that we take into the process.

**Senator CONROY**—In the same way that the President said, 'No way,' to the Jones Act, the Prime Minister seemed to flag that the cultural issues were on the table, which was not the original position back in March. There has been a shift in the government's position as articulated by the Prime Minister. Maybe the Prime Minister is wrong. I am willing to bet he is not. But he has indicated what appeared to be a subtle shift in the position, so have you been given modified, refined—to use your word—instructions as the debate has evolved?

**Mr Deady**—In relation to going to the specifics of the one you talk about—the audiovisual or the cultural industries—the government made it very clear right back in March what our negotiating mandate and instructions were: we would be doing nothing in these negotiations to undermine the ability of the government to protect and ensure the development of Australian culture. That remains unequivocally the negotiating mandate we have. We are in the process of negotiations. Again, it is no secret this is an area where the United States has some ambition in these negotiations. As we have gone through the process what we have tried to do is explain the system that we have in place in this country, the openness of our market in audiovisual, the measures that we do have in place now—to explain those in detail to the United States—and we have sought to get some sense of the level of ambition from the United States. Nothing has changed in relation to our negotiating position on those cultural industries; it is still dictated by those objectives as stated by the government.

**Senator CONROY**—I am going to be a bit of a pedant here, Mr Deady—and I am sure you deal with lots of them in your business. Has the government varied your negotiating parameters since March?

**Mr Deady**—As I mentioned—and I cannot answer it any other way, I do not think—we have the broad objectives set out as per March. They remain very much the negotiating mandate that we have got. We have gone back to ministers and sought some flexibility in terms of exploring perhaps options with the United States in certain areas. We have authority from ministers to do that—just explore options. But we have not—

**Senator CONROY**—How often do you go back?

**Mr Deady**—Obviously after every session, and continual consultations and discussions with Mr Vaile. It is a whole-of-government process. It is a very big team that is involved in the negotiations. It does cover all the agencies in Canberra.

**Senator CONROY**—When you say you go back to ministers and it is a whole-of-government process, is that something that would therefore go back to cabinet?

**Mr Deady**—Yes. We have been back to cabinet several times.

**Senator CONROY**—Cabinet, at the end of the day, is the final arbiter of this? Senator Minchin would be sitting there and he would be one of the members of the cabinet that would make the final deliberations, and they would say, ‘All right, Mr Deady, here is your mandate: go to it.’ Is that the way the process works?

**Mr Deady**—Essentially that is right.

**Senator CONROY**—So cabinet gave you some riding instructions back in March. Have they given you any refined riding instructions since March?

**Mr Deady**—I used the word ‘refine’ before, and that is right. The broad negotiating mandate has not changed.

**Senator CONROY**—I have not suggested it has.

**Mr Deady**—We have sought some further refinements in aspects. As there is dialogue with other agencies, as we are talking to the Americans and getting a clearer idea of what their demands are of us in some of these areas, we have sought and received authority to explore some of these options. To that extent the mandate has changed, but only to that extent.

**Senator CONROY**—I am not allowed to ask about advice from the department up to the government, and I understand the restriction. I am allowed to ask about government directions to departments, so if they have given a direction I am allowed to ask about that, once they have made a decision. I am not allowed to ask what you have advised them but I am allowed to ask what they have told you to do. So in which areas have they varied or refined their mandate to you?

**Mr Deady**—The negotiating mandate we have now, as I said before, reflects very much the objectives that were set for us when we started. We have had some refinement. We sought authority from ministers, for example, in relation to the offers that we made to the United States in agriculture and in other areas. So to that extent, yes, we sought—

**Senator CONROY**—Our original mandate was zero tariff immediately. That was our first offer.

**Mr Deady**—Again, going into the negotiations the very clear statement of objectives was that we wanted a comprehensive agreement with the United States, fully consistent with the GATT. Our understanding and interpretation of the GATT is that it has to be comprehensive and it has to cover all products, it has to go to zero on everything. That has not changed.

**Senator CONROY**—I appreciate that. But let me give you two that the Prime Minister appears to have flagged publicly that have been refinements. Firstly, he has indicated a phase-in period—let us call it an ambitious log of claims, saying straightaway, access for everything. Obviously it was an original offer. The Prime Minister has indicated a phase-in period for agriculture. We could argue—and I will not bother with his argument today, or maybe not until later—about the phase-in period. He has flagged the idea—and he has said it publicly and he has been quoted and paraphrased—arising out of his meeting with President Bush. It

could only have come from the government, because I do not think that President Bush has given press conferences or press briefings to Australian journalists about the discussions. But the Prime Minister has indicated on the front page of a number of newspapers that in the cultural services debate he is prepared to be more flexible. So I am seeking to find out—other than those two, and I would like to try to drill down a bit on what they mean in plain English—in what other areas there are refinements.

**Mr Deady**—I cannot go into those and there really are not specific areas where we have sought that. We have sought some clarification and some refinements in the positions and some of the ideas and options that we might be talking about to the United States, but that is as far as I can say in relation to those.

**Senator CONROY**—If you have told the United States, it is not a secret to them—right?

**Mr Deady**—I can say that we have not sought from ministers specific changes to the negotiating mandate that we have been given.

**Senator CONROY**—I understand from what you have said and what the Prime Minister has indicated publicly they have given you some refinements.

**Mr Deady**—They have given us authority to explore options in certain areas. That is what they have given us authority to do and that is what we certainly did last week and will continue to do. On the cultural one, for example, I saw the press comments and the reports of the discussion but that is all I have seen. As far as our mandate goes in relation to the audiovisual sector, it is unchanged. We are there and we are negotiating to ensure an outcome that provides the government with the flexibility to continue to maintain and achieve Australia's cultural objectives, and that has not changed.

**Senator CONROY**—Maybe the Prime Minister should let you do the briefing. He seemed to indicate that there had been a broadening.

**Mr Deady**—Senator, I think that if you see it in the context of the things that we have certainly said we put a position and we made an initial offer to the United States in this area. The Americans have come back to us and indicated that from their perspective they want to see that flexibility narrowed somewhat. That is the demand that they are making and that is the negotiating process that we are engaged in. I think the point that should be noted there is that at the moment Australia government has full flexibility in relation to audiovisual to the extent that, hypothetically, it could ban all US TV tomorrow—that is the nature of the carve-out, the reservation, that we have at the moment. We are prepared, as the government is prepared as part of this overall deal, to make some sort of commitment that narrows that reservation somewhat, and that is something that we are in the process of talking about and negotiating with the United States. But if there were agreement to some sort of the lessening in that flexibility then it would be done in the context of ensuring the overall cultural objectives. That remains absolutely the mandate that I have got and that has not changed.

**Senator CONROY**—Cabinet has made a decision to give you authority to vary—perhaps I am using the wrong word—or refine—

**Mr Deady**—Explore options—

**Senator CONROY**—In which areas have they given you that authority to explore options?

**Mr Deady**—There is a whole raft of areas that the Americans have some ambition in. We sought from ministers some indications of areas where we have some flexibility to explore these ideas. They are in areas where the United States are making demands of us and they are in relation to some of these reservations that we have spoken about—

**Senator CONROY**—Presumably, you have communicated these to the Americans.

**Mr Deady**—We have explored the options with them; we have not put any specific proposals.

**Senator CONROY**—All I am trying to do is to identify the areas where there is a refined mandate for you. You have already told the Americans, and I am just hoping that you might share them with us.

**Mr Deady**—There is nothing that is of particular significance in the areas where the United States have some ambition and have made clear they have some demands of us. One is in the investment area; you mentioned the FIRB, earlier. Going right back to Bob Zoellick's letter, there have some ambition in relation to FIRB. We have sought and received from ministers some authority to talk about options in relation to how we may be able to take a reservation that meets some US concerns in that area whilst still maintaining very clearly the government's policy objectives in relation to foreign investment. Audiovisual is another area where we have got authority to explore options.

**Senator CONROY**—Would you like to tell me about the ones I have not mentioned? It would save a lot of time. I can cast around, if you like, and you can say, 'Now that you have mentioned it, I will mention it.'

**Mr Deady**—It is not appropriate for me to get into that level of detail.

**Senator CONROY**—I have not asked you to go into the detail of the offers; I have just asked you to identify the areas. Given that you have already identified them to the US government, I would not have thought it was that big an ask to identify them to the Australian public.

**Mr Deady**—What we are doing with the United States is negotiating. They have indicated very clearly that there are some areas where they are looking for some narrowing in our reservation—and they have mentioned it very publicly in relation to audiovisual.

**Senator CONROY**—I have got audiovisuals written down, Mr Deady.

**Mr Deady**—Apart from those areas, the mandate that we have from the government is sufficient for us to deal with the requests the Americans are making of us in the other aspects of the negotiations. That is where we are at. I just want to make clear that we have not, even in those couple of areas, done anything other than outline, discuss and explore some of the options that might be feasible, as part of developing these reservations, which is what we are talking about in the services area. That is where the demands are from United States office. The open market that we have in this country has reflected very clearly that they do not have the same demands of us, obviously, on beef, dairy and sugar as we have on them, so this is the area. Apart from these couple of specific examples, which are high priorities for United States, the negotiating mandate that we have is certainly sufficient for us to carry forward the negotiations.

**Senator CONROY**—You have beaten me down, Mr Deady. I hope you are doing as good job on Mr Ives. You were interviewed by Matt Brown on the ABC's *PM* program, along with the US lead negotiator, Ralf Ives, on 31 October. During the interview, Ralph Ives said that the US is still trying to develop a proposal to present to Australia on the PBS. Given the significance of this issue, aren't you running out of time? Is it normal practice—you are the expert and I am absolutely not—for countries to wait until five minutes to midnight before slipping a pretty major proposal onto the table?

**Mr Deady**—That is really a question for the American side. What Ralph has said there, I think, it is pretty clear. There is a debate going on in the United States over pharmaceuticals—

**Senator CONROY**—It is more than a debate. Mr Zoellick has described it as the 'pharmaceutical protection scheme'.

**Mr Deady**—What I mean is that there is an internal debate in the United States in relation to pharmaceutical prices in that country.

**Senator CONROY**—I see. Somewhat e-mailed me a little earlier that an American congressman was talking about it.

**Mr Deady**—There are certainly a number of congressman talking about it. But the bottom line is that this is an area where the United States have said, as Ralph said then and as he said to us in the course of the meeting last week, that they are still talking with the industry about whether they can develop a proposal to put to us.

**Senator CONROY**—Are they negotiating in good faith if they are slipping a pretty major proposal onto the table in December in Washington?

**Mr Deady**—It is not a matter of slipping it onto the table. There are only two of us in the room; there is no gamesmanship in this. If they have a proposal that they want to develop and put to us, then we will look at it. A couple of points on this are worth saying. We have had a lot of discussion on the PBS since March; we have spent a lot of time explaining to the Americans—

**Senator CONROY**—Are they slow?

**Mr Deady**—I do not think they are slow. The fact is that the explanations we have given on the operation of the PBS scheme in this country, which we have been able to explain to them and which they then go back and talk to their own industry about, I think have very clearly had some effect. They have not been able to put together a proposal and come to us and say, 'These are the things we would like to talk specifically about on the PBS'. I cannot answer the questions as to why they have not, other than there is this internal debate in the United States. We have been able to explain it very clearly to them—and this is not me but very efficient and effective professional officers from the Department of Health and Ageing who have done all that. I think it has been very effective.

Yes, we are waiting and, if they come to us in December with something, we will look at it, but we will look at it very clearly. Ralph said that he understands very clearly the sensitivities over this issue in Australia. Though I am not sure if he said it in that particular interview, it certainly was part of the press conference we did. More than that, he understands the position we have put that, whatever proposal the United States may come to us with in these

negotiations, the ability to provide affordable medicines and a sustainable PBS to Australia is not something we will undermine as part of these negotiations. The fundamentals of the PBS will remain. Ralph himself has said, 'That is the position of the United States: we don't want to affect the fundamentals of the PBS.' What that translates to in a proposal is yet to be seen.

**Senator CONROY**—They would say that, wouldn't they?

**Mr Deady**—You asked about good faith. I have seen nothing whatsoever other than that these negotiations are absolutely being held in good faith.

**Senator CONROY**—Just from the outside though, it is a pretty important agreement. They have had nine months to come up with a proposal and they are publicly saying, 'No, we will present it in December'. It is 6 November today. You are going in the first week of December?

**Mr Deady**—We start again on 1 December.

**Senator CONROY**—I presume you hope to basically have an agreement by the end of that week?

**Mr Deady**—That is correct.

**Senator CONROY**—So we are less than 30 days from a possible signing and they have not put a proposal to us, and they tell us they are going to put it on the table on the 1st?

**Mr Deady**—He said they are still working on coming up with something. I do not know whether they are going to come up with something on 1 December or not. But I do know what our response will be. Our response is very clear and it will not change. It has been clear right from the start—that is, the fundamentals of the PBS will not change. The sustainability of the PBS is not something that is up for negotiation. Whatever they come to us with on 1 December, our position will not change.

**Senator CONROY**—You use the description 'won't affect the fundamentals'. What was your language?

**Mr Deady**—The objectives stated are very clear: the ability to provide affordable medicines to Australia, which I think is certainly one side of the PBS, and the sustainability of the PBS itself. They are the very clear commitments that the government has given in relation to these negotiations.

**Senator CONROY**—Are you aware that that is the exact language the government used when it introduced the copayment concept? It is word for word. When this government put forward a proposal to increase copayments, it used those exact words that are your mantra on this issue. This government believes that introducing a copayment on the PBS does not affect the fundamentals.

**Mr Deady**—That is not a question I can answer.

**Senator CONROY**—It is all on the public record. That is what the Treasurer's words were two years ago in the budget. He said, 'We're not affecting the fundamentals up but we're going to put the copayment up.'

**Mr Deady**—I can only say that the mandate that I have is very clear: affordable medicines for Australians and a sustainable system. That is how it has been articulated and I think that is



how we have explained it to the United States. That is the objective; that is the mandate that we are operating under.

**Senator CONROY**—Have we got a PBS equivalent we want to slip on the table with them at the last minute to match theirs if they are going to slip that one on the table?

**Mr Deady**—Again, when you say this is question about faith: if this had not come up at all, if we had no discussion on this for six months and then suddenly it appeared, that may be a different matter. There is no doubt that this is an area that has been a longstanding issue for the pharmaceutical industry in the United States. Again, it is not a new issue to us. I believe it was reflected specifically in Bob Zoellick's letter, but I would have to check that. Very clearly, it is something that has been understood. In my view, one of the advantages or plusses of the FTA has been the level of discussion we have been able to have to explain to the US side in much greater detail what this scheme is and what it is not. I think that has been helpful to the process. Yes, the onus is very clearly on the United States. If they have something to propose here, it is up to them to propose it. We would look at it and then respond in the context of the mandate that we have.

**Senator CONROY**—As a mug punter from outside, it looks a little sleek. But you believe they are negotiating a good faith.

**Mr Deady**—I do, yes.

**Senator CONROY**—Representatives from the Australian pharmaceuticals industry have expressed to me concerns that intellectual property issues as they specifically affect pharmaceuticals will not be excluded from the negotiations. The industry is concerned that the US negotiators have flagged the possibility of Australia introducing a paragraph 4 process similar to the current US process linking intellectual property with the regulatory approval process. Paragraph 4 enables innovative drug companies to take legal action to prevent or delay the launch of generics. You would understand that getting access to generics is a very important part of the process in protecting the cost base of the PBS. So if through this process they are able to delay the launch of generics, that would increase the cost of the PBS as a whole by definition because you could not put it on to the generics and start selling them cheaper. Is that fair?

**Mr Deady**—That is a hypothetical question. If that is what the US were pressing, if that were something that we did agree to and if it did lead to the delay of generics entering the market then I believe that would have an impact on the PBS. That linkage is understood, yes.

**Senator CONROY**—Has the US raised the possibility of a paragraph 4 or something similar?

**Mr Deady**—Again, I really do not want to get into the detail of the negotiations here. I can say that there are a number of issues in the IP chapter that we are still negotiating hard with the Americans. This is another chapter where they do have some ambitions. They are the demanders in this chapter. We are working to achieve an outcome that meets our needs as well as listening to what the Americans are putting to us. There are some issues in relation to the arrangements as they apply to the marketing approvals for pharmaceuticals prior to the end of the patent terms. There are a couple of articles that they are talking about there. The United States are not asking us to replicate their legal system and their processes in relation to

those things, but there are some issues concerning the marketing approvals in advance of the patent terms that are being talked about in that chapter.

**Senator CONROY**—So it is possible that in one chapter it looks like everything is cool but over here there is a backdoor way of undermining the system.

**Mr Deady**—I do not believe that is a proper characterisation. We are, as the negotiators, negotiating the whole package. We are very aware of linkages between issues and chapters, and this is one. Getting back to the cultural issues, which came up before, there is a question of whether e-commerce is going to backdoor our commitments, whatever they may be, to culture. Again, we are very much aware of that debate. What we are doing is negotiating the whole of the agreement in order to ensure Australia's interests are met. We are very aware of the linkages between IP, generic medicines and the sustainability of the PBS.

**Senator CONROY**—Are they seeking a paragraph 4 style arrangement?

**Mr Deady**—They are not seeking the replication of their arrangements.

**Senator CONROY**—I did not say 'replication'; I said 'a similar thing'.

**Mr Deady**—Paragraph 4, as I understand it, is an automatic 30-month extension of patent terms. They are not seeking that.

**Senator CONROY**—And less than 30 months?

**Mr Deady**—All I will say is that we are talking to them. They are raising some issues in relation to the arrangements for approvals prior to the marketing of the drugs whilst they are still under patent but coming up to the patent ending. There are some issues there that they have raised with us that we are looking at and talking to them about but nothing as specific as the paragraph 4 you mentioned.

**Senator CONROY**—I understand from industry sources the US has also raised the possibility of extending the five-year data exclusivity for chemical entity, which would inhibit further growth of the generic drug market in Australia. Is that correct?

**Mr Deady**—All I can say is this falls into this basket of issues in relation to patents where the Americans are raising issues in relation to the way this treatment goes prior to the ending of the patents. They are putting forward some ideas, we are looking at those and, again, we will respond to them in a way that is consistent with the commitments that the government has given in order to balance the interests of the generic drug industry in this country as well as these linkages, as you mention, to the PBS. We are aware of all of those issues and we are working with industry, talking to them and talking to the Americans to see what, if anything, we may be prepared to do in these areas.

**Senator CONROY**—Has the US raised the possibility of extending data exclusivity?

**Mr Deady**—That is a level of detail that I am not across for that chapter. As I said, there is a raft of these issues which are linked to this question of prior approvals, but I am not familiar with that level of detail.

**Senator CONROY**—That is fair enough—I am sure you could not possibly be across every single piece of detail in every single chapter. But you understand that if Australia agreed

to a US request on data exclusivity that would result in the delays in the launch of generics and, again, lead to cost increases.

**Mr Deady**—I believe it would depend on the sort of commitment that Australia was entering into. Again, this is an area where these things are just not as stark as they are perhaps presented. These are ideas the Americans are putting to us. I am sorry, I do not know precisely what they have said to us in this area. But I certainly know, in the broad sense of these things, that in the IP area in particular they do have a level of ambition. We are looking very hard at that, working through which of these sorts of commitments that the United States are looking for are consistent already with the outcomes that we achieve in this country. That is the thing in much of this IP area: our outcomes are very similar, our approaches are different, and it is a matter of explaining to the Americans how we get to the same result. I think this is an area that that falls into, and we believe we may be able to craft the language here that meets both our needs in this area, that reflects the existing pretty tough IP protection regime that we have but that certainly does encourage a generic industry and still provides that balance between IP protection and consumer rights that is a key part of government policy in this area.

**Senator CONROY**—Did the US negotiate paragraph 4 type arrangements in data exclusivity with Singapore and Chile in their respective negotiations?

**Mr Deady**—I would have to look at that. I do not know the answer to that.

**Senator CONROY**—Would you be disappointed if they bowled up in 30 days time with a paragraph 4 type clause?

**Mr Deady**—Those negotiations have been going on, like all of them, but the IP chapter I suppose is a bit unique in a way in that that is all about the legal language, the text, so it has been going absolutely from day one. I think all the issues on IP are on the table in that chapter. I do not think there are any surprises coming out from either side in that chapter between now and December. So if there was any greater specificity or more demands from the United States in that area I would be surprised, yes.

**Senator CONROY**—I want to come back to agriculture. In your media briefing with Ralph Ives on 27 October you said Australia will be ‘pressing for a truly comprehensive and big market access deal on agriculture’. I know we have covered some of these issues. On 31 October you said again you were looking for a big outcome on agriculture. Are you satisfied with the US offer on agriculture? Does it provide the potential for a big market access deal on agriculture?

**Mr Deady**—We received a revised offer from the United States on agriculture back on, I think, 14 and 15 October, just prior to the round that you mention. The minister has commented that that was an incremental improvement on the first offer. Very clearly, there is still a long way to go.

**Senator CONROY**—He said it was a shocker originally, so it was an incremental improvement on a shocker.

**Mr Deady**—He said it was an incremental improvement, and I think that was a fair description. There is still a long way to go on agriculture—that is the case. We had a good discussion, as I mentioned, during the week but there is a way to go. On the big items—dairy,

beef and sugar—where we do need significant improvements in access, we have a way to go with all of those.

**Senator CONROY**—Have you requested the US to come back and try again on agriculture?

**Mr Deady**—As part of the process, yes, we have made it clear to the United States that we are looking for further improvements.

**Senator CONROY**—And what have they said?

**Mr Deady**—They have taken that back and they are talking to the US industry. Obviously the sensitivities are there in the United States, but they understand very clearly the demands that we are making of them that, for the FTA to satisfactorily conclude, we do need the sort of outcomes we have talked about in agriculture: comprehensiveness, significant improvement in access from day one, transition periods that are meaningful and endpoints that lead to the elimination of free trade in all agricultural products into the United States.

**Senator CONROY**—The NFS has stated that it is seeking market access up-front and not subject to the long phase-in times which have characterised other FTAs reached by the US. What has been the length of phase-in times on agriculture for FTAs the USA has other countries?

**Mr Deady**—Again this picks up a point I think you made earlier about our original objectives with the United States. Going into these negotiations, we understood the approach the United States has taken in the past in relation to sensitive products—agriculture—in other FTAs. Again, from memory, the longest implementation period in the Mexico agreement—the agricultural part of NAFTA with Mexico—was around 15 years. The longest phase-in period for Chile was 12 years. So they are the sorts of times that the United States has used in previous negotiations.

**Senator CONROY**—They do seem to like consistent FTAs with other countries. They try and get them all into the same sort of basic module, if I can use that word?

**Mr Deady**—They do have an approach that is similar across agreements.

**Senator CONROY**—They like the words to be the same in different chapters—just for simplicity, I assume, from their perspective.

**Mr Deady**—There are elements of that, but they are not just complete duplicates. What we have said and have made very clear right from the beginning of these negotiations, though—and I think the point needs to be registered—is that most of those FTAs the United States has are with developing countries. Australia is not a developing country and therefore the nature of the agreement would need to be different. We have made that very clear to the United States, and I think that is understood. If you look at some of those earlier transcripts, Ralph certainly has indicated that that is the approach the United States has taken to these negotiations.

**Senator CONROY**—A phase-in time of 12 years or 15 years, as you have mentioned, would be well beyond the government's ambition—certainly it is well beyond mine—wouldn't it, Senator Minchin or Mr Deady?

**Mr Deady**—I am not going to speculate on transition periods that may be acceptable as part of an overall package under this FTA.

**Senator CONROY**—That is setting a low bar for yourself.

**Mr Deady**—We have set a very high bar—a very high bar. I use these words because they are the only words I have in my vocabulary to use. We need a very substantial market access deal on agriculture from the United States on areas of dairy, beef and sugar which are very sensitive products in those markets. We have made it crystal clear right from the start that there has to be some significant, immediate improvements in access in those significant products. That is different. With Chile, for example, very little if anything happens in the early years with some of the more sensitive products; it is back loaded, if you like. That is the sort of thing that, as part of a package, would not be something that we could see as meeting this very high bar of a substantial outcome.

**Senator CONROY**—You mentioned earlier the concerns of American farmers. They must know something we do not because, as I am sure you are aware, it would be very difficult for us to flood their market, given the size of their market and given the size of our production capacity. There are some commentators arguing that we would barely be able to increase it because of water constraints in some areas. Have we got an education program going on with those American farmers?

**CHAIR**—Before you answer that, Mr Deady, it being 9.30, we will take a short break.

**Proceedings suspended from 9.29 p.m. to 9.40 p.m.**

**Senator CONROY**—Before the break we were talking about phase-in periods.

**Mr Deady**—I have forgotten the question, Senator, I am sorry.

**Senator CONROY**—That is all right—I have forgotten it as well! In the Australia-Thailand FTA agreement in Bangkok recently we have agreed to extremely long phase-in periods for agriculture market access in Thailand. In particular the phase-in period for skim-milk powder and dairy milk products extends to 2025. This is a long time, wouldn't you agree, Mr Deady?

**Mr Deady**—It is not really for me to comment on the Thai FTA in the context of the United States FTA. I really am not going to comment on what might be an acceptable transition period as part of an overall package. But, very clearly, the principles that we have set out for an agriculture deal with United States have—in your words—to jump a very high bar. That is what we are looking for. I do not believe that it is worth trying to equate the overall outcome in the Thai FTA with what we are still pursuing with the United States.

**Senator CONROY**—So you would be prepared to rule out a lengthy phase-in to the year 2025 for any products?

**Mr Deady**—We have made it very clear that we need a big deal, we need immediate access gains, we need transition periods that are meaningful in the relationship between Australia and the United States and we need endpoints that lead to zero. I do not want to speculate at all about what may or may not be an acceptable number of years because you are into a debate about if X was unacceptable would Y be acceptable—and I just do not want to get into that, Senator.

**Senator CONROY**—Are you negotiating the US FTA with our Bogor commitments in mind?

**Mr Deady**—The negotiations themselves are something that I am negotiating on the basis of the mandate, as we have talked about, given to me by the government. The Bogor goals are there as part of the architecture of the trade regime that we face. We are talking in these FTA negotiations about binding treaty levels and binding obligations in relation to market access tariffs, quotas, those sorts of things, and the Bogor goals—

**Senator CONROY**—Was Bogor one of those non-binding agreements we were hearing about earlier?

**Mr Deady**—It is a non-binding agreement, yes, Senator. It is not a legally binding commitment in the WTO sense or in a treaty sense. That is the point. It is just something that we are doing—

**Senator CONROY**—Given that we both agreed to it as developing nations by 2010 and both governments keep saying that they have agreed to it, I would just be surprised if both governments were going beyond 2010.

**Mr Deady**—In relation to an FTA and the binding commitments that involves for both countries we are governed absolutely by our interpretation of the GATT in relation to free trade agreements after 2004—

**Senator CONROY**—You are not bound by Bogor—that is what you are saying?

**Mr Deady**—I think the nature of the commitment is different—that is all I would say. ‘Free’ was never defined in a Bogor sense—‘free’ is certainly defined in article 24 of the GATT as far as Australia interprets it, and that free means ‘zero’. I am not sure that ‘free’ has ever been precisely interpreted in the Bogor context.

**Senator CONROY**—I just assumed that the word was consistent.

**Mr Deady**—I can only say that we are talking about treaty level commitments consistent with our GATT obligations, and our interpretation of ‘free’ in article 24 means the elimination of all tariffs. That is what it talks about and ‘elimination’ means just that in our mind, that is, the removal—

**Senator CONROY**—But not in Bogor as far as you are concerned.

**Mr Deady**—The Bogor goals are the Bogor goals. It is not my area of responsibility and I am not an APEC expert, but on those questions of free trade as expressed in those goals I do not believe ‘free’ has ever been defined precisely amongst the APEC members. We are negotiating with the United States a deal that encompasses all products and is looking for zero outcomes on all those products.

**Senator CONROY**—Can you point to Bogor and say, ‘You’ve signed up to this goal in Bogor—2010’?

**Mr Deady**—The negotiations cover a whole raft of different discussions, as I am sure you are aware. We have said very clearly to the Americans that we are looking for a very ambitious outcome. Without getting into the specifics of precisely what that means, from our

perspective ambition means just that—a very high bar. That is the position we have taken into the negotiations, and we are pressing the Americans very hard on that.

**Senator CONROY**—Do you want a fee for every time you say ‘high bar’?

**Mr Deady**—No, but it is important that it is understood that there is a big prize here but also a big hurdle. It is a big ask. These are tough negotiations, and no-one has ever assumed that it would be easy to achieve the outcomes we are looking for. If you go back and look at what the ministers have said about an agreement between the United States and Australia you will see that the trade policy aspects of that are important for the signals they send to the multilateral system—and to our regional partners as well, for our regional trading objectives. That has always been a part of the government’s objectives as stated by Mr Vaile, and Zoellick’s own comments and objectives make it clear that we are looking very much to those higher aspirations in relation to broader trade policy interests.

**Senator CONROY**—As two of the key nations in APEC that have signed up to the goals of Bogor, do you think long phasing periods that go beyond 2010 would kill Bogor as a viable proposition?

**Mr Deady**—I am not speculating on what the transition periods will be in the Australia-US FTA.

**Senator CONROY**—If they are longer than 2010, which is the Bogor goal—

**Mr Deady**—I cannot speculate on whether or not they will go longer. I certainly do not want to be in the position, this close to concluding these negotiations, of speculating at all about what may or may not be an acceptable transition period for Australia in the negotiations.

**Senator CONROY**—But if two of the key champions of 2010—and we were key champions of the 2010 goal for developed nations—walk away from that, everyone else who is a signatory to the goals would surely say, ‘Bogor’s dead.’ That would be the realistic position. We could still pretend, but the hard, real world would say, ‘If two of the key nations that drove the 2010 deadline haven’t even been prepared to deliver it themselves, no-one else is going to bother.’

**Mr Deady**—I cannot speculate on what the transition period might be in the negotiations with the United States as part of an overall deal.

**Senator CONROY**—Minister, would it be a disappointing outcome if negotiating the FTA killed the Bogor declaration for APEC countries?

**Senator Minchin**—I am not going to speculate on that either. As you know, the general position is that, while the government has an in-principle strong enthusiasm for multilateral protection reductions, in the absence of a clear pathway on that we think it is sensible to pursue bilateral arrangements.

**Senator CONROY**—Mr Deady, in your press briefing with Ralph Ives on 31 October you said that you had made it clear to the US that our state trading enterprises do not distort world trade. Ralph Ives commented that the US obviously took a different view of the operation of the STEs and this was one reason they were part of the negotiation. He went on to say that the

US would continue to pursue this issue. What has been the nature of the discussions on the Australian Wheat Board?

**Mr Deady**—These discussions started back in March in Canberra with an information exchange, a discussion about the operation of a state trading enterprise in this country, including not only AWB Ltd but also other arrangements in relation to a number of commodities—barley, rice, sugar and some others. There are still some others but they are pretty modest now. We also asked a number of questions of some of the cooperatives and other commodity credit corporations in the United States. That was the nature of those early exchanges.

Bob Zoellick in his letter to the congress certainly referred to state trading enterprises—the single desk monopolies—as an area where they were looking for something from Australia as part of these negotiations. The Americans have continued to take that position in the negotiations to this point. We had a further discussion, as I said at that press conference on STEs last week, but our position is that these entities in Australia are transparent, they are not supported by government subsidies and they do not distort world markets. That is very much the position we are putting to the Americans as we are continuing to talk through those issues.

**Senator CONROY**—In broad terms, what can we offer them on the Wheat Board?

**Mr Deady**—I am not going to speculate on what, if anything, we would offer. We are continuing to defend very strongly the operations of these STEs. As I mentioned, they do not distort trade and they are not supported by subsidies, and that is the position that we are taking in responding to the Americans. This is an issue that I think will continue to be talked about in the negotiations. It is one in which the Americans have some ambition here. As I mentioned, they are looking for specific commitments from us in relation to STEs, but at this point in the negotiations we are making very clear the way these things operate in Australia and why we believe that there are no specific commitments we need to take in relation to these. They are governed by the rules of the WTO; there are rules and disciplines in relation to state trading enterprises. We fully meet those and perhaps go far beyond them. So, for all those reasons, we are pushing back the Americans in this area.

**Senator CONROY**—So it is not one of the areas of refinement?

**Mr Deady**—No, we have a mandate in relation to state trading enterprises which is very clear and that we are operating under.

**Senator CONROY**—So we have had no change to the instructions—no refinement, no nuance?

**Mr Deady**—No. I do not want to get into the specifics of what our mandate is or is not, other than the broad objectives that we have got. But the answer to that is no, we are still operating with the clear mandate we have in relation to STEs.

**Senator CONROY**—No refinement?

**Mr Deady**—No.

**Senator CONROY**—In your joint interview with Ralph Ives on the ABC on 31 October, Ralph Ives indicated that the US is prepared to accept Australia's quotas on existing broadcasting but it is concerned that 'the proposal by Australia is too broad and we need to



work on narrowing that'. Does this mean the US is not seeking any changes to current Australian content quotas for television, film and radio broadcasting?

**Mr Deady**—Again, I really cannot speak on that. Even Ralph himself probably could not. He has certainly got other negotiators working with him very closely on these things. What he has said is that they are comfortable with the 55 per cent local content arrangements on broadcast television. That is really as much as Ralph has said in public. He has also talked about the subsidies provided to the film and television industries; again, they are not a target for the United States in these negotiations.

The best way I can answer that question is to say that this is an area where the US is making demands on us and we are looking at those demands. It is for us to make offers in this area: what are we prepared to do? The onus is very much on Australia to respond; it is not for the Americans to craft, if you like, this reservation we have talked about. It is not for them to craft a reservation for us in this area. They have certainly set out that these are the things they want to achieve in the negotiations. I think we are the ones who understand our system and the regulations and things we have in place. That is the process we would be going through to look at what, if any, commitments we are prepared to make in terms of the reservation we would put to the United States. He is saying that they are comfortable with the 55 per cent. He just has not articulated positions publicly in relation to other aspects of the current arrangements, such as that we have an 80 per cent requirement on advertising, for example—that 80 per cent of advertising in Australia needs to be done by Australian production. He has not been specific in the press and I do not want to speculate on US positions other than what Ralph has said publicly.

**Senator CONROY**—What is the US looking for in the audiovisual area, particularly in relation to future digital services?

**Mr Deady**—Publicly they have said that they are looking for some narrowing in the flexibility that we currently have in relation to those new technologies.

**Senator CONROY**—Could the US live with the audiovisual arrangements we have with the Singapore FTA? Under SAFTA we reserve the right to regulate in relation to creative arts and cultural heritage.

**Mr Deady**—I think that gets to the heart of it. They believe that sort of reservation is too broad. That reservation is very broad and provides the Australian government full flexibility in relation to audiovisual and cultural services. The Americans are saying to us, 'We want that narrowed somewhat.'

**Senator CONROY**—You have often used the word 'narrowing'. As you know, I am a novice in this. What does 'narrowing' mean?

**Mr Deady**—The nature of the reservations is such that, if the government was prepared to, it could take some specific commitments in relation to some aspects of our audiovisual regime and say to the United States, 'For this particular area of broadcasting'—or whatever—'we are prepared to take some bindings but for everything else we would still maintain full flexibility.' That would be one option. That is the sort of thing I am talking about when I say 'narrowing'. That would narrow the reservation that we have with Singapore. The question then is: what sort of commitments and what sort of specific bindings—standstill commitments—are we

prepared to take, if any? In what areas of the new media are we prepared, or able, to maintain full flexibility? That is the nature of these reservations. They are very complicated but they are also very flexible—there is that word again.

These reservations actually allow us a great deal of flexibility to be very precise if the government determines what commitments it is prepared to make to the US while still maintaining our ability to regulate to achieve these cultural objectives. It is not black and white, where we either agree to everything or we maintain a full carve-out—which is essentially what we have in that Singapore reservation. The government has full flexibility, theoretically, to ban all US movies tomorrow—or Singapore movies, in the case of SAFTA. We could ban all foreign movies tomorrow—that is the sort of flexibility we have at the moment. Do we need that? That is an issue that we are talking to industry and thinking about as we go forward in these negotiations.

**Senator CONROY**—It is possible to have a discussion, as we had earlier, about digital technology, videos, and downloading videos on demand. New mediums could come along. How do you write something that is not too broad if you do not know what the new medium is? How does Steve Deady write a protection so that the Australian government has the capacity to regulate a new medium that we cannot conceive of today?

**Mr Deady**—There are certainly ways. The SAFTA model does it and there may be ways you can narrow that SAFTA model while still maintaining a hell of a lot of flexibility on things that are yet unknown—the new media. All I can say, without getting into detail about what may or may not be possible, is that these are the sorts of things that we are looking at and working through with industry. Then we would sit down and perhaps talk to the Americans about it.

**Senator CONROY**—If you invested in an Internet delivery system—if you set up a web site in the US that delivered to Australia—would that be defined as having invested in Australia? If you set up an Internet site that was about downloading videos, say, into Australia, would that qualify as investment in Australia?

**Mr Deady**—There is a very precise definition of investment in these agreements. My answer to that would be that that would not qualify as investment. It is a service delivery. That is the only answer I could give: it is not really investment.

**Senator CONROY**—That was a complete aside—I was fascinated how we would deal with something like that. I have some other questions but I am conscious of the time. I have a couple of questions on Singapore that should not take too long. Depending on how long that takes we may not get to Thailand. Apologies to you, Mr Baxter, I know you have been very patient; do you cover Singapore as well?

**Mr Deady**—I cover Singapore.

**Senator CONROY**—Commiserations. Sorry, I thought I was giving you a leave pass, Mr Deady.

**Mr Deady**—No, I finished off the Singapore deal.

**Senator CONROY**—Let me take you back in time. I am sure you have forgotten everything, or as near to, to focus on what you have been focused on for the last 10 months. Could you advise on how implementation of the SAFTA agreement is proceeding?

**Mr Deady**—It is proceeding very well. All the legislation has now passed and the agreement has entered into force. Again, I am not sure exactly when that was. I think it was the end of August, but I would have to check that date if you needed precision. The agreement now has entered into force for both countries.

**Senator CONROY**—It is the enforced bit I want to get to the bottom of.

**Mr Deady**—I think it is in force and, as I understand it, it is operating well. They tell me 28 July was the date that it entered into force. I understand, and I have certainly had some feedback from Austrade colleagues, that already some of our service providers in Singapore are doing quite well as a result of some of the commitments there—architects is one. Australian industry is also doing well. Clearly the tariffs that Australian importers faced on products from Singapore have now been removed, so there are some cost benefits there

**Senator CONROY**—Who is responsible for the actual implementation? Now that the legislation has been passed, what body in Australia and what body in Singapore are responsible for ensuring that it is working?

**Mr Deady**—As I said, this is the agreement. Again, it is a very detailed agreement. It covers the area of goods, for example. In Australia's case it is Customs, and that was the legislation that was required. The rules of origin and the enforcement of those things are largely Customs' responsibility. There is a chapter on telecommunications, and of course that goes to the regulatory processes in both countries—the regulators in Singapore and the ACCC and DCITA here. But if you are asking, in terms of ensuring consistency, that both countries live up to the commitments under the agreement then that is a bit like, in my view, the WTO commitments. The Office of Trade Negotiations are the trade law experts in the department. If Australian companies believed that Singapore was not meeting one of the obligations then I think in the first instance they would probably go to our colleagues at the geographic desk who have responsibility for the day-to-day, if you like, implementation of the agreement. If it was a legal issue that was raised and it went through the initial consultation and bilateral processes then it may well come back to OTN to provide the legal advice on the specifics.

**Senator CONROY**—Are there time lines that the government is working to?

**Mr Deady**—There is only one really outstanding issue in relation to Singapore. That is, the agreement we reached with Singapore was—again in relation to the negative lists—that we would have a 12-month grace period in which we worked with the state governments to finalise the state governments' reservation lists. So we have committed to Singapore that by the first annual review of this agreement—one year after entry into force—we would incorporate state government reservations in annexes 1 and 2 of the services and investment chapter. That is an ongoing piece of work. That is the main thing.

There are some other aspects of the agreement. We concluded this agreement probably a month or so before the United States finished their agreement with Singapore. We got commitments from Singapore that if Singapore ended up giving some specific additional concessions to the United States in the areas of legal and financial services they would flow

automatically to Australia. The US-Singapore agreement has been signed and has gone through the processes. It enters into force, I believe, on 1 January 2004. We are talking to the Singaporeans about ensuring that those benefits flow to Australian service providers. That is another piece of work that is going on.

**Senator CONROY**—So you think all the time lines have been met that have been set out?

**Mr Deady**—Yes. There is nothing else.

**Senator CONROY**—You mentioned that you are aware that SAFTA has opened up some new opportunities for Australian business. Which sectors are they in?

**Mr Deady**—I was talking to Austrade and the one they mentioned to me was architects. There are some provisions there that have eased the requirements on architects to have Singapore partners and to do business without a Singapore partner directly, or aspects of that, which have again made doing business in Singapore that much easier for Australian service providers. They have certainly indicated that that is a plus for them.

**Senator CONROY**—Do you do an assessment? Do you step back now and say, ‘It is a year later’? Is there an assessment process to see whether those business opportunities that we anticipated have been created? I presume that is not Austrade’s responsibility. They can report back on positive feedback. Do we actually sit down and go, ‘Let’s make sure that it’s working as it’s supposed to’?

**Mr Deady**—I think a most important feature of these FTAs is that they do allow for annual reviews. I think that, in the case of Singapore, it is a review after year one and then biennial reviews.

**Senator CONROY**—I was thinking more in terms of us saying to Australian businesses: ‘Is it working? In real terms, on the ground, are you getting improved access?’ I am just asking if there is a process like that. We have passed the legislation, you have moved on to bigger and more wonderful things. Is there a process—not in a critical way—to make sure it is all happening?

**Mr Deady**—We are certainly working with Austrade. Part of the implementation that you mentioned is explaining to Australian business what this agreement is, what it is not and the benefits that we believe flow on. There have already been some roadshows, if you like, travelling around the states, talking to Australian industry about the SAFTA agreement and what some of the benefits are. We do work with Austrade. This is an area that is really their responsibility, but we would certainly be looking to ensure that agreement is understood. Again, my colleagues should be answering these questions. We do have very much in mind how we can ensure that Australian business understands the agreement and can benefit from it. Again, if there are areas where there are questions about Singapore living up to the commitments in the nature of these things, there are opportunities for those issues to be raised with our South-East Asia Division, our Singapore desk or the High Commission in Singapore and for that to be done as part of the business of the department’s work in that area.

**Senator CONROY**—A Singaporean telecommunications company, SingTel, is a significant investor in the Australian telecommunication industry. Do you believe that

Australian telecommunication companies are being given reciprocal access to Singapore at this stage?

**Mr Deady**—One of our key objectives in these negotiations was to have a strong telecoms chapter with Singapore. It was one chapter that was worked on right through the full period of negotiations. Singapore does have competition law in the telecoms area. It does not have horizontal competition law, as we do in Australia, but it does have competition law. One of the key things we were looking for was some greater precision, greater due process and greater transparency in that regime in Singapore. From the dialogues we have had with the operators that are working in Singapore, I know that Australian companies believe that the commitments that we obtained in the agreement are very beneficial to their operations in Singapore.

**Senator CONROY**—In one of those remarkable coincidences, you have a senior government minister—possibly even the most senior—and they have a family member who is very senior in SingTel. By a remarkable coincidence, in another part of that invisible hand working of old Adam Smith, the telecommunications regulator apparently has another family member in charge of it. Does that ring a bell at all? Is that a familiar set of circumstances in Singapore? Have you crossed that one, Mr Deady?

**Mr Deady**—I am not aware of those particular individuals, no.

**Senator CONROY**—It may come as a surprise to you that there are some Australian telecommunications companies, notwithstanding your fine work, that are finding gaining access to the Singapore telecommunications market a little slow and frustrating.

**Mr Deady**—If that is the case, the SAFTA agreement is there. There are very strong commitments that Singapore has entered into that will ensure due process and transparency. If they are having difficulties, there are commitments. If these things are brought to the attention of the Australian government and if in time we considered these things to be a breach of Singapore's commitments, we have recourse, for the very reasons you say.

**Senator CONROY**—Can you understand that a company may be bashful and not want to upset such a powerful family?

**Mr Deady**—I do not see how I can respond to that. We can negotiate with the government of Singapore, which we have done. We have binding commitments from Singapore and we have a dispute settlement mechanism here. If Australian industry makes a case to us that Singapore is not honouring the commitments here, we have recourse to dispute settlement.

**Senator CONROY**—Is there a process to detect whether or not it is actually happening in the real world as opposed to on a piece of paper which says it should happen?

**Mr Deady**—This is no different to a dispute settlement process in the WTO. There are many things on which we, as government, continue to monitor the activities of other governments, in terms of whether they are living up to their commitments. Certainly there are aspects of the trade regimes in other countries that we, as government, continue to look at to see if they are consistent with the obligations. There are others that are certainly brought to our attention by Australian industry. An Australian company or industry might come to us

and say, ‘We believe a certain country is not honouring commitments.’ That is something that we would—

**Senator CONROY**—But this is the SAFTA agreement that I am talking about.

**Mr Deady**—Yes, but it is very similar. These are commitments that Singapore has given—

**Senator CONROY**—But it is not like it is between developed nations, like Australia and the US, where we can go and complain without fear of retribution about our commitments. In a situation like this, if you go and take on the prime minister and his son—

**Mr Deady**—I am not going to speculate on that. We have very good relations with Singapore. Again, maybe Mr Patterson should answer. If we had a complaint from Australian industry, we would sit down with officials from the Singapore government and explain what we had heard. We would certainly have those consultations. We could do that before SAFTA. We have done it, and we continue to do it, with governments. With SAFTA, if we do not get satisfactory answers and we are convinced in time that these are breaches of commitments, there is recourse through a dispute settlement process, government to government. So it is the Australian government that take the case, not the Australian telco, and it goes through the dispute settlement processes. That is a very strong outcome of these sorts of agreements.

**Senator CONROY**—Thank you very much. My apologies, Mr Baxter: I am going to have to find another forum to quiz you on those famous rules of origin. You know I am looking forward to that.

[10.13 p.m.]

#### **Australian Agency for International Development**

**CHAIR**—Welcome, Mr Tapp, and your people from AusAID. Senator Marshall has some questions for you.

**Senator MARSHALL**—In August this year this committee in its references form tabled a report to the Senate called *A Pacific engaged*. Are you aware of that report?

**Mr Tapp**—Yes.

**Senator MARSHALL**—There is a chapter in it titled ‘Use of consultants for aid delivery—“boomerang aid”’. Are you all aware of that?

**Mr Tapp**—Yes.

**Senator MARSHALL**—At the end of that chapter the committee actually indicated that we would pursue these issues through the estimates process. None of these issues should jump out as a surprise to you, I would suspect. The June 2002 report of the Australian National Audit Office called *AusAID contract management* stated:

AusAID estimates that the aid delivered through these contracts represents annually around 90% of Australia’s bilateral aid program, which accounts for some 60% of the overseas aid program.

Do you agree with the figures in the ANAO report?

**Mr Tapp**—Yes, the figures in that ANAO report reflect the primary contractors that we have under the aid program.

**Senator MARSHALL**—Can you provide to the committee a breakdown of the percentage of recipient country participation in the delivery of aid to each of its bilateral partners? When we talk about bilateral partners in AusAID we actually mean donor recipient countries, don't we?

**Mr Tapp**—Yes.

**Senator MARSHALL**—Given that we have just moved on from trade, I thought I should clarify that for *Hansard* in case anyone else apart from you and me ever read it. We do not want them getting confused with the other terminology.

**Mr Tapp**—So you are looking for a breakdown for every country under the aid program.

**Senator MARSHALL**—Yes. Are you able to provide that?

**Mr Tapp**—I am not in a position to provide that for every country under the aid program right now. I would be prepared to look at the issues particularly pertaining to the Pacific. We can of course provide that information for you on notice and I am happy to provide that for you.

**Senator MARSHALL**—You cannot do outside the Pacific? Why is that?

**Mr Tapp**—Not tonight—I can on notice. I am very happy to take it on notice.

**Senator MARSHALL**—Yes, take that on notice for all our bilateral partners. Can you provide that for each of those countries over the last five years or is that too difficult?

**Mr Tapp**—We will be happy to provide that information for you.

**Senator MARSHALL**—Does AusAID have any control over the level of local participation in its development contracts with Australian consultancies?

**Mr Tapp**—It depends on the specific nature of the primary contract in terms of how much of the local participation there may be within the contracts and subcontracts. For example, if you take a situation such as in Papua New Guinea, in the infrastructure sector a significant proportion of the contracts let, such as road maintenance work, is actually contracted out to local companies. Significant proportions of the purchase of equipment under those contracts would be purchased in local contracts.

**Senator MARSHALL**—PNG is a bit of a different case though, isn't it? Are you able to do that elsewhere?

**Mr Rooker-Smith**—Yes, a similar pattern of contracting is undertaken throughout the different countries where we operate. In effect, with the Australian managing contractor that we contract through AusAID once they are in the field there is an enormous amount of subcontracting. The only requirement we have in the contract with them is that they subcontract in accordance with the Commonwealth procurement guidelines, which is basically a value-for-money approach. Depending on value for money, they can either buy goods or services from outside the country or within the country and they have to make that judgment themselves in terms of what is going to be the best value for money for that particular project.

**Senator MARSHALL**—Isn't it an aim of AusAID to increase the level of local participation in our aid projects?

**Mr Rooker-Smith**—Yes it is but in many cases, for example if they were buying motor vehicles or fax machines or equipment of some sort, they would source it from the cheapest available provider. Although it might be purchased through a local dealer the actual inputs might be sourced from a South-East Asian country if they were in PNG, for example.

**Senator MARSHALL**—If we are putting a condition in the contracts to get best value for money then often it will not be the case that we increase our local participation in terms of spending the aid money.

**Mr Rooker-Smith**—Local participation in terms of involvement in the program through, for example, individuals, consultancies and construction contracts is usually through locals. But some goods procurement often involves imported goods.

**Mr Tapp**—To give you an example, Senator—and I think Papua New Guinea is quite a good example—last year over 70 per cent of staff directly engaged under aid projects were local Papua New Guineans. About 133 million kina of project material and equipment was actually purchased within Papua New Guinea, and I think that clearly indicates the issue in terms of value for money. You are seeing a significant proportion of the expenditure being directed towards Papua New Guinean individuals and companies.

**Senator MARSHALL**—Of course the difference with PNG is that we actually have a treaty on development cooperation between Australia and PNG. So, other than in PNG, can AusAID demonstrate how it is seeking to increase the participation of recipient countries in the delivery of aid? Let me be clear about the point of my question: how is AusAID ensuring an adequate transfer of skills to both guarantee the long-term viability of projects and to make certain that local people and organisations are then able to tender for future development assistance projects?

**Mr Tapp**—I would firmly contend that the basis of our programs in developing countries is looking to improve and develop the capacity of those countries, in government departments, local organisations or what have you. So, by the very nature of the work we are looking to do, we are looking to be able to build and improve that capacity and therefore the ability of them to have a great involvement in not only our aid program but also the broader development of their country.

**Senator MARSHALL**—Yes, but how are you doing that? You gave us the example of PNG, which is a good example. But when you compare that to what is actually happening overall from the audit office report, it indicates that it is not happening very well anywhere apart from PNG.

**Mr Tapp**—The information provided there by the audit office is referring to the primary contracts that we have. Through those contracts there are a host of other subcontracts. Also I think the audit office figures are based in value terms, the total expenditure that we make. What that probably disguises is the very broad and rich experience that we have in terms of local engagement in our programs through subcontracting arrangements and also through smaller value contracts. Again—and I will give you a PNG example, but it is still quite a striking figure—last year 2,039 contracts were awarded to PNG companies and individuals. That is a large number of contracts. The ANAO figure is providing a total contract value figure through primary contracting.



**Senator MARSHALL**—I am hoping that before eleven o'clock you might be able to give me an example outside of PNG, if you can. How do you actually get your feedback in terms of your aid delivery? Do you conduct any public relations exercises in-country with our bilateral partners?

**Mr Tapp**—The nature of our programs is such that they are developed with our partners. So we work in the development of our broad country strategies which frame our program and development assistance in the countries where we are working. Underneath that you have the determination of the various sectors and the priorities within which we will be working. Then there are the specific activities that we undertake. In the context of each activity, and the design of each activity, we will be building in clear monitoring and evaluation mechanisms which would involve us being able to, with our partners in developing countries, essentially determine the success of the interventions which we are undertaking. So that can cover a whole gamut of arrangements. For the large projects you end up with far more sophisticated monitoring and evaluation mechanisms.

That also leads into the fact that every year, in pretty much every country where we are working, we have annual aid consultations with our developing country partners—be it the government of Fiji, the government of Vanuatu or what have you. We essentially review with them what we are doing, we review the progress of the aid program in that country, we look at the priorities and we always agree mutually in terms of whether there needs to be any changes in terms of those priorities and activities.

**Senator MARSHALL**—So the evaluation really takes place at a government or institutional level rather than at a local level?

**Mr Tapp**—Obviously we would also be looking to undertake evaluation with beneficiaries of the projects with whom we are aiming to work. The evaluation will depend on what the project is looking to achieve, but, if you are looking at, for example, aiming to improve health services in a certain province within a certain country, we are obviously going to be looking at the local level in that province in terms of whether those health services have improved. Also, then, we are going to be looking at what has been the impact of those health services. For example, have we seen improvements in child mortality rates or increases in immunisation rates and what have you? Obviously that work has to be done down at a local level.

**Senator MARSHALL**—The other side of that, which I am also looking for, is if we build a hospital as part of providing health services, for instance, do we also leave the local community with construction skills and trade based programs? Are they able to maintain the actual hospital that is built, monitor the equipment and use it properly or is that still dependent upon us providing ongoing aid for Australian consultants and Australian specialists?

**Mr Tapp**—What we are looking to do is to build up the local capacity to be able to maintain whatever it is that we may have put in place. Indeed, in some places it may not be appropriate for us to be putting in a full-time hospital, because it may be quite clear that reaching the local capacity to be able to maintain that in a very remote area is just not going to be feasible. Therefore we would be looking to something more like a local health centre. But quite clearly, through the work that we are doing in terms of building the capacity of the local population—local groups and local government—the issue of ongoing and longer-term

maintenance is terribly important. Obviously, the last thing we want to do is put something in place for which we are not providing the skills and the ability to maintain that form of infrastructure.

**Senator MARSHALL**—I understand that AusAID is implementing several initiatives to further increase PNG participation in the delivery of the aid program, which will increase the involvement of technically capable PNG organisations in the program. Can you briefly outline what those initiatives are?

**Mr Tapp**—Yes. Part of the PNG program is the PNG incentive fund. That fund is set up very specifically to allow PNG entities to be able to submit proposals. Non-PNG organisations or entities are not eligible. We also have been recently looking at ways where we do see that there is a capacity within PNG to undertake certain activities—to actually let contracts locally for certain activities. A recent example I would give is a financial management implementation project where we have been looking to contract accounting services locally to be undertaking audits at provincial government level. A local accounting firm recently undertook a very important audit in the southern highlands which was done all through the local accounting firm with locally employed staff. That particular audit threw up some very important information which was indicating that there was essentially a leakage in the PNG government system of slightly in excess of 50 million kina in a 12-month period. These were funds which had been allocated to the provincial level by the central government which were not being applied to the services for which they had been given. From that, the Ombudsman Commission has taken that audit report and is looking at the possibility of prosecutions as a result of that. I am trying to give you a very concrete example of where we are looking to be able to involve PNG companies within the program when they clearly have the capacity and the capability to do it in, as that case demonstrates, a very high profile and important activity.

**Senator MARSHALL**—Are we using these initiatives as a model for the rest of the Pacific in particular?

**Mr Tapp**—As you mentioned earlier, we have a development cooperation treaty with Papua New Guinea. I will ask Ms Thomas in a moment to talk about the broader Pacific. In relation to PNG, we are mindful of the commitment to the benchmarks under the treaty. Last year 49 per cent of the program was spent by PNG organisations, and the treaty benchmark for last year was 44 per cent. We are clearly looking to overachieve on that issue when compared to the treaty benchmarks. There will probably be many examples in the Pacific where we are making use of local organisations for aid program implementation.

**Ms Thomas**—I think that is right, Senator. The same principle applies, that while our primary contracts might be with Australian contractors there is a great deal of subcontracting that happens throughout the Pacific. There is quite extensive involvement by Pacific island firms in individual countries in various construction projects and other aspects of our aid program delivery.

**Senator MARSHALL**—But we do not exercise direct control over that. We are pleased that it is happening, but if it is not happening can we control that or influence it?

**Ms Thomas**—In a number of situations we take quite deliberate decisions to ensure that contracting does happen in a way that benefits Pacific island firms. For example, in Samoa we are building a new quarantine facility for the government. The overall project is about institutional strengthening in the quarantine and customs area, and the contract for building the new facility has been let locally to ensure that it is being managed by a local firm. In Vanuatu, we are building some new secondary schools. Again, those contracts are being let locally to ensure that there are actually flow-on benefits to the Vanuatu economy and that local firms are able to use their skills to deliver aspects of our aid program.

**Senator MARSHALL**—We have recently had a focus on donor coordination. How is AusAID addressing the issue of local delivery of aid with other donors?

**Ms Thomas**—Our engagement with other bilateral aid donors is something that we take very seriously in each country. At a macro level, this year Australia hosted a meeting of all Pacific donors that brought together the World Bank, the Asian Development Bank, the European Union, Japan and a range of other donors to talk about how we coordinate our approaches and how we work towards common objectives where that is possible. In local circumstances, the AusAID people on that ground in each country would have relationships with their counterpart donors. There would be donor coordination meetings on a regular basis, and a great deal of ad hoc consultation on particular issues as they come up.

**Senator MARSHALL**—Are we seeking a formalised structure, particularly with New Zealand, in terms of the Pacific? It is all right to have meetings and talking about it but are we actually getting the right coordination mix?

**Ms Thomas**—In relation to New Zealand we have a very particular agenda which is about harmonising our procedures, by which we mean trying to work as closely as we can together and to adopt common approaches to the delivery of particular aid programs. That could be as simple as scholarship programs, making sure we have similar guidelines and application procedures and there is a single management procedure in place, through to the way we collaborate in individual countries in the delivery of particular programs. In Kiribati, for example, we are looking at taking joint approaches to the delivery of education assistance. Again, this is replicated across a wide range of areas. The level of dialogue and consultation with New Zealand is very strong and that is then translated into joint approaches in a wide range of areas.

**Senator MARSHALL**—I will move on to contract management. ANAO report No. 59 of 2001-02 made a number of conclusions in relation to AusAID's micromanagement of contracts, excessive contract reporting, effecting cost and quality, and AusAID performance feedback to contractors. What steps have you taken to address those issues?

**Mr Tapp**—I will ask Mr Rooken-Smith to deal with some of the specifics. One of the things we have been looking to do in the context of the strategic plan for our agency, which was introduced at the beginning of 2002, is to take some very specific steps in relation to ways we can simplify contracts. We are looking at ways of ensuring that we are not involved in excessive micromanagement. There are times, of course, when it is important to protect the Commonwealth's interests, so we need to ensure there is adequate management of contracts we are undertaking. Another element relating to this—and I think this was picked up in the

Senate committee report into the South Pacific—has been to try to ensure that we reduce the level of mobility of contract management staff and desk staff who are working on programs so we have a greater level of continuity. We have seen some quite significant improvements in that regard in the last couple of years. Mr Rooker-Smith might like to add to that point.

**Mr Rooker-Smith**—Over the last 12 to 18 months we have made a lot of effort to redesign some of our contracts. In particular, we have moved to get rid of what we used to call ‘milestone madness’. We had contracts that had an enormous number of milestones that contractors were paid against. Quite often these entailed them writing monthly reports to us in order to trigger payments. We did a lot of work on simplifying the contracts and on consolidating milestones into key milestones. Annual plans became far more important, as did focussing on real outcomes rather than constant reporting to trigger payments. We have also spent a lot of time and effort in getting contracts simplified so that they are more easily managed from the post, from our overseas officers. In that process we have been able to get rid of quite a lot of the micromanagement that was being done in Canberra. We have also been careful not to transfer micromanagement to the post.

I think if you spoke to some of the contractors who have worked with us over the years they would say they have seen a real difference over the last two years in the nature of the contracts that we are drawing up. There are far fewer demands on them in terms of constant reporting and meeting many milestones. There is much more exception reporting and much clearer—and more sensible, if I can put it that way—milestones based around an annual working plan that the contractor would design in conjunction with the line agency and the host government.

**Senator MARSHALL**—So you have actually done some evaluations with your client contractors?

**Mr Rooker-Smith**—Yes, indeed. To move on to your question about performance reporting, that has been refined as well. The ANAO report recommended that we actually expand to include more contractors in the performance evaluation. We now evaluate, on average, the top 12 or 15 contractors, which represent 60 to 70 per cent of the contracts that we currently let. Occasionally we add new contractors in, based not on the size of the contracts but on special issues that are of concern to us.

The performance evaluation process itself has been decided in consultation with industry. It entails annual reviews that include not only picking up themes from the variety of country desks—which report back to us in contract services on how their performance is going—but also, again in response to the ANAO report, a much more detailed quantitative survey which we give to the activity managers who deal with the contracts. There are about 18 different categories which they grade the performance of the contractor against. We then provide that to the contractor, using visuals such as pie charts, plus sit down with them and go through quite a detailed feedback process, not only telling them their strengths and weaknesses as we see them but also allowing them the opportunity to feed back to us, in a contract management sense, on how our activity managers have been performing. In that sort of dialogue they might, for example, raise issues of micromanagement. We would then have to go to and intercede with the activity managers on the desk or at the post and basically try to improve the performance of the contractors and of our own activity managers.

The performance evaluation system really took on board the ANAO report recommendations. In fact, this week I have just finished a performance evaluation for one major contractor and I have two more in the next three weeks. The feedback from industry is that the process is working very well. It has been up and running for about two years and now it is much more formal than it used to be. Early in the New Year we will probably review that with our colleagues in industry and see whether we can refine it even further.

**Senator MARSHALL**—You indicated earlier that you had addressed the staff turnover issues identified in the audit report. How did you do that and what are they now?

**Mr Tapp**—The staff turnover issue is quite challenging. We are a small agency: we have a little fewer than 500 staff and we have about 60 members of staff who are posted to various Australian missions overseas. We therefore have a fairly continual turnover of people going out to posts and coming back from posts. We also have to deal with our contributions to groups like the peace monitoring group or what is now the Bougainville Transitional Team in Bougainville. There are also demands put upon us by the Solomon Islands and we have to deal with emergencies such as Afghanistan and Iraq. They are all putting demands on our agency for a lot of internal movement. So trying to meet those demands and at the same time trying to reduce staff turnover is obviously always a challenge.

We have been looking to encourage people to spend longer periods of time on desks and in certain functions. We have put in place a system—the people management advisory group, which I chair—which contains a cross-section of people within the agency that tries to monitor various HR issues, including mobility within the agency. There are various sorts of things that we have been trying to do to encourage a reduction in staff turnover. In terms of desk officers within the PNG branch, for example, over the last year and a half the average length of time that each person spends in one position is now 22.4 months. For country program managers—which is the next level above a desk officer—it is 25.7 months: just under 26 months in a position.

I think some of the figures that you had in the Senate report on the Pacific—which came out of the ANAO report—were earlier figures from 1999-2000. The length of time that individuals are spending in positions is quite significantly less than that. So some of the means we have had of encouraging people to stay longer in their positions—and in the Pacific Branch that pattern it is quite similar—have been proving successful in ensuring greater longevity.

One of the things we have also been looking to do is to encourage individuals when they come back from a posting to a certain country to spend some time working on the desk of that geographic area, covering where they may have been posted. That is often very useful. On a number of occasions staff who have come back from Moresby have come into the PNG side of the branch in Canberra to maintain the knowledge we have of the PNG program. Given the nature of our organisation and its small size it is difficult, and at times we would like to see less mobility; but, given the demands, it is something worth having to try to manage.

**Senator MARSHALL**—Have we increased our aid commitment in the Solomon Islands since the intervention force arrived?

**Ms Thomas**—Yes, we have.

**Senator MARSHALL**—By how much?

**Ms Thomas**—The Australian commitment at the start of this financial year was about \$37 million in total aid flows to the Solomon Islands. As a result of the strengthened assistance program, Mr Downer announced an additional \$25 million package for the law and justice sector, and the Prime Minister announced an additional \$25 million package for economic and budget stabilisation. The combined effect of those two packages and the existing aid program puts us up to about \$90 million—about \$87 million, I think, on those figures.

**Senator MARSHALL**—Where has the extra money come from?

**Ms Thomas**—It was additional resourcing provided to the aid program for that strengthened assistance package.

**Senator MARSHALL**—So none of it is from the existing aid budget?

**Ms Thomas**—That is correct.

**Senator MARSHALL**—Thank you—and thank you for waiting all night for this.

**CHAIR**—Thank you all.

**Committee adjourned at 10.46 p.m.**