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Official Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION
COMMITTEE

ESTIMATES

(Additional Estimates)

MONDAY, 13 FEBRUARY 2006

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SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Monday, 13 February 2006

Members: Senator Mason (*Chair*), Senator Murray (*Deputy Chair*), Senators Brandis, Carol Brown, Fifield and Forshaw

Senators in attendance: Senators Mark Bishop, Brandis, Conroy, Chris Evans, Faulkner, Fifield, Forshaw, Joyce, Mason, Moore, Murray, O'Brien, Robert Ray, Sherry, Stephens and Webber

Committee met at 9.03 am

PARLIAMENT PORTFOLIO

In Attendance

Senator the Hon. Paul Calvert, President of the Senate

Department of the Senate

Mr Harry Evans, Clerk of the Senate
Dr Rosemary Laing, Deputy Clerk of the Senate
Mr Cleaver Elliott, Clerk Assistant (Procedure)
Mr Richard Pye, Clerk Assistant (Table Office)
Mr John Vander Wyk, Clerk Assistant (Committees)
Ms Andrea Griffiths, Usher of the Black Rod
Mr Joe d'Angelo, Chief Financial Officer

Department of Parliamentary Services

Portfolio overview and major corporate issues

Ms Hilary Penfold QC, Secretary
Mr David Kenny, Deputy Secretary
Ms Roxanne Missingham, Parliamentary Librarian
Ms Judy Konig, Chief Finance Officer
Ms Val Barrett, Assistant Secretary, Strategy and Business Services Branch

Output 1: Information and Research Services and Resource Management Services

Ms Carol Kempner, Acting Assistant Secretary, Research Branch
Miss Roslynn Membrey, Acting Assistant Secretary, Information Access Branch

Output 2: Client and Technical Services

Ms Nola Adcock, Acting Assistant Secretary, Content Management Branch
Mr Chris Duffy, Acting Assistant Secretary, Product and Service Development Branch

Output 3: Building and Occupant Services

Mr Peter Ward, Assistant Secretary, Building Services Branch
Federal Agent Mark Andrews, Director, Security Operations, Building Services Branch
Ms Maggie Barnes, Director, Facilities, Building Services Branch
Mr Andrew Smith, Assistant Secretary, Infrastructure Services Branch
Mr John Nakkan, Director, Maintenance Services, Infrastructure Services Branch

Mr Gowrie Waterhouse, Acting Assistant Director, Art Services, Infrastructure Services Branch

CHAIR (Senator Mason)—Good morning. I declare open this public hearing of the Finance and Public Administration Legislation Committee. On 8 February 2006, the Senate referred to the committee for examination the following documents: particulars of proposed additional expenditure in respect of the year ending 30 June 2006; particulars of certain proposed additional expenditure in respect of the year ending 30 June 2006; statement of savings expected in annual appropriations made by act Nos 72 and 73 of 2005; final budget outcome 2004-05; advance to the finance minister as a final charge for the year ended on 30 June 2005, together with the Mid-Year Economic and Fiscal Outlook 2005-06; consolidated financial statements for the year ended 30 June 2005; and the 2005 tax expenditures statement.

The committee is required to consider these documents insofar as they refer to the portfolios allocated to the committee by the Senate on 9 February 2006 and to report back to the Senate on or before 28 March 2006. The committee may also examine the annual reports of departments and agencies at this time, even if no additional appropriations have been sought. The committee has set Thursday, 30 March 2006 as the date for the submission of written answers to questions that are taken on notice. The hearing today will commence with the parliamentary departments, followed by the Prime Minister and Cabinet portfolio. Examination of the Finance and Administration portfolio will commence tomorrow. I propose to proceed by opening with general questions and then calling on the outcomes and outputs in the order that is listed on the agenda this morning.

Before we start, there are a few formal procedural matters to go through. I remind officers 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. I also draw attention to the privilege resolutions agreed to by the Senate on 23 February 1988 concerning the conduct of Senate committees. I draw attention, in particular, to resolutions 119, part of 110 and 116. Privilege resolution 119, which deals with the question of relevance reads as follows:

A chairman of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry. Where a member of a committee requests discussion of a ruling of the chairman on this matter, the committee shall deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.

The Senate endorsed in 1999 the following test of relevance of questions at estimates hearings:

Any questions going to the operations or financial decisions of the departments and agencies which are seeking funds in the Estimates are relevant questions for the purposes of Estimates hearings.

I ask senators to bear this in mind when framing questions. Privilege resolution 110 goes the question of the procedure that must be followed by a committee if a witness objects to answering a question. This resolution is partly overridden by standing order 26(2), which

requires 'legislation committees considering estimates to take evidence in public'. A section of privilege resolution 110 that applies to estimates reads as follows:

Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. Unless the committee determines immediately that the question should not be pressed, the committee shall then consider in private session whether it will insist upon an answer to the question ... Where a witness—

including a minister—

declines to answer a question to which a committee has required an answer, the committee shall report the facts to the Senate.

Alternatively, the committee can also consider reconvening outside the estimates process to pursue a matter under one of the committee's other powers, as provided for in standing order 25(2)(b). I also remind senators and officers that under privilege resolution 116:

An officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

Evidence given to the committee is protected, of course, by parliamentary privilege. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

[9.08 am]

Department of the Senate

CHAIR—This morning I am happy to welcome the President of the Senate, Senator Calvert; the Clerk, Mr Evans; and officers from the Department of the Senate. Mr President, do you wish to make an opening statement?

The PRESIDENT—No, I do not.

Senator ROBERT RAY—Do we also examine annual reports at additional estimates?

CHAIR—Yes.

Senator ROBERT RAY—I did not know if that was in that statement or not.

CHAIR—I assume that it is part of public expenditure.

Senator ROBERT RAY—We had a long explanation of what may or may not be relevant questions. Once you throw in the annual reports, we sort of broaden the net.

CHAIR—Are there any general questions?

Senator ROBERT RAY—Following up on that explanation of what can and cannot be asked, I ask the Clerk: are there any inhibitions to asking questions on matters that are either before courts, royal commissions or other independent inquiries at estimates?

Mr Evans—In relation to courts, there is the sub judice convention of the Senate, which provides that an inquiry should not be entered into if it is going to cause prejudice to proceedings before the courts. The committee concerned has to weigh the danger of prejudice, particularly having regard to whether there are jurors involved who might be influenced by

the inquiry or publicity arising from it and so on. In relation to royal commissions and other commissions of inquiry, the practice which has been followed in the Senate for many decades now is that there is no inhibition on inquiry into or debate on matters before such commissions, because they are not courts and are not trying cases.

Senator FAULKNER—Are you able to indicate to the committee what it cost for the recall of the Senate last year to deal with an amendment, effectively, to our antiterrorism laws?

Mr Evans—We do have figures for those things. It is a frequently asked question. The estimates are estimates, of course. The maximum that an extra one-day's sitting tacked onto a sitting week would cost would be about \$300,000, we estimate.

Senator FAULKNER—Are those costs borne by the Department of the Senate or more broadly?

Mr Evans—I am sorry, that figure I just gave you was for an extra day not in a sitting week. To tack an extra day onto a sitting week comes to about \$59,000.

Senator FAULKNER—So are those costs borne by the Department of the Senate only, or not?

Mr Evans—No, they are total costs.

Senator FAULKNER—So, for example, if we look at the situation of a recall not in a sitting week, it would include travel for senators and so forth?

Mr Evans—Yes. That is correct. And that accounts for the large difference in cost between the two figures, obviously.

Senator FAULKNER—My recollection is that the last occasion was in an estimates week—is that correct?

Mr Evans—Yes, I think that is right. And that makes it all the more difficult to estimate.

Senator FAULKNER—I appreciate that. But it would be closer, I assume, to the \$59,000 figure than the \$300,000 figure, obviously, because most senators would have been in Canberra.

Mr Evans—Yes. We have taken it that way.

Senator FAULKNER—Apart from the broad guidance you have provided, do you have any figures specifically for that recall last that you are able to be more precise about?

Mr Evans—Even if we set out to calculate the cost of that particular day, it would only be an estimate. We have not done a specific calculation for that particular day.

Senator FAULKNER—On the issue of party status in the Senate, what is your understanding of what the term 'party status' means? How does a group of senators actually achieve party status in the Senate?

Mr Evans—It does not mean very much at all. Under the determinations of the Remuneration Tribunal, a party with five members receives certain additional remuneration for its leader and, I think, whip. Five is a significant number for those determinations. But that

does not apply to parties in the government. Special provisions in the determinations apply to parties in the government.

In relation to proceedings in the Senate itself, there is no significance in any particular number. Any senator can declare themselves to be a party and to be a leader of a party, and that is accepted for procedural purposes and for lists of senators and that sort of thing. In relation to accommodation and facilities about building, the President has taken into account the number of people in a party for the purposes of deciding whether a party ought to have a party room and things like that, but there is no particular magic number in relation to that. Obviously, that also depends on pressure on accommodation. Under the Remuneration Tribunal determinations, there is a fairly large discretion given to the Prime Minister in relation to additional staffing, but, again, I do not think there is any magic number that is taken into account in that area.

Senator FAULKNER—The numbers may not be magic, but do you know where the figure of five comes from?

Mr Evans—The Remuneration Tribunal determination has that specific figure of five for non-government parties to receive additional remuneration. I think that is where the particular number comes from.

Senator FAULKNER—But it is not competent, is it, for the Remuneration Tribunal to determine what is and what is not party status in the Senate?

Mr Evans—No, they determine only the levels of additional remuneration.

Senator FAULKNER—From the point of view of you as Senate Clerk, with your understanding of Senate precedent, rules, procedures, standing orders, conventions and the like, is there any such thing as party status in the Senate?

Mr Evans—No. The only other area where the number five is mentioned is in the standing order relating to matters of public importance—you need the proposer and four other senators—but that has nothing to do with party status.

Senator FAULKNER—Of course, that could be a cross-party decision of senators standing in their places, couldn't it?

Mr Evans—Yes, indeed.

Senator FAULKNER—Finally on this, you mentioned that there were special provisions for parties in the government. What did you mean by that?

Mr Evans—In relation to additional remuneration for party office holders, the Remuneration Tribunal determination distinguishes between parties in the government and non-government parties—

Senator FAULKNER—I see.

Mr Evans—and the number five is applied to non-government parties, not parties in government.

Senator FAULKNER—Thank you.

Senator ROBERT RAY—Mr President, one of this morning's newspapers refers to the fact that you have banned a photographer for two weeks. Could you outline the circumstances of that? One of the reasons I am asking is that Barry Hall got off!

The PRESIDENT—It was not behind play; it was while in play. The photographer involved—like, I presume, all photographers—knows the rules. In fact, that particular photographer was warned. The fact that photos were being taken was brought to my attention by other senators. In fact, one news outlet chose not to take the photo, even though I understand that the people concerned had raised no objection to that. But that is not the point. The point is that we do have rules about the taking of photos in the Senate. I am often reminded about that by other senators. In this particular case, I believe the photographer concerned was well aware of the rules, chose to take those photos and the outlet printed them.

Senator FAULKNER—Where did the incident occur?

The PRESIDENT—It was in the chamber during question time. I think Senator Heffernan went to have a chat with Senator Nash, as you may recall. They were seated, and the rule in the Senate is that photographs may only be taken of senators on their feet. I do not know whether that is the same rule that applies or whether it is strictly adhered to in the other place, but the point is that it is the resolution of the Senate that that is the way it goes. I am not sure whether it was two weeks, though. It was two sitting days in the estimates week.

Senator ROBERT RAY—And this is a punishment, is it? Banning a photographer from attending estimates?

The PRESIDENT—Given the fact that the person involved knew that they were doing the wrong thing, what is the point of having these sorts of resolutions or rules if we are just going to allow them to be abused?

Senator FAULKNER—You made the decision that it is a matter for the President of the Senate to determine what sanction or punishment, if any, occurs—is that right? It was your decision?

The PRESIDENT—Yes.

Senator FAULKNER—Did you seek advice before you made that decision?

The PRESIDENT—What sort of advice, Senator?

Senator FAULKNER—How did you work out that—

The PRESIDENT—There were two days left in the week, and I presumed that that and estimates would be sufficient punishment for a blatant abuse of our rules.

Senator FAULKNER—But did you seek advice from the Department of the Senate?

The PRESIDENT—I do not have a rule book.

Senator FAULKNER—I know.

The PRESIDENT—I just thought that was appropriate.

Senator FAULKNER—So, 'Did you seek advice?' is my question.

The PRESIDENT—I spoke to my senior adviser about it, but it was a decision I made by myself after having spoken to him.

Senator ROBERT RAY—As you say, rules that exist and are agreed on are there to be enforced, so there is no quibble from me. There has also been a longstanding rule about doorstops that goes back to when I was in charge of the executive wing here in 1988—that is, people can mill around outside, stick a camera in people’s faces et cetera. But occasionally of late, when they see a target come in via the basement, a couple of them charge in through the door, shouting like harridans—one almost knocked one of your female colleagues to the ground last week. So it might be time to reinforce the message that press have an absolute right to interview people outside but not a right to rush into the building, knocking other people down, just because they are excited.

The PRESIDENT—The Black Rod and I have had discussions on more than one occasion about incidents in recent time when photos and, in fact, interviews have been taken in private areas—and, in one case, in the lift. That is a matter of concern. It is bad enough for the person concerned, but the inconvenience, if you like, that it places on other senators is also a concern when this happens.

Senator FAULKNER—I have been requested to be briefed by Senator Evans, and therefore this concludes my questioning of the Department of the Senate.

Senator ROBERT RAY—I am subject to no such directions but I have run out of inspiration, so let us move on.

CHAIR—Thank you very much, gentlemen, and thank you Mr Evans.

[9.25 am]

Department of Parliamentary Services

The PRESIDENT—I think it is important to note that for the first time in 16 years we have a Parliamentary Librarian sitting at the table—Ms Roxanne Missingham. I think it is quite significant.

CHAIR—Thank you, Mr President. Quite right. Ms Penfold, welcome. I call on general questions for the Department of Parliamentary Services.

Senator FAULKNER—Firstly, I have a very brief follow-up on a matter that received a little bit of publicity out of the last estimates round, which was the coins in the fountains here at Parliament House. That seems to be a happy story—I think you would agree, wouldn’t you, Ms Penfold—that has had a happy ending? Would that be right?

Ms Penfold—It will have a happy ending. We are still working through with the Department of Finance and Administration the legal implications of how we go about giving away money that is covered by the FMA Act. The current plan is that we will be setting up a special trust account where the Australian currency will go, and then, once a year, we will clean that out and get the foreign coins and hand them both over to the UNICEF people.

Senator FAULKNER—Obviously someone—I do not know whether it was the presiding officers, on your recommendation—has made a decision that UNICEF receive these moneys. That is true, isn’t it?

Ms Penfold—Yes.

Senator FAULKNER—I know that because UNICEF in fact wrote to me, thanking me for addressing the issue in Senate estimates. It is rare that I get a congratulatory letter, so I just wanted to get that on the record.

Ms Penfold—They have not written to us yet.

Senator FAULKNER—The reason probably is that you have not actually given them any money yet, by the sound of it. So you will probably get your letter of thanks when you do so.

Ms Penfold—In due course. That is right. You are right: there are two decisions there. The decision was made effectively by the President at the last estimates hearing that the foreign coins would go to UNICEF. The President and the Speaker have subsequently directed us that the Australian money should also go there.

Senator FAULKNER—Excellent. You might let us know on notice perhaps when those matters have been finalised.

Ms Penfold—Certainly.

Senator FAULKNER—That is excellent. Thank you for that. Another issue that I have addressed at a number of estimates committees now is the retractable security bollards here at Parliament House. Things are not going well with those bollards, are they Ms Penfold?

Ms Penfold—They could be going better, but I think that all we are seeing at this stage are inevitable teething problems, particularly, I suspect, related to the fact that the bollards are built to be up most of the time and going up and down some of the time. Because of the way things worked out last year with getting the advice about when they should be up and when they should be down, they were basically all locked into the ground for the best part of six months. So we are probably seeing a few problems related to that and to the effect of that on the mechanisms. We are seeing a few other problems that are purely, we believe at the moment, teething problems relating to how they were installed and how some of them operate. I have some figures, if you would like them, for those things.

Senator FAULKNER—Okay. Why not, if you can, give us some figures about these problems. That would be helpful, I am sure, for the committee.

Ms Penfold—The figures suggest that the bollards have operated approximately 10,000 times since we put them into operation at the beginning of January.

Senator FAULKNER—You mean they have retracted 10,000—

Ms Penfold—They have gone up and down.

Senator ROBERT RAY—Where are you talking about? How many sets?

Ms Penfold—I am talking about the sets at the three slip road entrances and exits, so I suppose six.

Senator FAULKNER—In all three wings—ministerial, House and Senate?

Ms Penfold—The three wings, that is right—entrances and exits. So we are talking 10,000 operations. We have got, in that time, 18 incidents recorded by our security people. There is another one that is recorded by the maintenance people, but it did not cause any sort of

incident, as another repair thing. So 18 noticeable incidents since we started using them. Of those, 14 seem to be some sort of mechanical failure in the system.

Senator FAULKNER—What are the other four?

Ms Penfold—There are two recorded as operator error; one recorded as a road loop problem, which seems to relate to a taxi turning around at a point where the road loop would have sensed that it was going in one particular direction; and one where one of our vehicles actually clipped the swipe-card reader and damaged it—and I do not think we can blame that on the bollards.

Senator FAULKNER—No, I do not either. That caused a broader mechanical failure with the bollard?

Ms Penfold—No, I think it just meant we had to fix up that bit. It was a recorded incident.

Senator FAULKNER—Because the electronic tag mechanism didn't work?

Ms Penfold—The electronic tag mechanism certainly was not working while it was dismantled, yes, and so that had to be fixed.

Senator FAULKNER—Okay. Are you able to say, of these 18 instances, where they were—which ones were on the Senate slip road, which on the House and which on the ministerial wing?

Ms Penfold—I do have the figures by reference to that, but in terms of identifying the fault ones—are those the ones you are interested in, or in general? I can give you a general figure.

Senator FAULKNER—Yes, just give us the general picture.

Ms Penfold—So far, in the Reps we have three at the entry and two at the exit; in the Senate, one of each; in the ministerial wing, two at the entry and three at the exit.

Senator FAULKNER—There was a failure in these bollards last Thursday and last Friday mornings, wasn't there?

Ms Penfold—Certainly on Thursday, and I have a record here of a fault in the bollards at the Senate side on Friday, but that is not one of the ones that has been recorded as an incident.

Senator FAULKNER—So faults like that, when the orange coloured cones are put across the driveway, are not recorded in these figures?

Ms Penfold—Generally they would be. But I believe—and there is partly an issue because this has all happened at the last minute—the one that happened on Friday involved someone identifying a fault in the bollards and deciding to fix it, rather than anyone getting caught or having trouble with them.

Senator FAULKNER—Have you received any complaints about the operation of the bollards?

Ms Penfold—We have received a number of comments about the whole arrangement, yes.

Senator FAULKNER—We will come to that, but I am talking here about the mechanical failures. Have there been concerns expressed? There have been at the ministerial wing, haven't there?

Ms Penfold—Not that have been reported to me. I would be surprised if in some cases people who got caught in them did not express some fairly firm views about the operation of the bollards, but nothing that I am aware of that counts as a formal complaint has been drawn to my attention.

Senator FAULKNER—Have there been security issues in relation to the Prime Minister at the ministerial wing? Is it true, as I was informed by one of the security gentlemen, that he has had to use the exit ramp to enter the building and the like? Is that right?

Ms Penfold—I am not aware of that, Senator.

Senator FAULKNER—Have we had a situation where, because of bollard failure on entrance ramps, cars have used the exit ramps and vice versa—that instead of going out the exit they have gone out the entrance?

Ms Penfold—It is quite possible, given the number of incidents and the way some of them happened, that one of the ways of addressing those failures immediately was to redirect vehicles to the other end of the slip roads. But I do not have any formal reports of that happening or of that causing any complaints.

Senator FAULKNER—Are you generally disappointed with the way the bollards have not worked?

Ms Penfold—Obviously, I would have been much happier if they had worked perfectly. But I think it is reasonable to expect it in a system with a reasonable amount of complexity. With, as I mentioned earlier, the problems of the things having been locked down for six months, it is reasonable to expect that there will be some teething problems. If we are still having teething problems in six months I will be very disappointed.

Senator FAULKNER—There have been some suggestions made publicly that the way to deal with this is to have the things permanently retracted. My instinctive view in relation to that is that it makes a mockery and a nonsense of having the things in the first place. I am not sure whether you would agree with that or not, Mr President.

The PRESIDENT—One of the things the Speaker and I spoke to the secretary about was trialling, during heavy volume times, such as between eight and nine in the morning, retracting the bollards for that hour and having a security person there checking the passes. That was not because of the problem with the bollards; it was a question of whether it would make life easier for everybody concerned.

There seems to be a misunderstanding by some people, particularly the taxi drivers, that they cannot come up there. But they can if they have a pass holder. That is what it is all about. As far as the bollards are concerned, as we all know, they are in use at other parliaments around the world. I presume they had problems with them initially. But they are an accepted fact of security and we intend to keep using them. I just hope that they can sort out the few technical glitches. I am disappointed that we have had problems with them. When you spend that amount of money, and with the technology that is around—bollards are nothing new; they have been around for quite a while—I would have thought that the ones we purchased would have been perhaps more efficient. But we will wait and see. In the meantime, we are going to trial having the bollards down for an hour between eight and nine in the morning.

Senator FAULKNER—You are going to trial that, are you?

The PRESIDENT—We are doing it this week, to see if it will make life a bit easier for those coming in to work of a morning.

Senator FAULKNER—Do you think that somewhat defeats the purpose of this huge expenditure of public money?

The PRESIDENT—No, because there will be a security person there checking people through.

Senator FAULKNER—Yes, but how is a security person going to deal with a rogue vehicle? Are they going to stand in front of it?

The PRESIDENT—Vehicles will still have to stop to have their passes checked.

Senator ROBERT RAY—What if they have a bomb on board?

Senator FAULKNER—That is the point. I have always been doubtful about them, although I am not going to go through past evidence. I have been concerned, and I have expressed that, about the type of bollard that was purchased. I have been concerned that an overseas supplier was used when there is, I think, very good technology here in Australia—better technology—that was not accessed by the parliament, which I found disappointing. But now that the things are in place, I do not understand how that expenditure of public moneys can be justified if the things are retracted for a significant period in the day. How do we justify such expenditure when the things are permanently down because they are not working too well and people want to get into the parliament quickly? It is a bit illogical, isn't it?

The PRESIDENT—For an hour in the morning in the busy period, we thought that—

Senator FAULKNER—Heaven forbid, what if a terrorist decided that that was the hour that they might attack the building?

The PRESIDENT—Whoever comes through there has to have a security pass. Whether the bollards are up or whether they are down, it is still the same issue.

Senator FAULKNER—Are you seriously suggesting that a terrorist would be flashing a security pass?

The PRESIDENT—No, but the person who is in the vehicle would have to have a security pass or they do not get through.

Senator FAULKNER—But the bollards are down—they just drive through.

The PRESIDENT—You are just saying that they are going to come hurling straight through?

Senator FAULKNER—Exactly.

Senator ROBERT RAY—Usually suicide bombers do not worry about a speeding fine. This is the dilemma. I for one actually support you on the bollards issue. I think it is a necessary security thing. I would just urge you to persist until they work. I am not sure the security guard sends the right signal. I cannot understand why more people do not come in like I do, through the basement.

The PRESIDENT—That is the other thing we are doing: we are encouraging more people to come in through point 1, or through the basement. Arrangements are being made to make it a lot easier for people to do that.

Senator FAULKNER—On the staffing and appropriations committee, we were most concerned about the knock-on consequences of this—that is, how do non-MPs get access to the building? It seems to me that you have half-solved that problem. They can use their pass when the husband, wife or partner drops the other one off—they use the pass, go up and get dropped off—but how does that work when they are being picked up? The person in the building has the pass, not the husband or wife coming to pick them up.

The PRESIDENT—They have to be picked up outside, either at point 1 or—

Senator ROBERT RAY—Let us go back to that. The Joint House Committee took this over, promising to solve it, and I notice they have not. When it is wet or dark at night, people still have to cross that road, go down the stairs or through the basement and up to get picked up—is that right?

Ms Penfold—Ideally, they will go down to the front basement entrance.

Senator ROBERT RAY—Ideally I would go out and run half a marathon at lunchtime, but you and I both know that neither is going to happen. What they are doing is parking directly outside and, at the moment, the traffic hazard is going up massively. There are ‘no parking’ signs along the slipways instead of ‘no standing’ signs, so people are not even bothering to come up through the bollards; they are just stopping dead and letting people off and they are crossing the road dangerously. Those anticipated problems have not been solved. They have been partially solved, I agree, but they have not been solved.

Ms Penfold—There is some more work that is to be done on the traffic management side of it that simply was not able to be done in time. There will be some marked stopping spaces down on Parliament Drive, below each of the entrances. There is also some work to be done, which will take a little bit longer again, to pursue the idea of turning Parliament Drive into a one-way road, which will also address a number of those issues. In the meantime, the forecourt basement car park is an option. We cannot force people to go down there—I agree—but we have not yet come up with a practical alternative method of letting, if you like, stray, unknown vehicles into the slip-roads safely.

Senator ROBERT RAY—No—you have. You have worked out a way of letting them in to drop them off; you just have not worked out—

Ms Penfold—No—they do not count as unknown vehicles. That is the distinction, and that is the advice we are getting from the Protective Security Coordination Centre.

Senator ROBERT RAY—The taxi with a staffer in it is a known vehicle; a taxi about to pick up a staffer is an unknown vehicle. Therefore, we have a differential treatment.

Ms Penfold—You are absolutely right: there is a risk management element in this. We are not looking for absolute purity, because if we were looking for absolute purity we would not be letting in any taxis at all. But we have been advised that the risk of a taxi that a staffer happens to get into at the airport—

Senator ROBERT RAY—I accept that.

Ms Penfold—and turning up here, happening also to have a bomb in its boot, is much lower than the risk of permitting any taxi to turn up at the entrance and the driver saying, ‘I’m here to pick up a Mr Smith; let me in, please.’ That is the distinction we have drawn.

Senator ROBERT RAY—I have no argument with any of that. It is just that you have come up with a system of differential treatment that still leaves problems. You say you are going to do further work on it. We looked at all this last year; we were looking at this in March last year. What is the timetable for changes? I hope it will be done sometime before May. The weather is fairly benign at the moment. It is light most of the time when people leave. You have not dealt with the danger of people just pulling up willy-nilly on the road out there. Once you get to the middle of winter and there is wet weather and much harsher conditions, it is going to be a bit of a nightmare. I imagine that the House of Representatives side is twice as bad as the Senate side—I have not been over there, but I imagine it will be.

Ms Penfold—The parking signs on either side of Parliament Drive will I hope be going in during the next non-sitting period—so that will be starting next week, in fact. Turning Parliament Drive into a one-way road is a slightly longer process. The other point I should make in terms of timing is that we were talking about it in March last year—in fact, we were talking about it well before that—but in the end it was only in early November last year that we finally got the advice from the Protective Security Coordination Centre.

There are a variety of other possible bits of solution to the problems of people going down onto the road and being picked up or dropped off there. As I say, we have provided one option, which is not a particularly difficult option to use. There has been talk about building secure shelters down below the stairs on each side. That is still an option, but it is an option that the last time we looked at it was costed at somewhere between \$750,000 and \$1 million. That seems to me to be a lot of money to spend before we know that it is necessary. Whether we spend that simply because people will not use the satisfactory option that is provided is a question for the Presiding Officers in the end.

Senator WEBBER—You will know that it is necessary as soon as a female staff member is attacked at night while having to wait down there, as my staff had to last week.

Ms Penfold—But a female staff member does not have to wait down there. A female staff member has the option of going down to security point 1 and standing there waiting with PSS guards behind her and AFP people driving round in front of her. That is as secure as anyone can get.

Senator WEBBER—I suggest that that is not overly well known to interstate staff who do not come here that often. They do not even know where security point 1 is.

Ms Penfold—I will take your word for that, but we have put out quite a lot of information on that, including some circulars with maps which were emailed to everyone with an email address in this building.

Senator ROBERT RAY—I take it that you will be setting the example and parking in that car park now, to show everyone just how easy and safe it is?

Ms Penfold—In the—

Senator ROBERT RAY—In the public car park.

Ms Penfold—If you think that would be helpful, I can park there. I am not sure that parking there is really an issue.

Senator ROBERT RAY—It means you have to travel there and back every day like every staffer—just to prove how easy it is. I would have thought it would be good to set the example.

Ms Penfold—I could do that.

Senator FAULKNER—What is the cost of these bollards so far?

Ms Penfold—I think the bollards themselves were \$2 million.

Senator FAULKNER—You think? Let us be precise about that.

Senator ROBERT RAY—There are a lot out the front of the building, so that may well add to it.

Ms Penfold—To design, supply and install the bollards cost \$2.247 million.

Senator FAULKNER—That is of course a subset of very significant security upgrades around the perimeter of Parliament House. What is the current figure for the broader upgrade? It was around \$12 million, from memory.

Ms Penfold—It was \$11.7 million, and we have not gone above that.

Senator FAULKNER—You might give us that figure, if you do not have it in front of you, on notice—and perhaps disaggregated into the broad areas.

Ms Penfold—Yes, I could get you that.

Senator FAULKNER—How do we describe the mechanism of the bollards?

Ms Penfold—They are pneumatic.

Senator FAULKNER—Are the pneumatic bollards under warranty?

Ms Penfold—They are currently under a defects liability period arrangement.

Senator FAULKNER—Does that mean they are not under warranty?

Ms Penfold—I cannot tell you whether it means they are not under warranty. I think they have to be fixed up and made to work. Whether you call that technically a warranty or part of the building and installation contract that describes itself as defects liability coverage, I do not know.

Senator FAULKNER—How long is the defects liability period?

Ms Penfold—I believe that lasts until August this year.

Senator FAULKNER—That means that any mechanical faults and the like and expenses in relation to fixing them is borne by the manufacturer or the installer. Is that right?

Ms Penfold—It will not be borne by us as far as I am concerned, subject to the ones where—

Senator FAULKNER—Who is it borne by?

Ms Penfold—our people drive into them and so on. I would imagine that it would be borne directly by the installer—the person who supplied and installed them.

Senator ROBERT RAY—We are not going to have any answers based on imagination. Surely you have some people behind you who can answer that.

Mr Smith—The contract for the installation of the bollards was with a company called GE Shaw. They were our construction manager. They are who we go to when we have a fault in the bollards. They also have contracts in place with the manufacturer or supplier of the bollards in Australia, which is a company called Oztime.

Senator FAULKNER—GE Shaw has a Canberra based operation, obviously?

Mr Smith—That is correct.

Senator FAULKNER—So if something goes wrong you get on the telephone to GE Shaw? Is that how it works?

Mr Smith—The security people have a number of call-out numbers that they call to get people in to service the bollards, but GE Shaw is the first contact. The other people are Honeywell and Oztime.

Senator FAULKNER—Honeywell is some sort of computer operation, isn't it?

Mr Smith—Honeywell were the suppliers of the control system and Oztime are the Australian representatives of the bollard manufacturer.

Senator FAULKNER—And they have Canberra operations?

Mr Smith—They do.

Senator FAULKNER—So there are three ports of call if there is a bollard malfunction?

Mr Smith—The main one is to GE Shaw, but there is backup from the other two organisations.

Senator FAULKNER—You can assure the committee that the parliament is not bearing any cost for any of these malfunctions?

Mr Smith—That is correct where the fault is related to the installation. If, for example, someone were to drive into a bollard and damage it, the cost would probably be associated with us. But, for all faults, materials and labour are paid for by the contractors.

Senator FAULKNER—So, of the 18 faults that Ms Penfold reported, is there only one fault that is basically as a result of damage caused or where the fault in the system was as a result of a matter that would not be relevant to the defects liability arrangements? In other words, it was the fault of somebody here; it was not the manufacturer's or the installer's fault? There is only one case in 18—is that right?

Mr Smith—There is only one case in the 18 which required some repair work. That was when a landscape vehicle clipped the card reader. It was a very minor cost. I do not think we have been charged for that at this stage.

Senator FAULKNER—No, but in that situation that is fair enough; that would be borne by the parliament. I understand that. In the other 17 cases that is borne either by the manufacturer or the installer or the person responsible for the control system—is that right?

Mr Smith—Yes.

Senator FAULKNER—So there have been no costs borne by the parliament at all? Are there any costs that have been borne by the parliament?

Mr Smith—No.

Senator ROBERT RAY—We have concentrated on the slipways here. There are also movable bollards out the front for ceremonial purposes—is that right?

Ms Penfold—Yes.

Senator ROBERT RAY—Are we testing those? Obviously, faults will come out on the others. I do not particularly want the president of X coming up and being trapped between bollards. Are we testing those on a regular basis?

Ms Penfold—My understanding is that those are manually retracted. We go out and get them down when they are needed.

Senator FAULKNER—The president of X would stand on them!

Senator ROBERT RAY—Senator Mason points out that we do not want the Queen to have to get out and press them down.

Ms Penfold—I think that we will avoid that.

Senator FAULKNER—You are so chivalrous, Senator Mason; I am sure you will do it for her.

Ms Penfold—I am told that the bollards at the front ceremonial entrances are also pneumatic. They are retracted remotely from the operations room and they are always tested before ceremonial occasions as far as we possibly can and we have not had a fault yet.

Senator ROBERT RAY—With respect, President, I would suggest that they be tested a few other times too to make sure.

The PRESIDENT—There is a theory that the reason we have had quite a large number of problems, 17, is that they have been caused by—half of them—the pneumatic part of it. You may recall that those bollards were in the ground for quite some time before they were activated, and that may have been the reason that we have had so many faults.

Senator FAULKNER—Point 1 is a new name for the entrance at the rear of the public car park—is that correct?

Ms Penfold—I do not believe that it is a new name; I think that it has always been the name used by the security people. But it has become more widely used recently.

Senator FAULKNER—Is there an issue that taxi drivers and the like have absolutely no idea where this point 1 is? I have certainly heard from staff that that is a significant problem. I am not surprised to hear that because if you get a change of arrangements it is not unexpected that it might take a while for this to sink in. But point 1 might be pretty meaningless to a lot of taxi drivers around the place.

Ms Penfold—We did write to the taxi companies and we sent them all the circulars that we have put out to other people with the little plan showing where point 1 is in the building. It is possible that that information has not filtered through yet to all taxi drivers in Canberra.

Senator FAULKNER—Is it true that the taxi companies communications systems do not work in the underground car parks?

Ms Penfold—I have heard a suggestion that there is a problem with the radio controls, yes.

Senator FAULKNER—Is this a problem for the arrangements that are in place?

Ms Penfold—No. I think that it is a problem that needs to be fixed and we have a project in hand to do that.

Senator FAULKNER—What is that project?

Ms Penfold—Andrew, are you immediately on top of this? I have a brief but it has got technical terms in it which I do not want to invent without checking—

Senator FAULKNER—We did not want any technical terms to pollute the *Hansard* transcript.

Ms Penfold—If I am giving you technical terms I would like at least to give you the correct technical terms.

Mr Smith—We have an understanding from the taxi companies that when they get close to the very front of point 1, directly underneath the foyer of the building, they do lose their UHF radio communications. That is a problem that we have a couple of solutions for, and we are going to be trialling one of those fairly soon. If that trial works then that will be a permanent installation. The problem we have is that the taxi companies are in a situation now where they are changing their communications systems. The system they are changing to is a system that is supported already in the forecourt car park, but we understand that it will take about two years for them to make a change to their entire fleet.

Senator FAULKNER—What are the costs?

Mr Smith—We believe that the trial system can be installed for less than \$10,000. If we have to go to a more powerful system to get the radio communications back to Mount Ainslie, it could be as much as \$20,000.

Senator FAULKNER—Can I just ask, Mr President, so that I am clear: does the decision by you and the Speaker to retract the bollards between 8 am and 9 am relate to the slip-roads to the Senate and the House of Representatives?

The PRESIDENT—It does, but it is only a trial, just to see if it is possible, feasible and whether it helps.

Senator FAULKNER—How long is the trial?

The PRESIDENT—It is this week, and we will probably do it for the next two sitting weeks. As you realise, this week is an estimates week, so on the Senate side there will not be as much traffic as you would normally get. It is like all these things; from day one we have tried to strike the balance between inconveniencing staff as little as possible and on the other hand keeping in mind our obligations for security. These things have taken much longer than we ever expected. We all know that the spectre of the white barriers around the parliament lasted for all too long. Thank goodness they have gone. You would have to agree, Senator, that overall the security arrangements we have put in place certainly have not detracted from the architectural appearance of the building. Currently we are dealing with the bollard

problem. There are a couple of other minor security works that have not been completed yet that have shown up. On the bank areas on both sides some minor works have to be carried out to ensure that everything is under control. But the Speaker and I are appreciative of the fact that it is a pretty big task to ensure that you can lock Parliament House down. We are now in a position where we can. We want to make sure that all the options are looked at to ensure the least amount of inconvenience to staff and other occupants of this building. For members of parliament using Comcars it is almost business as usual, except when the bollards do not activate properly. There was some publicity about it last week that I was caught up in.

Senator FAULKNER—Yes, I know. I am probably too much of a philistine to make a judgment about the architectural impact. I think Mr Smith would probably suggest I was too much of a philistine. I do broadly accept what you say in that regard. It does strike me, now that the work has been concluded, that it has only a minimal impact on the building. I think most reasonable people would come to that conclusion. It just strikes me here that the nub of this issue is that, when you boil it all down, if we have a situation where the bollards are retracted for a certain period of the day, does that not defeat the whole purpose of having the damn things in the first place? I do not know how you can have a situation where we spend a huge amount of public moneys—well over \$2 million—on putting these bollards in place and then say that for an hour a day, at least, the things are down. What I do not understand is why they are retracted. Is it because of the malfunctioning at a busy time or is it because it is thought that this will be a measure that means more convenience for users of the slip-road? What is the reason? Is it because they are not working properly or is it just a convenience measure?

The PRESIDENT—From mine and the Speaker's point of view, it was a convenience measure, to see if it made life easier for people coming in. But I take your point. You are probably correct: if we are going to take security to the maximum of what we are capable of, those bollards should remain up all the time and just be used as intended. Plenty of other senators have made the point to me that they should be down. I think Senator Brown, in fact, has a notice of motion before the Senate at the moment calling for them to be retracted until security is of a high nature.

Senator FAULKNER—I understand. But, if it is convenience, why do the whole thing in the first place? That is what you have to be able to justify. You have to be able to justify this expenditure of public money, and then you say, 'We've spent all this money but it's not convenient to have them, so we'll actually retract the bollards when people are using them.'

Senator ROBERT RAY—Just because a few whining senators get on to you; just ignore them.

The PRESIDENT—I take your point, but it is like everything else. The secretary, the department, the Speaker and I are always looking at different ways of ensuring that security is the best that we can have. Both the Speaker and I took the opportunity on our way back from a conference in Kenya earlier this year to have a look at the changes that have been made to security at Westminster. I must say that, every time I visit there, there are enhanced security arrangements, including putting a glass wall across the public gallery in the chamber. I hope that never happens in our place, but we have a duty to ensure that we look at security on a continuing basis.

Member of the committee interjecting—

Senator ROBERT RAY—He wants a ban for a week so he does not have to contend with them.

The PRESIDENT—He is in within the field of play, though, so I think he is quite safe.

Senator ROBERT RAY—I have just one final question on this. Security-wise, we are almost in place, apart from some of the technicalities. Are you going to have it tested? Are you going to commission one of the other agencies of government to test the security in this building? I not suggesting the SAS, because that will end up as a bayonet at your throat. But there must be some other agencies of government that could undertake a test of it now, to find out where the vulnerabilities are.

The PRESIDENT—That is why we have asked for advice from the—what are they called?

Ms Penfold—The Protective Security Coordination Centre.

Senator ROBERT RAY—This is different. I well understand seeking advice, and so you should have, and you have consistency throughout. Now it is time to employ an agency, at a time not known to you, to test it, to see whether they can get in—when, where and how.

The PRESIDENT—That may be useful, and it is something that I will talk to the Speaker about.

Senator ROBERT RAY—Thank you.

Ms Penfold—I will take this opportunity before Senator Ray leaves, if that is what he is thinking of doing—

Senator ROBERT RAY—Within a couple of years, I hope.

Ms Penfold—You did say that it was your last question.

Senator ROBERT RAY—On this subject, yes. But you may well provoke many more. Keep going.

Ms Penfold—In returning to your suggestion earlier that I should take to parking in the forecourt basement car park, on reflection I think there are no long stay parking spaces in that car park. I think the longest is three hours. As much as I would like to think that I could come in here for three hours a day, I do not think that will work. What I would be prepared to undertake is that, in future, if I get picked up from this building, which I do sometimes, I am happy to do it down in the basement.

Senator ROBERT RAY—Can I say to you that I did the walk with your officials down through the basement to that spot and back on a particular day, and I drew the conclusion that very few staff would do the journey. That is all. It is human nature just to walk out the side door—even in the rain and with the risk of all the other things—rather than have to make that trip through the basement. That is human nature and you will not change it.

Ms Penfold—I understand that too. I suppose the last thing I would put to you is that we are, if you like, stuck with this building. We have an enormous amount of floor space spread over three or, at best, four levels. That necessarily means that, unless we start putting in

moving footways, it is much more difficult to get around this building. It takes a lot more personal energy than if we had a high-rise building with the same amount of floor space over 10 or 20 stories.

Senator ROBERT RAY—No-one is disputing that.

Ms Penfold—There is a limited range of solutions to that. In just the same way that I cannot get from my office to the Speaker's office anything like as quickly as I might be able to do in a high-rise building, we all live with those things.

Senator ROBERT RAY—I bet that, if there were a shortcut, you would take it. That is my point.

Ms Penfold—Absolutely.

Senator ROBERT RAY—If there is a shortcut out the side door, people will use that rather than wander through the basement.

Ms Penfold—But I would not take a shortcut that did not get me to the right place.

Senator ROBERT RAY—Well, it does at the moment. They have the alternative. They can just be picked up on the road in the rain, running all sorts of security risks.

Ms Penfold—But apparently that is a problem.

Senator FAULKNER—Particularly in the middle of the night.

Senator ROBERT RAY—But they are going to do it. You have to recognise that they are going to do it. They are not going to go down to that car park in the public area—or 90 per cent are not going to do it, so let us try to find some solutions in terms of traffic management.

Ms Penfold—I am open to solutions. As I mentioned earlier, we have had an email address for people to send us helpful solutions and comments. We have had a lot of comments—a few of them positive, in fact. Most of them make similar sorts of comments to the ones you have made. There have been no helpful suggestions yet.

Senator ROBERT RAY—With respect, our suggestion was to use the Senate car park as a pick-up and drop-off point for everyone. I have yet to hear the valid reasons why not. I heard later that there may be a problem with this or that, but I was never convinced by it. If you have thoroughly investigated it and knocked it out, then you have knocked out a suggestion.

Ms Penfold—The proposal there, obviously, is that we would allow anyone into the Senate car park.

Senator ROBERT RAY—Yes.

Ms Penfold—This is the solution: you let the taxis in. I think that then means that we would have to move senators' cars out of that car park. That then loses us 35 car park spaces on that side and a similar number from the House of Representatives side. I do not know if people are ready to give up that many car park spaces at this stage. Again, that is something we could investigate, but whether that is a solution or we just create a worse problem by solving that one and in effect shift the problem to a different group of people who then cannot find a car park outside their office—I do not know. I am not convinced that that is necessarily a better solution.

CHAIR—Never mind the bollards—

Ms Penfold—We wish!

CHAIR—My questions relate to after-hours access to the Senate. Were the rules changed because of security reasons or because of budget reasons?

Ms Penfold—Which rules?

CHAIR—The rules on after-hours access, I think there is now no access through the Senate entrance after a certain time at night until certain hours in the morning.

Ms Penfold—We have not changed the opening hours of the Senate and House entrances as part of this process; they were changed 18 months or two years ago to close the entrances from midnight to 6 am, I think.

CHAIR—Is it midnight?

Ms Penfold—That was my understanding.

CHAIR—I just wanted to ask you what the hours are.

Ms Penfold—Let me find the brief on that.

CHAIR—I do not want to waste your time. I can understand the Senate entrance not being available in non-sitting weeks, but between sitting weeks—that is, on the weekend between sitting weeks—I was wondering why access is so difficult. A couple of people have raised this with me, and I have had this problem myself.

Ms Penfold—As far as I understand it, on a normal weekend, the entrances are closed from midnight Friday until 6 am Saturday. On Saturdays—and this may be where you have had a problem—they are closed from 8 pm until 6 am Sunday.

CHAIR—And does that rule apply on the weekends between sitting weeks as well?

Ms Penfold—Yes, I believe so.

CHAIR—Was any thought given to not applying that rule on weekends between sitting weeks? I understand why it might apply otherwise.

Ms Penfold—I am not aware that there was.

CHAIR—Could you have a look at that?

Ms Penfold—We could certainly look at it. Do you believe that the entrances need to be open throughout that Saturday night, or just a bit later than 8 pm?

CHAIR—Perhaps a bit later at least. Obviously, the Senate entrance is open 24 hours a day during parliamentary sittings. Many senators are here on the weekends between sitting weeks and it makes access much more difficult.

Ms Penfold—It is Saturday night, Senator.

The PRESIDENT—There is access through the public basement 24/7. All you have to do is follow the red line, Senator, and it takes you straight to the Senate side.

CHAIR—A couple of people have told me, and I have had this experience myself, that there is access through the ministerial car park basement. All of us have passes that give us

access to the Senate car park, below the Senate entrance. If I have my car and my pass, will it give me access to the ministerial car park?

Ms Penfold—I do not believe so—now.

CHAIR—Can you see the problem? In a sense, it is tangential to what Senator Ray has asked about access, because it means you have to park and walk.

Ms Penfold—Or you could park down in the forecourt basement and come in that way.

Senator ROBERT RAY—You would need to take a compass and a cut lunch though.

The PRESIDENT—No; you just follow the red line.

Ms Penfold—And what I said before about long-stay car parking would not, I think, apply on a Saturday night.

CHAIR—No. But I could not park in the ministerial car park?

Ms Penfold—I do not believe you could get access to that these days.

Senator ROBERT RAY—Not yet, but you'll get the call one day!

CHAIR—I think that would be right, Senator Ray!

Senator ROBERT RAY—Do you reckon?

CHAIR—Ms Penfold, could you please look into out-of-hours access on the weekends between sitting weeks?

Ms Penfold—We can certainly have a look at whether that ought to be—

CHAIR—Is it a security issue or is it a financial issue?

Ms Penfold—I think it is a financial issue. As you would know, we are constantly looking to find ways of keeping our security costs down.

CHAIR—I understand that. I raise it merely as a matter of convenience for hardworking senators preparing for estimates.

Senator FAULKNER—On another matter, has there been any refurbishment over in the cabinet suite or in the Prime Minister's office of late or since we last discussed these matters?

Ms Penfold—There has been work in the cabinet suite with the hearing loop and projector and so on that was specially funded.

Senator FAULKNER—Is that now completed in the cabinet room?

Ms Penfold—Not quite, I believe.

Senator FAULKNER—The hearing loops are in, aren't they? I think they are in our party room; I was told that. There is a sage nod from Mr Smith at the back of the room—he knows these things.

Ms Penfold—I think there is still some work to be done in the cabinet room.

Senator FAULKNER—Just eyeballing it, I understand that the hearing loops are in. But, in relation to some of the budget decisions about the electronic, audiovisual and public address systems in the party rooms, they are not in place yet, as I understand it.

Ms Penfold—That is my understanding too.

Senator FAULKNER—That is fair enough. What is the timetable for those?

Ms Penfold—The party rooms we are hoping to start on 6 March and finish on 17 March.

Senator FAULKNER—Thank you. And going back to the cabinet room and the Prime Minister's office?

Ms Penfold—Off the top of my head, I am not aware of anything else in the cabinet room, but I will get David to follow that up. With the Prime Minister's office, we have done some work on the doors from the foyer into the rest of the suite to improve the soundproofing.

Senator FAULKNER—The foyer of the office?

Ms Penfold—The foyer of the whole suite—where you come in from that main corridor. There were some doors on either side of that foyer that were not soundproof at all, in effect—they had large gaps. We have done some work on that.

Senator FAULKNER—Anything else?

Ms Penfold—We have done a little bit of design work on the Prime Minister's dining room.

Senator FAULKNER—This is so people in the foyer—

Ms Penfold—Cannot hear what is going on.

Senator FAULKNER—cannot hear what the Prime Minister is saying. So, for example, if Mr Costello was sitting in the foyer, he could not hear what was going on behind closed doors—that sort of thing?

Ms Penfold—Mr Costello, or anyone else sitting in the foyer.

Senator FAULKNER—What is the cost of that work?

Ms Penfold—I have \$52,000 in my mind, but—

Senator FAULKNER—I would have said Senator Mason, but he would not even get into the foyer.

Ms Penfold—Perhaps we could come back to that when we have found the amount.

Senator FAULKNER—If you could give me the cost of that, I would appreciate it. What about the dining room? What is happening there?

Ms Penfold—We are looking at a bit of a refurbishment in the dining room.

Senator FAULKNER—A bit of a refurbishment? What does that mean?

Ms Penfold—The dining room has been a bit neglected over the last few years. You would probably be familiar with it. It has mirrors and silk panelling on the walls, both of which have rather deteriorated in recent times. We have been asked to look at what we can do about that and also what we can do about making the room a little more functional in terms of having official dinners there.

Senator FAULKNER—What have you been asked to do?

Ms Penfold—We have been asked to come up with some proposals, which we have done. Before I go on, that \$52,000 figure is correct. That was for the soundproofing of the doors.

Senator FAULKNER—What are the proposals for the dining room? Could you table a copy of the proposals that you have prepared?

Ms Penfold—We will take that on notice because there are a variety of bits of paper that I can remember having seen but I am not sure which one of them is in a form that could be tabled at this stage—a statement of requirements or a design brief.

Senator FAULKNER—Someone has requested you do design work in the Prime Minister's dining room.

Ms Penfold—Yes.

Senator FAULKNER—Who requested it?

Ms Penfold—Someone from the Prime Minister's office.

Senator FAULKNER—Who?

Ms Penfold—My recollection is that it was Terry Crane. Certainly I spoke to Terry Crane some time ago about this. As far as I know, he has been generally making the running.

Senator FAULKNER—What is the request that has been made?

Ms Penfold—The initial request was simply to have a look at it and see what we could do to make it more useable. That has produced several options.

Senator FAULKNER—And I have asked for a copy of the options—that is all. Are the options in writing?

Ms Penfold—There is a costing of each of the options in writing.

Senator FAULKNER—What is that costing?

Ms Penfold—I do not know if anyone has that here. One of the options is just replacing the mirrors and the silk. There is a further option which I cannot remember. The third option was to change the configuration of the walls of that room to open it more into the sitting room.

Senator FAULKNER—That is three options, one of which you cannot remember. What is the cost of these options? What is the budget for these three options?

Ms Penfold—Very much off the top of my head, the largest option, if you like—the one that involves reconfiguring the walls—is costed at around \$200,000 at the moment.

Senator FAULKNER—Has anyone written these things down on paper?

Ms Penfold—As I said, I have seen a page with those options costed. I do not have it with me and apparently neither does anybody else.

Senator FAULKNER—I am asking whether I can get a copy of that page which outlines the three options on notice please.

Ms Penfold—We will take that on notice.

Senator FAULKNER—When is the work due to commence?

Ms Penfold—I do not think we have a starting date at the moment because there is still more design work to be done. We are at a very preliminary stage. The inclination is to proceed with the reconfiguration option.

Senator FAULKNER—The big money option?

Ms Penfold—If you put it that way, yes—the big money option.

Senator FAULKNER—That is that way I would like to put it, yes.

Ms Penfold—That is where we are heading, but there is more design work to be done before we have a proper proposal that we could go to a project manager with.

Senator FAULKNER—So you do not have a budget for that except that you said it is around \$200,000?

Ms Penfold—That is the best I can give you in terms of cost estimates.

Senator FAULKNER—How often is this dining room used? Two hundred thousand dollars is a lot for dining room, isn't it?

Ms Penfold—I think part of the problem is that it is not used very often because it is not very functional. If we can improve that so that it works better as a dining room—

Senator FAULKNER—So that is \$200,000 for a dining room that is not used very often? Okay, I've got that now.

Ms Penfold—It is to make it able to be used often.

Senator FAULKNER—Perhaps, but \$200,000 is still a lot for a dining room, isn't it?

Ms Penfold—In the overall scheme of things in this building, I am not sure whether it is or not.

Senator FAULKNER—Anyway, you will give us a copy of the three options. We will look at the most expensive option and see what is being planned. This will go into the silk walls and mirrors and all of that sort of stuff, will it? God knows what they are going to do in there.

Ms Penfold—There may not be as many silk walls as there are now; I do not know.

Senator FAULKNER—That is the point. You tell me that you do not know but I would like to know. Mr Smith would be involved in this because he would be making sure that the design integrity was maintained. That would be right, wouldn't it?

Ms Penfold—Can I just mention incidentally that, as a result of our restructure, the responsibility for design integrity has moved within the department.

Senator ROBERT RAY—To where?

Ms Penfold—To the Strategic Policy and Planning branch.

Senator FAULKNER—I do apologise. I did not realise that Mr Smith was not in charge.

Senator ROBERT RAY—Who is in charge then?

Ms Penfold—In charge of that branch is Ms Val Barrett, who has most recently been in charge of the IT area.

Senator ROBERT RAY—She is not available today for estimates?

Ms Penfold—Yes, she is here. But I should say in fairness to Ms Barrett that she has only just taken on this role. We are still in the process of moving tasks.

Senator FAULKNER—As you know, Ms Penfold, we are always fair at this committee. Ms Barrett, can you tell us any more about the third option—the preferred option?

Ms Barrett—No, I am unable to elaborate at all on those at the moment.

Ms Penfold—I am sorry; I may have put Val in inappropriately there. The point I was making was that design integrity has moved away from what will be Mr Smith's new branch, which is Building Infrastructure Services. The design integrity role has moved away from that to our strategic policy area.

Senator FAULKNER—But design integrity is obviously a professional responsibility, isn't it? I am not suggesting that all of the officers concerned are not highly professional. I am sure they are. But, for example, you would not want to give me the job of being responsible for design integrity because I do not have the knowledge, experience or expertise to be able to do it. It cannot just be lumbered on anybody. You would not want Senator Calvert, for example, doing it either. That is not a criticism of him, but he does not have that—

Ms Penfold—It will still involve a person with expertise in the architectural area. There is no question about that.

Senator FAULKNER—Who is that designated point person these days?

Ms Penfold—At the moment it is a person called Helen Maas.

Senator FAULKNER—Who previously advised Mr Smith?

Ms Penfold—That is right. So it is not that we have taken the role away from people who know it; it is just that we have moved that role into a different part of the department.

Senator FAULKNER—Anyway, we have got the new doors, so people cannot overhear what the Prime Minister is saying. We have got the new dining room, somewhere around \$200,000, so that can be utilised over in the Prime Minister's office. Anything else over in the cabinet room or the Prime Minister's office?

Ms Penfold—The cabinet room chairs we are still working on, of course.

Senator FAULKNER—Any recarpeting?

Ms Penfold—There was some recarpeting of the cabinet suite following the flood, and my feeling is that that carpet had to be redone because there was a problem with the colour.

Senator FAULKNER—That is my feeling, too. That is what I was told. We did not like the colour of the carpet?

Ms Penfold—I think the colour was incorrect. It was not the same colour as the colour we were trying to replace.

Senator FAULKNER—Will you tell us about that, Mr Smith.

Mr Smith—We did not have stock of the right type of carpet to recarpet the cabinet room after the flood so we used some carpet which was a different colour. Because the carpet is

glued to the floor, that carpet had to be taken up to fit the sound loops and we recarpeted at that stage with the correct coloured carpet.

Senator FAULKNER—After the flood—

Senator ROBERT RAY—Sounds biblical!

Ms Penfold—Yes, it does!

Senator FAULKNER—Yes, I should not use an upper-case T and an upper-case F. It is a lower-case ‘t’ and ‘f’. After the flooding of the cabinet room, the recarpeting was covered by insurance, was it?

Mr Smith—That is correct, apart from the fact that we had to pay the first \$400,000, the excess.

Senator FAULKNER—What was the cost of carpeting the cabinet room? That was covered by insurance, except for the first \$400,000, and a carpet went down that was the wrong colour—allegedly the wrong colour. What colour was it, by the way?

Mr Smith—I would have to take that on notice. I cannot remember the exact colour.

Senator FAULKNER—Did you see it?

Mr Smith—Yes.

Senator FAULKNER—I am a layman, so you just tell me: was it blue, was it green, was it red?

Mr Smith—I think the carpet that went down was very much a light shade of blue, when it is meant to be very much a grey coloured carpet.

Senator FAULKNER—It was a light shade of blue. Thank you. Who complained about the colour of carpet?

Mr Smith—Nobody complained about the colour of the carpet. It was just the wrong colour for that suite, and it had to come up anyway to do the hearing loops, so when it came up we put the right carpet down.

Senator FAULKNER—How many metres of carpet are involved here?

Mr Smith—I would have to take that on notice. I do not have that number with me.

Senator FAULKNER—Of course, to install the hearing loops you could rip the carpet up and put the same carpet down at only the cost of the carpet laying, couldn’t you? That is what has happened elsewhere, isn’t it?

Mr Smith—There was a different method of installing the carpet. The carpet in the cabinet room is glued down and therefore when you pull it off the floor it cannot be reused.

Senator FAULKNER—How long had the light shade of blue carpet been down in the cabinet room? Just a matter of months?

Mr Smith—No, since April 2004.

Senator FAULKNER—How long did it last?

Mr Smith—It was taken out just before Christmas 2005, so it was there for around 18 months.

Senator FAULKNER—It lasted 18 months.

Mr Smith—Yes.

Senator FAULKNER—And a slightly different coloured carpet went down. It used to be a light shade of blue. Using layman's terminology, Mr Smith, what is the colour now?

Mr Smith—Grey colour.

Senator FAULKNER—A light grey?

Mr Smith—A fairly light grey, yes.

Senator FAULKNER—So we have changed from light blue to light grey. And what was the cost of the new carpet?

Mr Smith—I do not have that figure with me.

Senator ROBERT RAY—Oh, come on! If we cannot get that figure in the next five minutes I'll jump in the lake. Now, come on! This is about evincing information, Mr President. I know you have always been terribly cooperative in these things, but to think that we cannot get a figure like that is unbelievable. It is not believable.

Mr Smith—We have someone who will research that for us now.

Senator FAULKNER—When was that work completed?

Mr Smith—We finished relaying the carpet on 26 January this year.

Senator FAULKNER—Was it just the cabinet room or was it the whole cabinet suite? There are other meeting rooms. I am testing my memory—it has been a long time since I was in the cabinet room. There are a range of other rooms, aren't there—the anteroom and so forth?

Mr Smith—There are. I am not aware of exactly how far we replaced the carpet. I will wait for the research to come back.

Senator FAULKNER—So when you step into the cabinet room you go from light blue carpet to light grey carpet? Either the whole suite was recarpeted or it was not, so surely someone can tell us that.

Ms Penfold—I would hope so.

Mr Smith—We will, once we get the information that is being looked at right now. I cannot remember exactly how much of the carpet that was put down was blue, in April 2004, but we will have the information soon.

Senator FAULKNER—Who decided that the colour of this carpet was not suitable? I fear that falls to you, Mr Smith, doesn't it?

Mr Smith—It is certainly a part of the design of the building, but the colour designs for various areas were chosen by the original architects and we try and match those as closely as possible.

Senator ROBERT RAY—But the design of the building has not changed in the last 17 years, so why is it light blue one year and light grey the next? It does not make sense.

Ms Penfold—I think that part of the problem is that we had to put down some carpet urgently after the flood and the carpet we had in stock was not the right colour—

Senator ROBERT RAY—I see.

Ms Penfold—but we had to have some carpet.

Senator FAULKNER—DPS stocks carpet?

Ms Penfold—We keep some stores of it, as I understand it, for emergencies.

Senator ROBERT RAY—You are saying that the light blue is the aberrant one?

Ms Penfold—That is my understanding.

Senator ROBERT RAY—Why did we have that in stock?

Ms Penfold—Again, I imagine—Mr Smith would do better—

Senator FAULKNER—Don't use that word 'imagine'!

Ms Penfold—that we use it in other places. As you would know from walking around this building, there are whole lots of different shades of the same sort of colour used in different places.

Senator ROBERT RAY—Obviously, from having a look around, 2S1 is at the bottom of the pecking order.

Ms Penfold—I am sure there is a design integrity purpose to this colour.

Senator FAULKNER—So we do not know the cost of the carpet laying?

Mr Smith—We have someone researching that now.

Senator FAULKNER—You are saying that the purpose was the hearing loop—is that right?

Mr Smith—The hearing loops had to go in and they went in under the carpet, which meant we had to remove the carpet. That was an opportune time to change the carpet back to the right colour.

Senator ROBERT RAY—With respect, that is a different answer. Now you are saying it was an opportune time. I thought it was compulsory because of the glue. Which is it?

Mr Smith—It was the glue. The glued carpet cannot be relaid satisfactorily, so it had to come up to put the hearing loops in, which gave us the opportunity to replace it with carpet of the correct colour.

Senator FAULKNER—Anyway, you will come back to us soon on that. We will progress this in a few moments when you get the answers. Just briefly, I note that the Magna Carta has lost value dramatically in the last couple of months.

Ms Penfold—It was in June last year, I think. Yes, it has been revalued down quite substantially.

Senator FAULKNER—What was the value, do you recall?

Ms Penfold—The previous valuation was, I think, \$40 million and it is now down to \$15 million.

Senator ROBERT RAY—Meanwhile, the much-despised prints in the cabinet room continue to appreciate. Don't worry—I bagged them when they were put in!

CHAIR—Why has it been devalued so appreciably?

Ms Penfold—That is a very good question. The best answer I can give you is that it appears that the earlier valuation, the 2002 valuation, which was the \$40 million, was perhaps a bit expansive or extravagant. When we got the valuation done towards the end of last financial year, we used the Australian Valuation Office and they came up with quite a different valuation. As you might imagine, we were a bit surprised. We put to them that the previous valuation was a much higher figure. We sought from the original valuers any information they could give us about how they had got to their value. We got some information but nothing terribly useful. The Australian Valuation Office expert then went through what we had given him and the things he had taken into account himself and came up with a fairly well-argued assessment of the value. There was a limit beyond which it was not really appropriate for us to challenge that valuation. We do not have that expertise.

CHAIR—Sure, but you asked him to justify it.

Ms Penfold—We asked him to look very closely at it, given what he had come up with. He then fiddled around the edges, I suppose you might say, but he was quite firm that the \$40 million was way beyond what he could see by reference to comparable documents. There are not too many directly comparable documents, but the sorts of things he mentioned to us made sense of his valuation.

CHAIR—A 60 per cent reduction is a big reduction.

The PRESIDENT—The good news is that we are not going to sell it and it is going to cost us less to insure it.

Ms Penfold—We probably should not be focusing on the 60 per cent reduction so much as wondering why we got such a big valuation the first time.

CHAIR—Sure.

Ms Penfold—I do not know that there is really anywhere we can take that at this stage and I do not know that there would be any particular point in doing so.

Senator FAULKNER—We are running fairly short of time, given the timetable that we had established. Might it be appropriate to recall DPS, maybe at two o'clock for a few minutes, and finalise these matters? I think DPS could come back to us then with the issues in relation to the refurbishment in the Prime Minister's office and the funding for the carpet and so forth in the cabinet room. We could probably save a fair bit of time by asking them to come back to the table after lunch, at 2 o'clock, for 10 minutes, to deal with those outstanding issues. Would that suit the committee? I am trying to save time here.

CHAIR—Thank you. It would suit the committee if DPS could come back at 1.30 pm. Are there any further questions of DPS?

Senator FAULKNER—If I could just flag with you, Ms Penfold, that you could come back with some further detail on these refurbishment issues that have been raised—if you can say anything more about the doors, the costs and so forth, and obviously details about the dining room options and the carpeting. Has anything further happened in the Prime Minister's suite or the cabinet room or is that it?

Ms Penfold—Not that I can remember. If I think of any or am warned of any between now and 1.30 pm—

Senator FAULKNER—If there are any other matters since we last addressed it, you might come back on them.

Ms Penfold—I will certainly mention them. What sort of information do you want on the soundproofing of the doors?

Senator FAULKNER—You might give us the cost of that.

Ms Penfold—Wasn't that the \$52,000?

Senator FAULKNER—What is the time frame for that work?

Ms Penfold—I think that has been done. It is finished.

Senator FAULKNER—That one is completed. I did not understand that. No need to worry about that.

Ms Penfold—So the doors are okay?

Senator FAULKNER—I thought you were not certain about that figure of \$52,000.

Ms Penfold—I am sorry, I was not initially, then we found it and I put that in the middle of another answer.

Senator FAULKNER—So you are confirming that that was \$52,000.

Ms Penfold—Yes.

Senator FAULKNER—Thank you.

CHAIR—So the only issues are—

Ms Penfold—The dining room and the cabinet room carpets.

Senator FAULKNER—Unless there is any other refurbishment that we do not know about, but Ms Penfold will check that.

CHAIR—So no further questions of DPS?

Senator FAULKNER—I have a number of questions I would like to place on notice relating to the Citizenship Visits Program. Does DPS or the Department of the Senate deal with that?

Ms Penfold—I do not think it is us.

Senator FAULKNER—This is in relation to the PEO.

Ms Penfold—That is not ours; that is the Department of the Senate's.

Senator FAULKNER—Righto. I might have a couple more questions to place on notice.

CHAIR—There being no further questions, that completes the examination of the parliamentary departments for the moment. I remind you that the committee set 30 March as the date for the submission of written answers to questions on notice. I know Senator Faulkner has some more questions on notice. I thank the President, and Ms Penfold and officers for their attendance this morning.

Proceedings suspended from 10.46 am to 11.03 am

PRIME MINISTER AND CABINET PORTFOLIO

In Attendance

Senator Minchin, Minister for Finance and Administration

Department of the Prime Minister and Cabinet

Executive

Dr Louise Morauta, Deputy Secretary

Ms Jenny Goddard, Deputy Secretary

Mr Duncan Lewis, Deputy Secretary

Economic policy advice and coordination

Output Group 1

Mr Phillip Glyde, First Assistant Secretary, Industry, Infrastructure and Environment Division

Mr Paul Tilley, First Assistant Secretary, Economic Division

Social policy advice and coordination

Output Group 2

Ms Serena Wilson, First Assistant Secretary

Mr Dominic English, Assistant Secretary, Education & Immigration Branch

Ms Leonie Smith, Assistant Secretary, COAG Health Branch

Ms Julie Yeend, Assistant Secretary, COAG Skills Team

International policy advice and coordination

Output Group 3

Mr Hugh Borrowman, First Assistant Secretary, International Division

Mr Angus Campbell, First Assistant Secretary National Security Division

Ms Ruth Pearce, First Assistant Secretary, APEC 2007 Taskforce

Mr Allaster Cox, Assistant Secretary, Asia, Americas and Trade Branch

Mr Frank Leverett, Assistant Secretary, Ceremonial and Hospitality Branch

Mr Stuart Page, General Manager, Venues, Logistics and Security Branch, APEC 2007 Taskforce

Mr Andrew Harper, General Manager, Corporate Branch, APEC 2007 Taskforce

Mr Terry Fahey, General Manager, Procurement and Legal Branch, APEC 2007 Taskforce

Support services for government operations

Output Group 4

Ms Barbara Belcher, First Assistant Secretary, Government Division

Mr Peter Hamburger, First Assistant Secretary, Cabinet Division

Mr Greg Williams, First Assistant Secretary, People, Resources and Communications Division

Ms Judy Costello, Assistant Secretary, Governance and Infrastructure Branch

Mr David Macgill, Assistant Secretary, Parliamentary and Government Branch

Mr Chris Taylor, Assistant Secretary, Government Communications Unit

Dr Susan Ball, Assistant Secretary, Information Services Branch

Mr Peter Rush, Assistant Secretary, Awards & Culture Branch

Mr Alex Anderson, Assistant Secretary, Legal Policy Branch

Australian National Audit Office

Mr Ian McPhee, Auditor-General
Mr Steve Chapman, Deputy Auditor-General
Mr Ian Goodwin, Group Executive Director, Assurance Audit
Mr Michael Watson, Group Executive Director, Assurance Audit
Mr Warren Cochrane, Group Executive Director, Performance Audit
Mr John Meert, Group Executive Director, Performance Audit
Mr Brian Boyd, Executive Director, Performance Audit
Mr John Hawley, Executive Director, Corporate Management Branch

Australian Public Service Commission

Ms Lynelle Briggs, Australian Public Service Commissioner
Ms Lynne Tacy, Deputy Public Service Commissioner
Mr Jeff Lamond, Merit Protection Commissioner
Ms Patricia Turner, Aboriginal and Torres Strait Islander Employment Coordinator
Ms Christine Flynn, Group Manager, Programmes
Ms Ngaire Hosking, Group Manager, Policy
Ms Sue Johnson, Acting Group Manager, Evaluation
Mr Mike Jones, Group Manager, Corporate
Ms Clare Page, Group Manager, Better Practice
Mr Patrick Palmer, Acting Group Manager, Regional Services

National Water Commission

Mr Ken Matthews CEO National Water Commission
Ms Linda Holub General Manager Corporate Strategy and Services Group
Mr Malcolm Thompson General Manager Water Reform Group
Ms Virginia Hart General Manager Water Programmes Group
Mr Roger Cobcroft Chief Financial Officer

Office of National Assessments

Mr Peter Varghese, Director General ONA
Mr Derryl Triffett Assistant Director General Corporate Services
Patrick Keane Director Corporate Services
Laura Rennie Accountant Corporate Services

Office of the Commonwealth Ombudsman

John McMillan, Ombudsman
Ron Brent, Deputy Ombudsman
Mary Durkin, Senior Assistant Ombudsman, Immigration
Natalie Humphry, Contract Manager

Office of the Inspector-General of Intelligence and Security

Mr Ian Carnell, Inspector-General

Office of the Official Secretary to the Governor-General

Mr Malcolm Hazell, Official Secretary
Mr Martin Studdert, Deputy Official Secretary
Ms Amanda O'Rourke, Director Honours Secretariat
Mr Gary Bullivant, Corporate Manager

CHAIR—I have just discussed with my committee colleagues that there are no questions of the Office of the Official Secretary to the Governor-General, so Mr Hazell and officers may depart.

[11.04 am]

Department of the Prime Minister and Cabinet

CHAIR—I welcome for the first time Senator Nick Minchin, representing the Prime Minister. I also welcome Dr Moruata, representing the Secretary of the Department of the Prime Minister and Cabinet, and other officers. Senator Minchin, do you wish to make an opening statement?

Senator Minchin—Yes, thank you, I do. I should inform the committee that the government has directed that officials appearing before Senate legislation committees should not answer questions directed to them on matters before the commission of inquiry being conducted by the Hon. Terrence Cole into certain Australian companies in relation to the oil for food program. While examination of officials by the committees might be appropriate in the future, the government considers that Mr Cole should be able to proceed with his inquiry and present his findings without parallel public questioning that would not assist consideration of complex issues.

Senator ROBERT RAY—Minister, are you aware of the advice given by the Clerk of the Senate on this, going on past precedent, that there has never been an inhibition on questions—you are talking about answers; we are talking about questions—going to matters other than those that are sub judice, before the courts?

Senator Minchin—While it seems to me that estimates committees on additional appropriations should prima facie be about additional appropriations, obviously the committee can ask any questions it likes. It is up to the government's officials as to whether they answer them. I have told you what the government's position is with regard to questions that relate to matters before the Cole royal commission.

Senator ROBERT RAY—And how does that sit with any previous committees in which both you and your colleagues in opposition asked questions on matters before royal commissions or judicial inquiries? Were they wrong at that time to ask those questions and expect answers?

Senator Minchin—I regard that question as rhetorical. I am simply informing the committee of the government's position with regard to any questions that pertain to issues before the current Cole royal commission.

Senator ROBERT RAY—It has been made quite clear in standing orders, interpretation of standing orders and the direction that the chair gave this committee when it opened at nine o'clock this morning that questions in terms of both expenditure and, I might add, annual reports are entitled to be asked at this committee.

Senator Minchin—As I say, it is the general view, I think, that Senate estimates committees have gone way beyond the appropriations bills that give rise to these estimates. Nevertheless, that has indeed been the practice. However, in relation to specific questions

relating to matters before the royal commission, the government has given the direction that I referred you to.

Senator ROBERT RAY—You tell me what the matters are so that I know what my guidance is. You tell me now what the matters are.

Senator Minchin—There is no point in raising your voice at me.

Senator ROBERT RAY—This is just a despicable cover-up, Minister, and you know it. But, anyway, I will not raise my voice. What are the matters?

CHAIR—Can you let Senator Minchin answer the question.

Senator Minchin—Senator Ray, you ask your questions and we will decide whether we are going to answer them. I am giving you the information that the government has directed officials with regard to any questions that relate to matters before the Cole royal commission.

Senator ROBERT RAY—What are the matters?

Senator Minchin—You ask your questions. If you cannot work that out then I feel sorry for you. You ask your questions if you wish to.

Senator ROBERT RAY—And you will interpret it as you go without any guidance to me?

Senator Minchin—Any questions that relate to matters before the royal commission will not be answered.

Senator ROBERT RAY—What are the matters? Is ministers' behaviour officially in the terms of reference?

Senator Minchin—Would you like me to ask the chair to distribute the terms of reference?

Senator ROBERT RAY—No, I am asking you whether the terms of reference cover ministerial behaviour and an ability to make conclusions on ministerial behaviour. Do they?

Senator Minchin—Additional estimates are not about ministerial behaviour in relation to matters that may or may not have occurred several years ago in relation to the UN oil for food program. Nevertheless, if you wish to take time out to read the terms of reference and Mr Cole's statement of 3 February then I am happy for you to take the time to do that.

Senator ROBERT RAY—You are seriously telling me that you do not know what matters we can cover here? The government have made a direction. What direction did they give public servants as to what constitutes those matters? Where are the boundaries for where they can answer questions or not? Are they just in your head?

CHAIR—Senator Ray, we are not getting anywhere here. Perhaps if you commence—

Senator ROBERT RAY—Hold on—just don't even try that, Chair.

CHAIR—Senator Ray, if you commence your questioning we will see how far we get.

Senator ROBERT RAY—I have—I have asked what the matters are so that I know what I can go into and what I cannot.

CHAIR—That seems largely procedural. Why don't we get to—

Senator ROBERT RAY—No, it is not. It is the greatest stitch-up in estimates history. You know it. If we do not make a stand now then the government do not have to answer any

questions at estimates. This is a total cover-up. They are running scared and not intellectually capable of defending government actions. You have not given a full reference to the commissioner, no matter how he interprets it—and I agree with his interpretation. You have set up a committee of inquiry that cannot draw conclusions on government action, yet you say we cannot ask questions on it. You are joking!

CHAIR—No, that is not what Senator Minchin is saying. He has said that some questions cannot be answered but that he will try to answer some questions related to factual matters—that is right, isn't it?

Senator ROBERT RAY—No, I thought what he said was that they have directed Commonwealth officers. They have not directed themselves. He has not directed himself.

CHAIR—It is not that he will not answer any questions or that ministers or officers will not. That is not what the minister said.

Senator CHRIS EVANS—They have directed public servants not to answer questions in accordance with standard practice of the Senate estimates committees. It is a breach of all precedent and practice, and it cannot be anything else but a cover-up.

CHAIR—Senator Evans, all questions are to the minister in any case. Officers, as a matter of practice, answer them.

Senator CHRIS EVANS—And he is going to take the fifth amendment!

CHAIR—The minister will answer the questions he can.

Senator ROBERT RAY—Mr Chair, that is a convention, and it is a convention that we will respect. But, actually, standing orders say we can call witnesses and examine them directly. The fact that we do not choose to do so—the fact that we decide to follow convention—has always applied because governments have always followed convention, until this moment.

CHAIR—But, Senator, you can ask any question you like of the minister—any question. The minister has not said he will not answer questions. So why don't we start doing that?

Senator ROBERT RAY—Well let me ask the minister this question—

Senator Minchin—Mr Chair, I resent the accusation, being thrown around here, of a cover-up. That is one of the reasons this whole process is a bit of a farce. There is no cover-up. The government has instituted the Cole royal commission in order that it can attain all the relevant facts and make recommendations with regard to whether or not there has been any breach of the law. The commissioner has made it clear that he sees it as entirely within his ambit to determine what Commonwealth officials knew about these matters and, in particular, what DFAT knew, and that he feels free to call to his royal commission as witnesses Commonwealth officials; and, indeed, the government has offered that. The government has said that if the commissioner would like to have ministers appear before his commission he may do so. In those circumstances we do not believe that this additional estimates hearing should answer questions on those matters.

Senator ROBERT RAY—It is because you are running scared. You are too gutless to—

CHAIR—Order, Senator Ray!

Senator Minchin—I am not going to be lectured by you, Senator Ray—

Senator ROBERT RAY—You are too gutless to—

CHAIR—Order! The minister has the call.

Senator Minchin—I have made it clear in my statement that in future—and I have referred to the next estimates, in May—if there are questions which the Senate estimates wishes to ask, once the royal commission has reported and any possible actions have been taken—

Senator CHRIS EVANS—You will be accountable, but not yet.

Senator MINCHIN—then we will be prepared to answer questions. But while there is a royal commission in progress that has made it clear that it regards the knowledge of DFAT in particular and the Commonwealth in general as matters relevant to the royal commission, and to which officials and ministers can be called, we have directed that questions not be answered at these hearings.

CHAIR—Senator Faulkner—

Senator ROBERT RAY—When was that direction given and by whose authority?

Senator Minchin—I thought you were asking, Senator Faulkner.

CHAIR—Have you yielded the call, Senator Faulkner?

Senator FAULKNER—Believe it or not, I was going to ask exactly the same question. We have had prepared wording read out to this committee—

CHAIR—Senator Faulkner—

Senator FAULKNER—This is my question. Are you now going to stop a question being asked?

CHAIR—No. I am happy if you ask the question.

Senator FAULKNER—The minister read a prepared statement to this committee. I want to ask: what decision of government was behind that statement?

Senator Minchin—I am happy to table that statement if you like.

Senator FAULKNER—Are they your own words, Minister?

Senator Minchin—The government has decided.

Senator FAULKNER—The government?

Senator Minchin—The government. I am a part of the government. Yes, that is right.

Senator ROBERT RAY—When and where?

Senator FAULKNER—What is the government in this context? Is it a cabinet decision, Minister?

Senator Minchin—The government has decided.

Senator FAULKNER—Who decided?

Senator Minchin—The government.

Senator FAULKNER—What does that mean?

Senator Minchin—It means the government.

Senator FAULKNER—But how was communicated to you, Minister?

Senator Minchin—I have a statement, which I am prepared to table, and which I have already read out.

Senator FAULKNER—My question is: where was that statement drafted?

Senator Minchin—That has nothing to do with you, Senator Faulkner.

Senator ROBERT RAY—Yes, it has. Is it a cabinet decision?

Senator FAULKNER—It has everything to do with me.

Senator Minchin—It has nothing to do with you. I am reporting to you the government's position with regard to officials appearing before this—

Senator ROBERT RAY—How do we know you are telling the truth? We do not. You could have made it up. Is it a cabinet decision?

Senator Minchin—The government has directed officials in the terms that I have informed—

Senator FAULKNER—Who in government made the direction?

Senator Minchin—The government has directed. I am a member of the government.

Senator FAULKNER—Yes, but who has directed officials? How do officials know about this?

Senator Minchin—The government. Officials have been informed.

Senator ROBERT RAY—In writing?

Senator FAULKNER—Have you directed officials in writing?

Senator Minchin—Mr Chair, I am not prepared to answer a whole series of fishing questions on this. This is ridiculous. I have informed the committee of the government's position on this matter.

CHAIR—Senator Faulkner, I am going to give the call to Senator Fifield then I will give it back to you.

Senator FAULKNER—But I have not yet had an answer to my question. I am asking: how has the decision that Senator Minchin has read out at this committee been communicated to public servants? It is perfectly reasonable and proper and ought to be answered now.

CHAIR—It is a legitimate question. Minister?

Senator Minchin—Frankly, that is nothing to do with an estimates committee. Officials have been informed that this is the government's position and they have been so directed.

Senator ROBERT RAY—How?

Senator Minchin—That is absolutely nothing to do—

Senator FAULKNER—How have officials at the Department of the Prime Minister and Cabinet, who are before us at this hearing, been informed that the government has made this outrageous decision?

Senator Minchin—All that matters, Mr Chair, with regard to Senator Faulkner's question, is that officials have been informed.

Senator FAULKNER—Yes, but how have you done it? Carrier pigeon? How have you communicated it to them?

CHAIR—Senator Faulkner, that is enough! Order! Senator Fifield has the call. I will come back to you.

Senator FAULKNER—I want an answer to my question.

CHAIR—The minister has answered the question, Senator Faulkner.

Senator FAULKNER—No, he has not.

Senator Minchin—It does not matter how many ways you ask it.

Senator FAULKNER—You said it was a reasonable question. Now I am asking for an answer to the reasonable question.

CHAIR—The minister has answered it. I cannot tell him how to answer the question, Senator Faulkner. I will come back to you in a minute.

Senator FIFIELD—Chair, my understanding of what Senator Minchin said—and he will no doubt correct me if I am wrong—is that he is in no way attempting to advise the committee on what questions it can or cannot ask; he is merely flagging, for the convenience and benefit of the committee, what the nature of his responses in relation to some of those questions will be. Chair, correct me if I am wrong—

Senator CHRIS EVANS—This is a speech.

CHAIR—Please let Senator Fifield finish.

Senator FIFIELD—It is a question directed to the chair—

Senator ROBERT RAY—To the chair?

Senator FIFIELD—Yes.

Senator ROBERT RAY—Thank you. You did not say that at the start.

Senator FIFIELD—All questions are through the chair.

Senator ROBERT RAY—Is it to the chair or through the chair?

Senator FIFIELD—It is to the chair. Chair, my understanding is that, while senators can ask a witness any question they wish, the committee can in no way compel the witness to answer a question in the way that it may wish.

CHAIR—That is correct.

Senator FIFIELD—The committee cannot say, 'Sorry, try again.'

CHAIR—I will not be directing ministers on how to answer questions.

Senator FAULKNER—Given that the minister has made this totally unprecedented statement about what witnesses before this committee cannot do, I have asked the minister—and I expect an answer—how this direction was communicated to witnesses prior to the commencement of this hearing. You have witnesses at a range of committees, Senator

Minchin, who might, as you would appreciate, be asked questions about matters before the Cole royal commission. Is each and every minister appearing before a committee reading the same statement that you have read—or is that a special announcement for the Department of the Prime Minister and Cabinet?

Senator Minchin—This is a general direction by the government with respect to any legislation committee activity that may touch upon matters before the royal commission. It is a matter for each minister appearing before an estimates committee with regard to the portfolio they represent.

Senator FAULKNER—Has the statement that you have read out to this committee been communicated to other ministers who are at the table at other estimates committees in this round?

Senator Minchin—I think I am at the only committee today where the matter may be relevant, but that is certainly the case.

Senator FAULKNER—So it has been communicated to those ministers?

Senator Minchin—Ministers, as members of the government, understand the government's position on this. They understand and are aware of the direction that has been given to officials and will be, as a matter of courtesy, reporting that to the committees when they appear.

Senator FAULKNER—How are they aware of it? How are the other members aware?

Senator Minchin—You can obviously ask any department questions on this matter. I represent the Department of Industry, Tourism and Resources at estimates. I am not anticipating questions on this matter at those estimates but, as a matter of courtesy, I would at that estimates hearing formally inform the committee of the government's position.

Senator FAULKNER—How have the ministers been informed?

Senator Minchin—Mr Chairman, I am not going to go into internal communications within the government.

CHAIR—It is a bit on the edge, Senator Faulkner.

Senator Minchin—It is ridiculous. It has nothing to do with you.

Senator FAULKNER—It is not on the edge at all.

Senator ROBERT RAY—If this is a cabinet direction—

Senator Minchin—It has nothing to do with this committee as to how the government informs other ministers about decisions.

Senator FAULKNER—It has everything to do with this committee.

Senator ROBERT RAY—It goes to its normality as it stands against standing orders.

Senator Minchin—Goes against what?

Senator ROBERT RAY—There are privileges resolutions of the Senate on these matters—on the rights and obligations of witnesses. No government, even by way of cabinet, can overrule the obligations applied by parliamentary privilege to answer questions. Go and

have a look at 1(9) of the privileges resolution before you start to say that some nebulous decision by government—made by cabinet or prime ministerial fiat—can overrule that. It cannot.

Senator Minchin—The government is perfectly entitled to direct its officials as to what questions it will answer in additional estimates. It is a matter for the committee how it responds to that—

Senator ROBERT RAY—Not according to standing orders and privileges.

Senator Minchin—It is entirely a matter for the government.

Senator CHRIS EVANS—When did this happen?

CHAIR—Hold on, Senator Evans, please. Let us let the minister finish, then I will give you the call.

Senator Minchin—It is entirely a matter for the government as to how it directs its officials. It is up to you as a committee how you respond to that, but I am merely informing you as a courtesy—

Senator FAULKNER—You will not even inform the—

CHAIR—Senator Faulkner, order! Please let the minister finish, then I will give you the call.

Senator Minchin—I was going to go on to say that I am merely informing you as a matter of courtesy as to the government's position with regard to any questions on this matter. As I said, you can ask questions on any matter you would like—

Senator FAULKNER—You are informing us—

CHAIR—Senator Faulkner, please wait until the minister is finished.

Senator Minchin—I obviously want to cooperate with this committee as much as I can, but I am not going to sit here and be subjected to personal abuse of this kind. We will entertain questions; whether we answer them will require reference to the statement I have read out. I have indicated that in future it may be appropriate—for example, at the May estimates—to have further questioning on this matter. But, with the royal commission in progress and due to report on 31 March, this is the government's position with regard to these estimates.

Senator ROBERT RAY—I am asking you—and then you can refuse to answer—is this a cabinet decision or is it a decision made informally within government? Which of the two is it?

Senator Minchin—I am not going to go into that sort of detail.

Senator ROBERT RAY—Are you refusing to answer?

Senator Minchin—It is quite irrelevant to the proceedings of this committee.

Senator ROBERT RAY—So how do I believe—

Senator Minchin—I informed you that the government has given this direction to its officials.

Senator ROBERT RAY—How do I know that? I am asking who is the decision maker, so I know you are telling the truth before estimates. That is what I am asking.

Senator Minchin—Well, I do not appreciate you accusing me or even entertaining the possibility that I would mislead the committee. I as a member of the government am properly informing you that the government has directed officials to that end.

Senator ROBERT RAY—Are you doing it as a senior minister?

Senator Minchin—If you wish to have an official confirm that they have that direction, you can ask them.

Senator ROBERT RAY—Are you acting as a senior minister informing me of that or as the Prime Minister's representative here at estimates, representing the Department of the Prime Minister and Cabinet? Which of the two?

Senator Minchin—I inform you as a member of the government.

Senator ROBERT RAY—And you cannot tell me how or when the decision was made?

Senator Minchin—I am not going to go into the process.

Senator ROBERT RAY—You will not tell me when the decision was made?

Senator Minchin—No.

Senator FAULKNER—Why are you refusing to answer that question?

Senator Minchin—Because it has really nothing to do with you. The only matter that is relevant to this committee is the government's direction, which I have properly reported to this committee.

Senator FAULKNER—Normally committees make the judgment of whether it is a matter to do with us or not. That is the way all these committees have worked for 35 years. Committees make the decision of whether it is relevant or not—not you.

CHAIR—But the ministers decide how they will answer the questions. That is the impasse we have reached.

Senator ROBERT RAY—Except he will not answer the questions—that is the problem.

Senator Minchin—I am not answering those questions. I am not answering questions about internal government decision making, no.

CHAIR—But a process decision—

Senator Minchin—I am not answering questions about internal government decision making.

Senator ROBERT RAY—I want to know when and where this decision was made.

Senator Minchin—My opinion is that that has nothing to do with this committee.

Senator FAULKNER—But if I have asked you a question—

Senator Minchin—You can have a different opinion, Senator Faulkner.

Senator FAULKNER—I do. I have a very different opinion. I have asked you a question that you have refused to answer, in relation to how officers who may be appearing at the table

have had this matter communicated to them—and other officials in departments. That has nothing to do with internal government decision making and everything to do with communication of information.

Senator Minchin—It also has nothing to do with additional estimates. Officials have been informed. That is all there is for you to know.

Senator ROBERT RAY—What do you mean, ‘It has nothing to do with additional estimates’? We have questions—

Senator Minchin—As to how public servants are informed of a government decision?

Senator ROBERT RAY—Minister, we are considering the annual report of the Department of the Prime Minister and Cabinet. Do you want to have a look at all the wonderful weasel words up front about how open the department is, how ethical it is—and you are saying we cannot ask questions on any of that. Of course we can!

CHAIR—Senator Ray, perhaps it is time—

Senator Minchin—You can ask. I said to you that you can spend all day asking questions; we will decide what answers we give.

CHAIR—Why don’t we start with some questions?

Senator ROBERT RAY—I have. I have asked when this decision that has been conveyed to us was made, and by whom. I am not getting any answers.

CHAIR—Perhaps we can move on from those questions. The minister said they are process issues, Senator Ray.

Senator ROBERT RAY—So what?

Senator FAULKNER—Chair, we have never had a situation since the establishment of Senate estimates where a minister has not been willing to answer simple process questions like timing. We have never had a situation where such a question has been refused to be answered by a minister at a table. Process questions are never off limits. This process question, which has been asked by Senator Ray and me, goes to the issues of timing, at what level of government it was made and when it was communicated. These are straightforward matters. I even asked another process question about the method of transmission to officials who are going to be appearing before this committee. They are straightforward process questions, open and shut, and they ought to be answered by this minister at the table.

CHAIR—Senator Faulkner, in the past, there have been debates about the organisation of the politics of a situation and ministers have not answered the questions.

Senator FAULKNER—That is not true. Process questions—

CHAIR—Ministers communicate with other ministers, and they do not give—

Senator FAULKNER—They have never been off limits. Even in relation to cabinet decisions—

CHAIR—Ministers communications with ministers?

Senator FAULKNER—Historically, even questions in relation to cabinet decisions and the process of cabinet—procedural issues and the like—have never been refused to be

answered by ministers. I hear the threat in what Senator Minchin says, the threat being that at this particular hearing he will make decisions about which questions are answered in relation to matters allegedly before the Cole royal commission, but at future estimates hearings they will also be taking a very hard line. Here we have the real nub of what government control of the Senate means.

CHAIR—Come on, Senator Faulkner. There have been many—

Senator FAULKNER—Here we have open and shut what government control of both houses of the Australian parliament means.

CHAIR—Senator Faulkner, in the past there have been many instances where ministers have refused to answer questions about process issues. There have been many examples. It is not true to say that they have been answered historically. They have not been in my five years as chair of this committee.

Senator FAULKNER—The sorts of questions that have been asked here today have never—

Senator ROBERT RAY—I wish to raise a point of order. The reason why it is important to establish the authority on this is that there is an apparent contradiction. I am not going to put you on the spot by asking you to rule—I will not do that. But there is an apparent contradiction between what is included in the privileges resolutions of 1988 and what is in the standing orders and the opinion of the Clerk—which admittedly is third order in this—and the statement made by Senator Minchin today. They are in conflict, and to resolve that conflict we are trying to find out the source of authority—whether it was a cabinet decision, a Prime Ministerial fiat, or a cabal of a few senior ministers who have taken this approach. We are entitled to answers on that.

CHAIR—Senator Ray, this is the way that we will resolve it: you may obviously ask questions as you see fit about the Cole royal commission or anything else. If you believe that the minister is not answering the question, you can take it to me and I will make a ruling. If the minister still refuses, then it can go to the Senate for a final decision. That is the process, and you gentlemen all know that. Perhaps we should commence with questions.

Senator Minchin—I want to say that I take strong objection to this line of attack. The government has been very open about this matter. We established this Cole royal commission for the very purpose of finding out the truth.

Senator ROBERT RAY—But you cover it up here.

CHAIR—Order!

Senator Minchin—We do not think that Labor's star chambers are very good ways of obtaining the truth.

Senator ROBERT RAY—So you are now the chair of a star chamber, Senator Mason.

CHAIR—Order, Senator Ray!

Senator FAULKNER—You have a government chair and a government majority on this committee and you call it a star chamber. You are kidding, aren't you?

CHAIR—Order! Senator Faulkner, the minister has the call.

Senator Minchin—The Cole royal commission should be allowed to get on with its job without a parallel line of questioning at this committee. That is the government's view, so you can ask your questions but, in relation to answers, that is the position. I would also point out that in the parliament last week and again in the House of Representatives this week the opposition was and is able to ask any questions it likes about matters relating to the UN oil for food program. Indeed, I point out that in the Senate last week the opposition only asked three of its six questions on each day about the oil for food program. They put on this great grandstand performance about how outrageous the government is, and yet they could not even come up with six questions a day on the UN oil for food program in the Senate last week.

Senator CHRIS EVANS—The relevant ministers—

CHAIR—Hold on, Senator Evans. I will give you the call—

Senator Minchin—With respect to Senator Evans, the relevant ministers are still in the House of Representatives. That is a silly point to make with all the grandstanding that is going on today.

Senator CHRIS EVANS—It is not a silly point at all. You can ask dorothy dixers about these issues of your ministers in the House of Representatives, but somehow the accountability that is allowed to occur in the House of Representatives is not allowed to be transferred to the estimates committee. On what basis?

CHAIR—Senator Evans, this is argumentative and not really to the point. I do not want a debate about procedure all morning.

Senator CHRIS EVANS—The point is that the Prime Minister yesterday issued advice from ONA about these matters. He is allowed to comment; he is allowed to use officials' advice when it suits him. But when we ask if ONA actually gave that advice we are told we are not allowed to ask. That is what is going on. The Prime Minister says he got information from public servants, but we are not allowed to ask the public servants whether that is true or not. This is a cover-up and it is not in accordance with Senate practice and procedures. This is a case of the government being too scared and using its Senate majority to abuse the estimates process. We are not going to stand for it, because it has never been the case in the past and it should not be the case today.

CHAIR—Gentlemen, why don't you commence asking your questions. I will rule on it. I have outlined this process. I will then rule on it. If the minister still declines to answer the questions, the matter could be taken to the Senate. That is the process. We would all agree on that—that is the process.

Senator ROBERT RAY—No, we do not.

CHAIR—Senator Ray, if the minister does not wish to answer your questions, the outcome is to take the matter to the Senate floor.

Senator ROBERT RAY—Oh, yeah—that's terrific!

CHAIR—That is the process. You know that better than I do. So perhaps we can start with questions relating to the Department of the Prime Minister and Cabinet.

Senator ROBERT RAY—I have a question for the minister, very directly: do you want to contradict my statement that anything adduced in the *Hansard* is not liable to be led in either a royal commission or a court of law? Is that your understanding of parliamentary privilege?

Senator Minchin—I am not going to go into a dialogue about parliamentary privilege. We are here to hear your questions and answer them to the best of our ability with regard to the additional estimates. If the committee has any particular view about the way in which those questions are answered or not answered that is a matter for the committee. But I am not going to go into a dialogue with Senator Ray or anybody else—

Senator ROBERT RAY—No, you are not capable.

Senator Minchin—about my understanding of parliamentary privilege. If you believe as a committee that there are any questions of that sort arising, that is a matter for you.

Senator ROBERT RAY—Minister, let me explain the relevance. Rather than just block it out, just try to engage for once. I am trying to find out what matters are before the royal commission. One thing we can exclude, therefore it will open up an area at least for examination: you cannot lead *Hansard* evidence in a court of law or a royal commission—parliamentary privilege prevents that. And if parliamentary privilege prevents that going to the royal commission, I am entitled to ask questions on what was in last November's *Hansard*, on that material. Of course I am entitled to it, because it cannot go to the royal commission. That is what I am trying to establish. I am seeking your concurrence on that.

Senator Minchin—I would like to be more helpful but all I can do is repeat that, so far as the government is concerned, and quite contrary to these wild allegations of cover-up, the government has instituted a royal commission with wide terms of reference to inquire into every aspect of this matter with regard to Australia and the UN oil for food program. The commissioner has made it clear that he sees it within his terms of reference to inquire into the knowledge of these matters that may or may not have been held by the government, the Commonwealth, and in particular DFAT, and that he will call officials if he feels the need and he will also ask for a widening of his terms of reference if he feels that is needed. Indeed, we just agreed to a widening of the terms of reference with respect to any involvement of BHP. So there is no cover-up; but we regard that the due process of the royal commission should be allowed to proceed and, because it is concurrent, we do not think at this estimates we should answer questions regarding matters before it.

Senator ROBERT RAY—I come back to my original point: that on every other occasion when matters have been canvassed in this committee when there have been inquiries we were wrong. Is that right?

Senator Minchin—Again, I am not going to—

Senator ROBERT RAY—No, you can't, can you, when you are covering up—

Senator Minchin—respond to what I regard as—

Senator ROBERT RAY—When you are covering up you cannot have any rationale.

Senator Minchin—Mr Chairman, I really do object to this 'cover-up' line.

Senator ROBERT RAY—It is the truth.

Senator Minchin—It is ridiculous when you have got a royal commission.

CHAIR—Senator Ray, let the minister finish and then I will come back to you.

Senator ROBERT RAY—What have you got to hide, Minister?

CHAIR—Senator Ray! Minister, you have the call.

Senator Minchin—I would have hoped the committee would have more regard for and respect for the job that Mr Cole has got to do. It is a very important job. I think he should be left to get on with the job, and I would think the committee should respect that. I would have thought there were a whole lot of other matters that the committee could be asking questions about that are outside the Cole royal commission. But if you want to waste time arguing about this, that is fine.

Senator ROBERT RAY—In the past, why have coalition members asked questions and expected answers when there have been concurrent inquiries? Why is the Cole commission different from any other in the past?

Senator Minchin—Could you give me examples of occasions when there has been a royal commission concurrently with Senate estimates hearings?

Senator ROBERT RAY—There have been dozens over the years, and you know it—

Senator Minchin—Dozens? We do not have dozens of royal commissions.

Senator ROBERT RAY—into Aboriginal things; the Hope royal commission. Did you stop asking questions about security matters because of the Hope royal commission?

Senator Minchin—When we were in opposition we may not have stopped answering questions.

Senator ROBERT RAY—No—that is right. But when you are in government and you have a Senate majority, it all changes.

Senator Minchin—No—it is a matter for the government of the day to decide what is appropriate.

Senator CHRIS EVANS—The government majority—

CHAIR—Senator Evans, please let the minister finish.

Senator Minchin—Oppositions have a job to do—I understand that; I was in opposition—but governments are entitled, as they were in the past, to make decisions with regard to propriety. In relation to the propriety of questions on this matter, when the Cole royal commission is in progress, we have come to the view that I have reported to you.

Senator ROBERT RAY—So what is the difference in propriety between having a running commentary from Mr Downer all last week—he was on *Lateline* at least once, but I saw him being interviewed several times commenting on the royal commission—Mr Truss commenting on it, Mr Vaile commenting on it and DFAT—this is officials, no longer ministers—issuing statements? They can all have their shot at it, but we cannot ask questions on it at estimates.

Senator Minchin—Obviously, in the course of public debate and in the House of Representatives, and indeed in the Senate, ministers choose to answer questions, particularly

when there are allegations made against the government which need a response. And if you wish to make allegations against the government today, I will respond to them. That is fine.

Senator ROBERT RAY—Any allegation I have made—

Senator Minchin—You had all last week in the House, you have all this week in the House of Representatives and, no doubt, your colleagues in the House of Representatives will ask lots of questions and ministers will answer appropriately, and I will respond to allegations that you make in this estimates committee. What I have told you is what has been communicated to officials with regard to questions coming before the Cole royal commission.

Senator ROBERT RAY—Coming back to my question, which you did not answer: if, in fact, the *Hansard* record cannot be adduced in a royal commission—if you like, I could very quickly get the Clerk and everyone else who has ever served on the Privileges Committee to assert that as fact—we can go to the issues that were raised in November's *Hansard*, because it cannot be adduced before the royal commission.

Senator Minchin—Again, if you wish to ask questions, you should feel free to do so.

Senator ROBERT RAY—Yes, but you are not going to give us the courtesy of—

Senator Minchin—I have indicated to you the direction we have given with regard to answers.

Senator ROBERT RAY—Courtesy? That is not a courtesy.

CHAIR—We are going around in circles here. The minister has replied.

Senator ROBERT RAY—I am sorry, I am going to ask what I would like to.

CHAIR—You may, but I am just reminding you that we are going around in circles and the minister may answer questions as he sees fit. I am not going to cut you off—I never have.

Senator ROBERT RAY—No, but you editorialise and say that we are going around in circles. The reason we are going around in circles is that this minister at the table will not give a straight answer to anything—not about which direction was given, who gave it, how it was communicated or whether in fact we can look at issues that arise out of *Hansard* that cannot go before Cole. The cone of silence has come down. Intellectually, they cannot engage in this process, like all their predecessors have. All their predecessors have been willing to defend the action, have the contest and have the examination of truth. Here, the cover-up is just expanding.

CHAIR—The minister has answered the question in his own way. I cannot force him to answer in any other way.

Senator ROBERT RAY—Let me ask this question of the minister on this ruling: at the estimates committee hearing of rural and regional affairs, questions were asked of Mr Besley.

Senator Minchin—So—

Senator ROBERT RAY—It is going to the issue of what can be raised at estimates and what cannot, given your government direction.

Senator Minchin—I am just clarifying that this was last October and November.

Senator ROBERT RAY—Questions were asked of Mr Besley; answers were given. Now the answers appear to be no longer extant—in fact, grossly inaccurate. Are you saying that we cannot ask about the misleading of parliament because the very substance of those issues is before the Cole inquiry? Is that what you are saying?

Senator Minchin—Again, you can ask the questions, but we will have to make a determination at the table here as to whether they are matters that are before Mr Cole.

Senator ROBERT RAY—So we can ask about misleading but not about how we were misled? What a ridiculous situation!

Senator Minchin—I cannot really add to what I have informed the committee on.

Senator ROBERT RAY—You can but you will not.

Senator Minchin—It is a rhetorical question. It is impossible for me to answer that.

Senator ROBERT RAY—No, it is not. It is trying to define the boundaries of how you have ordered your public servants to answer on what are matters before Cole and what are not. It seems to me that at the moment the definition is that anything that has the potential to embarrass the government is a matter before the Cole royal commission and we cannot ask any questions about it.

Senator Minchin—That is how ludicrous your position is. If they are before an open royal commission being reported fully every day by the media, and on which you can ask questions in the Senate and the House of Reps, it is hardly a cover-up.

Senator ROBERT RAY—Why not do it? Why do you not have the courage to answer the questions and get your public servants to? You are just frightened, aren't you?

Senator Minchin—Yes, terrified.

Senator ROBERT RAY—That is right.

Senator Minchin—Of course!

Senator ROBERT RAY—You cannot hack it.

Senator Minchin—It is a matter of respect for the conduct of the royal commission.

Senator ROBERT RAY—You are joking!

CHAIR—Colleagues, why not ask some questions and probe the boundaries. We are still on procedure, Senator Ray.

Senator ROBERT RAY—What we have in this one ruling is the destruction of the estimates committee—

Senator Minchin—That is ridiculous.

Senator ROBERT RAY—and you just want to brush it off and get on with questions.

Senator Minchin—That is really quite a ridiculous assertion to make.

Senator CHRIS EVANS—You have to understand that this is fundamental to whether or not estimates serve any purpose in the future. This is absolutely fundamental. What Senator Minchin is advancing today is a breach of all practice and procedure. He is flying in the face of all that and he is saying that a government under pressure, a government that does not want

its public servants to tell what they know, is prepared to order them not to give evidence to an estimates committee. That is completely against the standing orders. It is completely against privilege. It basically means that the estimates committees are no longer of any value. The government is using its Senate majority. Senator Minchin would not have tried this on if he did not have a majority in the Senate, because he would have known the Senate would not allow it. But he knows that when complaints are made before the Senate he will use his Senate majority to enforce the government's decision. He is effectively ending estimates as an accountability mechanism.

CHAIR—Senator Evans, what is your question?

Senator CHRIS EVANS—My question, and my point to you, Chair, is: if you allow this to occur you are effectively presiding over the end of government accountability in the Senate.

CHAIR—Senator Evans, that is not a question.

Senator CHRIS EVANS—It is. That is why we are sticking on this point. You may well want to move on, but this is fundamental to the future of the Senate and the accountability of government. It is the key issue. It has never happened before. It has never been allowed by a previous chairman and it has never been tried on, except by this government when it is under pressure. It is not acceptable, Chair.

CHAIR—The minister has said that he will answer questions. Why not probe that?

Senator CHRIS EVANS—He said he is going to tell everyone that they are not allowed to answer questions.

CHAIR—The minister himself has said—

Senator FAULKNER—He has been asked a number of questions and he has not answered any.

CHAIR—I am going to give Senator Fifield the call.

Senator CHRIS EVANS—He will not even tell us who made the decision.

Senator Minchin—I have to respond to the wild assertions that this is the end of estimates. I have a huge brief here on a whole range of matters that I would expect the committee would properly inquire into with regard to estimates. We can spend all day on all those issues. But with regard to the UN oil for food program and the terms of reference before Mr Cole, I have informed you of the government's direction on that one subject. There is a royal commission under way which is looking into all these matters. Once it is completed, if the committee wants to come back to it in a further estimates then that is fine. But, while this commission is under way, we do not think it is appropriate. You can ask questions on any other field of government activity you like.

Senator FIFIELD—The same questions have been asked ad nauseam. The minister is not refusing to respond. He will respond to every question that is asked. The response may not be one that pleases individual committee members, but he will respond to every question, which is what he is doing. Yet the same question is being asked time and again for no point, for no purpose. Chair, I think that you should direct that the committee move on.

CHAIR—I cannot direct the committee, like I cannot direct the minister.

Senator FIFIELD—Encourage.

CHAIR—I will encourage the committee to do that.

Senator ROBERT RAY—Thank you for that sycophantic little comment.

CHAIR—Senator Ray, please!

Senator FAULKNER—My question, Minister, is: can you now indicate to the committee when the decision that you read out to this committee a little earlier today was made by government?

Senator Minchin—You have already asked that question.

Senator FAULKNER—I am asking it again: can you indicate to the committee when it was made?

Senator Minchin—I have given you an answer.

Senator FAULKNER—Which is?

Senator ROBERT RAY—Which is that you are not going answer.

Senator FAULKNER—What is the answer? When was it made?

Senator Minchin—I told you I am not going to answer that question specifically.

CHAIR—You are going around in circles, Senator Faulkner.

Senator ROBERT RAY—Can I have your name? Can we at least get one answer out of you? Who are you? Just tell us one thing.

CHAIR—Are there any serious questions?

Senator FAULKNER—These are the serious questions.

CHAIR—We have been down this road for more than half an hour now.

Senator FAULKNER—Now I am going to ask the minister: at what level of government was the decision made and who made the decision?

Senator Minchin—Mr Chairman, I have informed the committee of the government's position on this matter. The government has directed officials in the terms that I have indicated to the committee—

Senator ROBERT RAY—How?

Senator FAULKNER—Who made the decision? That is my question.

Senator Minchin—and I am not going to respond to questions about who, what, where and when.

Senator ROBERT RAY—Why not?

Senator Minchin—I am simply not going to respond to questions about who, what, where and when.

Senator FAULKNER—So my question is: who made the decision? Are you unwilling to answer that too?

Senator Minchin—The government.

Senator FAULKNER—What do you mean by ‘the government’ in this circumstance?

Senator Minchin—I mean the government.

Senator FAULKNER—Was it a cabinet decision?

Senator Minchin—It was the government.

Senator FAULKNER—Was it the Prime Minister’s decision?

Senator Minchin—It was the government.

Senator FAULKNER—Was it the Prime Minister’s decision?

Senator Minchin—The government.

Senator FAULKNER—Was it a decision made by a meeting of senior ministers?

Senator Minchin—The government has made the decision.

Senator FAULKNER—Was it your decision?

Senator Minchin—I am a member of the government.

Senator FAULKNER—Was it your decision, Senator Minchin?

Senator Minchin—It is a decision by the government.

Senator ROBERT RAY—Was the decision made on Friday?

Senator Minchin—That is just another way of asking when it was made—

Senator FAULKNER—Who drafted it—

Senator ROBERT RAY—I am asking for an answer.

Senator Minchin—The government has made the decision and it has been communicated to officials and I am reporting it here to you now.

Senator ROBERT RAY—Was it made on Friday?

Senator Minchin—I am not going to go into those sorts of details with you, Senator Ray. Frankly, it has absolutely nothing to do with—

Senator FAULKNER—Who drafted the weasel words that you read out—

Senator Minchin—These sorts of questions have nothing to do with additional estimates.

Senator FAULKNER—Who drafted the weasel words read out to this committee—

Senator Minchin—Mr Chairman, I am not going to respond to abuse of that kind. How dare they abuse whoever was the author with ‘weasel words’!

Senator FAULKNER—Who drafted the words you read out to this committee as an opening statement made in your name?

Senator Minchin—That is none of this committee’s business.

Senator FAULKNER—Did you draft your own words to this committee, Senator Minchin?

Senator Minchin—Mr Chairman, I am not going to respond to questions of that kind.

Senator FAULKNER—You are not even willing to say—

CHAIR—The minister has responded to the question, Senator Faulkner.

Senator FAULKNER—Let us understand what the minister is saying. The minister is saying that he is not willing to indicate to this committee whether material that he puts before this committee in his name was drafted by him or someone else. It is quite preposterous. The words stand in Senator Minchin's name—

Senator Minchin—The words record the government's position. That is all that is relevant to this committee.

Senator FAULKNER—The words stand in your name, Senator Minchin, and only in your name at this stage.

CHAIR—Order!

Senator Minchin—They stand in the name of the government and I am here representing the government.

Senator FIFIELD—When you read out your opening statement you took ownership of it, so they are in effect your words, as you said, on behalf of the government.

Senator Minchin—With respect, Senator Fifield, the words—

Senator ROBERT RAY—You really need a good sycophant, don't you, not a louse?

Senator Minchin—The words contain the government's position on this matter. I am a member of the government. I as representative of the government before this committee have communicated the government's position in the terms set out in the statement, which, as I say, I am happy to table.

Senator CHRIS EVANS—Minister, have you ever seen the show *Yes, Minister?*

Senator Minchin—I am not sure that my television viewing habits have anything to do with this committee either.

Senator FAULKNER—Has the government's decision in relation to this, the decision that you have read out to this committee, been communicated to the Secretary of the Department of Prime Minister and Cabinet, Dr Shergold?

Senator Minchin—I would imagine so.

Senator FAULKNER—That is not good enough.

CHAIR—Hold on!

Senator FAULKNER—We do not want imagination from Senator Minchin; we want answers, proper answers to proper questions.

CHAIR—I am not going to tolerate abuse of the witnesses.

Senator FAULKNER—That is not abuse of the witnesses. Let us not imagine anything. It has never been acceptable to imagine things before the committee. Let us have a clear answer to the question. My question is: has the government's decision been communicated to Dr Shergold?

Senator Minchin—I think that the committee should assume that Dr Shergold is well aware of this direction.

Senator ROBERT RAY—Should assume!

CHAIR—That is the answer to the question.

Senator FAULKNER—You would appreciate, Chair, that every time the words ‘imagine’ or ‘assume’ or ‘imagination’ or ‘assumption’ are used in this committee senators at the table generally ask the witness to be clear in the evidence that they are giving. So I think we are entitled to a clear answer, a definitive answer, to a clear question. I will ask again: was Dr Shergold, as the Secretary of the Department of Prime Minister and Cabinet—the department which is before this committee at this time—informed of the government decision that you have read out?

CHAIR—The minister has just answered that question.

Senator Minchin—I have nothing to add to my previous answer.

Senator ROBERT RAY—When the government mysteriously made this decision, up in the ether—we do not know where—does any penalty apply to a public servant who does not obey that directive, given the imposition of Senate standing orders on them to answer questions?

Senator Minchin—My understanding of procedure is that, properly, while it is observed in the breach, all questions should go to the minister.

Senator ROBERT RAY—But that is not what standing orders say.

CHAIR—But that is the practice.

Senator ROBERT RAY—Don’t talk conventions to me!

CHAIR—You have a consensus in a way. That is how we proceed. You would agree with that.

Senator ROBERT RAY—Yes, that is the convention. The other convention was that questions relating to government expenditure and annual reports could be asked. That has been breached. We cannot breach conventions but ministers can. That is what you are saying.

Senator Minchin—I am very happy to answer questions regarding the additional estimates. What has always staggered me is that nobody ever asks any questions about additional estimates, which is what these committees are about. Why don’t you ask about additional estimates?

Senator CHRIS EVANS—And the annual report, Minister. You ought to be better briefed.

Senator Minchin—You can ask about the annual report.

Senator FAULKNER—I now ask—

Senator CHRIS EVANS—You ought to be better briefed!

CHAIR—Hold on, Senator Evans, Senator Faulkner has the call.

Senator FAULKNER—Dr Morauta, when were you informed of the government decision in relation to this matter?

Dr Morauta—I think I will take the question on notice.

Senator FAULKNER—You will take it on notice?

Senator ROBERT RAY—You either know the answer or you do not. If you do not know the answer, you take it on notice. If you do know the answer, you do not take it on notice and fob it off, you just say, ‘I refuse to answer.’ It has to be one or the other.

CHAIR—Dr Morauta, you answered the question—

Senator Minchin—Hang on, Mr Chairman, I am not going to have officials here bullied like this.

Senator ROBERT RAY—That is a fair question—

Senator Minchin—The official has given her answer—

CHAIR—Senator Ray, Dr Morauta will answer the question in her own way.

Senator Minchin—and she has said she will take it on notice. I am not going to have officials bullied by Senator Ray. The official has given her answer and she is taking it on notice. It is not for him to determine whether or not she is entitled to take it on notice. She is entitled to take it on notice, and she has.

CHAIR—Minister, you are right. That is correct.

Senator ROBERT RAY—Can I ask the witness: are you taking it on notice because you do not know whether you are entitled to answer it or because you do not know the answer?

Senator Minchin—You cannot go to motive. I am not having questions being asked about motive.

Senator ROBERT RAY—You accused me of bullying and now I have asked a factual question as to why a witness has taken that question on notice—whether they do not have knowledge of it or they are going to seek advice. That is a legitimate question.

CHAIR—It is a good question, but Dr Morauta has answered that question—the previous one.

Senator ROBERT RAY—No, she has not.

CHAIR—It covers that question as well.

Senator ROBERT RAY—No, it does not.

Senator FAULKNER—Chair, the question before the chair at the moment is why Dr Morauta took the question on notice. That is the question, and I would like to ask Dr Morauta to answer: why did she take—

CHAIR—So you are going to her motivation?

Senator FAULKNER—No, I am not going to motivation, I am asking why my previous question, given that it relates to matters that are absolutely contemporaneous, that have happened over the last hours or days, was taken on notice.

CHAIR—Dr Morauta, do you have anything to add to your previous answer?

Dr Morauta—No, I do not have anything to add.

CHAIR—Okay.

Senator FAULKNER—When were you informed of the government's decision?

Senator Minchin—That is the same question, Mr Chairman, really.

Senator FAULKNER—I am sorry, but it is a very different question.

Dr Morauta—Again, I will take it on notice.

Senator ROBERT RAY—Were you informed in writing, if you were so informed? Do you want to take that on notice?

Dr Morauta—Yes.

Senator ROBERT RAY—Thank you. Have you communicated this ruling to anyone else in the department?

Dr Morauta—Again, I will take it on notice.

Senator FAULKNER—How are your staff—officials who may come to the table and be questioned about these matters—aware of this 'government decision' that has been communicated and read to the committee by Senator Minchin? How do they know about it?

Senator Minchin—Mr Chairman, that is inappropriate. Officials are aware. I have communicated to the committee that officials appearing before this committee are aware of the government's decision.

Senator ROBERT RAY—How?

Senator Minchin—They are aware of the decision, and that is all that matters.

Senator CHRIS EVANS—How do you know? Is that because they are watching estimates?

Senator ROBERT RAY—Have you put it in writing? We do not know.

Senator Minchin—As the minister appearing before this committee, I am satisfied that officials are aware of the government's direction. I do not believe questions going behind the veil—

Senator ROBERT RAY—Then why do you want the question—

CHAIR—Hold on, Senator Ray, I will come back to you. Let the minister finish.

Senator Minchin—I do not think questions that go beyond that are relevant at all and I do not think that officials need to answer them.

Senator ROBERT RAY—You say they are aware, but the first official we have asked had to take the question on notice. How do we know you are telling the truth? How do we know you are right, that your assumption is correct? Is there any official behind you who can say that they know or do not know?

Senator Minchin—Officials are aware of the direction.

Senator ROBERT RAY—How?

Senator FAULKNER—How are they aware?

Senator Minchin—You have asked that question before.

Senator ROBERT RAY—We have. You have not answered it.

Senator Minchin—They are aware of the direction.

Senator FAULKNER—How do you know they are aware of the direction?

Senator Minchin—Officials are aware of the direction.

Senator FAULKNER—How do you know that?

CHAIR—This is becoming boring and repetitive. We are not getting anywhere.

Senator FAULKNER—It may be boring for you.

Senator CHRIS EVANS—There is no standing order against boring and repetitive. There is a standing order that says that the minister is supposed to answer the questions.

CHAIR—They are boring and repetitive questions. We are not getting anywhere.

Senator ROBERT RAY—The questions are not boring and repetitive; the answers are.

CHAIR—Go ahead and ask, but we are going around in circles.

Senator FAULKNER—I would go ahead if you would stop your commentary from the chair.

CHAIR—I am not the only one who makes commentary.

Senator FAULKNER—I have asked Senator Minchin how he is so confident in his assertion that government officials are aware of the government's decision. How does he know that?

CHAIR—Do you have anything to add to your previous answers, Senator Minchin?

Senator Minchin—This is a really facile and quite juvenile line of questioning.

Senator FAULKNER—Stop leading the minister, Chair.

Senator Minchin—He is not leading. I do not need leading.

Senator FAULKNER—He is leading you.

Senator Minchin—I do not need any leading, and he is not.

Senator FAULKNER—Then answer the question.

Senator Minchin—I am surprised you put up with this abuse, Chair.

Senator ROBERT RAY—What—the abuse of Senate estimates? I am surprised too.

Senator FAULKNER—What abuse?

Senator Minchin—Your abuse of the chair.

Senator FAULKNER—My abuse of the chair?

CHAIR—It is all right, Senator Minchin. I am used to the vigorous camaraderie of this committee.

Senator ROBERT RAY—We are talking about the Department of the Prime Minister and Cabinet, but there are agencies within the Department of the Prime Minister and Cabinet. Does this direction apply to the Inspector-General of Intelligence and Security?

Senator Minchin—It applies to all officials appearing before Senate legislation committees.

Senator ROBERT RAY—But does it apply to officials of departments or agencies?

Senator Minchin—It applies to officials appearing before the committee.

Senator ROBERT RAY—So it includes all agencies?

Senator Minchin—I think you should take it that it includes agencies.

Senator ROBERT RAY—But you do not know for sure?

Senator Minchin—Yes, it applies to all officials appearing before—

Senator ROBERT RAY—So you have gagged the Inspector-General of Intelligence and Security?

Senator Minchin—No-one is gagged, because everyone is subject to being called before the Cole royal commission, and they are subject to being called to future estimates.

Senator ROBERT RAY—So Mr Cole is entitled to call officers of ONA for evidence. Is that what you are saying?

Senator Minchin—I think the terms of reference are sufficiently wide, and we have made it clear that, as far as we are concerned, all relevant officials and, indeed, ministers can be called before the royal commission.

Senator ROBERT RAY—But you are also making clear that officers of ONA can be called. You are making that clear to me, and that is the reason I cannot ask them questions.

Senator Minchin—That is my understanding. I am happy to take that on notice if you want confirmation of that.

Senator ROBERT RAY—I would be very interested to know whether Mr Cole can call—

Senator Minchin—It is my understanding that all officials are within the government sector.

Senator ROBERT RAY—So you are saying Mr Cole can call security agencies before him for information.

Senator Minchin—If Mr Cole believes that that is necessary in order for him to comply with the terms of reference and report properly on these matters, then that would be my understanding—but I will get confirmation of that.

Senator ROBERT RAY—But you are saying that the government will accede to that request.

Senator Minchin—I would have thought so, because we have been more than generous in our approach to this royal commission. We want him to find the truth, and if that involves calling those sorts of officials I imagine that that would be the case.

Senator ROBERT RAY—I know the answer to this, but you might as well confirm it: you have not actually checked with Mr Cole that he has any objection to Senate estimates probing some of these areas and he has not raised it with you, has he?

Senator Minchin—It is a matter for the government to determine what is appropriate when the royal commission is on. I do not think that is a question you would put to the royal commission. That is asking him to make a political judgment.

Senator ROBERT RAY—But I am saying there has not been an objection raised by Mr Cole—to questions in parliament, for instance.

Senator Minchin—It is a matter for the government to decide what attitude should be taken to questions on this matter in an estimates committee when a royal commission is on. It would be quite unfair to put that to Mr Cole.

Senator ROBERT RAY—I am not suggesting that you do it, but he has not raised an objection with the government, has he?

Senator Minchin—I would have to take that on notice.

Senator ROBERT RAY—Would you? You do not know?

Senator Minchin—I am happy to take that on notice.

Senator ROBERT RAY—But you do not know at the moment?

CHAIR—The minister is taking it on notice.

Senator FAULKNER—Dr Morauta, is there an official of the department who has specific responsibilities for coordinating or dealing with matters relating to the Cole royal commission? Is that a responsibility that has specifically been given to any departmental official?

Dr Morauta—I think, in the broad, the answer would be no. We took questions at the previous Senate estimates about the setting up of the royal commission. That is the kind of the thing that the department does, from time to time, give advice on. That is an area where we do have a division that provides advice of that kind.

Senator FAULKNER—Is that the Government Division?

Dr Morauta—Yes.

Senator FAULKNER—Are matters relating or pertaining to the Cole royal commission core business for the Government Division?

Dr Morauta—No. I said that it was part of their role to provide advice on the setting up of something like that. That is part of their role.

Senator FAULKNER—Has there been any monitoring role in the department?

Dr Morauta—I think the department would broadly keep across issues in government, but I do not think we have a particular role on that.

Senator FAULKNER—Is that a ‘Yes, there has been’?

Dr Morauta—Yes, I would be pretty certain that people in the department were monitoring that in some way and keeping up to date on what was going on.

Senator FAULKNER—It is not a matter to be ‘pretty’ certain about. Isn’t it a matter to be absolutely clear on?

Dr Morauta—Why don’t I take it on notice and make absolutely certain, Senator?

Senator FAULKNER—Is there no official here today who can assist us with saying whether the department has officials who have been involved in monitoring events pertaining to the Cole royal commission? Is that what you are saying?

Dr Morauta—I can find out and get that answer for you quite quickly.

Senator FAULKNER—What do you mean by ‘quite quickly’—a little later on today?

Dr Morauta—Yes. I am not sure whether we have an officer here.

Senator FAULKNER—I would have thought that you would only have to look behind you.

Dr Morauta—Mr Borrowman will come forward and advise to what extent they have been monitoring the events at the royal commission.

Senator FAULKNER—Thank you. So it is the International Division and not the Government Division, as Dr Morauta and I may have suggested a little earlier, that has responsibility for this.

Dr Morauta—The question you were asking was about a monitoring role within the department for events at the commission. Mr Borrowman can indicate whether his division has been monitoring events at the commission.

Senator FAULKNER—I would appreciate hearing from him. Let’s go, Mr Borrowman.

Mr Borrowman—I take the question to be: has the department been monitoring events at the royal commission? The answer is yes. Insofar as that is within the department’s purview, that is within the responsibility of International Division.

Senator FAULKNER—Would you remind repeating that a little louder, please, because I could not hear a word of it.

Mr Borrowman—Insofar as the question is has the department been monitoring events at the royal commission: yes, International Division has been monitoring the events of the royal commission.

Senator FAULKNER—And that is an ongoing responsibility of the department, is it?

Mr Borrowman—Yes, it is.

Senator FAULKNER—How many officials are engaged in that?

Mr Borrowman—It varies.

Senator ROBERT RAY—It varies between what?

Mr Borrowman—The International Division is a very small division. There are only about 16 people. The branch that has nominal responsibility for this has four people, two of whom would normally cover this among other issues. So it could vary between two and however might be needed to keep up to speed with things.

Senator FAULKNER—What do the two do?

Dr Morauta—Do you mean in relation to the royal commission?

Senator FAULKNER—What is their role and responsibility?

Dr Morauta—Their general role?

Senator FAULKNER—What are their duties? That is perhaps the best way to put it.

Senator Minchin—Generally speaking or in relation to the commission?

Senator FAULKNER—In the context of the matter that is before the chair. I am sure you appreciate that, Senator Minchin. I am asking about the responsibility of officials in relation to the Cole royal commission. What are the duties of these two? In other words, what is the broad brush of their functions?

Mr Borrowman—I think the answer is that the functions are the same as the officers' functions with regard to any other matter—to monitor and bring matters to the attention of the government as necessary and give advice.

Senator FAULKNER—Are there no PM&C officials attending the inquiry?

Mr Borrowman—Not from the Department of the Prime Minister and Cabinet.

Senator FAULKNER—Are you aware of officers of other departments attending the royal commission?

Dr Morauta—I think we would have to let the other departments answer those questions.

Senator FAULKNER—No, you would not. Listen to my question carefully, Dr Morauta. I asked whether the Department of the Prime Minister and Cabinet was aware of officials or officers of other departments or agencies attending. It is not something I need to address to other departments; it is a straightforward process.

Senator Minchin—With respect, I think that is a matter properly addressed by each committee as departments appear, as to whether any officials of those departments are in attendance. We have given you open answers about the role of PM&C. With regard to other departments, you should direct your questions to those other departments.

Senator ROBERT RAY—Has PM&C received any reports from officials that may have been attending the hearings? It is a different question.

Mr Borrowman—I believe that officials of DFAT are present at the inquiry. That is a matter you would have to ask them.

Senator ROBERT RAY—My question was whether any of those officials that were attending the inquiry had kept you updated or had reported et cetera. It is a different question.

Mr Borrowman—In answer to your question, there is of course the usual process of interdepartmental consultation and coordination about these matters. So, in broad, the answer is yes, as a function of our normal responsibilities.

Senator ROBERT RAY—Thank you. I will just chalk up the first answer I have got in an hour.

Senator Minchin—When your questions are reasonable, Senator Ray, you will get answers.

Senator FAULKNER—My questions are always reasonable.

Senator ROBERT RAY—We have not finished with you yet. Don't get too relaxed there!

Senator FAULKNER—What form does that reporting take, Mr Borrowman?

Mr Borrowman—We are kept apprised of events in the committee each day. There is a series of alerts by text message, which keeps us up to date with how the evidence is unfolding. That is really about it.

Senator FAULKNER—So the method of communication of these reports is text message. Do you mean, by that, mobile phone text messaging?

Mr Borrowman—In the first instance there is a text message just to say that person X is in the stand addressing matter Y.

Senator FAULKNER—Is that a broadcast text message from mobile phones, or is it specific information for the Department of Prime Minister and Cabinet?

Mr Borrowman—I do not know who else is on the recipient list for that.

Senator FAULKNER—So you do not know?

Mr Borrowman—No.

Senator FAULKNER—So there are text messages from mobile phones coming out of the commission. Fair enough. What other forms does the reporting take? That is the immediate form; what else have we got?

Senator Minchin—Mr Chair, we do not want to adopt a totally antagonistic attitude, but questions about methods of communication strike me as rather odd, not really relevant to the estimates committee and not fair on officials.

Senator FAULKNER—So are you ruling my question out on the basis that you consider it odd?

Senator Minchin—It is sufficient for the committee to be apprised that communication does occur from DFAT officials who are attending the royal commission back to PM&C. I do not think it is necessary to go into detail about how that is communicated.

Senator FAULKNER—Are you not answering my question on the basis that you think my question is rather odd?

Senator Minchin—I am indicating that I do not think any further information about the method of communication is appropriate.

Senator ROBERT RAY—Are you directing the officer at the table not to answer now?

Senator Minchin—I am suggesting that, as far as I and the officials are concerned, what is relevant is that communication occurs. I do not think the method of communication is at all relevant.

Senator ROBERT RAY—That is your view. We have a different view. Are you saying we cannot ask a question? Are you saying that if we have a different view on what is relevant we cannot ask the question?

Senator Minchin—No, you are perfectly entitled to ask the question. I am simply saying that—

Senator ROBERT RAY—You will not answer it.

Senator Minchin—We will not answer any further questions about methods of communication.

Senator ROBERT RAY—You are running out of bats and balls to take home, you know.

Senator FAULKNER—Why did you answer a question about text messages then?

Senator Minchin—One always approaches these things in a spirit of generosity on the assumption that there will be a sensible line of questioning—

Senator CHRIS EVANS—You are doing comedy now?

Senator Minchin—but that is clearly not going to occur, so I think we will—

Senator ROBERT RAY—Just cover it up?

Senator Minchin—terminate our evidence on that matter.

Senator ROBERT RAY—Yes, another cover-up.

CHAIR—Senator Faulkner—

Senator FAULKNER—I was in the middle of questioning.

CHAIR—I am just giving you the call.

Senator ROBERT RAY—And I will stop interrupting.

Senator CHRIS EVANS—I will not make any such promises.

Senator FAULKNER—My question relates to the forms of communication between the DFAT officials and Prime Minister and Cabinet. You have indicated to the committee that there are text messages going on mobiles. I asked what other forms of communication were taking place.

Senator Minchin—Chair, I have already said that we are not going into any further detail about forms of communication because that really is a facile line of questioning. What matters, what is reasonable to report and what is reasonable to ask is that there is communication.

Senator ROBERT RAY—Gee, thanks for that!

Senator Minchin—That is fine.

Senator ROBERT RAY—Now we will continue our questioning if you do not mind.

Senator FAULKNER—Why is it reasonable to know that there is text messaging and other forms of communication but not to know what the other forms are when we know that there is text messaging? It seems to be slightly inconsistent. Perhaps you can explain that to us.

Senator Minchin—In the spirit of generosity, listening to a line of questioning, Mr Borrowman answered that question. But I think that is as far as we need to go on that matter.

Senator FAULKNER—So you are going to cover that up?

Senator ROBERT RAY—Because you have a Senate majority? That is the only reason we cannot pursue it any further.

CHAIR—We have hit a procedural impasse again, I think.

Senator FAULKNER—No, we have hit an impasse.

Senator ROBERT RAY—This is not before the royal commission.

Senator Minchin—Frankly, most observers would regard this as ridiculous. It is a procedural line of questioning about forms of communication.

Senator FAULKNER—This has nothing to do with the royal commission. It is what is being reported outside the royal commission.

CHAIR—I did not say that. I said it is a procedural impasse and I think it is.

Senator FAULKNER—This does not fit any of what Senator Minchin put forward as the sorts of constraints that the government is applying to this hearing. Now he has extended and expanded that cover-up into a new cover-up about matters completely extraneous. This is why I am asking the questions.

CHAIR—And I am happy that you ask them.

Senator FAULKNER—Quite clearly these are not matters that relate to—

CHAIR—The Cole royal commission.

Senator FAULKNER—the opening statement of Senator Minchin. This is just a broader cover-up.

CHAIR—I understand that.

Senator FAULKNER—This is shutting down any matters relating to—

CHAIR—Senator Faulkner, please ask some more questions.

Senator FAULKNER—the governance of the department or any matters relating to public administration in the Department of the Prime Minister and Cabinet.

Senator Minchin—That is silly, Chair. The committee has been informed that DFAT officials are in attendance and they communicate with officials in Prime Minister and Cabinet the proceedings of the royal commission. The public would regard it as juvenile to be asking about forms of communication.

Senator FAULKNER—How do you know what the public thinks? It probably thinks that your government is completely corrupt.

Senator Minchin—This is why we are in government and you are in opposition.

Senator FAULKNER—The public probably thinks that your government is completely corrupt.

Senator Minchin—That is an utterly ridiculous and offensive assertion, Chair. I am not going to sit here and put up with that sort of assertion.

Senator ROBERT RAY—Do what you like, Minister, but I want to ask questions. You are asking what the relevance is of how the department communicates. I am actually interested in knowing whether DFAT is communicating with PM&C in writing according to the Archives Act and everything else or by text message. I want to know how retrievable those communications are. If Mr Cole wants documents, I want to know what sorts of documents he is going to get. Is he able to access text messages? I think not. We know that, of late, it is

emails and writing. So it is absolutely a relevant question about how one department is communicating information to another. Of course it is relevant.

Senator Minchin—We have informed the committee that there is communication between officials at the royal commission back to PM&C—end of story. As far as Mr Cole is concerned, he has available to him all documents relevant to his royal commission.

Senator ROBERT RAY—We will get to that later in the day. What I am asking extends Senator Faulkner's question but I will make it more specific. Is PM&C getting from the DFAT observers at the Cole royal commission communications other than text? Are they getting emails, are they getting documents in writing updating them on what is happening? That is a perfectly reasonable question.

Senator Minchin—They are receiving information in appropriate formats.

Senator ROBERT RAY—I am asking what the appropriate format is.

Senator Minchin—I hear your question.

Senator ROBERT RAY—I know. I am asking for an answer. You won't answer it?

CHAIR—The minister has answered the question.

Senator Minchin—I have told you they are receiving their communication in the appropriate format.

Senator ROBERT RAY—You won't answer the question?

Senator Minchin—I have given you an answer.

Senator ROBERT RAY—No, you won't actually answer the question. You are just refusing to answer the question. I am asking: what method of communication? You are declining to answer.

Senator Minchin—We have nothing further to add.

Senator ROBERT RAY—You are declining to answer, in other words.

Senator Minchin—We have nothing further to add to the previous answer.

Senator ROBERT RAY—On what grounds are you declining to answer? Just because you feel like it?

Senator Minchin—Mr Chairman, a minister is entitled to answer questions before this committee in any way he feels like.

CHAIR—That is correct.

Senator ROBERT RAY—Yes, in a totally contemptuous way.

Senator CHRIS EVANS—This is just because the government's Senate majority changed. That has not been the practice in the past.

CHAIR—Senator Evans, you have a question?

Senator CHRIS EVANS—Yes, I do. I would like to ask when the government made a decision to change that practice. It certainly was not applied during the building royal commission. When that was in process both government and non-government senators asked

questions of the government and received answers. They were not gagged by the government. What has changed in this royal commission, compared to the royal commission you set up into the building industry? When was there a change of policy?

Senator Minchin—Obviously the government will deal with each case on its merits. Obviously the government has given consideration to the coincidence of this royal commission, going to very serious issues that have been raised as a result of the Volcker inquiry into the UN oil for food program, with this estimates hearing and has come to the conclusion that it has on the merits of the circumstances before it. We will deal with each of these cases on its merits, but in this case this is the government's position.

Senator CHRIS EVANS—But what is the answer to the question of why? You took questions on the two Centenary House royal commissions, where you wasted millions of taxpayers' money. You took questions on the building—

Senator FIFIELD—Sorry, what was wasting millions of taxpayers' money?

Senator Minchin—I was going to say, don't lecture us about a waste of taxpayers' money, with that outrageous deal done on Centenary House by the former Labor government. If you want to talk about corruption, let us go to that.

Senator CHRIS EVANS—All I know is you had two royal commissions and you did not get the political result you wanted. You had the building royal commission. You had the Ombudsman's inquiry into—

Senator Minchin interjecting—

Senator FAULKNER—That is the difference. Questions were asked.

Senator CHRIS EVANS—You feel no need to cover up when they are royal commissions you think are into the Labor Party or trade unions and which are politically motivated, but when you are under the pump, when you are under pressure, you decide suddenly there is a new rule, a new regime, in relation to answering questions. The hypocrisy is outstanding. Why on this occasion, the first time ever, has the government taken this policy decision, which it did not take in relation to every other royal commission since you have been in government?

Senator Minchin—As I said, Senator Evans—and you don't need to yell at me; I can hear you—

Senator CHRIS EVANS—You have been doing your fair share of yelling too.

Senator Minchin—we decide these things on their merits and we have decided in this case given the seriousness of the matter—

Senator CHRIS EVANS—The other commissions were not serious?

Senator Minchin—and the determination of the government to allow Mr Cole to conduct his royal commission appropriately. As I say, it is a serious matter. He can call any witnesses he likes. He can seek a widening of the terms of reference. He has indicated at this stage he does not think that is appropriate but if he needs to he will come back to the government. We have already widened the terms of reference once. Given that demonstrable absence of any attempt by the government to cover up this matter, given the statement by Mr Cole that he

feels it entirely within his terms of reference to inquire into the knowledge held by the government on this matter, we have given the direction we have to officials appearing here.

Senator CHRIS EVANS—So what is the difference between the Prime Minister answering questions on national television yesterday about the detail of ONA advice to him and your officials or you answering questions about the same advice or other related matters that are currently before the royal commission? Why is it that the Prime Minister when he chooses is able to release detail and discuss detail affecting the royal commission but somehow, at estimates, questions asked by senators are somehow out of order?

Senator Minchin—Obviously ministers in the public debate will answer questions put to them in the way they think fit and in a way that does not in any way cut across or prejudice the Cole royal commission. That will be done in the House of Representatives and the Senate. But in relation to these estimates I have indicated to you the government's direction to its officials. As I say, you can ask questions and I will endeavour on behalf of the government to answer where we deem it appropriate, consistent with that government direction.

Senator ROBERT RAY—What is the difference between this inquiry and the HIH inquiry, where you did not direct officials regarding the answering of questions? What is the distinguishing feature?

Senator Minchin—I am not sure that I can enlighten you any further than I have. I am not saying—and please do not interpret me as saying—that forevermore, whenever there is a royal commission on, a particular position will be adopted. But certainly in the case of these terms of reference, it is important to emphasise that, as Mr Cole said in his statement on 3 February, the knowledge of officials within government of AWB's activities is relevant to his royal commission. He will be inquiring into that and no doubt he will call witnesses in relation to that line of inquiry.

Senator ROBERT RAY—Can he draw conclusions?

Senator Minchin—I do not want to get into a comparison, but in relation to this royal commission, because of that clear indication from Mr Cole as to where he intends to go with this, we have come to this position. I am not saying that that will necessarily apply in the future, but in relation to this case that is the position we have adopted.

Senator FAULKNER—Just when it suits you.

Senator ROBERT RAY—The HIH inquiry was looking into APRA and other government organisations and their role in supervision et cetera. I am trying to find out why it is just this one. I would be more convinced, I must say, if I knew whether it had been discussed in cabinet and when the order came out. Was it just a panic order that came out this morning after another weekend of bad publicity? We do not know any of this, to make a judgment on whether or not there is any valid reason. You cannot draw any distinctions. You cannot give any reasons. Why not?

Senator Minchin—It is in the nature of political discourse that, as an opposition, of course you will not accept what I say as valid. That is the role of oppositions. I was not expecting to convince you of the validity.

Senator CHRIS EVANS—It would be a short argument, that is why.

Senator Minchin—Nevertheless, that is the government's considered position in relation to this case and it is done in consideration of our desire to ensure that Mr Cole can do a thorough job in his royal commission, because we do want the facts elicited through the royal commission.

Senator ROBERT RAY—In this consideration, Minister, can you now guarantee me that DFAT will not be putting out any more written statements, like they did last week, that would, as you say, have the same consideration of interfering with the Cole royal commission? I accept that—

Senator Minchin—Well—

Senator ROBERT RAY—No, let me finish. I accept that ministers, in the hurly-burly, will respond at question time and elsewhere. But here we have a department that you want protected from questions from us in the estimates process that is able to put out statements itself. How?

Senator Minchin—You can of course ask DFAT officials when they appear before the relevant estimates committee. My recollection is that the DFAT statement was in response to a statement made by Mr Stott, which was not made before the royal commission. My recollection is that that was made as a public statement, which DFAT regarded as being in error and felt properly obliged to issue a public statement on to correct that error. The statement by Mr Stott was not made in the context of the royal commission itself.

Senator ROBERT RAY—What you are implying there is that we can ask questions on matters that have not been raised before the royal commission at this point. That is what you are saying. Or are you saying that there is one rule for DFAT and one rule for us?

Senator Minchin—No. I am not sure where you are coming from with respect to DFAT's right to issue a statement to correct the record when it believes that a public statement has been made about it that it believes to be incorrect. You are free to ask DFAT about that and its motivation for its statement. I am simply informing you that the statement to which DFAT responded was not, according to my understanding, made in the royal commission.

Senator ROBERT RAY—I am sorry I am being so obtuse that you cannot understand my point. You are saying that—and I might accept this statement—DFAT is entitled to put out a statement refuting stuff that was made as a public statement but not before the royal commission. I am saying that therefore I should be able to ask questions about similar matters. But, no. Because the matter might be before—and you will not define 'matter'—the royal commission, I cannot ask public servants about it. For instance, I may want to ask about the chappie at the weekend who made allegations—and I stress allegations only—about what he had raised with Mr Truss. He has not been before the royal commission. Are you saying I cannot ask questions about that because some other matters may be before the commission?

Senator Minchin—With respect to matters that are within the ambit of the Cole royal commission, officials have been directed as I have indicated.

Senator ROBERT RAY—But, you see, the matters that DFAT responded to are broadly before the royal commission but the specific allegation was not. You seem to have one rule for

them and one rule for us. Are you going to enforce the rule you have put on us on all departments and agencies from now on?

Senator Minchin—It is not a rule for you; it is a direction to officials with respect to their appearance before these committees.

Senator ROBERT RAY—Yes, but they can go out in public.

Senator Minchin—DFAT believed that the public statement made was grossly in error and took it upon itself, quite properly, to issue a correcting statement.

Senator ROBERT RAY—But, if I want to ask them about other questions that may also be in error, you are going to gag them.

Senator Minchin—As I say, you can ask all the questions you like and we will attempt to respond. But, if they come within the ambit of that statement, we may not be able to answer you.

Senator ROBERT RAY—That is a different definition. You said that officials will not be able to answer. This is the first time you have included yourself, unless you do not regard yourself in the ‘we’. I hope you have not moved the definition.

Senator Minchin—As I understand it, all questions should go through the minister. That is the proper course of events.

Senator ROBERT RAY—Are you now saying ministers will not answer questions on this?

Senator Minchin—I will attempt to answer questions as best I can.

Senator CHRIS EVANS—Dr Morauta, did the department prepare material to answer questions from senators regarding issues and events currently before the royal commission?

Senator FAULKNER—Did you do estimates briefings on the Cole royal commission?

Senator CHRIS EVANS—And issues related to it?

Senator Minchin—I do not think you need to answer that.

Dr Morauta—What we prepare a briefing on is something that is internal to the department.

Senator CHRIS EVANS—Sure it is. I am not asking you what that briefing was. I am asking: did you brief on those issues? Did you prepare briefs? Are they in your file? Were you ready to answer those questions?

Senator Minchin—I do not think a question as to what sort of briefings were prepared is appropriate.

Senator CHRIS EVANS—That is a cover-up, Minister. I am asking: did the department, using the taxpayers’ money, as is the subject of additional estimates, use those resources to prepare answers or briefings to appear before this committee? It is a very straightforward question.

Senator FAULKNER—Of course they did. And they should front up and say so.

Senator Minchin—I do not think it is relevant for officials to have to go into detail about what they brief ministers on.

Senator CHRIS EVANS—I am not asking for detail. I am asking one thing: did they prepare a briefing?

Senator Minchin—That goes to the question of what briefings go to ministers.

Senator CHRIS EVANS—No, it does not. It goes to what they prepared for themselves to answer questions before estimates.

Senator Minchin—Given that all questions are directed to ministers—

Senator ROBERT RAY—He is right: it goes to when the stitch-up occurred.

Senator Minchin—We are not going to go into details about that. Briefings are prepared for ministers.

Senator CHRIS EVANS—You are not prepared to tell us when you put the fix in—that is what this comes down to. When was the fix applied?

Senator Minchin—That is a silly assertion, given there is the Cole royal commission on.

Senator CHRIS EVANS—Tell us then: did the department prepare briefings in preparation to answer questions? Yes or no?

Senator Minchin—We have answered that question. We have nothing further to add.

Proceedings suspended from 12.28 pm to 1.32 pm

CHAIR—I call the committee to order again and welcome back the President and Ms Penfold.

Department of Parliamentary Services

Senator FAULKNER—The committee felt that we would save time by returning to questions for the Department of Parliamentary Services now, and I appreciate the cooperation of the officials. There are just a couple of issues that we left in abeyance. They related to the refurbishment in the Prime Minister's office, in the dining room, and the recarpeting of the cabinet room. If you are able to provide any further detail on either of those matters it would be appreciated by the committee.

The PRESIDENT—Before we go to the matter about the Prime Minister's office, I would just like to make a point about that, if I could. We all know that the Prime Minister's suite has had three occupants, but the dining area has never been sufficient and large enough to be functional for any of those occupants.

Senator ROBERT RAY—I did not know they had that many friends!

The PRESIDENT—The Prime Minister has said to me a couple of times that my dining room is larger than his, and so is the Speaker's, and what they have to do is bring in trestle tables in other parts of the office if they are having a reasonable size function. So I think that if, in the space available, a satisfactory solution can be made, that should happen. When all is said and done, different prime ministers operate their offices in different ways. Former prime ministers had a butler, for instance; the current one does not. We have all seen different ways

of operating. In this particular case, the dining room is not providing the service it should and, if the space is available to enlarge it, I believe it should happen.

Senator FAULKNER—Thank you for that editorial.

The PRESIDENT—That is all right; it was a comment.

Senator FAULKNER—A comment and an editorial—and you will get a brownie point from the Prime Minister for making it.

The PRESIDENT—Good.

Ms Penfold—We have some papers for you which we can table at this stage. We have copies so, if that is appropriate, they can be handed to you immediately.

Senator FAULKNER—Thanks.

Ms Penfold—The first one is the paper that I referred to earlier, which is the one with the very basic costings for the three options that were considered. Oddly enough—

Senator ROBERT RAY—There is no point in saying we are going to get them when we do not have them. Let us have them.

Ms Penfold—Sorry.

Senator ROBERT RAY—I know that it is not your fault.

Ms Penfold—I will talk you through the second one while those are being dealt with. The second one is some material that we have extracted from what is currently a working document—it is very much a draft of what will go out to the next lot of designers. It sets out the concerns that brought this project into being and what we are looking for in the project. That is the information that we have that is able to be given to you at the moment.

Senator FAULKNER—Thank you. The first document gives the three alterations to the Prime Minister's suite. Are they draft budgets?

Ms Penfold—They are very preliminary cost estimates.

Senator FAULKNER—Preliminary budgets.

Ms Penfold—Very preliminary. You will see when you get to the second document that, as I said, that was extracted from what will become a statement of requirement for the designers who will be doing the serious design work, with plans and details of finishes and so on. Now that we have got to the point where it is the third option that is preferred, we will now be focusing on design options.

Senator FAULKNER—So the decision to run with the third option has been made?

Ms Penfold—Yes.

Senator FAULKNER—I felt from what you said this morning that it might be an in principle decision.

Ms Penfold—It is an in principle decision. For instance, it has not been through the department's finance committee. We do not have anything that is fit to go to the finance committee yet to get funding approved for it.

Senator FAULKNER—You are running with it.

Ms Penfold—That is what we are running with.

Senator FAULKNER—You are running with the \$205,000 option. Thank you for providing that; it indicates what it all is. The documentation you have provided also indicates the broad six areas of concern that have been expressed by the Prime Minister's office in relation to the dining and sitting rooms. It is not just the dining room, is it? It is the sitting room and the dining room.

Ms Penfold—My recollection is that this started with the dining room but as the project developed it became apparent that some of the issues that had been perceived with the sitting room could also be dealt with in the same process.

Senator FAULKNER—Thanks for that.

Ms Penfold—As you can see from those budget estimates, the first two options reflected work in just the dining room.

Senator ROBERT RAY—In addition to this work, will there need to be other purchases to fill in the enlarged dining room, such as tables and chairs—teak tables?

Senator FAULKNER—Dog kennels?

Ms Penfold—If we only seat 16 people at the moment, we would presumably need more chairs if we are going to provide a space that seats more. But it is my understanding that the intention is that the larger room will not be permanently set up as a dining room, so it may be that that furniture can be brought in from somewhere else when it is needed.

Senator ROBERT RAY—So there is no commitment to additional cost to furnish it?

Ms Penfold—Not to my knowledge.

Senator FAULKNER—That is that. Thank you for those tabled documents. I said we would deal with this just briefly. I must say, Mr President, that we have probably saved time doing this in this way. The second issue that you, Ms Penfold, were coming back to us on was the issue of the costs in relation to recarpeting the cabinet room. Can you help us with that at all?

Mr Smith—During the flood that happened in April 2004, approximately 1,133 square metres of carpet were damaged beyond repair and had to be replaced. The department had sufficient stock of cabinet room carpet to replace the carpet in the cabinet room, which is some 159 square metres, with the correct blue-green-grey carpet. Because the carpet had to be cut around the cabinet room table legs, it was double bonded, which means that the underlay was glued to the concrete floor and the carpet was glued to the underlay. What that meant is that when we came to do the hearing loops project that carpet had to be pulled from the floor. In doing so, the carpet got stretched. We cannot re-lay that carpet, because we end up with bubbles in the carpet that would cause OH&S trip and fall hazards, so that carpet had to be replaced with another blue-grey-green carpet. The cost of doing that was \$14,703, and that was paid for out of the hearing loops project.

The remainder of the cabinet suite, which is 504 square metres of carpet, was recarpeted after the flood with a carpet we purchased locally, which was a blue-grey carpet. It is a significantly different carpet when you put the two colours side by side. It was laid using

conventional methods. When we went in to do the hearing loop project we re-laid the correct carpet, but we have been able to recover 80 per cent or more of the carpet that was put in after the flood. That carpet will be reused in back-of-house office suites. The cost of recarpeting the rest of the cabinet suite was \$18,000 for materials and \$7,600 for labour, giving a total cost of \$25,000. The insurance assessor has accepted that as a legitimate cost in the claim for insurance for that project.

Senator FAULKNER—So the whole project was \$41,000, is that right? Or just shy of that—

Mr Smith—Just shy of that, yes.

Senator FAULKNER—It was just shy of \$41,000 to replace carpet that had been down less than 18 months?

Mr Smith—That is correct.

Senator FAULKNER—Thank you. I think it was quicker to deal with that information now.

Ms Penfold—Sorry, there is one other thing I probably should mention—that is, given our undertaking at the end of the last stage of this hearing, there is also another lot of work that we are about to do in the Prime Minister's dining room in the short term to make it more usable as a meeting space while we are working—

Senator FAULKNER—This is before the refurbishment?

Ms Penfold—Before the refurbishment.

Senator FAULKNER—You are going to refurbish the dining room and then replace it?

Ms Penfold—We are not going to refurbish it. David can speak about that.

Mr Kenny—The job is to make the dining room usable as a meeting room, which is a fairly recent requirement. I think it came to our attention only last week. What we have done is put a glass top on the table so it can be used as a meeting room table. That has cost \$750. We have put in some additional lighting. I think four lights have been bought at a cost of \$400, and there is some cabling work necessary to connect those lights. There is an as yet unresolved issue as to what chairs will be used for the meeting room.

Senator FAULKNER—A new glass top at \$750, new lighting at \$400, cabling at some cost and chairs at—

Mr Kenny—We believe it will be \$200 to \$300.

Senator FAULKNER—question mark—some possible cost. Is that right?

Mr Kenny—That is right.

Senator FAULKNER—And that is going to happen now?

Mr Kenny—That is happening.

Senator FAULKNER—Then the whole lot is going to be pulled down and \$205,000 is going into a massive refurbishment of the same area?

Mr Kenny—We are looking at a couple of options for chairs, including using existing chairs.

Senator FAULKNER—The temporary refurbishment sounds like a bit of a waste of money to me, but that is just my view and I know that we were not going to spend much time on this. With that brief editorial—far briefer than the President’s editorial—we will put the cue on the rack.

Senator ROBERT RAY—If he does not want to put it in the report—when we report back—he has had his say.

CHAIR—Ms Penfold and Mr President, thank you very much.

CHAIR—I call the committee to order. The committee will recommence its examination of the Department of the Prime Minister and Cabinet. We are still on general questions.

Senator ROBERT RAY—Minister, has there been a thorough search of all the files of PM&C to discover what documents might pertain to the Cole royal commission?

Senator Minchin—In the context of the Cole royal commission, obviously any documents relating to this matter which the commissioner requests are available—and I think the Prime Minister has made this clear.

Senator ROBERT RAY—That is not the question I asked. Do you want me to rephrase it?

Senator Minchin—You want to know whether PM&C have done a thorough search to see what documents are available.

Senator ROBERT RAY—No.

Senator Minchin—Sorry, what documents exist. Is that right?

Senator ROBERT RAY—That is correct.

Senator Minchin—We will try to get you an answer to that. We do not have the answer at the table.

Senator FAULKNER—Who tasked that search?

Dr Morauta—I have the answer to the question from Senator Ray. The answer is yes, a thorough search has been done.

Senator ROBERT RAY—I did not ask you. The question was to the minister. I assume you will not get performance pay, having breached the directive.

Senator Minchin—I indicated to the official that I was happy for her to answer that question. You have the answer.

Senator FAULKNER—Minister, who tasked that search?

Dr Morauta—I do not know the answer to the specific question. We may be able to answer that specific question. In general, when such a thing happens, it would be normal practice—in order to be ready to answer questions—to do such a search.

Senator FAULKNER—Minister, with respect, that is not the question I asked. This is a specific question following on from Senator Ray’s question.

Senator Minchin—As to who instigated that search?

Senator FAULKNER—One would assume—though I do not want to make assumptions—that such decisions are generally made on directives. I want to know where the directive came from.

Senator Minchin—We are just checking to see whether we can give you an answer to that question.

Dr Morauta—I think the division head of the international division asked that the work be done.

Senator FAULKNER—You think that?

Dr Morauta—No, that is the answer to the question.

Senator FAULKNER—Minister, was that a decision that the division head of international division made himself or did the division head of international division receive a directive or instruction to undertake that activity? In other words, was it self-generated activity?

Senator Minchin—In the context of the royal commission, it would not surprise you that a thorough search was undertaken of all documents that may be relevant. Officials are not sure who formally issued the directive but, to the extent that we can get some further information on that, we will endeavour to do so.

Senator FAULKNER—Didn't you just consult with the head of the international division?

Dr Morauta—He was not the head of the international division at the time this happened.

Senator FAULKNER—So we run into our usual corporate memory problems, Minister?

Senator Minchin—Mr Borrowman does not recall exactly what form any directive might have been issued in or the mechanism by which the activity was undertaken, but we will endeavour to find out for you.

Senator ROBERT RAY—We are unclear about when Mr Borrowman took over this role. Mr Borrowman, when did you take over this role in relation to when the royal commission was set up?

Mr Borrowman—I took over this role today.

Senator Minchin—You should congratulate him.

Senator ROBERT RAY—I am worried about what happened to the previous incumbent.

Senator CHRIS EVANS—That is obviously designed to maximise your capacity to contribute to today's hearings.

Senator Minchin—No reflections on the witnesses.

Senator CHRIS EVANS—That is not a reflection on the witness.

Senator FAULKNER—So we are clear, who was Mr Borrowman's predecessor?

Mr Borrowman—My predecessor as first assistant secretary was Mr Ian Kemish.

Senator FAULKNER—That is Mr Kemish of DIMIA fame, isn't it?

Senator ROBERT RAY—Yes, he was a good officer in DIMIA.

Mr Borrowman—He is a DFAT officer. I do not think there is any DIMIA connection.

Senator ROBERT RAY—He used to run consular services.

Mr Borrowman—That is correct.

Senator ROBERT RAY—I did not know he had moved.

Senator FAULKNER—He moved and moved again.

Senator ROBERT RAY—To follow up my question, has a search been done?

Mr Borrowman—Yes.

Senator ROBERT RAY—That is good. Were all relevant documents that were found then sent on to the Cole inquiry, or is the process that you wait for a request from Mr Cole?

Mr Borrowman—The documents have been sent on to the Cole inquiry.

Senator ROBERT RAY—None have been withheld?

Mr Borrowman—No. All documents relevant to the inquiry have been sent on to the inquiry.

Senator FAULKNER—Who is the officer responsible for collating and passing the documents to the Cole inquiry? Is it again the head of International Division?

Mr Borrowman—No. In our case it is DFAT, because DFAT had been served with the subpoena by the royal commission to produce the documents.

Senator FAULKNER—Fair enough. I understand that, and that is helpful, but is there a collating point in PM&C? In other words, does PM&C collect the documents and then pass them to DFAT for response to the subpoena—I assume that happens—or do officers individually deal with DFAT? Surely it is collated at PM&C.

Mr Borrowman—Yes.

Senator FAULKNER—Who is the officer or official of PM&C who is responsible for the collation of documents in this case?

Mr Borrowman—That is me.

Senator FAULKNER—Is the same officer responsible for then transmitting, transferring or providing those documents to the Department of Foreign Affairs and Trade?

Mr Borrowman—Yes.

Senator FAULKNER—In your case, I assume you have not done any of this, because if you had you would have had to have done it in the last few hours. Is that right?

Mr Borrowman—No, I did it in my previous capacity as assistant secretary in the division.

Senator FAULKNER—I see. So that task is completed?

Mr Borrowman—Yes.

Senator FAULKNER—So it was you who did it but in a different capacity?

Mr Borrowman—That is correct.

Senator ROBERT RAY—For my benefit, when we talk of documents are we talking about all written documents or electronic documents? How far down does that go in terms of definition?

Mr Borrowman—The short answer is that I think that written documents have been sent—but that would include the fact that documents that are created on email and then required to be filed according to the relevant directions would obviously be on file and therefore exist in paper copies.

Senator ROBERT RAY—In other words, it covers both.

Mr Borrowman—Yes.

Senator FAULKNER—Can you say when those documents were collected and passed through to the Cole royal commission? Can you also say when you issued the instruction for documents to be provided to you?

Mr Borrowman—I would have to take both of those on notice.

Senator FAULKNER—Can you say whether it was before or after the announcement of the Cole royal commission?

Mr Borrowman—No. Again, I would have to take that on notice.

Senator ROBERT RAY—When you collect the documents, do you just do it for the Department of the Prime Minister and Cabinet or do you cover and coordinate on behalf of other agencies? You have within your department not many relevant ones. ONA is obviously potentially relevant. The Inspector-General of Intelligence and Security is possibly relevant. I am not sure of any others. Do you work on their behalf or are they separately tasked?

Mr Borrowman—We did not work on their behalf.

Senator ROBERT RAY—So you have covered the full gamut of the Prime Minister and Cabinet responsibilities?

Senator Minchin—He said ‘did not’.

Mr Borrowman—I said that we did not, I am sorry—only for the department itself.

Senator ROBERT RAY—I am sorry—I did not hear the ‘not’. So, if they had relevant documents—and this is not the presumption—it would be up to them to take the initiative or produce them and send them on to the coordinating group in DFAT?

Mr Borrowman—Again, I understand—and you would have to confirm this with DFAT—DFAT did call all relevant departments on the basis of the subpoena, so I assume they responded directly to DFAT.

Senator ROBERT RAY—You do not know when that subpoena was issued?

Mr Borrowman—No, I do not.

Senator FAULKNER—You have taken on notice for me when you collected these documents. Are you able to tell the committee when you passed them through to the Cole commission?

Dr Morauta—I think the officer said they were passed to DFAT.

Senator FAULKNER—I am sorry. They were to be passed to the Cole commission via DFAT. Can you say when they were passed through to DFAT? Can you say when you passed the documents to DFAT?

Mr Borrowman—Not off the top of my head. I can get back to you on that.

Senator FAULKNER—Can you tell the committee whether this was done progressively—in other words, did you pass one set of documents or a series of sets of documents progressively over time?

Mr Borrowman—No, it was one set of documents.

Senator ROBERT RAY—Did any of these documents relate to the Iraq task force in terms of meeting notes?

Mr Borrowman—I am not in a position to go into the detail on the substance of the notes or the substance of the material.

Senator ROBERT RAY—I am not asking—

Mr Borrowman—It was all relevant material.

Senator ROBERT RAY—So all relevant materials would have included, if necessary, note-taking from the Iraq task force. That does not even ask you to confirm whether there was any. But it would actually cover that ambit?

Senator Minchin—I do not think it is appropriate for the officer to go into the detail, because you start to get to what is in and what is out. I think you should accept that anything relevant to the royal commission and, in the context, I would assume, to the subpoena has been passed on.

Senator ROBERT RAY—I accept that. Let us discuss the definition of ‘relevant’. What is regarded as relevant? In other words, is it material on the perversion of the oil for food program or is it as it relates simply to the Australian Wheat Board reference? I suppose that now includes BHP as well, but it would not have at the time. Which of the two issues would fall on the relevant side?

Mr Borrowman—We took a broad view of relevance and made available all of the documents. Could you restate the two categories that you drew there? I did not quite catch them.

Senator FAULKNER—There is one thing that I do not quite understand here, Mr Borrowman. I appreciate that you have changed your responsibilities recently. In your previous incarnation you had the responsibility you have outlined to the committee. That is clear. I do not understand why you are unable to say to us who tasked you in that earlier responsibility you had as assistant secretary in your division. That I do not quite understand.

Mr Borrowman—As Dr Morauta said, the instruction I think came from the division head. But ‘instruction’ is a very strong term in this sense. A letter came in from DFAT saying, ‘Please find all relevant documents in response to the subpoena,’ so it was done.

Senator FAULKNER—Does DFAT have a capacity to require of all agencies and departments that such a subpoena be responded to? That strikes me, you see, as core business for the Department of the Prime Minister and Cabinet. I just want to understand. It seems like

an unusual role for DFAT. I can understand DFAT doing it through PM&C. That would have seemed a little more logical to me. Perhaps you can explain that to me.

Senator Minchin—I think that it is a given that DFAT is the principal agency with respect to the royal commission. This was a UN oil for food program and the primary policy responsibility lay with DFAT. The royal commissioner himself, as you know from his statement on 3 February, referred to the role of DFAT. He said it was the Commonwealth in general but it was the role of DFAT in particular, so DFAT has in a de facto sense acted as the coordinating authority within the government.

Senator FAULKNER—I accept the logic of DFAT being the lead agency in this. That makes sense. Are they responsible for coordinating any IDC, formal or informal, or IDC like procedures in relation to responses to the royal commission, Mr Borrowman, that you are aware of, or is this done pretty informally? The reason I ask this question is that for complete transparency it seems that in response to a subpoena government would want to be very careful about ensuring that its response was thorough. You would hope that. How can we assure ourselves of that?

Mr Borrowman—I am not entirely clear about the question.

Senator FAULKNER—Is there any coordinating mechanism that PM&C is part of with DFAT as the lead agency in terms of collation of these responses to the Cole royal commission, or is it just done by contact between officers? Have you had any meetings, for example, with DFAT officials about this?

Mr Borrowman—In terms of the first part of your question, the responses were collated in response to a request from DFAT to search documents and provide relevant material.

Senator FAULKNER—Have you got to go a contact point with the Department of Foreign Affairs and Trade on Cole royal commission matters?

Mr Borrowman—Yes, but insofar as contact points there are a number of people to whom we would speak depending on which aspect was relevant. There is not a designated Cole commission point of contact, if that is the question. It is part of the normal interdepartmental ebb and flow of information and consultation.

Senator ROBERT RAY—At any stage did you need to get a legal opinion—I am not going to what it might be, by the way—to see whether material is relevant or not?

Mr Borrowman—Not to my knowledge.

Senator FAULKNER—Have you or other officials had formal meetings with DFAT officers in relation to Cole royal commission matters, or has your communication been done on a more ad hoc basis—telephone and emails et cetera?

Mr Borrowman—I tend to the second answer, in that it is part of the normal ebb and flow of consultation that has been taking place. There is not a Cole commission IDC, for example, if that is what your question drives to.

Senator FAULKNER—Have there been meetings of officials from agencies about these matters? I have got to say to you that I would not find it particularly remarkable if there were.

Have you sat down with officials of DFAT and other agencies to determine the modus operandi for this or not?

Mr Borrowman—It would depend on entirely what you mean by ‘these matters’. Over a number of years there have been consultations with various agencies about matters relating to Iraq—

Senator FAULKNER—I am aware of the Iraq Task Force and a range of other mechanisms. I am specifically talking about the Cole royal commission.

Mr Borrowman—To my knowledge there has not been a specific meeting about the provision of documents for the Cole royal commission.

Senator FAULKNER—Well, not about the provision documents, but have there been meetings about any elements of the royal commission?

Mr Borrowman—I think the answer to that would have to be yes, but I could not be precise about it, as I said, because it is subsumed within general discussion.

CHAIR—Senator Faulkner, do you mean meetings within which that issue was discussed?

Senator FAULKNER—I am trying to understand the processes myself. Any questioning that you can assist us with—

Senator ROBERT RAY—This time you were being helpful, Chair.

CHAIR—I am trying to follow the evidence.

Senator FAULKNER—I am trying to understand the involvement of Mr Borrowman, on behalf of PM&C, with other agencies and specifically how he has approached his role.

CHAIR—I understand that. I think there is some confusion as to the import of that question, in terms of whether discussion was in meetings.

Senator FAULKNER—It may have no import. From time to time, I have asked questions in the committee that do not have any—

CHAIR—I know that.

Senator FAULKNER—Only from time to time. Most of them are pretty relevant, but you never know. We will do our best.

Mr Borrowman—Could you restate the question?

Senator FAULKNER—I was trying to understand the engagement you have had with other agencies about Cole royal commission matters. If I ask the question in the broad, perhaps you could just very briefly outline to the committee what your role has been: who you have engaged with and what level of formality it has had.

Mr Borrowman—I have engaged in consultations with my colleagues in other departments about matters before the Cole royal commission since it started, in a variety of forms: through email, telephone conversations and face-to-face meetings.

Senator FAULKNER—Are other officers of the department engaged in such discussions as well, or are you the key departmental liaison person in relation to this matter?

Mr Borrowman—Other officers of the department are engaged.

Senator FAULKNER—So it is happening at a range of levels?

Mr Borrowman—Yes.

Senator ROBERT RAY—As a department, PM&C is not legally represented at the commission, like DFAT is, is it? You do not have a barrister?

Mr Borrowman—PM&C does not have a barrister per se. Regarding the exact terms on which the council engaged by DFAT appeared at the commission, you would have to refer that to DFAT.

Senator ROBERT RAY—Yes—I was not interested in that. I know they are there; I am just saying that you are not there.

Mr Borrowman—We are not there insofar as I believe it would be possible, for example, for that person to intervene on behalf of the Commonwealth. I am not certain about the exact terms of their engagement. That is something for DFAT.

Senator ROBERT RAY—But has any thought been given to the possibility of a PM&C officer being called to give evidence? Would you then be legally represented? Have you given that matter thought, or is it just a matter of leaving it to DFAT to represent a broader government point of view?

Mr Borrowman—I do not recall any thought being turned to the specific question of what would happen should a PM&C witness be called. I would expect that we would use the DFAT council.

Senator ROBERT RAY—But it has not been given a ‘run over the target’ in the department?

Mr Borrowman—No.

Senator CHRIS EVANS—In the break, the minister offered to table the statement that was read out this morning. I forgot to take up the offer. Would you mind tabling it now?

Senator Minchin—That is fine.

Senator CHRIS EVANS—Do I take it that that will be provided to all ministers appearing before other relevant committees?

Senator Minchin—Each minister, to the extent they believe is appropriate, will inform their committees of the government’s position. I am happy, in my capacity of representing the Treasurer, to give notice of the government’s position to that committee, but that is a matter for each minister. I suspect that, for completeness, the statement would be made available to each committee, because we could anticipate questions in relation to just about any portfolio.

Senator CHRIS EVANS—Yes, you could have. I am not sure now. Who is going to convey that to those ministers? Sometimes you have parliamentary secretaries representing you in these areas.

Senator Minchin—They are members of the government and they are aware of the government’s position.

Senator CHRIS EVANS—So you or someone in the government will be advising them to provide the advice on all matters relating to the AWB wheat issues?

Senator Minchin—The minister representing the government—and by minister I include parliamentary secretaries—at each estimates committee meeting will inform the committee of the government's position, in anticipation of any questions on the subject.

Senator CHRIS EVANS—Are you still unwilling to tell us who made that decision?

Senator Minchin—I really have nothing to add to what I said this morning.

Senator CHRIS EVANS—Are you aware that the Prime Minister told the House of Representatives who made that decision?

Senator Minchin—That is a matter for the Prime Minister. I will answer the questions to the best of my ability, and I answered it in the terms that I did.

Senator ROBERT RAY—So you know better than the Prime Minister?

Senator Minchin—I informed you that the government had made the decision and then made the direction.

Senator CHRIS EVANS—You think it is appropriate that you share less information with the Senate estimates than the Prime Minister is prepared to share? Is that your decision or a government decision?

Senator Minchin—It is entirely a matter for the Prime Minister, as to how much information he wishes to give to the House of Representatives.

Senator ROBERT RAY—That is one decision that government has not conveyed to you.

Senator CHRIS EVANS—So your decision not to share that sort of information with us is not a policy decision; it is your personal decision?

Senator Minchin—I have told you what I believe is appropriate to tell you. I believe it appropriate to inform you that the government had made the decision; not to entertain questions about who, what, when and where.

Senator ROBERT RAY—But you are not implying that the Prime Minister inappropriately told people, either. Because that would mean you would get demoted at some stage.

Senator Minchin—That is always possible, Senator Ray. I live with that every day.

Senator ROBERT RAY—You are doing a fine job. You are doing a good job yourself, on that.

Senator CHRIS EVANS—We are in a situation, again, where the Prime Minister is happy to make public comment or a comment in the House of Representatives but you are not prepared to even go that far—even though you say it is a government decision. Is the Prime Minister out of step with the government or are you?

Senator Minchin—He is leader of the government, and I defer to him in all matters.

Senator CHRIS EVANS—Is there any chance of you bringing him to estimates for us?

Senator Minchin—That is not the usual practice, as I understand it.

Senator CHRIS EVANS—He is obviously more fulsome and frank than you, so maybe it would help us.

CHAIR—It is certainly not the usual process, Senator Evans, as you know.

Senator FAULKNER—You would not even get my vote on that one.

Senator CHRIS EVANS—Just so I am clear: the government decision is not not to say anything; that is your decision.

Senator Minchin—I am operating on the basis, as I always do in relation to government decisions, of the terms of the direction. Obviously we will listen assiduously to your questions and determine whether they should be answered, given the direction that has been issued.

Senator ROBERT RAY—The follow-up question, of course, is if the Prime Minister has said it was a cabinet decision and you will not confirm that, therefore you will not confirm the time at which it was made, will you?

Senator Minchin—It was not for me to go into the details.

Senator ROBERT RAY—Why not?

Senator Minchin—The Prime Minister has prerogatives that I do not, and if he chooses to go into details that is for him.

Senator ROBERT RAY—You are representing the Prime Minister here. You are not here as Senator Minchin or Leader of the Government in the Senate; you are representing the Prime Minister. You are his mouthpiece.

Senator Minchin—But I am not the Prime Minister. The Prime Minister has prerogatives that I do not have, and if he wishes to give further information then that is a matter for him, not for me. While I represent him here, in terms of his department of state, I am not the Prime Minister.

Senator ROBERT RAY—Was the decision made not to give further information? Did the Prime Minister direct you, as his representative before this committee, to hide the fact that cabinet made this decision?

Senator Minchin—I choose to answer questions as I see fit, and I answered that question on the basis of that criterion. I did not see any point in going beyond the statement that the government had made the decision.

Senator ROBERT RAY—Yet the Prime Minister will.

Senator Minchin—That is his prerogative. As I said this morning, this assertion of a cover-up is ridiculous given that question time continues and there is a Cole royal commission in progress.

Senator ROBERT RAY—But, of course, at question time you can ask one question. You cannot have follow-ups or veracity checks, which can happen at estimates. That is why you have made the distinction. In estimates it is far easier to follow up in detail, to check the veracity and to cross-reference than it is in question time. That is why you have done it.

Senator Minchin—Mr Chairman, I think that was a statement not a question.

Senator FAULKNER—Can I please go back, Mr Borrowman, to your evidence before the committee. I now understand that the process is that you, on behalf of your own department and as a result of a request from DFAT of PM&C, have coordinated documents that might

relate to matters of interest to the Cole royal commission—the departmental elements of PM&C, not necessarily the agencies. Is that right?

Mr Borrowman—That is correct.

Senator FAULKNER—Understanding that, as you put out an all-points bulletin to staff in PM&C, does this mean you were dependent on PM&C officials proving that advice to you? The department has not specifically gone looking in a range of areas; you have been basically dependent on the provision of such documents to you. In other words, you are dependent on people giving the documents to you, as opposed to you going looking for them. I just want to understand the process. What has been the approach? You have asked for them, but have you actively sought them? Have you gone burrowing into the bowels of the department to find these documents, or have you been dependent on officials and officers providing them to you?

Mr Borrowman—It is a combination of both. We are dependent on other officers looking for the documents, although I have participated in that myself, and, in terms of your ‘burrowing’, having done a thorough search suggests thinking about whether—

Senator FAULKNER—How is a thorough search like that conducted? That is what I am trying to understand. This case is specific to these documents, but how do you go about conducting such a search?

Mr Borrowman—You would do things like looking on the relevant files, doing a search of registry for all files which might contain relevant keywords, doing a search of ministerial correspondence or correspondence that might have relevant keywords, relying on the normal administrative and record-keeping systems of the organisation.

Senator FAULKNER—And a keyword here might be, for example, ‘AWB’—it is not actually a word but an acronym—or that sort of thing?

Senator Minchin—I do not think we should get into that sort of detail.

Senator FAULKNER—Well, Minister, the officer at the table is saying that there is a search of keywords, so what is a keyword in this instance—‘kickback’, ‘AWB’?

Senator Minchin—I am not prepared to have officers talk in those terms—

Senator FAULKNER—I was trying to be generous and you interrupted.

Senator Minchin—because you go through a process of inclusion and exclusion. The officers are responding to a royal commission and a subpoena, and would naturally, as I think Mr Borrowman has said, have taken a wide interpretation of that.

Senator FAULKNER—You would want it to be thorough.

Senator Minchin—But I always regard answering specific questions like that as extremely unwise, given that it can lead to incorrect assumptions about inclusions and exclusions.

Senator ROBERT RAY—So you would not look up a key paragraph or phrase like any files that refer to ‘an Australian company subsidising a mad dictator bent on terrorism and weapons of mass destruction’? That would not be the heading in the file, would it?

Senator Minchin—The officers have made a proper and responsible assessment of what documents would be relevant to the royal commission, its terms of reference and the subpoena.

Senator FAULKNER—Yes, but I would hope that you would share my view that you want to ensure that such a search is absolutely thorough. I would hope you would share that objective.

Senator Minchin—Yes, certainly, and I am sure the officers would act accordingly.

Senator FAULKNER—Yes, so what I am asking is—

Senator Minchin—The officers indicated that they use a keyword, but—

Senator FAULKNER—about the process of how you—

Senator Minchin—That is fair enough.

Senator FAULKNER—I am asking you, Minister: how have you ensured that the search of your files is exhaustive and thorough? Let me put the question in that way, bat it over the net to you, and let us hear the answer.

Senator Minchin—That is a fair question. I am happy for Mr Borrowman to—

Senator FAULKNER—I always ask fair questions, Minister. I am noted for it!

Senator Minchin—Let's not go that far! I know you endeavour to, but they do not always come out that way. I am happy for Mr Borrowman to seek to answer that question but to avoid specifics about keywords and such things.

Senator FAULKNER—So do not mention the word 'kickback', as I unkindly suggested, or 'AWB', Mr Borrowman—or 'rort'!

CHAIR—Mr Borrowman, can you assist the committee?

Mr Borrowman—I am not certain that I can add more than I said previously. When you turn your mind to what words might be relevant, first of all you would look at the relevant subject area files. You would then turn your mind to where else documents might be found. You would think of keywords. You would run them through a registry search; you would run them through a correspondence search. You would consult with other divisions that might hold files on the same matter. It is the normal administrative procedure for searching for information.

Senator FAULKNER—Do you have a capacity at PM&C to undertake an electronic search using a particular keyword? I will not identify a keyword, but let us say there is a keyword. Do you have the capacity to undertake an electronic search around that keyword or key acronym? In other words, can you access all your electronic files by this sort of method?

Dr Morauta—I would like to get somebody from our IT area to give us a specific area on that. They may be in the building; if they are not, they can come along and take that question. I am not familiar with the process.

Senator FAULKNER—I am assuming that this sort of activity has taken place in this regard. Senator Minchin and I at least share a view—and I am taking him at his word here—of wanting to ensure that any such search of records is exhaustive and thorough. He said that

and, because I am generous, I am willing to accept that. How do we know it happened? I do not know why I am so nice; I really do not.

Dr Morauta—We have somebody from the IT area who might be able to throw light on our electronic search capacity.

Dr Ball—We have, like most areas, email systems and word directories. To search for an item you simply do a search in those particular utilities. If you are in email, you just do a word search.

Dr Morauta—What about by file title?

Dr Ball—With directories of files, you simply do a search, which can search for a title or a word within the document.

Senator FAULKNER—Does this give you a capacity to access all electronic files on a keyword or a key phrase basis?

Dr Ball—In a sense, yes, it does.

Senator FAULKNER—In a sense? Does it?

Dr Ball—It searches files that you have access to.

Senator FAULKNER—Are there departmental files you do not have access to?

Dr Morauta—What about electronic ones?

Dr Ball—With electronic files, they are in directories, and certain people have access to certain directories.

Senator FAULKNER—Yes, but if you are doing a thorough search wouldn't that mean that you would have access to all files and all directories?

Dr Ball—We could do that, yes.

Senator FAULKNER—You could do it. However, the issue is whether you have done it. That is what I am trying to understand. Senator Minchin and I, as I said, share the view that this search should be thorough. Has it been thorough? Have you accessed all electronic files and directories?

Mr Borrowman—My recollection is that we undertook this particular process.

Senator FAULKNER—Your recollection is that you did?

Mr Borrowman—Yes.

Senator FAULKNER—Let us say you used a keyword and found a keyword in a file. Would that file be provided to you, Mr Borrowman, in electronic form or in hard copy form? How does this work in PM&C? How would it come through?

Mr Borrowman—It would depend on what form the record was in. By that stage, most records would be in hard copy form so it would come through as a hard copy.

Senator FAULKNER—Who would make that decision? It is identified by the person searching. Would they request to have it turned into a hard copy for you to pass on to DFAT?

Mr Borrowman—I think there is some confusion here. That would help us identify the hard copy files and we would then look at that hard copy file. I think the kinds of records that would be caught by electronic search would be more like ministerial correspondence, which would then be printed out because at that stage there would probably be only an electronic copy.

Senator FAULKNER—What about if there was email traffic between departments and agencies or between—as it might have been in this case—someone who was an operative for AWB, for example, and the department? I assume that is the sort of thing you would be looking for. That would be picked up in such a search, would it not? That is why I am asking about how thorough the search was—because, if it was not picked up, it was not very thorough. Can you give me an assurance that it was very thorough from that point of view?

Mr Borrowman—The general principle is that relevant documents that are created electronically are then printed in hard copy and put on files. So there can be a working assumption that, if it is important, it will be on the file. My recollection is that email traffic would have been searched by officers as part of their normal responsibilities.

Senator FAULKNER—Minister, do you remember the certain maritime incident issue and the Senate committee that was established to enquire into that?

Senator Minchin—I do recall that.

Senator FAULKNER—Do you recall that, for that inquiry, the Department of the Prime Minister and Cabinet searched 36,000 emails?

Senator Minchin—I do not recall that, because I was not appearing here. I do not recall that fact, but I will take it as—

Senator FAULKNER—I think that is an accurate figure, Chair.

Senator Minchin—I will not dispute it for the purposes of this discussion.

Senator FAULKNER—Is that an accurate figure, Chair?

CHAIR—I cannot recall. You could be right, Senator Faulkner.

Senator FAULKNER—The secretary to this august committee, who made his reputation on the CMI committee, nods sagely across the table. Minister, are you able to advise the committee, or ask one of your officers or officials to advise the committee, how many records in the Department of the Prime Minister and Cabinet were searched in relation to this inquiry? There were 36,000 for ‘children overboard’.

Senator Minchin—How many were searched?

Senator FAULKNER—That is right—searched. PM&C searched 36,000 emails for the CMI inquiry. Do we have any figures about numbers of files, emails et cetera that were searched in relation to this particular inquiry?

Senator Minchin—I do not think we have any at the table, but we will take that on notice and see if it is possible to supply you with that information—

Senator FAULKNER—If you do not have it at the table, could you perhaps—

Senator Minchin—not that I necessarily see any particular relevance of that inquiry to this one.

Senator ROBERT RAY—Thoroughness of search is what this is going to.

Senator FAULKNER—Thoroughness is the one thing that you have agreed with me about. You said a search should be thorough.

Senator Minchin—I am happy to take that on notice and see if we can—

Senator FAULKNER—I wonder if you could perhaps look behind and ask if one of your officials with IT responsibility could assist us. In broad terms, I thought those sorts of statistics might be available. Dr Ball seems to be very expert on this.

Senator Minchin—We would prefer to take that on notice and see if we can get you an answer.

Senator ROBERT RAY—Let us exclude AWB and BHP. Has the department done a chronology on the perversion of the oil for food program? I am not talking about AWB's role here. Have you been asked to do a chronology and have you done a chronology?

Dr Morauta—Does this go to the question of policy advice we might be providing?

Senator ROBERT RAY—No. I asked whether the department had done one; not what they did with it.

Senator Minchin—Do you mean a factual—

Senator ROBERT RAY—Often when an issue comes up, a chronology is established. I am asking about a chronology on the perversion of the oil for food program—not on AWB, what is before the Cole committee or whatever else.

Senator Minchin—From what point—the Volcker royal commission?

Senator ROBERT RAY—From the point at which the department was informed of some problem, I would assume.

Senator Minchin—The difficulty is, in terms of your question about the 'perversion' of the UN program, while there were assertions going back some years, it is really only since the conclusion of the Volcker inquiry that the UN instigated that it is able to be said that there were issues in relation to that particular program.

Senator ROBERT RAY—I accept that. Let me take that up. Were any officials in the department made aware of allegations of the perversion of the oil for food program prior to the Volcker committee? Again, I am not asking about the Wheat Board, Tigris or any of these other areas at the moment.

Senator Minchin—Aware of allegations?

Senator ROBERT RAY—Yes, were they aware of allegations that this program had been rorted?

Senator Minchin—I am sorry, but I do think that goes to the question of matters before the royal commission—

Senator ROBERT RAY—I am sorry, it does not. The Australian Wheat Board, Tigris—anyone within the terms of reference is excluded from my question. They were not just Australian firms that rorted this program. Admittedly, \$300 million is a big ante up, but we are excluding that. Volcker found many other firms from around the world were rorting it. I think the Prime Minister made comments in 2003 about the perversion of this program then—not in relation to any Australian firm. I am not asserting that. I want to know when the department was first alerted to the possible perversion of the oil for food program.

Senator Minchin—Full stop, or by—

Senator ROBERT RAY—Full stop.

Senator Minchin—‘The possible perversion’—do you mean public allegations?

Senator ROBERT RAY—Not when they read the newspapers, but if something had come across from another agency, was raised with them by another department or had been raised in a prime ministerial meeting—something. Or was the Volcker inquiry the first time they ever knew or suspected—you can answer either way—that the program was being perverted?

Senator Minchin—We will entertain questions as to the process by which the department was ensuring that it cooperated fully with the royal commission; I think that is fair enough. But I think questions that go to the knowledge of the department and when that knowledge was obtained et cetera come within the terms of the direction of which I informed you: they are matters that could well come before the royal commission, and the royal commissioner has made it clear. I quote:

It necessarily follows that the knowledge of the Commonwealth of any relevant facts is a matter to be addressed by this inquiry ...

I think you are treading on the grounds upon which the royal commission may well tread, so it is not appropriate to ask those questions.

Senator ROBERT RAY—With respect, Mr Cole does not have terms of reference to any country in the world other than Australia. I am asking about the perversion of the program now, not any Australian company’s role in it. What you have said to me is total nonsense. It is just a wrong summary. I am asking you about the general issue. The government made a lot of big statements about Iraq and how nasty Saddam Hussein was and all the rest of it. For heaven’s sake, we had ships in the gulf from 1991 to enforce sanctions. It is an ongoing issue. Sanctions were an ongoing issue from 1991. I want to know when this government or this department first knew there were problems with sanction breaking. It is nothing to do with the Wheat Board at the moment. It is nothing to do with Cole.

Senator Minchin—Given the fact that the commissioner has made it clear that ‘the knowledge of the Commonwealth of any relevant facts is a matter to be addressed by the inquiry’ and that he has indicated that he will seek to widen his terms of reference to the extent he needs, and he has already sought and received a widening of his terms of reference, you are now embarking on an area of questioning that officials have been directed not to answer.

Senator ROBERT RAY—I am not embarking on that area at all. I have not asked anything about the Wheat Board or anything to do with the Cole terms of reference. I am

asking about general policy matters. This government has made a lot of unequivocal statements about Iraq, we have had ships in the gulf enforcing sanctions since 1991 and I am not allowed to ask questions about sanction breaking. You have to be joking, Minister! That is just nonsense.

Senator Minchin—If there were not a royal commission under way, that would be a line of questioning to which we might want to respond—

Senator ROBERT RAY—But the royal commission is not looking at these matters.

CHAIR—Senator Ray, the minister has the call.

Senator Minchin—But, given that we have a royal commission under way and the commissioner has made it clear that knowledge of the Commonwealth about any relevant facts will be addressed by his inquiry, we cannot entertain answers to your questions.

Senator ROBERT RAY—That is very sad. It is sad to see you so diminished. What you are saying is nonsense.

Senator Minchin—We do not feel diminished at all.

Senator FAULKNER—You look diminished.

Senator ROBERT RAY—This is a general issue that I am asking about. Have we had ships in the gulf since 1991? You cannot even answer that?

Senator Minchin—You have already stated that matter for the record.

Senator ROBERT RAY—I am asking you. Can you confirm that?

Senator Minchin—That was not your question. You asked about knowledge.

Senator ROBERT RAY—But maybe that is relative to sanction enforcement.

Senator Minchin—Your question went to the Commonwealth's knowledge of what you described as the perversion of the UN oil for food program. That is exactly what the Cole royal commission is about.

Senator ROBERT RAY—Where? Where in the terms of reference does that come up? Put the terms of reference on the table and point to where that is. That is nonsense.

Senator Minchin—I have pointed you to the statement by the commissioner of 3 February. In fact, I have quoted from it. It is quite clear that the ground upon which you tread is ground upon which he may wish to tread.

Senator ROBERT RAY—Rubbish! He is talking about the AWB. He is talking about Tigris. He is talking about the role of DFAT and maybe PM&C officers in that. He is not talking about the general oil for food program.

Senator Minchin—He is talking about the Commonwealth in general. Naturally, DFAT are the lead agency and they are in particular the subject of his inquiry. But he does refer broadly to the Commonwealth and the Commonwealth's knowledge of relevant facts.

Senator ROBERT RAY—So if I were to ask you, 'Was the federal government consulted about setting up Volcker?' you would say that that is within the terms of reference of Commissioner Cole?

Senator Minchin—That is a question you should put to DFAT.

Senator ROBERT RAY—No, it is not. The Prime Minister made statements about the Volcker inquiry. Are you saying he had no input whatsoever in a government response on the matter?

Senator Minchin—I am saying I do not have direct knowledge of that but I am happy for you to put that to DFAT.

Senator ROBERT RAY—Therefore, it would follow that I am entitled to ask questions about what the government knowledge was before Volcker was set up. Are you saying that I cannot ask questions on that either?

Senator Minchin—I am respecting the royal commissioner's prerogative to—

Senator ROBERT RAY—No, you are not.

CHAIR—Hold on. The minister has the call.

Senator Minchin—As he said, he is dealing with potentially imposing on or defrauding the Commonwealth and it involves offences under the Crimes Act. Therefore, as he said, it follows that knowledge by the Commonwealth of any relevant facts is a matter to be addressed by the inquiry. We have given a direction to our officials not to answer questions that come within that reference.

Senator ROBERT RAY—But what you are doing, Minister, is extending that direction to cover other countries that are not subject to the Cole inquiry and the broader issues before Cole was set up.

Senator Minchin—No.

Senator ROBERT RAY—I am excluding those terms of reference. Do you want to table the terms of reference of the royal commission or point to where Mr Cole's job is going to be inhibited because I ask questions about Volcker or when you first found out that this oil for food program was going wrong? You deny—and for the moment I accept it—any government knowledge of the AWB's complicity in this. I should therefore be able to ask questions about it. This is just a cover-up, Minister. You are extending it far beyond where even the Prime Minister would dream of you extending it because you do not want to engage here in the intellectual debate on when the government knew and to justify your position. That is disgraceful.

Senator Minchin—As I have said to you, if you refer to Mr Cole's statement of 3 February you will see that he has made it clear that knowledge by the Commonwealth of relevant facts is a matter for his inquiry.

Senator ROBERT RAY—What are you talking about? Relevant facts to what? Relevant facts to the AWB and now BHP or relevant facts to the original program and how it may have been perverted by other countries around the globe? I suspect we had knowledge that other countries and other firms may have been perverting this program with no knowledge that our own were. But you will not let us explore that.

Senator Minchin—I do not think I can add to my answer.

Senator ROBERT RAY—I am going to keep asking the question.

Senator Minchin—Anything that goes to knowledge of the Commonwealth about this program is going to run into this prohibition.

Senator ROBERT RAY—It is Australian firms' role in this program that Mr Cole is looking at. He is not doing a Volcker. He does not have terms of reference to look around the globe. He is not doing the UN's job. He is doing a job under the instructions of the Australian government about Australian participation. You were not asked about that.

Senator Minchin—You are asking about knowledge of the Commonwealth and I am not prepared to give answers on that.

Senator ROBERT RAY—But you are not willing to justify why you are not because you keep referring back to Cole's statement that is not relevant.

Senator Minchin—We have a royal commission which has already sought and been granted a widening of its terms of reference. Therefore, all of these matters may well come up before the inquiry.

Senator ROBERT RAY—Tell us about the widening of the terms of reference. How and to where were they widened? Read it out, just so we that know what we are talking about.

Senator Minchin—It was widened in accord with the request by the royal commissioner.

Senator ROBERT RAY—I am asking you to read out the new terms of reference that Mr Ruddock has endorsed.

Senator Minchin—I am happy to table them. They are two pages long. I think I would bore you witless if I read them out.

Senator ROBERT RAY—Bore me witless.

Senator Minchin—I am happy to table them if you want them tabled.

CHAIR—I think tabling is appropriate, Senator Ray.

Senator ROBERT RAY—Chair, I want him to point out where in the new terms of reference he is in some way excluded from having us look at Volcker.

Senator Minchin—The point is that the commissioner sought and received a widening of his terms of reference with respect to the conduct, decisions and actions et cetera of BHP and Tigris. He made it clear in his statement that, in relation to his obligation to determine the knowledge of the Commonwealth about relevant matters—

Senator ROBERT RAY—Yes, relevant matters.

Senator Minchin—he will if he believes it appropriate seek a widening of the terms of reference to enable him to do so. But at this stage he does not believe that is necessary.

Senator ROBERT RAY—That is right. He has not said, 'You are not allowed to look at the Volcker committee, the way it was set up, the way it operated, the way it reported and the knowledge of the government of that.' That is a total nonsense for you to assert that. It is just a cover-up.

Senator FAULKNER—Minister, can you confirm that Mr Cole is not empowered to investigate whether the Australian government complied with the UN sanctions regime?

Senator Minchin—Whether the Australian government itself complied with the sanctions regime?

Senator FAULKNER—That is right. I want you to confirm that Mr Cole is not empowered to investigate whether the Australian government complied with the UN sanctions regime.

Senator Minchin—The Australian government?

Senator FAULKNER—The Australian government—the thing you keep quoting.

Senator ROBERT RAY—You know, this mythical being—the cabinet or senior ministers or you. We do not know what it is, but it exists.

Senator CHRIS EVANS—It is the vibe.

Senator Minchin—The inquiry was set up in response to the Volcker inquiry, which I think you are all familiar with. It, of course, confirmed that there were considerable difficulties with the UN oil for food program—

Senator ROBERT RAY—Considerable difficulties!

Senator Minchin—and it made reference to or it found that there was insufficient evidence to make a finding that AWB knew et cetera. It found that there were circumstances which should have raised concerns within AWB that such payments were payments to that regime. As a result of that, we set up a royal commission to investigate that matter further. The terms of reference have been made public and they have now been widened.

Senator FAULKNER—I hear that and I have heard that before. I have tried to word my question very deliberately and, it might surprise you, without any political spin at all. You have not answered it. Let me ask you again because you may not have heard it. I have asked you whether you can confirm to this committee that the Cole royal commission is not empowered to investigate whether the Australian government complied with the United Nations sanctions regime. Can you confirm that, please, for the committee?

Senator Minchin—The terms of reference of the commission are well known to you all. They follow from the Volcker inquiry. They do go to the question of the role of the three Australian companies mentioned in the final report of the independent committee of inquiry into the UN oil for food program.

Senator FAULKNER—Can you confirm to this committee that Mr Cole is not empowered to investigate whether the Australian government complied with the United Nations sanctions regime?

Senator Minchin—Because there has been absolutely no suggestion that that was the case.

Senator FAULKNER—So you can make that confirmation?

Senator Minchin—Yes, of course, because there was no suggestion that that was the case.

Senator FAULKNER—Thank you. That took a long time.

Senator Minchin—I have made the point that the knowledge of the Commonwealth about these matters is a matter that is relevant to this inquiry.

Senator FAULKNER—Having now confirmed that, can you please now explain to the committee why you are unwilling to answer Senator Ray's question, given that the Cole commission is not empowered to deal with these matters?

Senator Minchin—Because, as I said in the latter part of my answer, the commissioner believes, based on his terms of reference, that the knowledge of the Commonwealth of any relevant facts is a matter to be addressed by this inquiry and it is in the existing terms of reference in the letters patent. To the extent that you are seeking here to ask questions about the knowledge of the Commonwealth, that is potentially treading upon the ground that could be subject to this inquiry.

Senator FAULKNER—He is not empowered to deal with it. It is outside his terms of reference.

Senator ROBERT RAY—I am asking questions not related to the AWB or the extended terms of reference on BHP. I am asking other questions and therefore they are not relevant to Mr Cole. He is not investigating when the government first found out that there were problems with oil for food, leaving aside your innocence in regard to the Wheat Board. Did you not know anything until Volcker came out? That is what I am trying to establish. Did you have hints about it? Did you have concerns about it? Did you receive reports about it? Or did you just know nothing until the Volcker report came out?

Senator FAULKNER—Senator Ray has asked you a question and you have indicated quite clearly that you accept that Mr Cole is not empowered to deal with it. It is unarguable. Even you have said that it is outside his purview and terms of reference.

Senator Minchin—You asked whether he is inquiring into whether the Australian government itself breached UN sanctions.

Senator ROBERT RAY—The answer is no.

Senator Minchin—That had nothing to do with a question asked by Senator Ray.

Senator ROBERT RAY—Follow the logic. I am not asking questions about the Wheat Board—

Senator Minchin—You are asking about the knowledge held by the Commonwealth.

Senator ROBERT RAY—There is a whole range of knowledge held by the department about a whole range of things. I am asking about relevant knowledge here. I am not asking about the Wheat Board. I am not asking about BHP. I am asking when this government—that runs foreign policy, that commits troops and does all these things in Iraq—first found out that there was something dodgy about the oil for food program. Did you know nothing until Volcker—

Senator Minchin—And I am indicating to you that that may well be a question that is a matter for Mr Cole to investigate.

Senator ROBERT RAY—Absolute nonsense! It is not in his terms of reference or his statement. If you knew things about the AWB, that would be in his terms of reference. If you knew something about the shameful BHP Tigris deal, that would be in the terms of reference. But as a government you operate at other levels. When did you know that there were

problems with the oil for food program? The Prime Minister made a statement to the National Press Club in 2003, I think, that gave some hint of it. That was two years before Volcker reported. I want to know when this government knew about that as a general issue, not about the role of Australian companies. That is for the royal commissioner, according to you.

Senator Minchin—Because the commissioner has specifically referred to his inquiry into the knowledge of the Commonwealth, I think that your question does go directly—

Senator ROBERT RAY—It goes to the knowledge of the Commonwealth—

Senator Minchin—to his inquiry and therefore we are not prepared to answer it.

Senator ROBERT RAY—No, it goes to the Commonwealth's knowledge about the Wheat Board, BHP et cetera. It does not go to broader foreign policy aspects as to when the government was first complained to or learned about the problems of the oil for food program.

Senator Minchin—I would have thought that you would admit to the possibility that the commissioner in investigating this matter may well be interested in what knowledge the Commonwealth had and when in respect of the UN oil for food program and therefore, with respect to Mr Cole and his inquiry, we will leave that line of questioning to him.

Senator ROBERT RAY—Where do we draw the line? Am I entitled to ask no questions about Iraq because it may have some reference to this? Where do you draw the line?

Senator Minchin—You ask the question and we will let you know whether we feel in a position to answer you.

Senator CHRIS EVANS—Why don't I ask: when did the department first become aware of AWB paying agent fees to ensure it won the Pakistani contract of one million tonnes in 1999-2000?

Senator Minchin—Of a sale to Pakistan?

Senator CHRIS EVANS—Yes.

Senator Minchin—Again, the question of AWB, its general modus operandi in relation to these matters—

Senator ROBERT RAY—Pathetic.

Senator Minchin—My recollection is—and I stand to be corrected—that the question you raise has in fact come up in evidence before the Cole royal commission.

Senator CHRIS EVANS—It is not covered by the terms of reference, by Volcker or by oil for food. A discussion of the weather may have come up in the Cole commission, but your defence has been the terms of reference of the Cole commission. Pakistan sales are not in the terms of reference of the Cole commission. They have nothing to do with Volcker or oil for food. You are telling me that you are not prepared to answer questions about the department's knowledge about the activity relating to the sale of wheat to Pakistan.

Senator Minchin—No, because that could well become relevant to the commissioner's line of inquiry in relation to AWB.

Senator CHRIS EVANS—So anything that could become relevant is now ruled out—even though it is not in the terms of reference or the Volcker inquiry?

Senator Minchin—I would have thought that it is obvious that the commissioner might well think that he should inquire into AWB's other transactions in the Middle East at that time. Indeed, the fact that that matter has come up before the commission, which is my recollection, goes to the argument.

Senator CHRIS EVANS—But you have just changed your defence. Your defence earlier was the terms of reference and the Volcker inquiry. Now your defence is: 'It may be of interest, it may come up, there might be some mention of it at the commission, therefore we cannot help you—we cannot take any responsibility or provide any accountability for anything vaguely related to any activities that the department might be involved in.'

Senator Minchin—Not in this estimates hearing at this time, because it is the subject of a royal commission.

Senator CHRIS EVANS—No, it is not the subject of a royal commission. You show me in the terms of reference where it refers to the sales of wheat to Pakistan. You show me where it is within his brief.

Senator Minchin—I think it is reasonable—

Senator CHRIS EVANS—You cannot, because it is not.

CHAIR—Hold on. Let the minister answer.

Senator Minchin—I think it is reasonable on our part to admit the possibility that the commissioner, in doing his job and in determining the knowledge of the Commonwealth and the role of AWB and AWB's modus operandi, may well go down that path. As I said, it has already come up before the commission. Therefore, it is a subject that I do not think we should comment on.

Senator CHRIS EVANS—He may go down the path of what the Wiggles have for breakfast. That is not the question, is it?

Senator Minchin—That is unlikely.

Senator CHRIS EVANS—It may be unlikely. It may be unlikely that he goes down this path. I am asking you what the government knew, what PM&C's knowledge was of the sale of wheat to Pakistan and the allegations that they were paying agent fees in relation to that matter. When was PM&C briefed? When did it first come to PM&C's attention?

Senator Minchin—I am well aware of your question. I am simply giving you my on-balance view that that is a matter that could well come up before the commission and be a line of inquiry of the commissioner. Therefore, I think we will leave it to the commission.

Senator CHRIS EVANS—So you are refusing to answer any question that may, in your judgment, come up before the commission?

Senator Minchin—Yes.

Senator CHRIS EVANS—So the terms of reference and the Volcker inquiry are not the relevant benchmarks, it is what Senator Nick Minchin determines might come up before the

royal commission in his judgment—therefore no Senate accountability will be allowed, because you have determined that it might come up. That is a pretty thin line, isn't it?

Senator Minchin—On behalf of the government, the government having made a decision, as I have communicated to you—

Senator ROBERT RAY—So you say.

Senator Minchin—I have now had an opportunity to read the Prime Minister's answer in question time, and he has confirmed that it was a decision by the cabinet. As I said, I am happy for him to exercise that prerogative. You may not believe me, but I hope you would believe him in giving an answer to the House of Representatives.

Senator FAULKNER—Will you now say when the cabinet—

Senator CHRIS EVANS—Well, I might not, because the rest of his answer was factually wrong.

CHAIR—Hold on, Senator Evans. We will let the minister finish and then I will give you the call.

Senator Minchin—The Prime Minister has confirmed to the House of Representatives that the government made a decision as to the direction it would give officials. It was made by the cabinet. As the minister representing the government at this table, I must exercise some judgment as to what questions fall within that direction and I have determined that that question regarding AWB in Pakistan does fall within that direction.

Senator CHRIS EVANS—Are you telling me that you provided to the Cole commission all PM&C documentation relating to the sale of wheat to Pakistan?

Senator Minchin—Mr Borrowman has already indicated that they took a wide view of the sort of documentation that would be supplied.

Senator CHRIS EVANS—A wide view? It is not in the terms of reference so it may well not have been that wide. So it is an interesting and pertinent question: did they or did they not provide information to the royal commission about PM&C's knowledge of and involvement in the sale of wheat to Pakistan where agent's fees were paid?

Senator Minchin—You are asking the same question in a different way, and we are not prepared to go into detail about the specific subject matters of documents supplied to the royal commission. The department has, in response to the terms of reference and the subpoena that DFAT received—

Senator CHRIS EVANS—That is not covered by the terms of reference.

Senator Minchin—made a judgment as to what documents would be supplied.

Senator CHRIS EVANS—I am not asking you what documents were supplied; I am asking about the breadth of your response. You concede that it is not in the terms of reference. Your only defence at the moment on this issue is that you have determined that it might be relevant some time in the future.

Senator Minchin—It has already come up before the commission.

Senator CHRIS EVANS—I want to know whether your direction to PM&C was that wide, that encompassing. Did they or did they not provide information to the Cole commission about the Pakistani sales, given that they are not covered by the royal commission's charter?

Senator Minchin—The direction was pretty clear: questions directed to them on matters before the commission being conducted by Cole into certain Australian companies in relation to the oil for food program.

Senator CHRIS EVANS—It is not covered by the commission.

Senator Minchin—What documents were supplied runs into this issue, which is quite difficult, about inclusion and exclusion that we are not prepared to respond to.

Senator CHRIS EVANS—But you concede this has nothing to do with the oil for food program.

Senator Minchin—The department have made it clear that they have responded in a wide fashion to the request for documents, so that anything that could possibly be relevant to this inquiry has been supplied to the commission.

Senator CHRIS EVANS—That is a big call.

Senator Minchin—And they would always err on the side of—

Senator CHRIS EVANS—That is a big call, Senator Minchin. I will keep this transcript, because that is a very broad call. But you concede that the Pakistani sales have nothing to do with the oil for food program, don't you? As far as I know, we were not running a blockade on Pakistan at the time.

Senator ROBERT RAY—We did not have the frigates outside the Bay of Bengal.

Senator CHRIS EVANS—It might have been a better curb to terrorism than the one we were running.

Senator Minchin—I am indicating to you that it would not surprise me at all if the conduct of AWB in relation to Pakistan was inquired into by the commission. Indeed, that matter has already come up in evidence before the commission.

Senator CHRIS EVANS—As always, I am interested in your view and in whether you are surprised or not about matters—I always find those exchanges very interesting. But the questions are: what was the government's knowledge and what was PM&C's knowledge? They should be answered, regardless of whether or not PM&C responded in a way that did not surprise you. This is estimates and you have a responsibility to be held accountability. It is a very specific question about a sale where there are serious doubts about whether or not bribes were paid and which has nothing to do with the oil for food program and is not covered by the royal commission's terms of reference. If you say that that is not allowable, then your position is that you will only answer questions about anything that suits you at the time—that is where we will have got to.

Senator Minchin—No, I am saying that we have entertained other lines of questioning and tried to respond to you and give you as much information as we can, but do I think that line of questioning—

Senator CHRIS EVANS—I must have been out of the room when that happened!

Senator Minchin—Really?

Senator CHRIS EVANS—Did I miss something?

Senator Minchin—You must have.

Senator CHRIS EVANS—Yes, I must have—the cooperative, providing information bit?

Senator Minchin—Yes. I thought we were very cooperative.

Senator ROBERT RAY—The capacity for self-delusion here is shocking.

Senator Minchin—So we are prepared to consider carefully each line of questioning. We have responded to certain lines of questioning, but this line of questioning treads upon this ground that we have excluded from giving answers about at this time.

Senator FAULKNER—Now that the Prime Minister has indicated to the House of Representatives that the decision in relation to officials' evidence at estimates committees was a cabinet decision—and you have now been able to check that he said that in question time—can you tell us when that cabinet decision was made?

Senator Minchin—I am not sure that it is normal that we—

Senator FAULKNER—It is normal.

Senator ROBERT RAY—Mostly it is leaked.

Senator Minchin—We do not necessarily give dates of cabinet meetings at which certain decisions are made, but I am happy to see if we are able to give you that information. I am happy to find that out.

Senator FAULKNER—Surely you would be there and would know.

Senator Minchin—The Prime Minister did not go to that detail in the chamber, but I am happy to have inquiries made as to whether we can give you the date of the meeting at which that occurred.

Senator ROBERT RAY—While you are at it, find out how it was transmitted to public servants. You might as well take all that on notice and then decide what you will respond to.

Senator Minchin—I am happy to do that.

Senator ROBERT RAY—I just want to go back to my original question. You have ruled out any questions about bribes with regard to wheat sales to Pakistan, but you still have not convinced me as to why you and the department cannot answer questions as to when you were first alerted to non-Australian problems with the oil for food program. That is not going to be considered by Cole; he is not going over to France to see all those politicians who took bribes off Saddam or all the rest; he is not even looking at that. When did we first know?

Senator Minchin—Again, I can only say that it seems to me that, on the reasonable man test, it is entirely possible that the commissioner, in relation to his specific terms of reference, could well want to know when the Commonwealth acquired what knowledge in relation to the whole oil for food program.

Senator ROBERT RAY—But you do not know.

Senator Minchin—I think it is entirely possible for the commissioner to want to inquire into that. It would not surprise me at all.

Senator ROBERT RAY—Under the terms of reference, how is that possible?

Senator Minchin—Again, I can only direct your attention to Mr Cole's quite comprehensive statement about how he interprets his terms of reference. I indicate that he does interpret them widely and that he is going to inquire widely into the Commonwealth's knowledge about this whole matter. I think we should act on a presumption that he could well want to know when the Commonwealth knew what in relation to the whole program before leading to a question about what, if anything, the Commonwealth knew with respect to AWB.

Senator ROBERT RAY—I take it that there is no dispute that the Commonwealth supported the sanctions?

Senator Minchin—I do not think that is disputed, is it? 'The sanctions'—what do you mean?

Senator ROBERT RAY—The economic sanctions against Iraq. The government supported it and still supported it up until the deposition of Saddam Hussein, I take it.

Senator Minchin—I am not the expert on that matter.

Senator ROBERT RAY—So at what point can I ask questions about that policy and at what point can I not ask?

Senator Minchin—Of government support for the sanctions?

Senator ROBERT RAY—Yes. You have supported the sanctions, I think, since you came into office; you have sent frigates to the Gulf to enforce them. So obviously you are very committed to the supporting of sanctions.

Senator Minchin—Right.

Senator ROBERT RAY—We know they were breached. We now know they were massively breached—that \$1.7 billion or \$1.9 billion was funnelled into Saddam Hussein's regime. We know all that. We want to know at what point you knew that this program was in doubt, excluding any Australian firms. You are just not willing to engage.

Senator Minchin—Sorry, we are going around in circles because I am indicating to you that I think it is entirely possible that the commissioner may well want to inquire into the knowledge, if any, of the Commonwealth about what Volcker has discovered with regard to the UN oil for food program as part of his inquiries specifically into the role of Australian companies.

Senator ROBERT RAY—Prior to Volcker's report, *Four Corners* carried a story on the perversion of the oil for food program, didn't they, naming certain officials for taking certain amounts of money? This is pre-Volcker—pre the report coming down. Did PM&C note that?

Mr Borrowman—I do not know the answer to that.

Senator Minchin—Did they note that *Four Corners* made the program?

Senator ROBERT RAY—It was a pretty big red flag flying to say that there was something wrong with the program before Volcker. Did you just say, ‘Oh well, we had better ignore that’?

Senator Minchin—You are going to the question of the Commonwealth’s knowledge of these matters and what was done, but that is exactly what is before the commission.

Senator ROBERT RAY—When the Volcker inquiry was set up, did the government support its being set up?

Mr Borrowman—Yes.

Senator ROBERT RAY—It did support its being set up? Why? That question is to the minister, and, if he wants to delegate it, he can.

Senator Minchin—The Minister for Foreign Affairs is obviously the relevant responsible minister with regard to Australia’s attitude to UN activity, of which this was an example, so we are at somewhat of a loss. I think this is a relevant line of inquiry for DFAT, and if you wish us to seek to take that on notice we can, but I would have thought you should pursue it with DFAT.

Senator ROBERT RAY—Why? Do you think they may have a different idea of what may come before the inquiry than you do?

Senator Minchin—No. You are asking specifically about the government’s position with regard to Volcker, which is a matter for DFAT.

Senator ROBERT RAY—Is it? I am asking whether PM&C, through the Prime Minister or PM&C, had any input into the approval of the setting up of and support for the Volcker inquiry.

Senator Minchin—And I am indicating to you that I think that is a matter you should put to DFAT.

Senator ROBERT RAY—They do not know what PM&C did. I am asking PM&C whether they had an input into this. In some cases, foreign affairs issues go across government in consultation with PM&C, and in others they do not. I am asking whether, in this case, there was consultation with PM&C on this as a matter.

Mr Borrowman—I would have to take that on notice.

Senator FAULKNER—Mr Borrowman, when you collected all this material from the department, I suppose you kept a record of all the documents you received.

Mr Borrowman—Yes.

Senator FAULKNER—In what form was the record?

Mr Borrowman—It is a copy.

Senator FAULKNER—So, did people forward copies or originals to you?

Mr Borrowman—Copies would have been made to assemble a version of the relevant documents that were held.

Senator FAULKNER—So copies were forwarded to you and original documents held on file, effectively. Is that right?

Mr Borrowman—Yes, I suppose that is a fair characterisation.

Senator FAULKNER—And then all the material that was forwarded to you, you also copied? You said that you kept a record of it.

Mr Borrowman—I suppose the answer is yes.

Senator FAULKNER—You ‘suppose’ the answer is yes?

Mr Borrowman—Most of these files would be held in my division, an officer would look at the file, take a copy of it, and that would then become a copy of a relevant document. When a package was assembled, a copy of the whole package would be made. The package would be sent off, and therefore there exist copies of the documents on file which are copies of the documents that were sent.

Senator FAULKNER—You obviously sent a copy of the documents, the file, the package—call it what you will; and I suppose ‘package of documents’ is a good way of describing it—to DFAT, because it was their request.

Mr Borrowman—Yes.

Senator FAULKNER—Who else did you send it to?

Mr Borrowman—Just DFAT.

Senator FAULKNER—Did PM&C undertake any analysis of the documents at all?

Mr Borrowman—Could you expand on what you mean by ‘analysis’ in that question?

Senator FAULKNER—Were you effectively just a postbox or, having received the documents, did someone examine, analyse and assess them? Did you not look at them—did you just get them, stick them in a photocopying machine and shoot them through to DFAT? It sounds a bit unlikely, but I thought I had better ask.

Senator Minchin—The assessment involved was an assessment as to whether or not they were relevant to the royal commission and within the terms of the subpoena given to DFAT. That was the assessment of what was required of officers and that was what was done, and I do not know that any further analysis would have been required or appropriate.

Senator FAULKNER—Thank you for that. How do you know that occurred?

Senator Minchin—Because I have great confidence in the officers in PM&C to undertake diligently their response to those sorts of requests.

Senator FAULKNER—So it is guesswork.

Senator ROBERT RAY—It is faith rather than empiricism.

Senator FAULKNER—You do not actually know it happened; you are guessing that that is what happened.

Senator Minchin—I am certain that is what happened.

Senator FAULKNER—You do know that is what happened?

Senator Minchin—I am sure that is what happened.

Senator FAULKNER—Why are you sure it happened? Aren't you just slashing outside the off stump again?

Senator Minchin—If you do not believe me, I am happy for Mr Borrowman to confirm that is what—

Senator FAULKNER—It is not a question of believing you. It sounds to me like you are making it up as you go along.

CHAIR—Senator Faulkner—

Senator Minchin—You do not believe me, so I am happy for Mr Borrowman to confirm that that was the approach of the department.

Senator FAULKNER—I am happy to believe you if you can explain to the committee what leads you to be able to provide that evidence to the committee.

Senator Minchin—I do not have to explain myself to you. I have given the answer—

Senator FAULKNER—But you do have to give accurate answers. There are no standards for Howard government ministers, I admit that. But you are supposed not to mislead the estimates committee. So generally it is a good idea—

Senator Minchin—The standard applied to Howard government ministers is that applied by the people of Australia, who have re-elected us on three occasions. They appear not to have any confidence in you, as a shadow minister.

Senator FAULKNER—But generally it is a good idea if—

CHAIR—Order! Senator Faulkner, do you have further questions on this?

Senator FAULKNER—Yes I do. I am asking a series of questions about what happens in the department. I am making the point to Senator Minchin that it is generally a good idea—I am letting him off the hook here—

CHAIR—That is pretty unusual, Senator Faulkner.

Senator FAULKNER—I am like that; I am a nice guy. It is generally a good idea if you give evidence before the committee that it is accurate. Senator Minchin has just had a big slash outside the off stump. He's got no idea whether what he has said is correct or not.

CHAIR—Perhaps you might ask your question, Senator Faulkner.

Mr Borrowman—I can confirm that the senator's understanding is correct.

Senator FAULKNER—All right, so explain to me the process of what occurred. Once you received the documents, Mr Borrowman, what happened?

Mr Borrowman—We looked at them, made an assessment of the extent to which they fell within the terms of the request and partitioned them accordingly.

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

Mr Borrowman—Principally, myself and the staff working with me.

Senator FAULKNER—And what measure did you run by the documents? What was the measure? You had the terms of the DFAT subpoena before you and the terms of reference of Mr Cole. Is that the measure you applied to the documents?

Mr Borrowman—That is one of the measures we applied. The other measure was the government's declared willingness to be open and transparent in provision of documents to the commission.

Senator FAULKNER—So you had beside you the terms of reference and the terms of the subpoena from DFAT. And for each and every document you tried to make an assessment of whether it fell within those terms, is that right?

Mr Borrowman—In the first instance, yes.

Senator FAULKNER—In the first instance. And what happened then?

Mr Borrowman—As I say, that was one criterion. The second criterion was the government's declared intention to be open and transparent, so we took a broad approach to an interpretation of what might be relevant to the commission.

Senator FAULKNER—As for the decision to forward matters to DFAT so that you could conform with the provisions of the subpoena, did that final responsibility lie with you, Mr Borrowman, or did it lie with a more senior officer in the department?

Mr Borrowman—It lay with a more senior officer.

Senator FAULKNER—That is fair enough; I am not surprised to hear that. Who was the senior officer? At what level was the decision made? It obviously was not quite as straightforward as we have just heard. Who was the senior officer?

Senator ROBERT RAY—What is their new job?

Senator FAULKNER—In which particular Antarctic outpost are they currently serving?

Mr Borrowman—The documents that were sent were signed off by me.

Senator FAULKNER—The documents that were sent were signed off by you?

Mr Borrowman—Yes.

Senator FAULKNER—So that is the sign-off procedure, but you have indicated to us of course there is another level of decision making. You did not make the decision about which ones would be signed off, did you?

Mr Borrowman—The decision was taken in consultation with colleagues.

Senator FAULKNER—Who were the colleagues, is what we are after. You have indicated you have gone up the line.

Senator ROBERT RAY—Who?

Senator Minchin—Mr Borrowman has indicated that he consulted with senior officers before he sent the documents across.

Senator FAULKNER—We know that. We have heard that, thank you, Senator Minchin. You are on the ball.

Senator Minchin—I would love to get on with my work but I have got to pay attention to your line of questioning, unfortunately.

Senator FAULKNER—You just get on with your work because I think you have already probably mislead the committee on a couple of occasions.

Senator Minchin—I am paying close attention to your line of questioning, in fact, so I cannot get on with my work.

Senator FAULKNER—You would be better of concentrating on your work. Who were the senior officers, Mr Borrowman?

Senator Minchin—I have got to keep listening to your questions, tedious as they are.

Senator FAULKNER—Just think of a pay rise you've got recently. It comes with the territory.

Senator Minchin—In this case Mr Borrowman is not going to indicate which officers, but he is prepared to take it on notice.

Senator FAULKNER—You are going to take that on notice, are you?

Senator Minchin—Yes.

Senator ROBERT RAY—Why? Do you think Mr Cole might look at it? Or are you trying to cover it up? Tell us. You know the answer, don't you?

Senator Minchin—It is a mechanical question.

Senator ROBERT RAY—You know the answer. Why won't you answer it? You know it.

Senator Minchin—We do not have to answer a question as to why we won't answer a question.

Senator ROBERT RAY—Then refused to answer it. Don't say you will take it on notice and fob us off later. If you are not going to give us the answer now, tell us. Don't say, 'I'll take it on notice'—and we will never see the answer. Have a bit of integrity.

CHAIR—Senator Ray, the minister has given his answer.

Senator Minchin—I reject the question of integrity being raised.

Senator FAULKNER—Why, because the government doesn't have any?

Senator Minchin—We have said we will take on notice your question as to the names of the officers with whom Mr Borrowman consulted in determining which documents would be sent to Foreign Affairs.

Senator ROBERT RAY—No, be precise, Minister: the senior officers, not the junior ones. We would not have asked that question.

Senator FAULKNER—I asked—and you heard the question, Senator Minchin, if you were concentrating: who was consulted up the line? Which were the more senior officers consulted?

Senator Minchin—Yes, and we will come back to you with some information.

Senator FAULKNER—Well, let's not reinterpret the question. And you might tell us, Mr Borrowman: was everybody consulted an official of the Department of the Prime Minister and Cabinet?

Senator Minchin—For the purposes of this discussion, you should accept that Mr Borrowman consulted who he thought was appropriate in responding on behalf of PM&C to the request from DFAT for the relevant documentation.

Senator FAULKNER—I am happy to accept that. Now I am asking: was everyone consulted an official of the Department of the Prime Minister and Cabinet?

Senator Minchin—We are not giving you an answer to that, but we will take it on notice.

Senator ROBERT RAY—Yes, but are you ever going to answer it?

Senator FAULKNER—I want to know whether the Prime Minister's staff were consulted. Can you tell us that?

Senator Minchin—No, I am not prepared to go into that sort of detail.

Senator FAULKNER—Why not? You can rule it out if they were not. If the Prime Minister's staff were not consulted, just rule it out and we will move on. Can you rule it out?

Senator Minchin—At this point I would prefer to take that on notice.

Senator FAULKNER—You won't rule it out. Of course they were consulted.

Senator Minchin—No, you cannot assume that. That is just a silly assumption.

Senator FAULKNER—A political decision, was it?

Senator Minchin—No, the department has properly responded to the request from DFAT for all relevant information. The officer has made it clear that, the government having taken so publicly a very wide view of its responsibility with regard to this commission, that is how the department interpreted the request. Any suggestion of political interference is outrageous, and totally rejected by the government.

Senator ROBERT RAY—But you know the answer and you will not give it. Let us be explicit on it. You are taking it on notice because either you want a longer consideration or something else. But you actually know the answer now, don't you, as to who was consulted?

Senator Minchin—I know that Mr Borrowman on behalf of the department made available to DFAT every relevant document in relation to the commission. And of course the commission has very wide powers and all the documents are available to it—

Senator ROBERT RAY—Yabbdy, yabbdy, yabbdy!

Senator Minchin—and the Prime Minister has said that.

Senator ROBERT RAY—Yes, but the question is: who above him in the order of hierarchy in PM&C did he consult? You know the answer to it; you are taking it on notice; you are not giving us the answer now. Do you want to contest any part of that statement?

Senator Minchin—We have taken on notice that question.

Senator ROBERT RAY—You do not. I will take that as affirmative. You know the answer. You refuse to give it to the committee. You take it on notice so you can deliver the answer—

CHAIR—That is editorialising.

Senator ROBERT RAY—It is true.

CHAIR—That is your view, Senator Ray. Senator Faulkner, you have a question.

Senator FAULKNER—I want to know whether the people that were consulted were only departmental officers. You have taken that on notice too, have you?

Senator Minchin—We have at this stage, yes.

Senator FAULKNER—Why don't you just rule out whether any members of the Prime Minister's staff were consulted? You can just rule that out. Why do you have to take that on notice? Mr Borrowman knows who was consulted. Rule it out!

Senator Minchin—The department responded to the subpoena that was given to DFAT. It responded appropriately and within the terms of the subpoena. In so doing, it ensured that all relevant documents were supplied.

Senator FAULKNER—Why won't you rule out whether the Prime Minister's staff were consulted in this process?

Senator Minchin—I do not particularly feel like cooperating in your political witch-hunt and in your idiotic assertions that any political—

Senator FAULKNER—I am not conducting one yet. It has not started.

Senator Minchin—Your idle threats really are quite childish. I am not going to engage in some sort of response to your witch-hunt.

Senator FAULKNER—It is not a witch-hunt. It is a reasonable question.

Senator Minchin—On behalf of the government I am assuring this committee, and through you the public, that the government has and will continue to cooperate fully with this inquiry in supplying it with any documentation that it believes is relevant to its inquiry, because we wish to know the truth.

Senator FAULKNER—Let me assure you that asking reasonable questions about this sort of departmental process has never been interpreted before by ministers at the table as a witch-hunt. I do not ever recall anyone suggesting that about such questions, which, to my mind, are pretty straightforward. They are process questions about how a department works and operates. To interpret that as a witch-hunt is, I think, a pretty clear indication of how guilty you are.

Senator Minchin—If we felt any notion of guilt, we would never have set up a royal commission with wide terms of reference to inquire into this matter.

Senator FAULKNER—Then why don't you answer the question?

Senator ROBERT RAY—If you do not feel guilty—

Senator Minchin—We have a royal commission. It has wide terms of reference. It is making a full inquiry. It will investigate the knowledge of the government on all relevant facts and all relevant documents. Officials and ministers are available to the royal commission.

Senator FAULKNER—If you will not rule out—which I find quite extraordinary—whether the Prime Minister’s staff were consulted, will you indicate—

Senator Minchin—I do not wish to engage with you in a conversation about what communication may or may not be made—

Senator FAULKNER—No, because you will not tell the truth.

Senator Minchin—between the department and the office.

Senator FAULKNER—That is right—of course you will not engage with me. You will not answer reasonable questions.

Senator Minchin—I am assuring the committee that the officers—

Senator FAULKNER—You will not tell the truth. You will cover up.

Senator Minchin—in PM&C have been assiduous in making available to DFAT and therefore the royal commission all relevant documents.

Senator FAULKNER—I do not know whether I will accept that or not. I would like to know first of all—

Senator Minchin—I am sure you will not. I have no doubt you will not because you come to this with complete prejudice, so of course you will not.

Senator FAULKNER—I come to it with the intention of trying to get answers to my questions. You can call it prejudice. I really do not care. By not ruling out a question relating to the possible involvement of the Prime Minister’s staff, it seems to me that you beg the question. You will not rule that out. What will you say to this question: can Mr Borrowman inform this estimates committee whether officials of other agencies were consulted in this decision-making process about whether documents would be forwarded, or was any consultant outside the department engaged to assist in the making of this assessment? Can you indicate whether either officials from other agencies or departments or any outside consultants were involved in the decision-making process? Surely you can at least rule that out for us.

Mr Borrowman—In relation to the first part of the question, we consulted with other departments to make sure that we were not duplicating information. Obviously, if another department—DFAT, for example—originated that material, it had already been forwarded to the commission and we had a copy of what they had without any change then there was no point in including that as well. So documents that we—

Senator FAULKNER—So you did compare notes with other departments?

Mr Borrowman—In order to avoid duplication. In answer to the second part of your question, when you say ‘outside consultants’—

Senator FAULKNER—Did you seek legal advice or the like? You know what I mean by that.

Mr Borrowman—I am not certain that I do know what you mean by that. We did not engage any consultants to look at it and we did not take legal advice.

Senator FAULKNER—I am trying to find out who was part of the decision-making process. You will not tell us whether the Prime Minister's office was involved. We now know that you had some discussions with other agencies. So I am checking too whether another broad category or group might have been consulted—that is, either non-Commonwealth officers or non-political staff.

CHAIR—Senator Faulkner, I hate to break your line of questioning—

Senator FAULKNER—You do not hate to do it at all. You really enjoy interrupting, but you want to say—

CHAIR—It is the appointed time for afternoon tea.

Senator FAULKNER—I see. I know my place and afternoon tea takes priority.

CHAIR—It is an order of priorities.

Senator Minchin—I am happy to advise that the date of the cabinet meeting at which the decision to which the Prime Minister referred in question time was 6 February.

Senator FAULKNER—Thank you.

Senator ROBERT RAY—And you kept it secret. Well done.

Proceedings suspended from 3.31 pm to 3.51 pm

CHAIR—The committee will continue its examination of the Department of the Prime Minister and Cabinet.

Senator FAULKNER—Before the break we were going through the process in relation to what occurred with the material that had been provided by elements of the Department of the Prime Minister and Cabinet to Mr Borrowman. I was asking Mr Borrowman to explain what happened once that material came to him. Mr Borrowman, perhaps you could inform the committee what the procedure was once the material was provided to you.

Mr Borrowman—As I said before the break, the material was looked at, a judgment was made as to what was relevant, and that was provided to DFAT.

Senator ROBERT RAY—You said that you did not want to double up on documents from other departments, so which other departments sent you a list of their documents to make sure you did not submit the same ones?

Mr Borrowman—It would be prima facie evident from the documents, in a Word document originating from DFAT. To my knowledge, the consultation was probably a telephone conversation, with someone asking: 'Have you got this in your pack? It is yours.'

Senator ROBERT RAY—I misunderstood. I thought you said you had received a list, but I could have misinterpreted what you said.

Mr Borrowman—No, I did not intend to convey that impression.

Senator ROBERT RAY—Right.

Senator FAULKNER—What sort of analysis was undertaken of the documentation that came to you?

Mr Borrowman—We looked at it.

Senator FAULKNER—You looked at it?

Mr Borrowman—We read it.

Senator FAULKNER—You read it. Anything else?

Mr Borrowman—We looked at it and read it and came to a judgment as to whether or not it met the terms of the request.

Senator FAULKNER—That surprises me. The first thing I thought you might have done was make a definitive list of the material that was provided. You did not record it in any way?

Mr Borrowman—As I said, we actually had the documents in front of us. So, in terms of a cover list, I honestly cannot recall whether there was one.

Senator FAULKNER—How was it provided to the Department of Foreign Affairs and Trade? Did someone just get a few documents and stick them in an envelope and shoot it through to them, or was there a cover sheet with a list of the documents and so forth?

Mr Borrowman—As I indicated before, it went under a covering letter from me to the Department of Foreign Affairs and Trade.

Senator FAULKNER—A covering letter?

Mr Borrowman—Yes.

Senator FAULKNER—Is there any reason why a copy of that letter could not be provided to the committee? I assume it is a public document.

Mr Borrowman—I do not know the answer to that. I would have to have a look at it and take advice on that.

Senator ROBERT RAY—You can take that question on notice, because that is legitimate.

Senator FAULKNER—Did the letter contain a list of the appended documents?

Mr Borrowman—Not to my recollection, no.

Senator FAULKNER—How were the documents ordered, classified and so forth?

Mr Borrowman—They were simply an attachment to the letter.

Senator ROBERT RAY—If I can help out, I think that what he is asking is whether the documents were put in categories or chronological order.

Mr Borrowman—I honestly cannot say. I would imagine they would have been in chronological order. It would have been the logical way to do it.

Senator ROBERT RAY—Do not ever ‘imagine’ here; it is not evidence before the committee. Just say you do not know.

Mr Borrowman—I think I prefaced my answer by saying that I do not recall.

Senator ROBERT RAY—Good. Then you went on to say that you ‘imagine’. Do not ever do that here. We are seeking evidence and that does not help us.

Mr Borrowman—We will find out for you.

Senator FAULKNER—Do you know how many documents there were?

Mr Borrowman—Not off the top of my head. I would have to go back and look at the file copy.

Senator FAULKNER—Could you do that?

Mr Borrowman—Yes, I can take that on notice.

Senator FAULKNER—Do you know what the nature of the documents were? Do know how many were electronic and how many were hard copy files?

Mr Borrowman—We will take that one on notice too.

Senator FAULKNER—Do you know what happened to the documents once they were provided to the Department of the Prime Minister and Cabinet?

Mr Borrowman—I understand they were provided to the Cole commission as requested.

Senator ROBERT RAY—You have not verified that they all went on?

Mr Borrowman—I have spoken to the officer concerned and I have every reason to believe that they were passed to the Cole commission.

Senator FAULKNER—Does that mean that the documents are now public?

Mr Borrowman—No, they have been provided to the Cole commission and the commission has, as you know, a lot of documents which are not yet, and may not be, public.

Senator FAULKNER—I understand that. I am asking: do you know whether they have been made public?

Mr Borrowman—Not to my knowledge.

Senator FAULKNER—You do not know, or not to your knowledge have they been made public? I am assuming your answer means that you believe that they have not been made public.

Mr Borrowman—That is correct.

Senator FAULKNER—I suppose the only way you would know that would be if there were some sort of communication back from the DFAT officers at the Cole commission who are monitoring events—would that be right? I appreciate there has been lodgment on websites and the like.

Mr Borrowman—Documents are lodged as tabled and I believe documents are lodged on the commission website.

Senator FAULKNER—Yes, and you monitor that website?

Mr Borrowman—We are aware of that website.

Senator FAULKNER—You are aware of it. Is someone keeping a weather eye on it?

Mr Borrowman—A weather eye would be the appropriate term, yes.

Senator FAULKNER—Who does that?

Mr Borrowman—One of the staff in my division.

Senator FAULKNER—And they report to you on that?

Mr Borrowman—Yes, as all staff in my division do.

Senator FAULKNER—So you get fairly regular updates on what is on the Cole commission website, do you?

Mr Borrowman—I would not say that we get fairly regular updates. We have looked at it a couple of times in the past week. I think that we would probably know from the other mechanisms I have mentioned were those documents to be made public.

Senator FAULKNER—Are we able to establish who the final decision maker is in relation to the provision of those documents to Cole? This is a different question from one I asked before. I have asked who was consulted up the line but I am asking who the decision maker was.

Mr Borrowman—I signed the letter covering those documents to Cole.

Senator FAULKNER—Yes, I know that.

Mr Borrowman—If it makes me the decision maker—

Senator FAULKNER—I do not think that it does. I think that you have indicated that it does not either. You have indicated clearly to this committee that others more senior to you have been involved in this decision-making process. That is right, isn't it?

Mr Borrowman—I have indicated that I have consulted other colleagues, yes.

Senator FAULKNER—You have consulted other colleagues—okay, fair enough. You have consulted other colleagues, some more junior to you. That is right, isn't it?

Mr Borrowman—Yes.

Senator FAULKNER—So we will set them aside. Some are more senior to you?

Mr Borrowman—Yes.

Senator FAULKNER—Where does the buck stop? That is what I am trying to establish with this. Who makes the final decision about whether a document goes to Cole or doesn't go to the Cole commission? That is what I mean by 'decision maker'. I know that you signed the letter—I understand that and appreciate that and accept that—but who makes the decision about what is in and what is not in?

Mr Borrowman—As the person who signed the letter, I take responsibility for it. I am not sure that decision maker in this sense means anything more than that to me.

Senator ROBERT RAY—Did you alter any decisions on the advice of anyone more senior than you—accepting that you are the decision maker?

Mr Borrowman—Not that I recall.

Senator ROBERT RAY—I think you would recall if you got overruled on something, wouldn't you?

Mr Borrowman—That is a fair comment, but my statement is an honest one in my recall.

Senator FAULKNER—Did the package of this material go up the line to more senior officers in the department?

Mr Borrowman—I do not believe so.

Senator FAULKNER—Did more senior officers than you in the department sight these documents or not?

Mr Borrowman—More senior officers than I in the department would have sighted the documents at the time of their creation.

Senator ROBERT RAY—That is obvious. Senator Faulkner is asking: when you get the package together, do you have to send it up the line to inform people above you—not necessarily for their approval but for their information as to what is going to be made available?

Mr Borrowman—I do not recall that the physical pack itself was sent up.

Senator ROBERT RAY—What was? Let us cut out the fencing.

Mr Borrowman—I am not trying to be obtuse. I have indicated that we discussed the documents that are at issue here. It would then have been left to me to exercise my responsibility to put them together, sign off the letter and get them to the commission.

Senator FAULKNER—Who is ‘we’? Who are the more senior officers?

Senator Minchin—We have taken that on notice.

Senator FAULKNER—Do you know who the more senior officers are?

Mr Borrowman—I have taken that on notice.

Senator Minchin—That is going to a question which he has taken on notice.

Senator ROBERT RAY—No, it is eliciting whether the knowledge is there and whether you are taking it on notice to give consideration to the appropriateness of an answer or merely—

Senator FAULKNER—To cover up.

Senator ROBERT RAY—Whatever; both are done. I would like it acknowledged why it is being taken on notice, because traditionally it is taken on notice because the answer is not known.

Mr Borrowman—I would honestly have to check with a number of officers whether I did consult with them.

Senator ROBERT RAY—So you are saying that you do not have complete knowledge and you want to be certain; it is not because you know it and you want to fob us off—under ministerial direction, of course. That is not the case?

Mr Borrowman—I would need to check with officers to see whether I had in fact consulted with them.

Senator ROBERT RAY—So that is not the case?

Senator Minchin—That is right.

Senator FAULKNER—Are you able to say whether Dr Shergold, as secretary of the department, was consulted?

Mr Borrowman—No, I am not able to say that.

Senator FAULKNER—Is that because you do not know, you need to check or you are just not willing to say?

Mr Borrowman—As I indicated to Senator Ray, I need to be very clear about my recall on discussions on this matter.

Senator FAULKNER—Are you now able to rule out whether members of the Prime Minister's staff were involved in this process in any way?

Senator Minchin—We have nothing to add to previous answers on that matter.

Senator FAULKNER—So you will not rule that out?

Senator Minchin—We have nothing to add.

Senator FAULKNER—Do you know?

Senator Minchin—We have taken the question on notice. I have made it clear that the government's policy is to cooperate fully with the Cole royal commission to ensure that all departments supply all relevant documents.

Senator ROBERT RAY—You understand that the cut-off point for taking questions on notice is 30 March. Are you confident that you will have an answer to that one by 30 March?

Senator Minchin—We will endeavour to get an answer.

Senator FAULKNER—There is the rub—that 'all departments supply all relevant documents'. The issue here is who decides whether it is relevant or not.

Senator Minchin—You are right—someone has to decide what is relevant.

Senator FAULKNER—I am finding it very difficult to establish who the decision maker is.

Senator Minchin—It is the government's policy, as Mr Borrowman has said, and the departments are operating on the basis that the government wants the maximum possible degree of cooperation with this royal commission and that therefore departments should interpret the request from DFAT—and obviously we are operating on the basis of subpoena for documents—very liberally and widely and supply all relevant documents accordingly.

Senator FAULKNER—I am assuming that these decisions are made at the departmental level. Is that right, or are ministers making these decisions about whether or not a document is relevant?

Senator Minchin—My understanding is that it is made at a departmental level.

Senator FAULKNER—Your understanding?

Senator Minchin—I can confirm that. My answer to you is that they are made at a departmental level.

Senator FAULKNER—Is the Prime Minister informed in relation to the Department of the Prime Minister and Cabinet which documents have been provided by his department to the Cole royal commission?

Mr Borrowman—I think the answer to that is yes.

Senator FAULKNER—The Prime Minister was provided with that information?

Mr Borrowman—He is made aware.

Senator FAULKNER—Made aware?

Mr Borrowman—Yes.

Senator FAULKNER—How was he made aware?

Mr Borrowman—Advice was given.

Senator FAULKNER—Advice and copies of the documents?

Mr Borrowman—Again, advice was given.

Senator FAULKNER—All right, advice was given. Who provided the advice? Did you prepare that advice?

Mr Borrowman—Yes.

Senator ROBERT RAY—We are not going to ask you what the advice contained, but we do know from earlier evidence that you did not send the documents upwards anywhere. So we are entitled to interpret that you did not send the documents with the advice, are we not?

Mr Borrowman—Yes. Again, there is a broad awareness of what documents are at stake here.

Senator FAULKNER—So is advice that goes to the Prime Minister similar or identical to the advice that goes to DFAT? I assume it is similar to the advice that goes to DFAT. Is that right? It is the same information, is it not?

Senator Minchin—Are you saying—

Senator FAULKNER—Is it effectively a drop copy of what goes to DFAT?

Senator Minchin—You are not going to what advice or the nature of the advice—

Senator FAULKNER—No, I am not going to what advice. I am asking whether what Mr Borrowman is saying is that, effectively, the advice that goes to the Prime Minister is a drop copy of what is provided to DFAT. Is that what we are talking about?

Senator Minchin—I think Mr Borrowman has indicated that a copy of the pack—as we are describing it here—was not provided to the Prime Minister but, presumably, a copy of the letter or a letter paraphrasing the letter that was sent to DFAT was provided.

Senator FAULKNER—I do not know. We will have to ask him.

Mr Borrowman—I believe so, but it was—

Senator FAULKNER—You believe what?

Mr Borrowman—That a copy of the letter was provided.

Senator FAULKNER—With a brief?

Mr Borrowman—I know that there was no brief.

Senator FAULKNER—Just a copy of your covering letter?

Mr Borrowman—Yes.

Senator FAULKNER—And your covering letter, of course, does not innumerate, record, identify or note the appended documents, does it?

Mr Borrowman—There was no list of the documents attached.

Senator FAULKNER—When did that advice go to the Prime Minister?

Mr Borrowman—I would have to take that on notice. I do not have that date in my head.

Senator FAULKNER—Where else did you send copies of that brief?

Mr Borrowman—I said that there was no brief. It was a drop copy of the letter.

Senator FAULKNER—Where else did you send a copy of that letter, apart from to the Prime Minister?

Mr Borrowman—Nowhere, other than the original copy to DFAT obviously.

Senator FAULKNER—So there are two copies?

Mr Borrowman—Yes. There might have been internal circulation copies but none outside the department.

Senator FAULKNER—Were the originating officers—those who had dug out the material—informed of whether the material that they had dug out was forwarded to Mr Cole? So what happens is that certain officers are asked to provide material to you and an assessment is made—we do not know by whom—about whether this stuff should be forwarded to Mr Cole. Were officers informed that the material had been forwarded to Mr Cole?

Mr Borrowman—I do not think so, in the sense that you asked the question. But, as I said earlier on, a very small number of officers is involved and most of them are working on the process. They would have been aware of it, but, in terms of whether they were informed that a document you have found has been passed over to the Cole commission, the answer would have to be no.

Senator CHRIS EVANS—I would like to ask the department about its involvement with the Iraq Task Force. Can you tell me when PM&C began its involvement with the Iraq Task Force?

Senator Minchin—I fear that this goes to the question of what knowledge the Commonwealth possessed and when.

Senator CHRIS EVANS—On the Iraq Task Force?

Senator ROBERT RAY—What are you talking about?

Senator CHRIS EVANS—We sent troops in; we went to war.

Senator ROBERT RAY—They coordinated the whole effort. You are joking! Could we get a minister—

Senator Minchin—But your line of questioning—

Senator CHRIS EVANS—My one question was: can you tell me what PM&C's involvement was on the Iraq Task Force. Are we not allowed to ask questions about military involvement in Iraq now because it might relate to—

Senator Minchin—Exactly what are you seeking—a date?

Senator CHRIS EVANS—I am going to ask a series of questions about the PM&C's role in the Iraq Task Force. I know you are not supposed to mention the war, but for God's sake!

Senator ROBERT RAY—We funded it—both ways, on both sides.

Mr Borrowman—The question, as I understand it, is: what is the role of PM&C in the Iraq Task Force? The role of PM&C in the Iraq Task Force is as one of the participants thereof.

Senator CHRIS EVANS—When did PM&C commence involvement with the Iraq Task Force?

Mr Borrowman—I would assume that it was at its formation, but that is something I would have to take on notice.

Senator ROBERT RAY—You do not know when it was formed?

Mr Borrowman—Not off the top of my head.

Senator ROBERT RAY—No-one in PM&C knows when the Iraq Task Force was formed? Is that right?

Senator Minchin—Are you trying to ask for an exact date?

Senator ROBERT RAY—No. He is not the only officer who works in PM&C. He may not have the corporate knowledge. Surely someone has the corporate knowledge and could tell us that.

CHAIR—Dr Morauta, is an officer there who would know?

Dr Morauta—We are just trying to find out if anybody is available to answer that question. We will try to get you an answer as soon as we can.

CHAIR—Thank you.

Senator CHRIS EVANS—We do not know when we started, but we think we might have been there. All right—that is a good start. Why were you there? What was PM&C's role? I gather that it was coordinated by DFAT—is that right?

Mr Borrowman—That is correct. DFAT convenes the meeting.

Senator CHRIS EVANS—So PM&C was represented on the task force. Who represented PM&C on the task force?

Mr Borrowman—It would have been a varying succession of officers and levels over the duration of the task force's existence.

Senator ROBERT RAY—But you cannot tell us how long the task force went for?

Mr Borrowman—You asked about when it started. I cannot tell you that off the top of my head.

Senator FAULKNER—Is it still in operation?

Mr Borrowman—Yes, it is.

Senator FAULKNER—And PM&C has always been represented on it, hasn't it?

Mr Borrowman—Subject to confirmation, my belief is that we have been there ab initio.

Senator FAULKNER—At what level has PM&C been represented on the task force?

Mr Borrowman—As I said, at varying levels at varying stages of its existence.

Senator CHRIS EVANS—In terms of staff, were you represented at a very senior level?

Mr Borrowman—I would have to check that as a question of fact.

Senator FAULKNER—Surely somebody there would know who represented the Department of the Prime Minister and Cabinet on the Iraq Task Force from its establishment to the present day. That is perfectly straightforward. I think that even Senator Minchin, who has struggled greatly today, would agree. That one is something that he might even be able to cope with.

Senator MINCHIN—I think what Mr Borrowman is saying is not obfuscation but that he simply does not have that knowledge in his head.

Senator CHRIS EVANS—But the whole department's here.

Senator FAULKNER—It is absolutely pathetic.

Senator Minchin—Don't you dare call Mr Borrowman pathetic! How dare you, Senator Faulkner!

Senator FAULKNER—Minister, I am saying that it is pathetic if you do not have a capacity to answer those sorts of questions.

Senator Minchin—You asked for the name of an officer—

Senator FAULKNER—The corporate knowledge—

Senator Minchin—Mr Borrowman does not have that knowledge, and it is not unreasonable that he does not have that knowledge.

Senator FAULKNER—Someone else should.

Senator Minchin—We have said we will seek—

CHAIR—Order, Senator Faulkner! They are seeking the evidence now, I think. Is that correct?

Senator CHRIS EVANS—Chair, could I raise a point of order with you?

CHAIR—Yes.

Senator CHRIS EVANS—No-one is attacking Mr Borrowman. He has been brought along today on his first day in the job—

Senator FAULKNER—Deliberately.

Senator CHRIS EVANS—and has been asked to provide a whole range of information, which clearly he has no corporate knowledge of. I did not ask Mr Borrowman; I asked the minister—

Senator FAULKNER—It is the oldest trick in the book.

Senator CHRIS EVANS—and the Department of the Prime Minister and Cabinet whether or not they were involved in the Iraq Task Force. That was a huge problem to start with. We got over that hurdle; we decided that that was not classified information. Given that that has been on the public record in their annual reports for three and four years, we were allowed to share that. But it seems to me that previously at estimates not only did the minister and one poor official turn up but that generally the department comes prepared with a range of officials who can deal with a range of issues. That has been the normal courtesy at estimates committees. What we have been told today is that Dr Morauta and Mr Borrowman are it and they are the only ones with corporate knowledge here—one chap on his first day in the job and the deputy secretary, and that is it.

Dr Morauta—We have other officials next door.

Senator CHRIS EVANS—Can we bring them to the table then?

Dr Morauta—Sorry; they do not know the answer to that question, either, and they are ringing to get it. You are quite right; we ought to be able to answer that question, and I am hopeful that we will be able to answer that shortly.

Senator FAULKNER—Got that, Senator Minchin?

Senator CHRIS EVANS—Is there anybody you have brought—

Senator FAULKNER—Can you stop undermining Senator Minchin, please, Dr Morauta?

CHAIR—Senator Faulkner, please stop it. It is not helpful.

Senator Minchin—That is not helpful. You should not provoke me, Senator Faulkner.

Senator FAULKNER—It is not helpful, but it is a pretty obvious point to make, given that absurd commentary by you.

Senator Minchin—You are attacking officers at the table, and it is my task to protect them from your ravages.

Senator FAULKNER—Come on!

Senator Minchin—You can endeavour to get the information you want, but to expect them to walk around knowing off the top of their head who sat on which committee when is to expect far too much. It may be knowledge that you possess but—

Senator CHRIS EVANS—We can only go up from here; it can only get better.

Senator Minchin—it is not unreasonable that officials do not carry such information around in their head.

Senator CHRIS EVANS—I would appreciate it if someone who can help us with the task force could come to the table. It is not unreasonable. This was a task force—

CHAIR—I accept that, and so does the minister. The department is procuring people to answer these questions.

Senator CHRIS EVANS—We did participate in an invasion, and I think it is reasonable for someone from the department to be able to answer questions on it.

Senator Minchin—The information you are seeking is being sought as we speak.

Senator FAULKNER—What we are told—and this is my understanding—is that Mr Howard's own department does not know who represented them on the Iraq Task Force. That is absolutely hopeless.

CHAIR—It is being sought, Senator Faulkner; it is being sought now.

Senator FAULKNER—This is the situation we are facing: the Prime Minister of Australia's own department has not got a clue who was on the Iraq Task Force, representing them.

CHAIR—That is a misrepresentation.

Senator FAULKNER—It is not; it is the truth, and you do not like it.

CHAIR—The information is being sought now.

Senator FAULKNER—That is how it ought to be put.

CHAIR—Senator Faulkner!

Senator Minchin—Senator Faulkner seems to think we are playing *Who Wants To Be A Millionaire* and that this is a quizathon or something like *BP Pick-A-Box*. Listen: you asked for some information, the officers at the table do not have it and they are endeavouring to get that information for you. It is the name of an officer who served on a task force some years ago.

Senator FAULKNER—No, now.

Senator MINCHIN—You said that you wanted to know who was on it originally.

Senator FAULKNER—From—

CHAIR—Senator Faulkner, Senator Evans has the call for questions.

Senator CHRIS EVANS—The point I was making to you, Chair, was whether you could facilitate, please, the department producing an officer who can answer questions about the Iraq Task Force. I do not think that it is satisfactory for the minister or the department to say in response to the simpler questions—such as when did it start and who was on it—that they will take them on notice. I have a line of questioning about the Iraqi Task Force. If they are going to take all that on notice, I think we will have reached a new low.

CHAIR—Officers are being sought now, I understand.

Senator CHRIS EVANS—Are they being sought or is the answer being sought?

Mr Borrowman—I can attempt to answer the question.

CHAIR—Mr Borrowman, can you help us?

Mr Borrowman—I had understood the question to be asking about who represented the department on the task force at its inception. That is a matter which predates the corporate knowledge of anybody in the division now, and therefore it is a question which we will have to look into, but we can find an answer to it. If the question was, as I believe Senator Evans just indicated, about who represents us on it now, then that is a question I can answer. Officers of the division do so, depending on circumstance. Sometimes, I have sat on it; sometimes, some of my staff sit on it. There is no hard and fast membership of that. That is the current situation. As I reiterate, I had understood the question to be asking about who represented us on it some years ago. That is a matter we will have to look into.

Senator CHRIS EVANS—Perhaps you could take that on notice. What I am trying to get a sense of it is what sort of seniority of officer was involved in the Iraq Task Force? Do I take it from what you have said to us that the level of involvement and the seniority of the people involved may have diminished over time?

Mr Borrowman—I would not say that it has diminished. As I indicated earlier, it has varied over time.

Senator CHRIS EVANS—I would have thought that at its height you would have sent someone fairly senior from the department. Have I got that right? I would have thought intuitively that just before the invasion or whatever you would have had a fairly senior officer there. If you are just mopping up the task force work now, you might have a more junior officer. Am I wrong?

Mr Borrowman—I think that is a reasonable assumption, and I expect that it probably would have been the assistant secretary of the branch at the time who participated at the beginning. But, yes, that is quite right: the level varies according to the temperature at the time.

Senator CHRIS EVANS—We are checking whether you were involved at the start of the process, and I take it from what you have said that you are still involved in the Iraq Task Force. It still exists?

Mr Borrowman—It still exists. When I said that I am still involved, I was thinking last week rather than today. The person who will replace me in my job will notionally still be involved. But, as I said, there is not any formal membership from PM&C on the committee. PM&C is a member. We send people along according to seniority, level and temperature of the issue at the time.

Senator CHRIS EVANS—The question was meant to include the royal we, as in the department. What was PM&C's brief in terms of the task force? What did the department bring to the table? What was your function as part of the task force?

Mr Borrowman—It is the same function that PM&C discharges in its participation in the government at large. It is being in a position to brief the Prime Minister. It is being in a position to share information, to participate in the ebb and flow of bureaucratic decision making.

Senator CHRIS EVANS—Is it fair to say that one of your key functions was to report back to the Prime Minister and his office on anything that was relevant or that you thought that he needed to be briefed on?

Mr Borrowman—Yes, that is a reasonable assumption.

Senator CHRIS EVANS—That is unremarkable. That is why you are there, to provide that sort of function. I am sure the other departments provide the same sort of function to other ministers. I gather that at its height this task force met almost on a daily basis. Is that right?

Mr Borrowman—Again, that predates corporate knowledge. I would have to check if it was on a daily basis. It was certainly weekly. The frequency when the conflict was actually on may well have been daily. I will have to take advice on that.

Senator CHRIS EVANS—That is what the DFAT annual report says, unless that is wrong. But I suspect that is right.

Mr Borrowman—Then I have no reason to—

Senator CHRIS EVANS—I picked that up in their annual report. Are you aware that the task force secretariat produced situation reports for ministers and other agencies?

Mr Borrowman—During my time on it, I do not recall that. But I am assuming that you are again reading that from the annual report, so I have no reason to suspect that it is not true.

Senator CHRIS EVANS—So you have sat on the task force but you do not know whether they produced reports?

Mr Borrowman—You said ‘produced situation reports for ministers’, and that is something that, as I said, I do not recall. I know that there were records from time to time, but that is something that you should really ask DFAT about.

Senator CHRIS EVANS—I do not need to ask DFAT because it is in their annual report, but I was asking you because you were allegedly on the task force. But you are telling me that you have no knowledge of them producing those reports?

Mr Borrowman—I do not recall anything specific. I am not saying that they did not produce them; if they said they did, they did. There was a lot of paper flowing around. I am prepared to accept that there were situation reports.

Senator CHRIS EVANS—So you do not recall the task force that the department was a member of—and you represented the department on that task force on occasions—producing situation reports at all?

Mr Borrowman—It depends on what you mean by ‘situation reports’.

Senator CHRIS EVANS—I use the words from the DFAT annual report. There is no suggestion of me putting words in your mouth. It says:

The task force secretariat produced concise situation reports for ministers and other agencies, initially three times a week, rising to a peak of twice-daily reports.

But PM&C do not know anything about it?

Mr Borrowman—Which year are you reading from?

Senator CHRIS EVANS—That was their annual report of I think 2002 but I will get back to you on that. I am sorry; it must be later than that. By June 2003, 185 such reports had been prepared. It seems that PM&C had no knowledge of these reports.

Mr Borrowman—You asked about my knowledge. I was not on the committee at that stage.

Senator CHRIS EVANS—Generally when we ask questions at estimates, it is not just about the personal knowledge of the particular officer. If they do not know or they are put into this job at 9 am this morning, it is only fair that they be allowed to consult with somebody else. Generally, that is the sort of cooperation we need. Is there anybody representing the department available today who can help us with whether or not PM&C had any knowledge of these hundreds of reports that the task force provided?

Mr Borrowman—I am not disputing the information you provided and therefore that there was a PM&C representative. I am assuming there was one on it at the time and they would have been aware of them.

Senator CHRIS EVANS—Dr Morauta?

Dr Morauta—It looks as if we are going to have to take rather more on notice on this than you would probably prefer, but we can get back to you on whether we received the situation reports. These are simple things that we can check. It does not look as if we have any of the officers. We have had quite a high turnover in that area recently and we do not have any of the officers, nor do we have a deputy secretary who was involved in this at that time.

Senator CHRIS EVANS—Dr Morauta, is one of the department's performance indicators the service of estimates?

Dr Morauta—We would certainly endeavour to serve the estimates committee to the best of our ability.

Senator CHRIS EVANS—You tell me that you have turned up to this estimates round with nobody who knows anything about the Iraq Task Force except a chap who was put into the job this morning?

Dr Morauta—I think that, if we were able to anticipate the line of questioning, we would have been able to look into it. We do not have people who know this. It so happens that the staff have turned over—

Senator FAULKNER—Blind Freddy would have been able to predict that you might have got some questions about the Iraq Task Force!

Senator Minchin—Now you are being abusive.

Senator FAULKNER—I mean, what a joke!

Senator Minchin—It is not a joke. You can ask questions on any subject under the sun of PM&C—

Senator FAULKNER—You predicted it, Minister, because of your opening statement!

Senator Minchin—PM&C go to enormous lengths to be ready to answer your questions on everything before the government—

Senator CHRIS EVANS—But they cannot provide anyone to discuss their own task force? Give me a break!

Senator Minchin—In relation to the royal commission, you have been told what the government's direction is. Now you are asking about the Iraq Task Force, which is primarily the responsibility of DFAT. The information you currently seek is not readily available, but endeavours will be made to supply it. I do not appreciate the abuse of the department that you are throwing around gaily and freely.

Senator ROBERT RAY—Minister, we are not seeking full knowledge of what the Iraq Task Force does because, as you say, the lead agency is in DFAT. We are actually trying to find out who in PM&C attended and what their prime role was. That is totally legitimate for estimates and we are entitled to an answer.

Senator Minchin—You might have given the department forewarning that you wanted to ask specific questions.

Senator ROBERT RAY—Minister, what forewarning did you give us of the cabinet decision of 6 February when you ambushed us at 11 o'clock this morning? None whatsoever!

Senator Minchin—You are the one who is wanting information.

Senator ROBERT RAY—No, you are the one who is trying to deprive us of information.

Senator Minchin—If you want information then it is open to you to indicate to the department the sorts of questions you might be asking—

Senator FAULKNER—You really have to be kidding!

Senator Minchin—and therefore the department might be in a better position to answer them.

Senator CHRIS EVANS—They are the same questions that we asked in the last estimates round.

Senator Minchin—You gave no notice of those questions at all. The department has told you that, given the turnover of personnel in that section, there is no-one currently able to give you an answer to that question on the knowledge of the situation reports. But we will endeavour to get you an answer.

Senator CHRIS EVANS—You are seriously maintaining, Minister, that you do not think it reasonable that at estimates you might get asked a question about the Iraq Task Force, which was responsible for coordinating Australia's role in monitoring Iraq, the invasion of Iraq and the post-invasion administration of Iraq, given that we still have 800-plus troops in Iraq? You think it is a surprise, requiring a golly-gosh response, that somebody might ask you about those issues? You front up and say that you do not have anybody who can help. Dr Morauta cannot help and you brought along a public servant who, with all due respect, has been in the relevant job for a day.

Senator FAULKNER—Not quite a day.

Senator CHRIS EVANS—Do you seriously maintain that that is an adequate performance?

Senator Minchin—You are asking without notice if PM&C knew about these situation reports going back to 2003. That is a very specific question.

Senator CHRIS EVANS—No, the first really hard question I asked was whether you were on the task force. You could not answer that one.

Senator Minchin—That is a very specific question, to which—

Senator FAULKNER—Oh, for God's sake!

Senator Minchin—The question was answered. A very specific question about the knowledge of PM&C of the situation reports in 2003 cannot be answered with confidence here at the table, but an answer will be obtained for you.

Senator CHRIS EVANS—So what can you answer, Senator Minchin?

Senator Minchin—Hah—what to answer!

Senator CHRIS EVANS—No—in terms of the task force, how can you help us? Could you describe its role—

Senator Minchin—Are you just going on a big fishing expedition?

Senator CHRIS EVANS—No. I have got a series of questions—

Senator Minchin—You seem to know a lot about the task force.

Senator CHRIS EVANS—I have followed it, actually, in defence, and I am asking about the PM&C's role in it.

Senator Minchin—That is fair enough.

Senator CHRIS EVANS—And you tell me that it is a 'hear no evil, see no evil' sort of response.

Senator Minchin—No, it is not that. You asked a question about knowledge of these situation reports. No officer here feels confident to give you an answer about the state of that knowledge in 2003.

Senator CHRIS EVANS—Given that questions about the Iraq Task Force have been asked of this department and a range of other departments at previous estimates hearings, do you think it is appropriate that the department turns up at this estimates hearing without anybody who has any knowledge of the history of the department's involvement with the task force? Do you think that is a good performance, or have they deliberately been kept away?

Senator Minchin—I am satisfied with the calibre of the officers present. There has been turnover in that section, as you know. I regard both officers at the table as very high quality officers of Australia's Public Service. I do not appreciate undue references to or derogation of their quality. We will endeavour to answer your questions as best we can.

Senator CHRIS EVANS—There is no implication about the officers. Dr Morauta and I have spent many hours together in estimates. It is almost like the Stockholm syndrome—certainly on my part, if not on yours.

CHAIR—It is a joy for both of you, I am sure!

Senator CHRIS EVANS—And I cast no aspersions on her.

Senator Minchin—I appreciate that.

Senator CHRIS EVANS—I do not know Mr Borrowman quite as well, but I cast no aspersions on him. What I am asking is: do you think it is adequate for you to front up today and say, ‘We haven’t brought anybody with us; we have no-one who can help about any knowledge of the Iraq Task Force,’ given that it was so central to the government and this nation over the last four years?

Senator Minchin—What you have just said is a broad-brush extrapolation of the officials’ endeavours to answer two questions on the Iraq Task Force. That is a rather hyperbolic leap. Why don’t you ask some more specific questions?

Senator CHRIS EVANS—Can you confirm—

CHAIR—I know that Senator Fifield has some questions. Do you want to keep the call on this line of questioning? I am happy to leave it with you, but it is just that—

Senator CHRIS EVANS—It seem to me to be reasonable for me to try to follow up just to be clear.

CHAIR—Sure.

Senator CHRIS EVANS—I will go back to taws. Can we confirm that PM&C was and still is involved with the task force?

Mr Borrowman—Yes.

Senator CHRIS EVANS—Fantastic—gee we are making progress!

Senator Minchin—I think you got that answer about 20 minutes ago, actually.

Senator CHRIS EVANS—And we are going to take on notice when PM&C was involved. Is that correct?

Senator FAULKNER—If we did, it was the only answer we got.

Dr Morauta—We took on notice when the task force started and—

Senator ROBERT RAY—You asked for the date.

Dr Morauta—who our representative was at the beginning, and we are trying to find that right now.

Senator CHRIS EVANS—Right. Can you then help me: I want to confirm that nobody representing PM&C at the moment can tell us whether or not PM&C received the concise situation reports described by DFAT in its annual report?

Mr Borrowman—I took up my previous position in late 2003 and would have participated from then. Your specific question about the frequency and provision of those reports is something that I would have to check on. I do not in any sense dispute the fact that, if the situation reports were provided, that would have been one of the documents coming from the committee.

Senator CHRIS EVANS—You say that you do not dispute it, but do you know and did you receive copies of those reports—and by ‘you’, I mean PM&C?

Dr Morauta—I think we took that question on notice in the specific. Do you want to refer us to a particular—

Senator CHRIS EVANS—The officer at the table tells me that he has been involved since 2003. He is clearly not stupid, so I ask: did you or did you not know of those reports? Did you receive them?

Mr Borrowman—If they were produced, we would have received them.

Senator CHRIS EVANS—But you do not recall ever seeing one or reading one?

Mr Borrowman—Not specifically so that I have in my mind a picture of a situation report from the Iraq Task Force, but there were lots of papers about the Iraq Task Force, and situation reports may well have been one of them.

Senator CHRIS EVANS—What else did you get out of the task force? How else did they provide you with information, summaries or reporting?

Mr Borrowman—It was primarily an information-sharing exercise, to the extent that collective information was provided. Situation reports may have been one of the ways of doing it. It is not in that sense an end in itself, I guess is what I am saying.

Senator CHRIS EVANS—Mr Borrowman, you have just told me you have been involved quite extensively in various positions and at various times. Surely you would be able to describe what the reporting back to PM&C was from the task force, apart from the officer who attended having that knowledge. Did you make a separate report after every meeting you attended, or did you receive reports from the secretariat?

Mr Borrowman—The answer is both. If there were documentation coming out of the committee, such as situation reports, then that would be part of it. But the principal form of reporting back would be the participation of the officer concerned.

Senator CHRIS EVANS—When you participated in those meetings and got back to the office, what did you do? Obviously you would have to share that information. I mean as a process, not you personally. What did the officer attending do to share that information and make it available?

Mr Borrowman—The usual process was to talk it around and see what was germane, what, if anything, needed to be done, and act accordingly.

Senator CHRIS EVANS—So you did not provide a written report to anybody?

Mr Borrowman—Not specifically, no.

Senator CHRIS EVANS—Who would someone talk to? Would it be senior officers? How would the reporting go up to the Prime Minister, for instance, if something had happened there?

Mr Borrowman—The information gathered from the task force would inform a briefing that went to the Prime Minister as necessary.

Senator CHRIS EVANS—So if you found a weapon of mass destruction you would have a chat about it and someone would tell the PM?

Senator Minchin—Senator Evans, we are happy to go to process but I am wary of questions that go to content. I know where you are heading.

Senator CHRIS EVANS—It was a hypothetical example.

Senator Minchin—Yes, I know.

Senator CHRIS EVANS—I was trying to make the point—

Senator Minchin—Your tactic is to drop in hypotheticals—

Senator FAULKNER—It was a poor attempt at humour, given the—

CHAIR—It was whimsical, wasn't it?

Senator FAULKNER—Yes, very whimsical!

Senator CHRIS EVANS—I tried to think of a major event that clearly you would bring to the Prime Minister's attention. We can call it something else. A major piece of information—

Senator FAULKNER—He'd dance an Irish jig if you ever did find a weapon of mass destruction.

Senator CHRIS EVANS—I mean a major piece of information, not the day-to-day, 'we had a chat,' and 'situation normal' in Iraq.

Senator Minchin—As I recall it, Mr Rudd believed there were weapons of mass destruction, Senator Faulkner, and you know that.

Senator FAULKNER—All I know is Mr Howard took Australia to war on a lie. That is what I know.

Senator Minchin—If we had not, the corruption would still be going on.

CHAIR—Senator Ray, do you have a question?

Senator ROBERT RAY—You funded it, not us.

CHAIR—Order! Senator Ray!

Senator ROBERT RAY—On your watch.

Senator Minchin—If you had your way there would still be a corrupt government in Iraq.

Senator ROBERT RAY—And you would still be funding them through the oil for food program.

Senator FAULKNER—Well said. Saddam Hussein's bankers!

CHAIR—Order! You have had your say, Senator Faulkner. Senator Evans has the call.

Senator Minchin—I am happy for the question to be put about any important information.

Senator FAULKNER—I bet you are.

Senator Minchin—I am just wary of specific examples.

Senator CHRIS EVANS—The fall of the government, the assassination of the Acting Prime Minister—you know, a major event: how was that conveyed up the chain?

Mr Borrowman—It would have been conveyed in a briefing in the normal process, but the fact that it might have been discussed in Iraq Task Force would not necessarily be germane to that. It was one source, a forum of information sharing.

Senator CHRIS EVANS—So you did not get anything out of the Iraq Task Force?

Mr Borrowman—No, I did not say that.

Senator CHRIS EVANS—If you did get information out of it, what would you do with it? That is what I am asking. What was the process?

Mr Borrowman—The process is that it would inform the normal process of briefing the Prime Minister.

Senator CHRIS EVANS—Is that a written brief or just a verbal brief?

Mr Borrowman—It would usually be a written brief.

Senator CHRIS EVANS—So if you got information you thought was germane, your section would provide a written brief which you would pass on up the chain for the briefing of the Prime Minister. Is that fair?

Mr Borrowman—Yes.

Senator CHRIS EVANS—So that was the process followed inside PM&C. Where there any PM&C personnel seconded into the Iraq Task Force? Obviously they were very busy at various stages.

Mr Borrowman—I would have to check about ‘seconded into’. I do not believe so.

Senator CHRIS EVANS—Perhaps you would take that on notice. But essentially you are saying to me that participation in the committee was the main source of PM&C involvement—is that right?

Mr Borrowman—Yes.

Senator CHRIS EVANS—And we have been able to confirm that PM&C is still involved?

Mr Borrowman—Yes.

Senator CHRIS EVANS—Did agencies like ONA and others participate in the task force?

Mr Borrowman—Yes, but the membership of the task force is a matter for DFAT.

Senator CHRIS EVANS—Was ASIO represented on the task force?

Mr Borrowman—I would have to defer to DFAT on that.

Senator CHRIS EVANS—You are not sure?

Mr Borrowman—I am not sure.

Senator CHRIS EVANS—But clearly Defence was.

Mr Borrowman—Yes.

Senator CHRIS EVANS—Did the task force deal with issues relating to the blockade and Australia’s involvement in the blockade?

Mr Borrowman—All matters relating to Iraq would have come before the task force, so the answer to that would be yes.

Senator CHRIS EVANS—You would have received updates from Defence about the role of our ships as part of the UN blockade?

Mr Borrowman—I think that is reasonable, yes.

Senator CHRIS EVANS—Would there be a report from Defence about their activities or developments or assessments?

Mr Borrowman—Yes. The usual format was to go around the table and invite departments to bring matters to the attention of fellow participants.

Senator CHRIS EVANS—Who was responsible for providing economic advice about what was going on in Iraq?

Mr Borrowman—Are you talking about a particular period?

Senator CHRIS EVANS—I am asking generally, and we can come to the periods in a second. Clearly, part of that assessment was the Iraqi economic position. There was concern about the situation of Iraqi citizens and children in terms of food supplies and concern about health issues. As you know, the UN blockade was about putting pressure on the Iraqi regime but also ensuring that sufficient food was available so that the Iraqi population did not starve. So in terms of the economic issues, who provided the information to the task force about whether or not Iraqi children were starving and whether the economy was generating sufficient support for the Iraqi population?

Mr Borrowman—I think the answer to that would depend on which period you are talking about. Before the fall of the regime, my expectation would be that it would have been provided by assessment agencies, because there would have been no direct knowledge of that. But subsequently, of course, there were Treasury officials seconded to the CPA, so that would have been a supplementary source of advice about the Iraqi economy.

Senator CHRIS EVANS—So prior to the fall of the regime and the direct military involvement in Iraq, that would have been provided by assessment agencies like ONA and—

Mr Borrowman—And DFAT.

Senator CHRIS EVANS—Is it fair to say that those sorts of issues were covered in the considerations of the task force?

Mr Borrowman—Yes, I think it is fair to say that.

Senator CHRIS EVANS—You made the point that things changed. Who did the reporting after the installation of the provisional government?

Mr Borrowman—Both. Before, it could only have been external sources, obviously DFAT and assessment agencies such as ONA. After, we had a Treasury person seconded there, and that would have been a supplementary source of information. It did not mean that the other ones went away; they would have been part of the general stream of reporting.

Senator CHRIS EVANS—But after the formation of the provisional government you had Treasury officials embedded in the provisional government's operations or located with them in country. What is the best way of describing that?

Mr Borrowman—They were with the CPA, the Coalition Provisional Authority.

Senator CHRIS EVANS—So in addition to the normal assessment provisions you started to receive information from—were all the officers from Treasury?

Mr Borrowman—There were officers from other agencies seconded to the CPA as well.

Senator CHRIS EVANS—There were people from AusAID, as I recall. Are they covered in that broad description?

Mr Borrowman—Yes.

Senator CHRIS EVANS—AusAID, Treasury—were there any others that you recall?

Mr Borrowman—I believe there were Defence people. DFAT would be able to give you a comprehensive answer on that.

Senator CHRIS EVANS—Yes, and I think we have covered the Defence representation fairly extensively in the past. So they were providing reports back on economic issues inside Iraq. Were the reports solely to do with the reconstruction or were they on broader issues?

Mr Borrowman—Broadly, the Treasury would be better placed to answer those questions. I should say that the principal purpose of the people seconded to the CPA was not to report back; it was to provide assistance in addressing the problems and putting an administration in place in Iraq, to make a contribution.

Senator CHRIS EVANS—Sure, but, as we learnt with Defence, part of their function was also to keep the Australian government informed of developments inside Iraq and how that might inform Australian policy. Isn't that right?

Mr Borrowman—Yes.

Senator CHRIS EVANS—In terms of that, we made a number of decisions—for instance, about what aid was appropriate to be provided by the Australian government—as a result of that sort of advice. Is that right?

Mr Borrowman—The principal source of advice would have been, once it reopened, the Australian Embassy. As I said, the people working in the CPA had line responsibilities in the CPA and that was their principal function.

Senator CHRIS EVANS—We know also that they were reporting back directly to their departments as well as through the embassy, which was overrun with problems and issues that they had to handle at the time, not to mention their own security.

Mr Borrowman—Yes.

Senator CHRIS EVANS—So it is fair to say that each of those groups—Treasury officials and others—were reporting back to their own departments and through the task force?

Mr Borrowman—I believe so. It is a question that you would have to ask each individual department that had an officer represented.

Senator CHRIS EVANS—If we are allowed to we will. After the formation of the provisional task force, you were receiving more comprehensive economic data. Were the considerations about Australia's trade and economic involvement in Iraq discussed?

Senator Minchin—Your line of questioning has quite clearly been one that seeks to lead up to the point as to what, if any, knowledge the Commonwealth government had of the adduced and alleged corruption of the UN oil for food program. That is clearly where you have been heading in all of this and I think you are just about—

Senator CHRIS EVANS—You are a mind reader as well.

Senator Minchin—I am a very simple man, but that does seem to me to be where you are heading and it now appears that you are on the doorstep of that sort of question. We have indicated to you that questions that go to the knowledge of the Commonwealth of matters of that kind are matters before the royal commission.

Senator CHRIS EVANS—So anything to do with Iraq or economic issues are out of bounds because the commission might delve into those issues?

Senator Minchin—The royal commission is looking at the outcome of the Volcker royal commission in general and, most particularly, the question of Australia's potential knowledge of it or involvement in it. You are now about to go down a path that, in my view, includes matters that are before or could well be before the royal commission. You are about to narrow down to the oil for food program and I am simply restating the position that as far as questions on that program and allegations made about it are concerned they are matters potentially before or actually before the royal commission.

Senator CHRIS EVANS—I thought that might be your response, as you have refused to answer any other reasonable question that we have asked today, but I am keen to establish what information we were getting and how we were getting it from Iraq. That was the main sense I wanted to get. It seems that we have established that we were getting reports back from Treasury officials that flowed through to PM&C and that covered the economic activity both before the provisional government was established and after the provisional government was established.

Senator Minchin—As you know and as Mr Borrowman has confirmed, there was a mission in Iraq and obviously, as a matter of fact, one of its tasks was to report back. The other officers were there, in a sense, on secondment to assist the CPA. But this is PM&C. If you want to ask questions regarding other departments and their role in the CPA, you can pursue them, but questions that go to Australia's knowledge of issues surrounding the oil for food program come under the ambit of the Cole royal commission and are better pursued there.

Senator CHRIS EVANS—Mr Borrowman, can you tell me whether you had involvement through the task force—and by you I mean PM&C—in the decisions about what economic aid investment Australia would make in Iraq post the military phase?

Mr Borrowman—I think that the answer to that is that those are decisions that are taken by government rather than by a task force, and departments would have briefed participating ministers in preparation for those decisions.

Senator CHRIS EVANS—I accept that the government is all-knowing and all-seeking but indefinable, as we established earlier, but what I am asking you is: did the task force participate in any assessment of economic priorities for Australia's involvement in Iraq? Was the task force part of that assessment?

Mr Borrowman—It is an issue that I am sure would have been discussed in the task force. Again, in saying that the task force was part of the assessment suggests that it has particular status rather than being a forum in which information is exchanged.

Senator Minchin—DFAT is obviously the lead agency in making recommendations to government as to the appropriateness of particular aid and aid programs to countries like Iraq, so I think the questions of what consultation DFAT undertook with other departments or other agencies is a matter for DFAT.

Senator CHRIS EVANS—My specific question though is whether that was a function that the task force was involved in. Clearly they were best briefed in terms of knowledge of Iraq both prior to the military phase and just after the provisional government was established. There was a wealth of knowledge and information sharing. I am just trying to ascertain whether such decisions were then left purely to DFAT or whether the task force was involved in those decisions.

Mr Borrowman—Again, I think the answer is that officers who briefed the ministers would be involved in the task force but the task force itself would not have made a decision about that. That is really a question that DFAT should answer.

Senator CHRIS EVANS—Those sorts of things would not have been the subject of the situation report?

Mr Borrowman—I am sure that economic matters would have been covered in them but you are talking, as I understand it, about recommendations, as it were, about Australia's aid to Iraq. Those are decisions that would have been made by the ministers on the basis of briefing for which purpose bureaucrats may well have drawn on information that was shared in the task force.

Senator CHRIS EVANS—Did PM&C have any direct contact with the Iraq provisional authority?

Mr Borrowman—Not to my knowledge, Senator.

Senator CHRIS EVANS—So any involvement or any discussions or liaison or dealings with the Iraq provisional authority were conducted by DFAT?

Mr Borrowman—Are we talking about CPA, the Coalition Provisional Authority?

Senator CHRIS EVANS—Yes.

Mr Borrowman—The broad answer to your question, I think, is yes, because DFAT is the lead agency. It may have been that from time to time certainly people who were seconded to the CPA participated in the task force if they were back. If that comes within the ambit of your question, there was some interface there, but not in terms of direct contact with the CPA on behalf of PM&C, no.

Senator Minchin—We have some answers to some earlier questions.

Dr Morauta—We have some answers to questions you asked about when the Iraq task force was established. It was established on 26 September 2002 and first convened on 27 September of the same year. PM&C at that time was represented by the first assistant secretary, international; the assistant secretary, defence intelligence branch; and the director of defence intelligence section. We were asked about receiving the situation reports that were described in the 2002-03 DFAT annual report, and we can confirm that we received those reports. You asked us whether a PM&C officer was seconded in any way to DFAT for any part of this work, and the answer is no.

Senator CHRIS EVANS—Thank you for that.

Senator FIFIELD—Minister, I would like to take you back to your opening statement this morning, where you said that the government has directed that officials appearing before this committee not answer questions directed to them on matters before the commission of inquiry, the reason being so that Mr Cole can proceed with his inquiry and present his findings without parallel public questioning that would not assist the consideration of complex matters. Your opening statement was received by some senators with a wringing of hands and righteous indignation and the statement that this had never been done before—

Senator ROBERT RAY—Hold on: you have criticised us for editorialising.

Senator FIFIELD—and that there were no precedents and that this was the end of the Senate estimates process as we know it—and associated confected outrage.

Senator Minchin—I recall that response to my statement.

Senator FIFIELD—Thank you, Minister. I would like to put a scenario to you and seek your view as to whether this provides support and a possible precedent for the decision of the cabinet to adopt this particular approach. You will no doubt recall BHP's proposed mine in Kakadu National Park in 1989.

Senator Minchin—I recall that.

Senator FIFIELD—At that time there was a decision by the cabinet that officials in an entire department not answer questions in relation to Coronation Hill. That was not in relation to a royal commission or a commission of inquiry. That decision was taken simply in relation to the fact that cabinet was having a bit of a chat. That was the decision taken at that time. I will give you an instance. On 5 October 1989, Mr Blunn, who was an official at the table, said in response to Senator Puplick:

Senator, if I may say so before you go any further, my Minister has instructed me to answer no questions at all on Coronation Hill.

To another question, he said:

... I regret that under the instructions given to me by the Minister I cannot answer any questions on Coronation Hill.

Senator Bolkus, who was also at the table, said:

Mr Chairman, the clear position as put by Mr Blunn is that he will not be answering any questions on Coronation Hill.

He also said:

The fact is that we, as indicated to the Committee, cannot answer any question in relation to Coronation Hill.

He then said:

Any further questioning on this will be totally fruitless and a waste of the Committee's time.

Senator Minchin, would you consider that this particular decision by the government back in 1989 provides any sort of a precedent for the decision taken by cabinet, given we heard today that this had never happened before and was the end of the Senate estimates process as we know it? I would appreciate your thoughts on that.

Senator Minchin—I appreciate you drawing to this committee's attention the fact that the previous Hawke-Keating government did in fact instruct, through its ministers, its officials not to answer any questions at an estimates committee in relation to the Coronation Hill matter on the basis that that was a matter that was under cabinet's consideration. The then opposition did regard that as a rather extraordinary direction, but it was certainly very much a precedent for governments indicating that, on certain issues, it is not appropriate for officials to answer questions. However, that example is quite extraordinary and quite different from this one, in that the subject of Coronation Hill was determined to be excluded because it was under cabinet consideration. This government, in its 10 years, has never endeavoured to prevent questioning at estimates on the basis that a matter was under cabinet consideration, so that is quite an extraordinary precedent to have set.

I must say, this situation is rather different to that, in that we are talking about Terence Cole's royal commission into matters pertaining to the UN oil for food program and have indicated that questions that come within the ambit of the royal commission should not be answered while the royal commission is sitting. I think that is a perfectly reasonable position. The previous Labor government took the view that a matter that was simply under cabinet consideration should not be the subject of any questioning whatsoever. In light of the fact that at least two of the members of this committee present today were members of that previous government, I was rather staggered by the mock outrage displayed at the committee this morning.

Senator FIFIELD—I would like to read a statement to you and get your thoughts on it:

One would hope that all the legal processes in this country are fair and come to a proper judgment. One would hope that every time a case is taken, either by way of court or by way of inquiry, they will be approached in an objective manner.

I particularly note the next point:

The best way of ensuring that is to divorce the political process from the judicial process.

That was a statement by Senator Ray in the Senate on 16 November 1995. I notice that Senator Ray mentioned 'either by way of court or by way of inquiry'. Do you think that there is a good rationale behind what Senator Ray said—that it is important 'to divorce the political process from the judicial process'?

Senator Minchin—It must be said at the outset that the previous Hawke-Keating government set an extraordinary standard in obfuscation and avoidance of investigation or inquiry. I think our government has been remarkably open. Indeed, on an international scale,

the openness of this government to investigation into any involvement by Australian companies in the oil for food program is unprecedented. But, putting that to one side, I think that Senator Ray made a fair point back then. When sensitive matters of this kind are being investigated in an impartial and objective fashion by a royal commissioner, there are significant risks in subjecting the matter to the political process. We are all small 'd' democrats. I acknowledged that in question time in the Senate. There are questions being asked in the House of Representatives today. But we have done what we believe to be the right thing in this case and have subjected this matter to a full royal commission. I think this committee should respect that process and be sensitive in its questions to ensure that it does not in any way compromise the due process being engaged in by Mr Cole. To that extent, I think that Senator Ray's remarks in 1995 were pertinent.

Senator FIFIELD—I should just put that in context for the committee. Senator Ray's comments were in relation to the Lawrence royal commission at that time.

Senator ROBERT RAY—Yes, and we did not direct public servants not to answer questions.

Senator Minchin—You certainly did in the case of Coronation Hill.

Senator CHRIS EVANS—That is not true.

Senator ROBERT RAY—I was asked questions all the way through. There was no objection from anyone on that side.

Senator FIFIELD—I was not for a second suggesting that the government at that time had directed public servants not to answer questions on the Lawrence royal commission.

Senator ROBERT RAY—And you were commenting non-stop on it.

Senator Minchin—Chair, Senator Evans basically accused the Prime Minister of lying in relation to this matter of Coronation Hill.

Senator CHRIS EVANS—You are misrepresenting what occurred.

Senator Minchin—You said, 'That is not true,' in relation to Senator Fifield's statement and what the Prime Minister said in the House of Representatives today. I have before me the transcript of 5 October 1989. The Department of the Arts, Sports, the Environment, Tourism and Territories was before estimates at that time. It is quite clear. The senior public servant, Mr Blunn, said:

... under the instructions given to me by the Minister I cannot answer any questions on Coronation Hill.

Senator Bolkus, who was the minister at table, said:

Mr Chairman, the clear position as put by Mr Blunn is that he will not be answering any questions on Coronation Hill.

I am not sure how that is untrue, misleading or incorrect.

Senator ROBERT RAY—Minister, seeing that your little flunkey has helped you out, can you—

Senator FIFIELD—That is not—

Senator ROBERT RAY—Of course you are. Have a bit of pride!

CHAIR—Senator Ray, that is not necessary in this committee.

Senator FAULKNER—I am sure that Senator Ray meant that as a compliment. In fact, he was far more generous than I would be.

CHAIR—It is not necessary.

Senator ROBERT RAY—I withdraw that comment. He is a very loyal little acolyte doing his job and waiting his turn—

CHAIR—Senator Ray, that is not helpful at all.

Senator ROBERT RAY—The minister has lined this up. I am asking for a precedent—because my name has been mentioned—where, in 9½ years as a minister, I once directed a public servant not to answer a question. I can only think of one occasion, can you?

Senator Minchin—Senator Fifield properly drew to the attention of the committee in the light of the extraordinary reaction to my statement earlier this morning an example of the previous Labor government having directed public servants not to answer questions on a matter on the grounds that it was under cabinet consideration. I think it quite sensible and appropriate for the committee to be aware, in the light of the extravagant language used this morning about the end of estimates as we know it, that, way back in 1989, a government, albeit a Labor government, issued an instruction to officials that they were not to answer any questions at all on a subject on the grounds that it was before the cabinet. That seems to me to undermine entirely the reaction we had from your committee members this morning.

Senator ROBERT RAY—So it is all right for members of the Liberal and National parties to give a full commentary on the Lawrence royal commission—that is fine—and it was not stopped at the time. Maybe it was admonished, and you can admonish it. There is a difference between admonishing advisers for what is politically desirable, and censorship and banning it. That is the distinction here between the 1995 example, quoted by Senator Fifield, and your attitude today. I would take you a little more genuinely if you had informed this committee after the cabinet decision that we were not to ask these questions. But no, let the mugs here prepare their questions for a few days and then just ban them on the morning by way of ambush. Don't take the high ground on this.

Senator Minchin—It was your committee members who took the high ground; we are simply pointing out the hypocrisy of that position by virtue of evidence to the committee back in 1989.

Senator FIFIELD—No-one was suggesting that Senator Ray had directed public servants not to answer questions. Senator Ray was cited merely where he pointed out the principle that it is important to divorce the political process from the judicial process. Senator Ray was being cited when he stated a particular principle. No-one was suggesting that Senator Ray ever directed public servants not to answer a question—and I do not know whether he did or did not.

Senator ROBERT RAY—Only once. That was David Hill from the ABC. He ignored me and got into trouble.

Senator FAULKNER—I ask the minister whether he is aware of the Clerk of the Senate's letter of today's date which goes to this issue. He says:

Relying on both recollection and search, my colleagues and I have been unable to find any precedents for this direction.

Senator FIFIELD—Chair, I am just wondering whether this advice from the Clerk is available to all the senators or if it is just provided to individual—

Senator ROBERT RAY—It is provided to you just like you provided your material to us.

CHAIR—I haven't received a copy of it, Senator Fifield, but I am sure it will be made available very shortly.

Senator FAULKNER—I am quoting from a letter from the Clerk to Senator Evans and if Senator Evans has no objection to it being—

Senator CHRIS EVANS—No, I am happy to table it.

Senator FAULKNER—Fine, so we will get copies for you. We are very happy to have it tabled. There is the signed copy.

CHAIR—Thank you for your assistance, Senator Faulkner, as always.

Senator FAULKNER—Do you want to wait for a moment until the minister has a copy of the material? I want to be fair about this.

CHAIR—The minister will not have seen this either.

Senator Minchin—You are asking whether I am aware of a letter of today from the Clerk, and I am not.

Senator FAULKNER—If it suits the committee, the photocopy will be available in about 35 seconds. Let us deal with it then. On a different issue, what is the public interest ground on which this announcement has been made this morning by you of the direction to the effect that officers should not answer questions? What is public interest ground that the government depends on in relation to this?

Senator Minchin—As I said at the outset, the government is not claiming any public interest grounds or public interest immunity or any of that kind of thing. It is simply informing the committee that it has made a decision that officials appearing before estimates committees should not answer questions on matters that could come before the Cole royal commission. We are not claiming anything. We are merely reporting to you a government decision with regard to evidence on the matter.

Senator FAULKNER—So it is not based on a public interest ground?

Senator Minchin—There has been no claim by the government with respect to that. We are informing you of a government decision with regard to what officials appearing before this committee should and should not answer questions on.

Senator FAULKNER—I see. Are you saying that there is not a public interest ground or are you not willing to share with the committee what that public interest ground might be?

Senator Minchin—I cannot add to my answer. The government is not claiming any public interest grounds in relation to evidence before this committee. The government has decided—and, as the Prime Minister said, it was a cabinet decision—that officials should be directed in the manner in which I stated in my statement to you this morning, and the reasons for that.

Senator FAULKNER—You are now being provided with a copy of this letter, which I should identify and table.

CHAIR—I want to jump in on an administrative matter. I understand that there are no questions from senators relating to the Office of the Inspector-General of Intelligence and Security, so officers from that office, if they are listening to this in the other room, are no longer required.

Senator FAULKNER—Can I draw your attention, Minister, to the second paragraph of the letter from the Clerk of the Senate, which says:

Relying on both recollection and search, my colleagues and I have been unable to find any precedents for this direction.

I interpolate here that the direction, of course, is yours to the effect that officers at the table should not answer questions—as you would appreciate. It goes on:

There have been occasions when ministers, officers and statutory office-holders have expressed some reluctance to answer questions about matters before commissions of inquiry, but no case of a general instruction by government of the kind referred to by Senator Minchin.

My first question to you is this: are you aware of any precedent at all for the extraordinary direction that you made this morning to officers at the table not to answer questions?

Senator MINCHIN—We are not seeking to claim precedent, public interest or anything else. This government deals with the matters before it on their merits and, given that there is a royal commission underway into this matter that does go to the Commonwealth's knowledge of relevant facts and to the knowledge of DFAT and other offices and given that public servants are liable to be called before this royal commission with regard to their knowledge of these matters and that the Prime Minister has made it clear that ministers can be called, the government has decided that in these circumstances this direction should be issued. I note that Mr Evans goes on to refer to the general instruction issued by the then Labor government in 1989 about Coronation Hill, so there is certainly a precedent for a general instruction with regard to a subject matter before estimates.

I find it somewhat surprising that Mr Evans seems to imply that that was all okay because the matter was under cabinet consideration. If you want to talk about undermining the process of estimates, for governments to claim that any matter that may be subject to cabinet consideration cannot be a subject for inquiry is a much more extraordinary and widespread claim than the statement that we have made about these matters that are the subject of a royal commission coincident with this round of estimates.

I would have thought that what happened in 1989 was a much more disturbing statement with regard to your apparent desire to ensure the integrity of the estimates process than the decision by the government in this case with a royal commission underway into matters that do and will involve the question of knowledge of Commonwealth office bearers. So (a) there is a precedent for the general instruction, so I am not sure what Mr Evans is talking about and (b) the precedent is much wider and more disturbing in terms of your concerns than the statement we have made today.

Senator FAULKNER—That was very long answer. Are you saying that you know of no precedent for such a direction to be provided to officers? I think that was the import of the first sentence of your answer. You then went on—

Senator Minchin—There is a precedent—the 1989 precedent—by your own government.

Senator FAULKNER—Let me now go on to the next sentence in the letter:

Reference was made in the House of Representatives to an instruction by the then government in 1989 that officers should not answer questions about the Coronation Hill uranium mine. The basis of that direction, however, as was made clear by the responsible minister in the Senate, Senator Richardson, was that Cabinet was deliberating on the question of Coronation Hill at the time of the estimates hearings, not that a commission was inquiring into the matter. (The need to protect the confidentiality of deliberations of Cabinet is one of the known grounds for a claim of public interest immunity.) That occasion was therefore not a precedent.

I asked you a little earlier in this hearing: what is the public interest ground on which a direction has been provided to officers of departments not to answer questions directed to them on the Cole royal commission?

Senator Minchin—I answered that question earlier. I told you that the government is not claiming any public interest immunity; the government is reporting to you a decision that it has made to direct officials as to the issue of them answering questions on matters that are or could come before the Cole royal commission. I do not know whether in 1989, when this general instruction was made—which is a precedent—the then minister made some claim of public interest immunity. I have no knowledge of that, but certainly a general direction was issued at that time which, as I say, is based on a much more widespread ground of exclusion of questioning than this statement by us.

Senator FAULKNER—The truth is that, regardless of the Dorothy Dix questions asked by Senator Fifield, there is absolutely no precedent in the history of the Commonwealth parliament and since the establishment of Senate estimates committees, for the direction that has been provided by you to officials today. There is no precedent. The fact that there has been no precedent is confirmed in writing by the Clerk of the Senate. Isn't it now time for you to admit that what you are doing is just a political cover-up and has absolutely nothing at all to do with proper parliamentary process or committee procedure; it is just a clear attempt to try to ensure that information which ought to be properly adduced at committees like this is not provided to the public and the parliament through the Senate estimates committee process? Why don't you just admit it and let's get on with it?

Senator Minchin—Thank you for the invitation, Senator Faulkner, but I do not propose to admit to the crime to which you accuse us. There is a clear precedent for a general instruction by a government to officers at the table at an estimates committee not to answer questions. There was a precedent in 1989. I am surprised that the Clerk of the Senate should seek to distinguish that circumstance in 1989 and claim that it is not a precedent or evidence of a similar general instruction. I find that remarkable by Mr Evans. I think the singular coincidence of a royal commission with these particular estimates hearings is an appropriate basis on which the government has issued this direction. We have said in the statement:

While examination of officials by the committees might be appropriate in the future—

and we have another round of estimates in May—

the government considers that Mr Cole should be able to proceed with his inquiry and present his findings without parallel public questioning that will not assist consideration of complex issues.

Senator ROBERT RAY—So will this department be ready in May to answer questions on this or will they have changed their corporate knowledge so no-one is left around to answer the questions? That is a fair question. You have presaged May as a possibility if Cole has completed by them—and we presume he would be but anything can happen and I concede that. But if he has completed and has reported, are we then entitled to ask questions or are you going to come along and say that there are possible criminal charges and we cannot ask questions?

Senator Minchin—I have indicated to you that this decision applies to this round of estimates. The government's decision formally records that examination of officials might be appropriate in the future. So I have alluded to the possibility that, as you say, depending on the turn of events and the completion of the royal commission, it may be appropriate at that time.

Senator ROBERT RAY—Will you let us know in advance whether it is appropriate?

Senator Minchin—We will inform you at the appropriate time of any decision—

Senator ROBERT RAY—I am asking you when the appropriate time is. Are you going to expect us to go away like we did this time and do a fair amount of research to prepare only to find that you come in at the last minute? Surely it would be a little bit more decent for you to give us a few days notice if you were going to reimpose the ban or not have a ban.

Senator Minchin—I note your reaction to the statement. All I can do is draw your attention to our statement that, while in the future it might be appropriate to ask questions of this kind, we do not believe it is appropriate on this occasion.

Senator ROBERT RAY—But I have gone on and asked whether it is appropriate that we can be told by way of a statement at the start of the estimates committee when with a few days notice we might know whether we can concentrate on these matters or other matters. You have alerted us today to the great effort put it by PM&C in preparing your briefs in the full knowledge that you would not have to answer questions on these. I am just asking for the same courtesy for us.

Senator Minchin—We thought it was appropriate on the first morning of a week of estimates that the government's decision be conveyed, and of course those estimates committees meeting on Tuesday, Wednesday and Thursday have formal notice of this decision. But I take on board your complaint about the timeliness of the notice.

Senator FAULKNER—Why wasn't the Senate informed when it made procedural decisions last week about the estimates hearings? Why wasn't the Senate itself informed of this cabinet decision that was made a week ago?

Senator Minchin—The government decided that the information regarding this decision would be reported this morning at the start of the estimates week.

Senator FAULKNER—Why wasn't it decided to be appropriate to report this to the Senate in the circumstances?

Senator Minchin—We are reporting it to the committees examining the additional estimates—

Senator FAULKNER—Yes, but the Senate sat—

Senator Minchin—in anticipation of the necessity for it. It might have been reasonable for us to assume that you would be courteous enough to the royal commission not to ask questions. But given that there was a possibility you might ask questions on this matter we saw fit to make this statement this morning. It means that committees meeting on Tuesday, Wednesday and Thursday now to have ample notice.

Senator FAULKNER—Are you seriously saying to this committee that it is now an issue of courtesy, courtesy that did not apply when questions were asked at this very committee while royal commissions were investigating the Centenary House issue and recently in relation to Mr Cole's royal commission into the building industry, not to mention the HIH royal commission? Are you seriously saying now to the committee that this is a matter of courtesy that applies only to this latest royal commission? It is not an issue of process, procedure, precedent, but just a matter of courtesy?

Senator Minchin—I have not issued a general statement with regard to estimates and royal commissions. I have issued a statement on the government's position with regard to this royal commission and the government's belief that Mr Cole should be able to proceed with his inquiry and present his findings without parallel public questioning.

Senator FAULKNER—You said it was courtesy.

Senator Minchin—It is a courtesy to Mr Cole to enable him to proceed with this inquiry.

Senator FAULKNER—Why wasn't that courtesy extended to Mr Cole in his other royal commissions?

Senator Minchin—It is not a statement in general about royal commissions; it is a statement about this royal commission, which we have examined on its merits and about which we have concluded, for the reasons I have outlined ad nauseam today, precludes answering questions by officials at these estimates.

Senator FAULKNER—Why was a cover-up appropriate for this royal commission and not for the other recent ones I have mentioned?

Senator Minchin—You might just as well ask why a cover-up of Coronation Hill was appropriate for your government in 1989. That is how stupid it is.

Senator ROBERT RAY—But you could have asked those questions at the time. It is now your turn to answer questions. It is legitimate for us to ask why, comparatively, there was not a ban on questions on Centenary House, the Coles building industry inquiry and the HIH one. Why suddenly this one? Is it government self interest that has suddenly come into play? What has changed? Why has past practice suddenly—

Senator Minchin—I have told you: the government has not made any general decision with regard to estimates questions that occur at the time of royal commissions. We will deal with each case on its merits. On the merits of this case, and the nature of the inquiry that

Mr Cole has been asked to conduct, questions on matters before him are not appropriate to be answered at this estimates.

Senator ROBERT RAY—How does it interfere with his inquiry?

Senator Minchin—I have indicated to you that it is the government's belief that he should be able to proceed with his inquiry without parallel public questioning of this matter.

Senator ROBERT RAY—But how does parallel public questioning interfere with anything he is doing?

Senator Minchin—I have said as much as I can possibly say on this subject, and I am not going to add to my statements about the nature of the government's decision.

Senator ROBERT RAY—That is because you cannot.

Senator Minchin—It has made its decision, and in deference to this royal commission and the nature of its inquiry, and the role and prerogative of the commission in endeavouring to determine the knowledge of the Commonwealth with regard to these matters—which I think does distinguish this royal commission—for the time being, questions to officials cannot be answered.

Senator ROBERT RAY—What I was looking for is some justification. You just keep on asserting that this is the government's view without saying how it formed or what rationalisation and justification it has for that view, because you have not got one.

Senator Minchin—We do have one but, obviously, you in your partisan fashion are not prepared to accept it, despite the fact that your own government issued, I think, a much more extraordinary direction in 1989 not to answer any questions, simply because it was a matter that cabinet was having a think about. There would almost be no subject that you could ask questions about if you took that to its logical extreme. We have not ever in our 10 years endeavoured to restrict your questioning at estimates on matters simply because the cabinet has them under consideration—never in our 10 years have we done that. There is now a royal commission into a serious matter; for this round of estimates questions can be asked but answers will not be given.

CHAIR—Minister, can I draw your attention to the letter from Mr Evans, the Clerk, again. In the third paragraph the sentence in brackets says:

The need to protect the confidentiality of deliberations of Cabinet is one of the known grounds for a claim of public interest immunity.

As I understand it, the deliberations of cabinet are never part of the scrutiny process or purview of estimates in any case. Is that your understanding?

Senator Minchin—That is a given.

CHAIR—Of course it is.

Senator Minchin—But that is not a reason not to ask any questions of a broad kind on a subject like Coronation Hill, for example.

CHAIR—Senator Fifield read out from the transcript of the estimates committee of 5 October 1989. In response to a question of Senator Puplick, Mr Blunn said:

Senator, I regret that under the instructions given to me by the Minister I cannot answer any questions on Coronation Hill.

That is far broader than cabinet deliberations. No-one has ever suggested that cabinet deliberations should be the subject of estimates' purview but, in fact, the entire subject matter—not the cabinet deliberations—was excluded. That is your point.

Senator Minchin—That is correct. That is why I find the letter from Mr Evans rather remarkable. It is as though he is saying, 'Well, that is all right, but what the government is doing today is not all right.' I find that value judgment by the Clerk rather remarkable, given the extraordinary direction issued in 1989: that nothing at all about Coronation Hill was to be answered.

Senator FIFIELD—Mr Evans seems to be saying that having an issue listed on the cabinet agenda is all that would need to happen so you could say: 'That is the subject of cabinet deliberations; therefore, it is out of bounds.'

CHAIR—The entire subject?

Senator FIFIELD—So a future government—

Senator FAULKNER—Can I say—

CHAIR—Senator Faulkner, I will give you back the call on this subject in a second.

Senator MURRAY—I am finding this circuitous and a little annoying. The issue of precedence in a court situation is whether it is accepted by the court, not by the claimant. In this case, the government is the claimant. The Senate has not ruled whether it accepts this kind of precedent and, as far as I am aware, the Senate has not ruled whether it accepts the Coronation Hill situation as a precedent. My point of order is simply that this discussion about precedence does not exist on the basis that the government claims it to exist—

Senator Minchin—Well, no, hang on a minute—

Senator MURRAY—I am on a point of order.

Senator FAULKNER—He is in the middle of his point of order!

CHAIR—You are right, Senator Faulkner. Senator Murray has the call.

Senator Minchin—On the point of order—

Senator FAULKNER—That is all right. Wait until he finishes. Do not be so rude. I am shocked. I am surprised that someone from the Liberal Party could be so rude!

Senator MURRAY—because neither the committee nor the senators accepted the precedent.

CHAIR—Yes, you are right, Senator Murray.

Senator Minchin—On the point of order: I made it clear, if Senator Murray was listening, that the government is not claiming precedent, public interest grounds or anything.

Senator CHRIS EVANS—Because there is no basis for it.

Senator Minchin—I am reporting to you a cabinet decision that officials of the government appearing before estimates committees are not to answer questions on matters that could be, will be or are before the Cole royal commission.

Senator FAULKNER—On the same point of order: the point was that he is not claiming public interest grounds, because there are no public interest grounds for the decision.

Senator MURRAY—He was claiming Coronation Hill precedent.

Senator FAULKNER—But that has been—

Senator Minchin—I am not claiming or seeking to establish a precedent.

CHAIR—I know you are not.

Senator FAULKNER—And there is no public interest.

Senator Minchin—The committee's attention has been drawn to the fact that, in 1989, the previous government issued a direction. I do not know if that was formally claimed to be on public interest grounds or anything, but certainly there is a clear precedent for a very general direction to officials appearing before estimates committees as to what questions they could or could not answer. In that case it was on the grounds that it was before the cabinet, which seems remarkable.

CHAIR—There is no point of order, and I am prepared to indulge this discussion further if senators want to.

Senator FAULKNER—I have just one final point on this. Has the minister who made this grand announcement to the committee or the amorphous government—which I assume is the upper-case 'G' that Senator Minchin has referred to throughout the hearing—established whether the direction that Senator Minchin made at this committee this morning is a lawful and reasonable direction under section 13(5) of the Public Service Act 1999? That is an act which I of course was very much involved with—as I think Senator Murray was—in terms of its legislative evolution. Can you tell us that, Senator Minchin?

Senator Minchin—I have reported to you a cabinet decision. If you are seeking to question the veracity of that decision feel free to do so, but I am reporting to you a cabinet decision.

Senator FAULKNER—You obviously did not hear my question. Let me be clear again. Has the government sought advice as to whether the unprecedented direction that you read out at this estimates committee this morning is a direction that is a 'lawful and reasonable direction' under section 13(5) of the Public Service Act 1999? That is my question.

Senator Minchin—Well, (a) it is not unprecedented. As I have said to you, your own government in 1989 issued a general instruction of a very similar kind and, I would have thought, with less basis than the direction issued by this government. We have never sought to claim or purport to deny officials the right to answer questions on the grounds that it was something before the cabinet—never in 10 years. I am not going to go into, with this committee, particular advices sought or not sought by the government, except to say that the government is entirely satisfied with the appropriateness and propriety of its decision.

Senator FAULKNER—The Public Service Act was finally passed through the parliament, after an extraordinary amount of debate a couple of years previously, in 1999. It was enacted in 1999. My question goes to a specific section of the act. At least two people around this table—me and Senator Murray—lived and breathed this piece of legislation literally for years. I am using the terminology under the act when I say ‘lawful and reasonable direction’, and we have had this pompous question from Senator Fifield—

CHAIR—Senator Faulkner!

Senator ROBERT RAY—Unctuous, obviously, not pompous.

Senator FAULKNER—Well, unctuous and pompous.

CHAIR—It was appropriate.

Senator FAULKNER—So what is the situation under section 13(5) of the Public Service Act? I doubt very much whether it is a ‘lawful and reasonable direction’ under the act. But I am sure if cabinet dealt with this on 6 February that advices would have been sought. Isn’t that a reasonable question to ask of this committee?

Senator CHRIS EVANS—You don’t think it was just a rushed fix?

Senator FAULKNER—I just think it was a fix, rushed or not.

Senator Minchin—Senator Faulkner is perfectly entitled to ask the questions. I am not going to go into any detail about what advice the government may or may not sought—

Senator ROBERT RAY—You are not up to the job.

Senator FAULKNER—You have got no idea.

Senator Minchin—except simply to report that the government is satisfied—

Senator FAULKNER—You do not even know whether what you have done is lawful.

CHAIR—Are you asking for legal advice?

Senator FAULKNER—I have asked whether advice has been sought. I asked a process question, and if you had been listening you would have known that.

CHAIR—All right. It is hard to keep up with the play, Senator Faulkner.

Senator Minchin—All these poor besotted Labor people can do is abuse people. Go back to Victoria and abuse some people down there.

Senator ROBERT RAY—How’s the wine merchant going in their preselection, Senator? Do you want to get into that?

CHAIR—All right. Minister, you have to call.

Senator Minchin—I indicated that I am not going to go into any detail about what advice was or was not sought by the government, except to say that the government is satisfied about the basis on which it has made this decision, the propriety and appropriateness of this decision.

Senator CHRIS EVANS—The basis of the decision is the Senate majority.

CHAIR—Senator Evans, I am going to give the call to Senator Murray, and when Senator Murray has finished I will hand it back to you.

Senator MURRAY—I have a brief question to commence, Minister. As I understand it now, both the letters patent and the powers conferred on this commission entitled it to be called a royal commission. That is correct, isn't it?

Senator Minchin—Entitled it to be called a royal commission?

Senator MURRAY—A royal commission.

Senator Minchin—Yes.

Senator MURRAY—My memory is that when it was first announced, both in the announcement and the press release, this commission of inquiry was not referred to as a royal commission. Is my memory correct?

Senator Minchin—My recollection is that from the time of announcement we made it clear this was a royal commission. The formal description I think is inquiry, but the expanded terms of reference refer to the Royal Commissions Act 1902 and also the original terms of reference say:

... on the advice of the Federal Executive Council and pursuant to the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and other enabling powers, We appoint you to be a Commissioner to inquire into and report on ...

I do not know, in the public nomenclature, what particular references or descriptions were used, but it has always been the case that from the time of the formal issue of the terms of reference this was an inquiry instituted under the Royal Commissions Act, ipso facto it was a royal commission.

Senator MURRAY—I may be being unkind, but my impression was that originally it was underplayed and was spoken of as a judicial inquiry and not of the status of a royal commission but had been given that status subsequently.

Senator Minchin—To be fair, I do not think that is a proper description of—

Senator MURRAY—I might be being unkind. If an officer is not available to answer the question easily, perhaps someone could let me know on notice the time of the announcement and the press release in which it was referred to as a royal commission and what its proper name will be in the future—because of the potential for confusion with the building industry commission. That is traditionally referred to as the Cole royal commission, so the question really is: how will this be officially referred to?

Senator Minchin—It is the inquiry into certain matters relating to decisions or actions of Australian companies mentioned in the final report of the independent inquiry committee into the United Nations oil for food program, but the instruction to the royal commissioner of 10 November 2005 was very much under the auspices of the Royal Commissions Act. He is, by virtue of that instrument, signed by the Governor-General and the Attorney-General, appointed to be a commissioner to inquire into and report on the matter. So, whatever the public layman's descriptions that might have been used by a variety of people, it has been clear from the outset that, as far as the government is concerned, Mr Cole has been appointed as a royal commissioner.

Senator MURRAY—Moving on to the terms of reference of the Cole inquiry, the inquiry was constituted to look into breaches of Australian law. The terms of reference specifically refer to:

... a breach of any law of the Commonwealth, a State or Territory; and

(b) if so, whether the question of criminal or other legal proceedings should be referred to the relevant Commonwealth, State or Territory agency.

Does that mean that the Cole royal commission does not cover potential breaches of international law?

Senator Minchin—I will choose my words carefully, because I am neither the Attorney-General nor an expert on the details of the establishment—

Senator Faulkner interjecting—

Senator Minchin—That is probably true, but I think you should accept that the terms of reference refer to breaches of Australian law, be it Commonwealth, state or territory law.

Senator MURRAY—Therefore, with respect to this direction to the members of the department concerning the Cole royal commission and answering questions, any questions with respect to probable breaches of United Nations Security Council resolutions 661 of 1990, 986 of 1995 and 1538 of 2004 would be perfectly in order?

Senator Minchin—Questions can be asked, but officials are mindful of the government's decision as to questions that can be answered. Because the commissioner in his statement of 3 February has explained the manner of his interpretation of the terms of reference and has referred specifically to it necessarily being the case that the knowledge of the Commonwealth of any relevant facts is a matter to be addressed by this inquiry, there is some restraint on the capacity of officials to answer questions about alleged corruption in the UN oil for food program. The commissioner has made it clear that he will have a fairly widespread inquiry into what knowledge the Commonwealth had about relevant facts. It could well be a relevant fact that there was, hypothetically, knowledge of some alleged breach of international law.

Senator MURRAY—I do not know, Senator Faulkner, if you have covered this earlier—and perhaps you could pick up on this—but it is my view that a strict reading of the terms of reference, along with my understanding of what Commissioner Cole has said, suggests that he will not be inquiring into potential breaches of the United Nations Security Council resolutions 661, 986 and 1538 with respect to the operations of AWB. Therefore, the government's cabinet instruction should not apply to questions concerning breaches of international law. Are you telling me that the committee should view your government instruction in the broad to cover international law breaches as well as Australian law breaches?

Senator Minchin—I am making the point that the commissioner has indicated just how broadly he is approaching this matter in endeavouring to report on the terms of reference. He is regarding this as a wide inquiry and if he believes that he needs to seek a widening of his terms of reference he will do so—he has already done so, and that has been granted. He has made it clear that the knowledge of the Commonwealth of any relevant facts is a matter to be addressed by his inquiry and that he will be seeking to make findings regarding at least the

role of DFAT and whether the Commonwealth was informed et cetera. Therefore, matters pertaining to knowledge within the Commonwealth, if any, of matters relating to the UN oil for food program are within the direction that has been issued.

Senator MURRAY—Let me try a different direction. I have understood—

CHAIR—Senator Murray, can I interrupt with an administrative matter? Please excuse me, but I have just received a note from the Clerk relating to the discussion we had before. I will have it copied.

Senator MURRAY—I would really prefer if we could hold that over, unless it is urgent.

CHAIR—You continue with your questioning. But I just thought I would say this so I can get it copied now and distributed to members while you are asking your questions.

Senator MURRAY—I see; okay.

CHAIR—Senator Murray, you carry on.

Senator MURRAY—I would not like that to provoke any discussion.

CHAIR—It will. Do you want me to hold off on it?

Senator MURRAY—That is what I was asking.

CHAIR—All right; I will hold off on it for the moment.

Senator MURRAY—Let me try from a different direction, Minister. I have understood the Prime Minister's general remarks to be that he welcomes an open and full inquiry. In that sense, I feel that his implication is that Commissioner Cole should not feel restricted to the strict letter of the terms of reference. If my interpretation means that Commissioner Cole could arrive at conclusions as to whether there were probable breaches of international law, then that is a very interesting development. That is why I ask you—and you may wish to think about it and come back—whether you consider possible breaches of international law as within Commissioner Cole's remit.

Senator Minchin—Mr Borrowman, who was earlier giving evidence, just made the point to me that—and this is a somewhat more arcane subject than I am familiar with; maybe you are familiar with it—using the description 'international law' is a rather vague term. It is not exactly clear what you mean by 'international law'.

Senator MURRAY—Shall I be specific? I can assist you if you wish.

Senator Minchin—Mr Borrowman also made the point that the UN sanctions in question were incorporated into Australian law and therefore, to the extent that you are talking about breach of sanctions, then you are talking about matters quite clearly within the ambit of the royal commission.

Senator MURRAY—That is an important point. I would have assisted you as follows: my understanding of the law is that the Australian government has an obligation under international law to cooperate fully with the United Nations Security Council resolutions to which it is a party. Decisions made by the Security Council are binding on all members and one aspect of that duty to cooperate is to guarantee that government entities, as was the Wheat Board up to 1998, and Australian companies, such as AWB post 1998, were not breaching the

sanctions regime against Iraq. I would think that, if that summary is accurate, there is the potential for court or legal action to be incurred as a consequence of Commissioner Coles' recommendations both within and outside Australia.

Senator Minchin—Sorry. I thought you were seeking to purport that what you describe as international law had nothing to do with this inquiry and any questions relating to that could therefore be asked.

Senator MURRAY—No. I have gone through a range of options. The first is that the terms of reference refer specifically to Australian law and breaches of Australian law. So my first question was: does it cover potential breaches of international law? I also relate that of course to your restriction on questions being answered, because if your answer was that it is solely Australian law and has nothing to do with breaches of international law then the question is whether your restraint on your officers applies. If your view is that it could cover international law then your restraint on officers applies to that is well. But I then move on to question that, if Commissioner Coles' remit is much broader than the narrow reading of the terms of reference would imply, there are larger potential issues arising from the Cole inquiry because of potential international legal action as well as Australian legal action.

Senator Minchin—To the extent that any international law to which you refer is not incorporated into Australian law—and I referred to the fact that, as I am advised, UN sanctions to which we are bound or comply with are incorporated into Australian law—ipso facto international law of that description is incorporated into the terms of reference and are therefore properly subject to the government's decision. But even beyond that to the extent that the commissioner in his 3 February statement has made clear that the question of knowledge of the Commonwealth of any relevant facts is a matter into which he would inquire, that potentially does take you beyond the strict letter of the law per se because it may be relevant to the commission to examine matters of that kind in coming to conclusions in relation to the strict terms of reference.

Senator MURRAY—It then goes to the matter of penalties as well. My mind was exercised by a view I have that sanctions constitute non-violent war. It is an act of aggression. In international law that may not be an accurate definition and I was interested to see whether both the declaration of war with Iraq and the declaration of sanctions would trigger either potential treason or treachery offences if aiding and abetting the enemy were seen to be a result of breaches of the oil for food program. I had a look at the criminal law with respect to treason and that is only triggered when there is a proclamation, and a proclamation was never made with respect to Iraq.

I then had a look at the treachery provisions. Both of these provisions of treason and treachery have imprisonment for life as a penalty. The treachery provisions were not triggered because of proclamation. I am not asking for a legal opinion but there is one issue for me which I would like you to take on notice, because I am sure you cannot answer it off the cuff. In what instances would an Australian government—both in precedent terms and in present circumstances—initiate a proclamation which would trigger treason and treachery offences? The reason I ask this is that with some of the war talk going out around about Iran, and some people are talking up hard talk and so on, I would like to know on what basis Australia would

ever make a statement which would trigger treason and treachery offences, because they do not seem to me to apply with respect to the AWB issue.

Senator Minchin—You are certainly correct to say that I could not answer that question without notice. It is more pertinent, I guess, to A-G's and/or DFAT than it is to PM&C.

Senator MURRAY—Except that a proclamation is made by cabinet, you see. It would come through the Prime Minister.

Senator Minchin—There is no reference by the royal commissioner to treason and treachery or any of that sort of thing.

Senator MURRAY—The royal commissioner has been asked to examine the question of criminal or other legal proceedings and whether there should be reference to relevant Commonwealth, state or territory agencies. It is quite apparent that there are potential breaches of the Corporations Law and of the Criminal Code. The maximum penalty that I could find is a potential for imprisonment for 10 years for anyone who would get to that level. But the more serious public allegation is that these people essentially assisted the enemy. People are accused of doing that and therefore I was interested in the treason and treachery issues. My reading of those is that they do not apply because there was not a proclamation. So my question is: when would there ever be a proclamation?

Senator Minchin—It is a legal question and you broadened that out to a general question about what circumstances would lead to the proclamation. I will endeavour to get you an answer.

Senator MURRAY—That is all I have for the moment.

Senator Minchin—Mr Chairman, Senator Murray asked about the description of the committee. The Attorney-General's statement on the website of 10 November, the day the instruction was issued, described this as an inquiry into 'certain Australian companies' and said that commissioner had been appointed to conduct the inquiry. The final sentence of the statement was that the inquiry 'has powers conferred by the Royal Commissions Act 1902'. We were not seeking to avoid this being described as a royal commission. It is clearly a royal commission and I do not think that we have sought to hide that or play that down.

Senator MURRAY—I will be interested to find out what its general short form is going to end up being because I can see some confusion.

Senator Minchin—I accept that, Senator Murray.

Senator FAULKNER—Senator Minchin, what was the role, if any, of the Department of the Prime Minister and Cabinet in the appointments of people to the Coalition Provisional Authority in Iraq? Did the Department of the Prime Minister and Cabinet have any role in the appointment process?

Mr Borrowman—I am afraid I am going to have to take that on notice.

Senator FAULKNER—You do not know?

Mr Borrowman—No.

Dr Morauta—It may be something we can find quite quickly. People will be watching and trying to find out.

Senator FAULKNER—You do not know either, Dr Morauta?

Dr Morauta—No. But we will try to get information for you on that as quickly as we can.

Senator FAULKNER—Is it possible that after the dinner break we can have some officers at the table who might be able to answer some questions about the appointment process and the involvement of the Department of the Prime Minister and Cabinet in that process? Two of those appointments, I have to say, Minister, have received quite significant publicity, which I am sure you would appreciate: Mr Flugge and Mr Long. You would be aware of the case of both of those appointments; I am sure you would have heard of those.

Senator Minchin—Yes.

Senator FAULKNER—Obviously, these are government decisions—using your terminology. I assume, but do not know, that the lead agency in this is the Department of Foreign Affairs and Trade. My interest is the involvement of the Department of the Prime Minister and Cabinet. I am happy to leave that till after the dinner break if we could—

Senator Minchin—We will try to get you an answer by 7.30.

Senator FAULKNER—And there will possibly be some follow-up questions in relation to Mr Flugge and Mr Long's appointments. If we could do that I would appreciate it.

Senator Minchin—Yes.

Senator FAULKNER—Is anyone in the department able to inform me about what role, if any—and again I expect that the lead or key agency in this is the Department of Foreign Affairs and Trade—the Department of the Prime Minister and Cabinet had in relation to the approach of Ambassador Thawley to the chairman of the US Senate investigations committee. That occurred in late 2004, as you would be aware. Is there someone at the table or elsewhere in the department who could let us know if there were any departmental processes involved in that approach?

Dr Morauta—Again, we will see if we can get information as quickly as possible about any possible PM&C role.

Senator FAULKNER—Most of my questions relate to or possibly flow from those two issues, so we will come back to those after the break, Minister, and chase them down. Who is responsible for cable traffic in the Department of the Prime Minister and Cabinet? When the Department of the Prime Minister and Cabinet is identified on cable traffic, is that dependent on the nature of the cable or is cable traffic generally something that is handled in your division, Mr Borrowman?

Senator Minchin—I am sorry, Senator, was that a factual question about who handles cable traffic in the department?

Senator FAULKNER—It was a factual question. When the Department of the Prime Minister and Cabinet is included on the distribution list of a diplomatic cable, does that automatically go to the International Division of Prime Minister and Cabinet? I assume there is a central receiving point or the like. I do not know this and I do not want to make assumptions. I want to understand where such a cable goes in the department. I thought it may well be to your division. Could you just explain that to the committee?

Mr Borrowman—The general answer to that is that the distribution of any cable is set by the originator of the cable, who can choose where they direct it. That may therefore include the International Division; it may not include the International Division.

Senator FAULKNER—Is the originator of the cable normally that specific about the receipt address on a cable or does it just list departments generally? A lot of the cables that I have seen just list agencies, departments and the like. I am sure you have seen similar cable traffic. Admittedly my knowledge of these things is a bit long in the tooth.

Mr Borrowman—There have been a number of changes over recent years in the cable system which, as you indicated in your remarks, is the responsibility of DFAT. So in some measure the answer to the question depends on when you are talking about, and DFAT can give you a more precise answer on that. At the moment the distribution is set by the originator and, yes, it is to that level of specificity.

Senator FAULKNER—That does not really help me very much. Are you saying there is a fairly specific address point?

Mr Borrowman—When one creates a cable, one of the stages of so doing is that you are given a range of addressees from which you choose. The system chooses some automatically, and the originator can add to or modify those or essentially create an entirely specific distribution list. There is no central point anymore. This is a very arcane field and I would defer to DFAT on the specifics about it, but that is certainly my experience as a user.

Senator FAULKNER—So you are saying the addresses are quite specific and that it would be, at a minimum, a division in Prime Minister and Cabinet and the like?

Mr Borrowman—Of course we never send cables to ourselves, but at the moment it is down to levels of, yes, International Division head, for example, and International Division officers.

Senator FAULKNER—With regard to the searches that you would have done in compiling the information to be referred to DFAT, you outlined a range of the sorts of material that you looked at but I assume you looked at all the cable traffic as well. That would seem to be a pretty obvious thing to do.

Mr Borrowman—Yes.

Senator FAULKNER—So that was done?

Mr Borrowman—Yes.

Senator FAULKNER—And the cable traffic that is received by the Department of the Prime Minister and Cabinet would, I assume, be cable traffic that in not all cases but in many cases would be similar to cable traffic received in other agencies of your own department and in a range of other departments and agencies as well. That would be right too, wouldn't it?

Mr Borrowman—It could certainly be the case, but equally it might not be the case. It would depend on the individual circumstance.

Senator FAULKNER—In the estimates hearings of the Department of Foreign Affairs and Trade, in answer to questions evidence was given that Bronte Moules sent a cable from New York to Canberra that included on the distribution of the cable the Department of Foreign

Affairs and Trade, the Prime Minister's office, the foreign minister's office, the trade minister's office, the defence minister's office, DOD, AusAID, PM&C, AGD, ONA and DIO. This was given in answer to a question on notice, I think from me, on 3 November 2005. Are you aware of the cable that I am referring to in relation to this?

Senator Minchin—By that line of questioning we have gone from the general to the specific. We are prepared to entertain questions about the general process, but once questions go to specific cables and things of that sort I believe that those questions tread upon the ground that is the subject of the government's decision with regard to matters that may be before the royal commission. The officer will not answer questions about specific information. We are happy to answer questions about the general process and general modus operandi but not specific information.

Senator FAULKNER—As you would appreciate, Senator Minchin, you have a lot of cable traffic, with identical cables going to a range of destinations. You would appreciate that that is the case. Regarding the identification of material in the department, how was cable traffic specifically handled? In other words, once you have identified through keywords and the like a matter that may be of interest, what happens? Does the Department of the Prime Minister and Cabinet then go and check with a range of other agencies about the nature of the cable and whether it has been drawn to the attention of DFAT? I am trying to understand the process.

Senator Minchin—We are happy to help you with the process. Mr Borrowman has been happy to answer questions on the generality of the way in which cable traffic is dealt with, but you leapt into a specific example which Mr Borrowman is not able to help you with. However, if Mr Borrowman has any further advice that he would like to give you about the general method of handling these matters, he is able to do so.

Mr Borrowman—Picking up what I take to be the core of your question, Senator Faulkner—and please correct me if I am wrong, as I am sure you will—you are asking: who actions a cable, what process happens when the cable comes in, and is there is an interdepartmental process of consultation? It is usually pretty clear from inwards traffic where responsibility lies. Again, in the normal course of departmental consultation, there may be discussion about that from time to time.

Senator FAULKNER—We will come back to this later.

Proceedings suspended from 6.25 pm to 7.39 pm

CHAIR—Before we recommence our examination of the Department of the Prime Minister and Cabinet, there are a couple of administrative matters. First of all, welcome to Senator Abetz, who is replacing Senator Minchin for the rest of the evening.

Senator Abetz—I apologise, on behalf of Senator Minchin, for his inability to be here. I think that senators know that he is not feeling well and is seeking medical advice.

CHAIR—Thank you, Minister. Secondly, I have a letter from Mr Harry Evans, the Clerk of the Senate, to me, dated today. Unless there is any objection, I will table that. Thanks very much.

Senator FAULKNER—Received at a private meeting.

CHAIR—Yes, received privately and tabled in this meeting. It is so tabled. Thirdly, Dr Morauta, you mentioned informally the order of proceedings. I have discussed that with my colleagues. We will see how we go with the Department of the Prime Minister and Cabinet. It will depend upon the line of questioning how long we go for. When we conclude with the Department of the Prime Minister and Cabinet, we will go to the Office of National Assessments. The priorities after that will be the Ombudsman, then the Audit Office. We are unlikely to get any further, but the order would then be the Water Commission and finally the Australian Public Service Commission. I am just asking colleagues here, members and participating members, what areas they want to pursue. I suspect that within half an hour I will be able to give you a more definitive answer as to who can go.

Dr Morauta—Thank you.

CHAIR—With that, the committee will recommence its examination.

Senator FAULKNER—Can I take the committee back to a couple of matters I raised before the break. Minister, these have at least been flagged with Dr Morauta, so she is aware of them. The first related to any Department of the Prime Minister and Cabinet involvement in the appointment of Mr Trevor Flugge and/or Mr Michael Long to the Coalition Provisional Authority in Iraq. Dr Morauta, you were going to see whether you could assist us with that over the break.

Dr Morauta—Yes. We have been actively doing file searches on this but, I am sorry, we have not been able to complete the work in the time. I will have to take that question on notice. People have been active, but we have not been able to do all the work required to give you a proper answer. We are going to have to take that one on notice. The second question you asked us was about the PM&C role in relation to the instructions to Ambassador Thawley. Again, although we have been actively working on it, we have not succeeded in getting all the information we need in order to provide a full answer. I am sorry, we will have to take that on notice too. I know I was enthusiastic and hopeful, but when it came to it there appeared to be more records to go through and they were not able to complete the work.

Senator FAULKNER—Is the problem the size of the task?

Dr Morauta—To be sure of an answer, a large number of records need to be perused. We want to be careful with our answer. We have not been able to complete that work in the time.

Senator FAULKNER—The difficulty you have with a situation like this, Chair, is that an answer may well come back from the department saying, ‘No, there has been no involvement at all,’ or ‘Yes, there has been.’ In the case of an answer in the affirmative that comes back, the difficulty is that with this situation—as you would appreciate, Minister, I hope—there is no capacity to form questions that logically follow through from an answer that indicates that there has been some departmental involvement. I cannot second-guess this. With a question being taken on notice the only reasonable way these sorts of circumstances can be dealt with is to ask the department if there has been any such involvement. This is firstly in relation to the appointment of Mr Flugge and Mr Long to the Coalition Professional Authority. I asked the department to detail its role in this instance. It is also in relation to the question I asked about former Ambassador Thawley.

I do not know what the answer will be, but if it does come back in the affirmative, again, there is no chance for the committee or committee members, including me, to ask appropriate follow-through questions. That is a highly unsatisfactory situation. All I can really do in this circumstance is place on notice a question, if the answer is in the affirmative, asking the department to detail what that involvement is. That requires a degree of good faith from the government and the department in these circumstances. That is why it is such an unsatisfactory situation and, as you know, Chair, I am always extremely reluctant to leave matters such as this on notice for that very reason. You will often find that I and other senators want to progress matters but in this circumstance it seems that I am very limited in what I can do. That is extremely unfortunate.

Senator Abetz—That is often the case when questions have to be taken on notice and I can understand that frustration.

Senator FAULKNER—In this particular circumstance we have tried to give the department and minister an opportunity to see if they can get some further detail over the dinner break. That, as it has turned out, has been to no avail. Is there any information on either of these matters? You may not be able to provide complete information, Dr Morauta, but is there any information you can provide on these matters at all that you have been able to glean over the dinner break period?

Dr Morauta—Not at this stage, I am sorry.

Senator FAULKNER—As I have said, Chair, I will place my question on notice in a form that requests of the department that the detail of any relationship that may have existed in these matters be provided to the committee. I stress, as I have said before, the unsatisfactory nature of that in the circumstances. It is very disappointing that we do not have officers able to come to the table to provide that information. It begs the question: was it not possible to find some officers who might be able to answer questions on these matters to come forward and be present at the estimates committee, Dr Morauta?

Dr Morauta—No. The problem is that we have had a complete change of personnel in the rather small unit that was dealing with these issues, and there is not anybody who has great familiarity with the files and the material. People are conscientiously working through the files but they are not familiar with the material, and that is making it a longer process.

Senator FAULKNER—Is any consideration ever given to the fact that it might not be good public service practice to have this extraordinary turnover of personnel in key areas? We are left with a situation, which is happening more and more in the Department of the Prime Minister and Cabinet, where there is simply no corporate knowledge on matters that, it seems to me, are important. I would want—and certainly I would if I were a member of the government—the department to have corporate knowledge. But it is all gone. It must make administration of the department extremely difficult in such circumstances, I would have thought. Is it a problem?

Dr Morauta—Are we worried about turnover?

Senator FAULKNER—Worried about turnover because of the lack of corporate knowledge in key areas of the department. Here we have the International Division, for example, which is dealing with matters that probably relate to—there is no political spin in

this—what is and has been for some time the hottest political issue of the day. But no-one in the department appears to be an officer who is able to answer any questions about it. I would have thought that this would be extremely concerning to government.

Dr Morauta—I think it is probably rather exceptional that they have had such a complete turnover in one area. But it is in the nature of PM&C that quite a lot of people come for a shorter period than in other departments and then move on. We are aware of that and have given some consideration to how, in a corporate sense, we might be able to secure people to stay longer. But that is not a particular answer to the question as it is put.

Senator FAULKNER—Historically it is a department that has had a deserved reputation for being at the cutting edge of Commonwealth Public Service practice, and historically it has deserved that reputation. But frankly it seem to me that that reputation is in tatters because in so many areas no-one appears to know anything about what has occurred in the recent history of public administration and bureaucratic processes in the Department of the Prime Minister and Cabinet. I think that is a matter of extreme concern and it is one that you, Mr Chair, might apply your mind to. Perhaps it is time that this committee, in the development of its report, starts to address the issue of corporate knowledge, which is stymieing the questioning of this committee around this table and, I am sure, is having a broader impact in government. All I can say is that I hope it is not a deliberate stratagem on the part of—

CHAIR—I am sure it is not, Senator.

Senator FAULKNER—I am not sure.

CHAIR—I do take note of it, and I know that the—

Senator FAULKNER—I just hope it is not a deliberate strategy to say, ‘There are no officers in the department who can answer any question about any issue of significance, let alone issues that might be controversial.’ It does not sound like very good public administration to me.

CHAIR—We will certainly raise the issue in the committee’s report on estimates as an issue of public administration.

Dr Morauta—I might just comment that nothing takes away from the responsibility of the department to answer the questions of the committee, but I think in this case we have had to—

Senator FAULKNER—But time and time again we find that the witnesses at the table are unable to answer the questions. I am not suggesting that on certain occasions—there is a reason that the questions have not been answered today. It is not a question of unwillingness; it is a question of total inability or incapacity to answer questions because there is simply no corporate knowledge and no understanding at all of what has happened in even the most recent experience of the department. It has reached preposterous levels today, where we have had two key bureaucratic witnesses at the table—you and Mr Borrowman—and Mr Borrowman has been in his position for literally one day and, when he first came into this meeting this morning, had been in his current office for 30 minutes.

CHAIR—I am sure it was not intentional.

Senator ROBERT RAY—Did I understand the witness to say that four crucial people have moved on? Was it four?

Dr Morauta—I am not sure of the numbers. Mr Borrowman has taken ill and has had to go and seek medical attention, which is why he is not available now.

Senator ROBERT RAY—Let me rephrase the question—

Senator Abetz—What is the committee putting in the water?

Senator CHRIS EVANS—We saw off one minister, Minister Abetz. You ought to be careful!

Senator Abetz—I will stick around.

Senator ROBERT RAY—Let me rephrase the question. I do not have to know the actual numbers, but what I would like taken on notice is how many crucial people have left—not their names—when they joined that section of the department, when they left and where they went to, so we can get an appraisal of the sort of turnover and why this is happening. There may be very valid reasons, and I think it will help our analysis.

Dr Morauta—We can add a bit of background about Mr Borrowman being with the department for a longer period.

Mr Lewis—Mr Borrowman, while he is in the first day or early days of his new appointment as the first assistant secretary, has been an assistant secretary in that international division for some years, and so is not entirely new to the subject. So I think to characterise him as being on his first day, with regard to the subject matter, is not entirely accurate.

Senator FAULKNER—It is his first day in his current responsibilities?

Mr Lewis—In his current responsibilities.

Senator FAULKNER—And when he fronted up here very early in the morning we could measure the time he had been in the job in minutes.

Mr Lewis—With regard to the turmoil in the rest of the section, I do not know the precise detail of the movements but I know there has been some turbulence in the area. But I think it is incorrect to characterise Mr Borrowman as being completely without background information on the subject.

Senator FAULKNER—No-one so characterised him, so let us not put words in anybody's mouth. Nobody so characterised him.

Senator ROBERT RAY—You got the import of my question on notice?

Dr Morauta—Yes: how many people had moved. We will get that answer on notice.

Senator ROBERT RAY—Thank you.

Senator FAULKNER—Anyway, I hope, Dr Morauta, that the response to my questions on notice can be taken in the spirit in which the questions were asked.

Senator Abetz—As always.

Senator ROBERT RAY—May I conclude this questioning by again saying that we had many more questions, obviously, on AWB and related issues that we have been prevented from asking. I just wanted to say that for the record in case anyone thinks we are leaving the issue alone. We have been through it for several hours. I think some of the other agencies

might be more productive at this stage. We leave the issue under protest. I think Senator Evans has some questions on a totally unrelated matter.

Senator CHRIS EVANS—They are not totally unrelated. They are all to do with transparency in government. As we have been having such a good run on that, I thought I would keep the run going.

Senator FAULKNER—Can I suggest to Senator Evans that, if it is about transparency in government, he just give up now before he even starts?

Senator CHRIS EVANS—Hope springs eternal. I am like Dr Morauta. I am optimistic. I understand that some new FOI guidelines have been issued.

Dr Morauta—Yes, Ms Belcher will answer questions on that.

Senator CHRIS EVANS—I have struck gold! Ms Belcher, first of all, how long have you have been in your current position?

Ms Belcher—A long time.

Senator Abetz—Longer than you have been in yours, Senator Evans!

Senator CHRIS EVANS—You cannot imagine how pleased we are to hear that. Your responses will be different at least. I understand that PM&C has circulated new advice on compliance with FOI requests or there have been new guidelines issued. Is that correct or not?

Ms Belcher—Not new guidelines. We urge the divisions to take FOI seriously. From time to time we remind people of deadlines and the like. But I am not aware of any new guidelines.

Senator CHRIS EVANS—I understand that there was some document circulated under the signature of Dr Shergold. Is that what you mean by the reminder?

Ms Belcher—There has been nothing in recent times. I would need to check when we last put something out.

Senator Abetz—Are you happy to identify the document, Senator Evans?

Senator CHRIS EVANS—I would be if I had it. I do not have the document. That is my difficulty. I received information. I think it was something around there being new guidelines or advice provided by Dr Shergold in recent times.

Ms Belcher—Not in very recent times. I can certainly check when we last put something around the department.

Senator CHRIS EVANS—Do you have that with you? Are we talking longer than a year ago or was it within the last year?

Ms Belcher—No, it was longer than a year ago.

Senator CHRIS EVANS—So there has been nothing in the last year or so?

Ms Belcher—Not in the last 12 months—I am pretty confident of that.

Senator CHRIS EVANS—Since when have the guidelines for FOI responses been in operation?

Ms Belcher—They would be very longstanding. We do not believe there has been any change within the department since 2003. We, of course, look after only PM&C. We do not provide FOI guidance to other agencies.

Senator CHRIS EVANS—So any directive or revision issued by Dr Shergold would only apply to PM&C in any event?

Ms Belcher—That is right. Broader guidelines on FOI come from the Attorney-General's Department.

Senator CHRIS EVANS—So that is under the signature of the secretary of the A-G's Department.

Ms Belcher—Yes, or an area of his department.

Senator CHRIS EVANS—But that office is responsible for providing guidance to other departments on how they ought to apply the FOI legislation.

Ms Belcher—That is right.

Senator CHRIS EVANS—I can ask them about this, but are you aware of any change in their guidelines?

Ms Belcher—No. They put out information sheets from time to time, and they are always available to take calls, but I am not aware of any guidelines that they have put out.

Senator CHRIS EVANS—Has Dr Shergold sought to remind people of their obligations or how they might handle these matters in recent times?

Ms Belcher—Again, not in recent times. I think it was in 2003 that he put out a circular reminding people of their obligations.

Senator CHRIS EVANS—Was there any action after what is known as the Podger report? I cannot think of its official title. Mr Podger inquired into a whole range of matters and spoke about FOI law. Was there any reaction to his work?

Ms Belcher—I know of comments he made at the time he was leaving his position as commissioner, not of other work that he did.

Senator CHRIS EVANS—Thank you for that.

CHAIR—Are there any further questions of the Department of the Prime Minister and Cabinet?

Senator CHRIS EVANS—I have a question on the coordination of the COAG trials and Indigenous policy. I want to get a bit of a catch-up on the COAG trials and the monitoring and reporting of their success. Can someone take me through where we are at in terms of evaluation of the COAG trials?

Ms Wilson—I understand that there is a two-stage approach to the evaluation proposed for the trials, with some elements in 2005-06 and some elements in 2007-08. The first stage is currently under way, with all site evaluations expected to be completed by the middle of 2006, after which there will be a meta analysis undertaken.

Senator CHRIS EVANS—A what analysis?

Ms Wilson—A meta analysis, bringing all of the individual site evaluations together to look at the broader lessons. The Office of Indigenous Policy Coordination in the Department of Families, Community Services and Indigenous Affairs has responsibility for those evaluations.

Senator CHRIS EVANS—Yes, I have spoken to them about that and we will follow that up in this round. What about the document *Lessons learned to date from the COAG trials 2004-05* which I gather went to a COAG meeting—is that publicly available?

Ms Wilson—No. Because it was a report to COAG, at this stage it is not a public document.

Senator CHRIS EVANS—Is there any intention to release it?

Ms Wilson—There is no intention at this stage, as I understand it. It has not been sought.

Senator CHRIS EVANS—Will the evaluation of this year be released?

Ms Wilson—That would be a matter for the relevant minister, the Minister for Families, Community Services and Indigenous Affairs.

Senator CHRIS EVANS—Is it fair to say that the coordination role for COAG trials is increasingly moving to OIPC out of the PM&C and its secretaries committee?

Ms Wilson—I think that it is fair to say that OIPC has a coordination role in respect of the trials and ongoing work. The lessons from the trials are reported regularly to the Secretaries Group on Indigenous Affairs, which Dr Shergold chairs.

Senator CHRIS EVANS—I am just trying to get a sense of whether the reorganisation and the advent of OIPC means in effect that that coordinating function is moving to them rather than the secretaries meetings.

Ms Wilson—OIPC has the main coordination function, yes.

Senator CHRIS EVANS—Is the secretaries coordinating group still meeting regularly?

Ms Wilson—Yes, it is, Senator.

Senator CHRIS EVANS—What then are its functions now?

Ms Wilson—The secretaries group functions are essentially threefold. It is responsible, essentially, for providing advice to the Ministerial Task Force on Indigenous Affairs and for driving Indigenous reforms across the Australian government and ensuring that the new coordination and administrative arrangements for Indigenous affairs are being effectively implemented. It provides advice to the MTF in three areas: coordination of Indigenous policy and service delivery, performance of government programs in improving outcomes for Indigenous people, and resource allocation across Indigenous specific programs.

Senator CHRIS EVANS—What is the interface between that and OIPC now?

Ms Wilson—The interface—if I am understanding your question correctly—

Senator CHRIS EVANS—I am just trying to understand how they work together.

Ms Wilson—The OIPC provides the secretariat and support for the Ministerial Task Force on Indigenous Affairs, whereas, there is a somewhat shared role in respect of the secretaries

group with PM&C taking the lead. Dr Shergold is the chair of the secretaries group. OIPC attends those meetings and the Secretary of the Department of Families, Community Services and Indigenous Affairs and Mr Wayne Gibbons from OIPC have also attended the secretaries group meetings.

Senator CHRIS EVANS—I know that Dr Shergold has been very concerned about bureaucratic silos. Is the removal of bureaucratic silos the responsibility of the OIPC or of the secretaries group?

Ms Wilson—I think that one might characterise it as a responsibility of all departments and all secretaries.

Senator CHRIS EVANS—Dr Shergold has identified this as a key issue. Given the mainstreaming and the idea of a joint budget submission and the fact that this is a major policy issue for the government, whose job is it to fix the silo problem? I thought that was the job of the secretaries group. I want to confirm that, or is that not right?

Ms Wilson—The secretaries group are certainly taking a very active role in respect of that and every member of that secretaries group would have a responsibility as well.

Senator CHRIS EVANS—I have asked a number of questions on notice of various departments over the last six months and, to be frank, the answers reveal that a grossly disproportionate chunk of their budget seems to be going on administration costs. These are on the figures supplied to me by the various departments. This is not my assessment; these were direct questions. They seem to be spending very high amounts of the COAG and related issues budgets on administration costs. Is that a concern that has been raised with PM&C or the secretaries group?

Ms Wilson—I am not aware whether that issue has been raised.

Senator CHRIS EVANS—Wouldn't that be part of their monitoring role? As I understand it, part of their monitoring role was to make sure that services were delivered on the ground. If you are spending 80 per cent of the budget on administration costs, as some are, it seems to me that the services on the ground are not worth much value for money for the taxpayer.

Ms Wilson—As I am not aware of the specifics about which you were speaking, I find it difficult to comment.

Senator CHRIS EVANS—I can certainly get them for you but I was raising the general question of the secretaries committee and whether that was an issue. You say that you are not aware of that and that it has not been raised with the PM&C.

Ms Wilson—I am reasonably new to this role and have attended only a couple of the secretaries group meetings. But not in my experience nor in recent minutes that I have read—

Senator CHRIS EVANS—You did very well keeping a straight face with that. It must have been very difficult to deliver. I do not mean to pick on you but that answer has worn a bit thin today. So we are not sure whether we will ever get any public assessment of the COAG trials—

Ms Wilson—There will be evaluations, as I mentioned, and the evaluations are under way with some work to be completed this year and some in the following financial year.

Senator CHRIS EVANS—I accept that, but we do not know whether any of that is going to be public.

Ms Wilson—That would be up to the relevant minister.

Senator CHRIS EVANS—I understand you have done a report already, *Lessons learned to date from the COAG trials*, and that it is not publicly available.

Ms Wilson—Not at this stage, no.

Senator CHRIS EVANS—Is there any suggestion that some of the departments as lead agencies in COAG trials are seeking to withdraw from the role as a lead agency?

Ms Wilson—I think a way of understanding it would be that OIPC has taken on more of a coordination role with lead agencies retaining their responsibilities for coordinating those things that are relevant to their portfolio rather than the whole of the site per se.

Senator CHRIS EVANS—I see. So they are not lead agencies other than to the extent to which they do their own portfolio.

Ms Wilson—No, that is not what I said.

Senator CHRIS EVANS—That is what I took from it so I was a bit surprised. I do not want to put words in your mouth. Do you mind saying it again so that—

Ms Wilson—I can give you an example. The Department of Employment and Workplace Relations has a broad responsibility for Indigenous economic development. It would carry out that role in respect of all of the trial sites by its input whether or not there was another specific lead agency that had hitherto taken the running in a particular site.

Senator CHRIS EVANS—What does that mean? I think that DEWR have one that they are responsible for—I forget which one—but there have been media reports about them looking to get out of that role and they have been holding discussions with various people about looking to divest themselves of that role. I know that FaCS was not, because I know that Senator Patterson was very committed to having FaCS continue its role. I am just trying to understand what all that means. Is it really that OIPC will be taking more of the prime responsibility? Is that fair?

Ms Wilson—I think that it is fair to say that OIPC is the main body supporting implementation of the new Indigenous affairs arrangements, which includes the sorts of innovative approaches that the trials have adopted. At the last Senate estimates, I understand, the Department of Employment and Workplace Relations provided some evidence that they were handing over to OIPC their coordination of trial sites. But no other agencies have taken that approach.

Senator CHRIS EVANS—That is what I am trying to get a sense of. DEWR are handing their responsibilities to OIPC. Is that now a new model and has the old model been abandoned, or are you making an exception for DEWR? I am just trying to understand where you are going with all this.

Ms Wilson—I think it is probably fair to say that this is an evolving set of responsibilities. OIPC is taking on more of the broader responsibility for implementation of new arrangements

and learning from trials and so on to adopt the lessons learned from those approaches in a range of sites.

Senator CHRIS EVANS—So does that mean that next year's budget will reflect that and that OIPC will have more of the budget in the sense of the coordination role and that the lead agency will largely go back to just providing its own services?

Ms Wilson—No, I would not anticipate that approach. It does not go to funding arrangements per se; it goes to what is the most appropriate coordination role in each location.

Senator CHRIS EVANS—You are telling me that will remain non-uniform?

Ms Wilson—With this site based work and things like shared responsibility agreements, it is very much tailored to the individual community and what is appropriate at that time for that site and that community. There is no 'one size fits all'.

Senator CHRIS EVANS—I understand the problem, but you started the COAG trials and then the government changed the Indigenous administration arrangements. Clearly you have gone for a different model, since you had trials with COAG. You have gone for a different model of administration. I am trying to understand: does that mean they are effectively taking over the COAG trials or not? You told me DEWR are getting out of it.

Ms Wilson—No, I have said that DEWR have handed over responsibility for their trial sites to OIPC but continue to remain the lead agency for Indigenous economic development.

Senator CHRIS EVANS—With all due respect, that is a statement of the obvious, isn't it? The department remains responsible for the department's responsibilities.

Ms Wilson—They are not the only department that is engaged in issues around Indigenous economic development, but they are the lead in respect of it.

Senator CHRIS EVANS—Isn't that true anywhere else, as well as the COAG trials?

Dr Morauta—Ms Wilson, do you mean a cross-agency lead role?

Ms Wilson—That is right.

CHAIR—Does anyone have any further questions for the department? I know Senator Milne has some, but I do not propose to hold proceedings up.

Senator Abetz—They can be put on notice, I am sure.

CHAIR—Quite right, minister. In that case, Dr Morauta and officers from the department, thank you very much for your assistance.

Proceedings suspended from 8.20 pm to 8.34 pm

CHAIR—I call the committee to order. Before the committee commences its examination of the Office of National Assessments, I would like to call Senator Stephens.

Senator STEPHENS—Chair, I understand that you have not made the progress that you hoped to do today and so therefore we are not going to get to the National Water Commission tonight.

CHAIR—Correct, I do not think we will get to get them.

Senator STEPHENS—Can I just foreshadow that I will be putting several questions on notice. Can you advise when the response time is for those questions?

CHAIR—It is 30 March.

[8.34 pm]

Office of National Assessments

CHAIR—I welcome Mr Varghese and the officers of ONA. The committee will now commence its examination of the Office of National Assessments with questions from Senator Ray.

Senator ROBERT RAY—Mr Varghese, could you explain to the committee how much your organisation has grown in terms of staff and funding coming out of both your progress and the Flood report?

Mr Varghese—The Flood recommendation was that ONA should effectively double in size—off a very small base, I should add—from 75 to 145. We are well on track to achieve that. Accompanying that was an increase in our budget, which went up to \$27 million—using round figures. I expect that the 145 staff will be fully recruited by the middle of this year. We still have a few more to do, but I think we are ahead of our original schedule.

Senator ROBERT RAY—When we visit you again in the May estimates, I put you on notice that we would like a progress update on the figures you have given today and how you are achieving them. You do not really recruit like other intelligence agencies—they are more fully formed people. Where are you recruiting from?

Mr Varghese—We are casting our net a little bit wider perhaps than we have traditionally, in that we are seeking more recruitment from outside of government circles. So academia and the private sector, to a limited extent, are areas that we are now targeting. But, as will always be the case, I think our recruitment will primarily draw from other sources within government. We still have a reasonable number of ONA staff with a DFAT background, and I expect that to continue, although the percentage of DFAT officers will probably change over time as the base gets bigger. We have had some people coming across to ONA from other parts of the intelligence community. We have secondment arrangements with a number of government agencies as well.

Senator ROBERT RAY—To what extent does your recruitment from other intelligence agencies create problems for them—many of whom are also expanding and in fact putting double shifts on on training et cetera? Is that putting pressure on them?

Mr Varghese—I think it is not a problem at the moment. We are all conscious within the intelligence community that, as each of us grows—and most of us is growing—that could become a problem. At the moment, the movement is probably both ways. To just use ONA as the focal point, we are getting people in and we have had a few of our people go to other parts of the intelligence community. It may be a prospective issue for the community, and it is certainly something that we are keeping very closely in mind as a community.

Senator ROBERT RAY—How are you going on security clearances for your new staff? Often there are backlogs in that area. How have you gone in regard to that?

Mr Varghese—It is not an issue for us. We engage our own consultants to do the positive vetting program. We have no backlog. On average, our security clearance takes about eight weeks, so it is not a serious issue. Obviously, two months added onto the recruitment cycle can sometimes mean that you lose people who get firm offers elsewhere before we have finished, but, given the nature of the security vetting, I do not think we could go any faster than we do.

Senator ROBERT RAY—I would have thought that two months was an outstanding effort.

Mr Varghese—We are helped by small numbers, I think.

Senator ROBERT RAY—No other intelligence agency has asked for your success formula in regard to not having a backlog, have they?

Mr Varghese—I think one of the issues is probably just going to be the number of people out there who you can engage as consultants to do this process, because they have to have the right background themselves. We are all after them, but for the moment we have hung onto the ones that we have.

Senator ROBERT RAY—How many do you now have for analysis in the Middle East section? That was a criticism of the Flood report when they compared what ONA had done in terms of the resources of the DIO devoted to it.

Mr Varghese—Let me give you an answer in relation to the Middle East and Africa—and of that, obviously, our focus is more on the Middle East than on Africa. Before Philip Flood's report we had two full-time Middle East analysts. Since Mr Flood's report we have added another three, in terms of approvals, so that takes us to five. We are fully staffed in relation to our Middle East experts. Can I just say, in relation to that, that the quality of the field of Middle East experts has been first rate. Of our five people working on the Middle East, all are fluent in Arabic.

Senator FAULKNER—What does 'in terms of approvals' mean, in the end?

Mr Varghese—We have been given a budget for recruiting additional analysts.

Senator FAULKNER—Does this mean they are not yet in place, or they are all in place?

Mr Varghese—No, the Middle East analysts are all in place now.

Senator ROBERT RAY—Have you got any Farsi speaking analysts?

Mr Varghese—No.

Senator FAULKNER—The Middle East and Africa Branch is actually bigger than that. Are they five full-time officers for the Middle East and Africa, or five full-time officers who are dealing with Middle East issues exclusively?

Mr Varghese—In effect there is only one analyst who deals with Africa, and she does so on a part-time basis in the sense that she also covers Middle East issues.

Senator FAULKNER—And that analyst is not included in the figures you have given, because they are all full-time figures?

Mr Varghese—No; she is a full-time officer, but only part of her full-time job is dealing with Africa. The other part of her full-time job is dealing with the Middle East.

Senator FAULKNER—So is that analyst included in these figures?

Mr Varghese—Yes, she is.

Senator FAULKNER—So it would be more accurate to say 4½ full-time analysts, wouldn't it?

Mr Varghese—That is right, yes. Although the branch head, of course, covers the Middle East for most of his time and he is also an expert in the area.

Senator ROBERT RAY—The Flood report, but more particularly the report of the Parliamentary Joint Committee on Intelligence and Security, when going back and analysing intelligence from the lead up to the Iraq war, detected differences of approach by ONA and DIO, which I think you would be well aware of. What steps has ONA—or DIO, if you like—taken to try to have a more synchronised approach to policy analysis? Or is it better to have creative tension and just have independently formed views that go up the line?

Mr Varghese—Probably a bit of both. I think there is nothing inherently wrong with a bit of contestability when it comes to analysis and assessment. At the same time, we are also keen to ensure that DIO and ONA work very effectively together, and we have instituted a couple of measures since the Flood report to help us achieve that objective. One is that we now each attend the other's weekly planning meetings, so we have good visibility of what planned reports are in the pipeline. I think it is fair to say that the extent of our consultation with DIO, in terms of making sure that we at least know what their view is before we finalise our product, is stronger now than it might have been before. Overall, what we are seeking to do is to work more closely together and make sure that we do not bump up against each other more than we need to, but also to accept that at the end of the day if DIO has a different view to ONA, and if we have been through the process of explaining where we are coming from in relation to our overall conclusions, then that is not such a great tragedy. Indeed, many people would argue it is probably not a bad thing.

Senator ROBERT RAY—You mentioned contestability. One of the great criticisms of past ONA reports is that they end up as a homogenised opinion, whereas at a lower analytical level there may have been differences of opinion that are never reflected in the end product. Are you putting in more of that contestability from the lower levels as the product goes up and gets polished?

Mr Varghese—We are trying very hard to engender a culture of contestability within ONA. I think that is actually the key to making sure that analytical assumptions are constantly tested. It is not so much a case of getting an external or a secondary agency to put a different point of view; I think it is even more important that within the organisation we subject our analytical conclusions to a great deal of internal scrutiny. So we have taken steps within ONA to encourage that. As a matter of course now, to give you one example, we will circulate draft reports to all analysts and I have encouraged analysts—even those outside of the particular area—to contribute to a discussion about the overall analytical judgments in a piece. I think that is a healthy thing for an analytical organisation.

When it comes to national assessments, where we seek to present the government with an overall view reflecting both the intelligence community and the input of the policy community, we make it clear that while we will be looking for a consensus view, if you like, where there are genuine points of difference, that ought to be reflected in the actual document. It is not a mechanism that has been resorted to very often. When Flood did his report, he said he could find evidence of only one example where a national assessment had a footnote contesting a particular judgment. Nothing has changed since then. But I think the process leading up to national assessments now does try to get the balance right between having sharp judgments while also trying to bring together the differing views of agencies.

Senator ROBERT RAY—I am quite happy with your answer about introducing contestability within the agency, but the customers of the product tend to be ministers and others. The extent to which you flag to them, in your final document, that there were divided opinions is the real essence of Flood's comments on contestability—that ministers should be able to know that, whilst this is the majority view, if you like, of ONA, there may be a strongly divergent view that may then ask the ministers to drill down deeper. They may well accept the majority view, but we have to somehow flag to them that there may be an alternate view.

Mr Varghese—The current framework does in fact provide for that sort of situation. Where it is an important judgment and where there is an important difference of view, we will flag it for ministers.

Senator ROBERT RAY—Regarding the ambit of coverage of ONA reports, are your customers satisfied that you are covering sufficient ground at the moment?

Mr Varghese—Certainly the feedback we get from our customers is very positive. One of Flood's recommendations was that there should be an evaluation of ONA's work that is not a self-evaluation. Until the Flood report, ONA, as part of its classified so-called 'part 2 report' to government on the foreign intelligence community had included a self-assessment. So we did an assessment on the other agencies involved in the foreign intelligence community and then we did a self-assessment. Flood said it made more sense for that evaluation of ONA to be conducted by another agency, which is a recommendation I thoroughly endorse. PM&C now has that role. I must say that the first report that PM&C produced post-Flood had very positive feedback from customers in relation to the scope of our product and whether it was addressing the issues that were most on the minds of senior policy makers.

Senator ROBERT RAY—Which section in PM&C did this review?

Mr Varghese—It is coordinated by the National Security Division, but it involves going out and talking to the clients essentially.

Senator ROBERT RAY—I see.

Senator CHRIS EVANS—I want to ask you about Iraq and security assessments there. I will start with a general question: what is your ongoing role in assessments about security in Iraq or issues related to security in Iraq?

Mr Varghese—Clearly, Iraq is a big focus for ONA, so we continue to keep the situation in Iraq under close scrutiny. We produce, as you would expect, reasonably frequent reports

tracking how developments in Iraq are going—not just on the security side, which is obviously a very important part of the equation, but also in relation to the political process. Obviously we followed very closely the two elections and the referendum last year. We are following very closely the current process of putting together the first government after a full general election. We have been looking at the prospects for Iraq in the medium term—all the things that you would expect us to be doing.

Senator CHRIS EVANS—What about in the assessment of the threat to Australian forces and other personnel inside Iraq? Do you have a role in that?

Mr Varghese—It is not really an ONA issue. The question of threat assessments is split into two different areas. The National Threat Assessment Centre, based in ASIO, has a responsibility for producing threat assessments affecting Australians at home and overseas, including in Iraq. Of course, on the military side, DIO would play a much more direct role in making judgments about the situation on the ground as it affects deployed Australian troops.

Senator CHRIS EVANS—What is your involvement in that sort of mix?

Mr Varghese—We provide the broad strategic picture, the strategic context in which our troops are operating, but it is not a threat assessment in the sense of making detailed judgments about the types of threats that our forces would face in Iraq.

Senator CHRIS EVANS—Would, say, the possible withdrawal of British troops from southern Iraq be the sort of consideration where you would have some input—because it impacts on the broader political context, as you put it?

Mr Varghese—We would look at the deployment of coalition forces and how countries are approaching the nature of their deployment. We would be looking at those sorts of issues, but we would not do a detailed threat assessment of the situation on the ground, say, in Al Muthanna. We might make some observations about the politics of Al Muthanna and the broad security environment in Al Muthanna but we would not do a direct military threat assessment.

Senator CHRIS EVANS—I am not trying to get into a particular assessment of the withdrawal of the British troops, but would you provide advice as to what implications the withdrawal of, say, British troops from the south of Iraq would have for the general political situation in Iraq and what it might mean for Australia's commitment?

Mr Varghese—We probably would not go that far in our work. We would probably look at what a likely trajectory of coalition forces might be, but we do not engage in much of a 'what if?' sort of analysis in relation to that particular type of issue.

Senator CHRIS EVANS—So you do not actually examine the consequences of things that have been out there in the public debate or considered by other governments? I am just a bit taken aback by that. I thought that would be part of your general role.

Mr Varghese—We obviously analyse the security situation in Iraq reasonably closely, and part of that would obviously be some judgments about the extent to which the Iraqi security forces are capable of handling the situation on their own or the extent to which they might require continuing coalition support and reinforcement. So we do make judgments along those lines.

Senator CHRIS EVANS—Does that include analysis of the insurgency and those who are attacking the Iraqi government?

Mr Varghese—We do seek to understand the anatomy of the insurgency, if I could put it that way—for example, who is behind it; what groups are conducting these attacks; what is driving them; and whether they are likely to be brought into the political process. Those sorts of questions are obviously questions that we look at.

Senator CHRIS EVANS—So their motivation and their tactical approach? Are they the sorts of thing you consider?

Mr Varghese—Certainly on the motivations and to an extent on their tactical approaches.

Senator CHRIS EVANS—Have you provided advice on the question of whether the presence of foreign troops in Iraq is now in part the cause of their activities? There was an argument that General Cosgrove made a little while back about whether we are actually aggravating the situation and encouraging greater insurgency by our presence. Is that the sort of thing you provide advice on?

Mr Varghese—I would be careful about using the word ‘advice’ in relation to what we do. We provide assessments to the government. We do not stray into policy issues or advice to the government in that sense. You were probably using it in a broader sense.

Senator CHRIS EVANS—Yes.

Senator ROBERT RAY—So you do not provide advice to the government?

Mr Varghese—ONA does not cross the line between assessment and policy advice.

Senator ROBERT RAY—I am just reading from the transcript of the Prime Minister’s appearance yesterday, where he said:

... that’s the advice I’ve received.

That advice was from ONA. That is why I asked.

Mr Varghese—I am talking about policy advice.

Senator FAULKNER—If you do not provide policy advice, what sort of advice do you provide?

Mr Varghese—We provide analysis and assessment.

Senator FAULKNER—Do you provide any advice?

Mr Varghese—If we are asked a question, we give an answer, and some people might classify that as advice. The point I am making is that, conceptually, when the Office of National Assessments was set up, it was a very firm foundation principle that ONA would not get into the business of policy advising—in other words, that you would keep a separation between assessment and policy. This is not unique to Australia. This is also the framework within which many other countries operate, and there is a very good reason for it. I am just making that point.

Senator FAULKNER—Of course. Have you contacted Mr Howard’s office to indicate to him the inaccuracy in relation to advice in the transcript of Mr Oakes’s *Sunday* program?

Mr Varghese—I do not think it was inaccurate.

Senator ROBERT RAY—So you are saying that he is using the term ‘advice’ in terms of what you may have informed him regarding what analysis you had; he is using it in a different context?

Mr Varghese—Exactly.

Senator ROBERT RAY—When he sought that information from you and you provided it, did he explain to you that he was going to make it public?

Mr Varghese—I am conscious of the decision that ministers have taken in relation to answering questions on these issues, and I do not feel I am at liberty to go into those details.

Senator FAULKNER—It is all right for Laurie Oakes to ask a question but not Senator Ray?

Senator ROBERT RAY—The cabinet decision on that was made on 6 February. This is a statement by the Prime Minister made on national television on 12 February. That is why I am asking. He said:

I’ve been told by ONA that there was no intelligence reporting, that AWB had paid bribes to Saddam Hussein, now that’s the advice I’ve received.

My question is not really going to what is before the Cole royal commission. I have asked you whether the Prime Minister indicated, when that advice was proffered—‘advice’ being the definition which you use, which I accept—that he was then going to make it public.

Mr Varghese—When I provided that advice, I had the expectation that it could well become public.

Senator ROBERT RAY—But you were not told that it was going to become public or that it was going to remain private. Is that what you are saying? You had an expectation?

Mr Varghese—I had an expectation.

Senator FAULKNER—So the advice—and now you are using the terminology ‘advice’, which is fair enough—was unclassified?

Mr Varghese—I am not going to go into the details of that information, for the reasons that I indicated.

Senator ROBERT RAY—Which precisely were?

Mr Varghese—I think it is relevant to the direction that the government has given to officials about what we may cover in these estimates.

Senator FAULKNER—Wait a minute. It could not be out in the public arena if it was classified advice, could it?

Mr Varghese—I did not say it was classified advice. I said that I was not going to go into the details.

Senator FAULKNER—So you will not say that it was unclassified advice?

Mr Varghese—I think if that advice is to be gone into in more detail than has already been the case, it is not a matter for me to do that; I think it is a matter for the Prime Minister to do it.

Senator ROBERT RAY—This is the only chance we have to ask the Prime Minister questions through his representatives and staff. I am not asking you to dispute the cabinet decision. We are trying to get a definition of what it covers and what it does not cover. I would have thought the indication today is that it does not cover the process but covers the content. We have been operating under some difficulty with this definition all day. Therefore I would ask you this question, which is not related to the Australian Wheat Board, BHP, or government activity: would it be likely that your agency would look more generally at sanction breaches committed by Iraq during the period 1999 to 2003?

Mr Varghese—I think that this was the line of questioning that was pursued earlier today and, as I recall from listening in to it, the minister indicated that to respond to that would be to go into an area which will be covered by the government's directive.

Senator ROBERT RAY—Have you got the directive there?

Mr Varghese—No, I do not, Senator.

Senator ROBERT RAY—How did you receive the directive?

Mr Varghese—I listened to it when Senator Minchin—

Senator ROBERT RAY—And that was the first time you had heard of the directive, was it?

Mr Varghese—That was the first time I had the details of the directive.

Senator FAULKNER—So you would have been in a very difficult, if not invidious, position if you had not happened to be listening in to the Senate estimates. You would not have known about the directive—is that right?

Mr Varghese—I think that I would have known about the directive.

Senator FAULKNER—How would you have known?

Senator ROBERT RAY—Tom-toms!

Mr Varghese—We have a process whereby my colleagues in the office do monitor estimates.

Senator FAULKNER—But you are indicating to the committee that you were not surprised when Senator Minchin made his statement. You had a bit of inside knowledge, did you? That is what you have just said.

Mr Varghese—I do not think that I have anything to add on that.

Senator Abetz—I am not sure that that is what he said, Senator Faulkner.

Senator FAULKNER—You had expected such a directive to be issued. Is that perhaps a better way of putting it: you had an expectation that such a directive would be issued?

Mr Varghese—I would not say that I had an expectation that it would be issued.

Senator FAULKNER—Well, you use your words.

Mr Varghese—I did use my words.

Senator ROBERT RAY—Coming back to my question, and I am still at a loss as to how questions about breaches of sanctions as opposed to questions on AWB, Tigris or BHP, are

excluded at this hearing by any ministerial directive. These are not matters before the Cole committee.

Senator Abetz—I understand that Senator Minchin this morning did indicate difficulties if these areas were traversed and on that basis Mr Varghese is rightly indicating his reluctance to answer in relation to these matters, keeping in mind of course that all these matters are appropriate to be inquired into but at a later time after the inquiry has finished its investigation and made its determinations.

Senator ROBERT RAY—I am puzzled, Minister, having read the terms of reference to Mr Cole and having read his explanation, how the general issue, as supposed to the specifics, is excluded from consideration here other than for reasons of cover-up. What we have had is a situation where this government, quite rightly, strongly supported the sanctions against Iraq and sent frigates to the gulf to enforce them. I am seeking to know: where is the line? Clearly I can ask about frigates, and the cost of those, the sanction and things. Where is the line drawn? Is it just drawn on anyone—any country or any company internationally—that breaches the sanctions through kickbacks, or is it only those applying to Australia that the Cole committee is looking into? This is my difficulty. I did not ask about the Australian Wheat Board, nor do I intend to. I am not going to waste my time; Mr Varghese is far too smart for me to try to deal with those issues. Nor am I going to ask about BHP Tigris. What I want to know, eventually, is this: was ONA on the ball? Did ONA ever detect the fact that other countries were breaching the sanctions and report it to government? And what did we do about it? But you have blocked off all those areas by throwing the net so wide.

Mr Varghese—I can only point to what Senator Minchin said this morning, and I think the question you are asking is a repeat of a question you asked this morning.

Senator ROBERT RAY—How are you as a public servant bound by a statement made to an estimates committee? Surely you have to have a written document or a verbal direction on how to behave under the Public Service Act. How can you respond, as an intelligent public servant, to something you heard this morning?

Senator Abetz—I do not think that is fair, Mr Chair. Mr Varghese's interpretation of the minister's directive is such and, with all these matters, it is not an issue of cover-up; it is a question of when these questions can be fully answered. We have indicated they will be fully answered after the inquiry has made its findings and determinations. Without seeking to pre-empt anything, the royal commission has sought a widening of its terms of reference. It has been given them. Where the inquiry will lead in the future is not necessarily known, and I think Mr Varghese's precautionary principle is the appropriate one.

Senator FAULKNER—So, Mr Varghese, you have not received the government directive formally; you have merely heard about it?

Mr Varghese—That is correct.

Senator BRANDIS—Mr Varghese, as you told us before, you are perfectly well aware of what the government's decision is and consider yourself to be bound by it?

Mr Varghese—That is correct.

Senator JOYCE—It would be fair to say, Mr Varghese, that if you had heard that directive and decided to do something completely different you would be well and truly outside your scheme of employment, would you? If you had heard that Senator Nick Minchin had given us specific direction on what was to be entertained and not entertained in discussion, and you explicitly—on knowing that—decided to do something different, how would you be treated then?

Senator ROBERT RAY—Whether you got it in writing or otherwise is, I think, a major issue to be taken up at some stage. It is far more general than you, Mr Varghese, so I will not pursue that. But it goes to how you interpret the definition of what you can comment on here at estimates and what you cannot. I take it you have been given no guidance on that—on the definition of relevant matters?

Mr Varghese—No, I have not been given any specific guidance. The interpretation I am taking is consistent with the interpretation that the minister at the table took. I am just pursuing the same position that was taken by the minister at the table.

Senator ROBERT RAY—You are pursuing a position, unfortunately, that was very ill defined. He could not quite articulate what was in and what was out. What he said on each occasion was, ‘Well, you have to ask the question; then I’ll let you know whether it is in or out.’ I do not think I am paraphrasing that or distorting what the minister said. That is easy for him to do; it is much more difficult for you to do, because you do not know where the actual parameters start. I ask you a question about breaching sanctions—nothing to do with Australia’s performance or anything else. You say, ‘Hold on, I think that’s outside what I can answer.’

Mr Varghese—The position I find myself in is that you are asking me a question that was ruled out by the minister at the table this morning. I do not feel that I have the discretion to rule it in.

Senator JOYCE—Do you generally err on the side of caution or chance your arm? I would say that you would err on the side of caution, wouldn’t you?

Senator FAULKNER—As opposed to you, Senator Joyce, who chance your arm.

CHAIR—Whatever you think of the government’s response, you cannot hold that against Mr Varghese.

Senator ROBERT RAY—No, but I am asking a different question that was not raised this morning and that falls into that grey area of interpretation. It would have been nicer if the government, firstly, had announced their decision instead of keeping it quiet until 11 o’clock this morning—because it was made a week ago—secondly, had given a written instruction to public servants and, thirdly, had defined for them what ‘relevant matters’ are. They would have at least had some decent guidance when they came to this committee.

CHAIR—Mr Varghese is being cautious. Again, I do not think you can blame Mr Varghese for that.

Senator BRANDIS—Senator Ray, if you are right, what can Mr Varghese possibly do other than to seek to interpret this poorly defined decision for himself? Since you are not doubting the good faith in which he interprets it, are you not stuck with his answer?

Senator ROBERT RAY—I will go to a more general question now, to assist you, Senator Brandis. You were not here this morning.

Senator BRANDIS—No.

Senator ROBERT RAY—We were ambushed with this. We could have been told a week ago that this was the decision so that we did not waste a week preparing questions. That is point No 1. We have a minister at the table—

Senator BRANDIS—My point is that the more you succeed in persuading us that the decision is vaguely defined, the stronger is Mr Varghese's position in saying, 'I don't feel I can go there.'

Senator FAULKNER—It is a directive to public servants not given to them.

Senator ROBERT RAY—Yes, that is right—without defining what relevant matters are. That is our problem.

Senator BRANDIS—That is his problem and he is responding to it in good faith.

Senator ROBERT RAY—Senator Minchin's definition was that almost anything in this world could be referred to Cole and therefore be ruled out. For instance, the setting up of the Volcker inquiry was ruled out by the minister this morning. How in heaven's name is that going to come before Cole? It is just part of the cover-up.

CHAIR—If you are right, you understand that Mr Varghese was cautioned.

Senator ROBERT RAY—I am not criticising Mr Varghese.

CHAIR—I know you are not, but—

Senator FAULKNER—A directive has been given to public servants at the witness table at a Senate estimates committee. There has been no other formal communication of this directive, even though a cabinet decision was made about it a week ago. One assumes, and all Mr Varghese can tell us, is that he maybe heard about it on the grapevine or by osmosis and was not completely surprised it was coming.

Senator BRANDIS—No, he said he heard about it through the established process that his office observes.

Senator FAULKNER—If it is a directive, one would assume that most directives are a great deal more clear than the one that has been provided by Senator Minchin at the Senate estimates witness table this morning. Mr Varghese also would have heard that evidence has been given about the way one agency, in this case the Department of the Prime Minister and Cabinet, has responded to the request for the subpoena of documents by the Department of Foreign Affairs and Trade. Did you hear the evidence of the Department of the Prime Minister and Cabinet on that issue, Mr Varghese?

Mr Varghese—I heard most of it, I think, but not all of it.

Senator FAULKNER—I was wondering whether you could inform the committee whether ONA followed similar procedures to the ones that were outlined by officials at the table from the Department of the Prime Minister and Cabinet. In other words, was there an

internal checking, cataloguing and seeking of all information within ONA that may have been relevant to the request from DFAT?

Mr Varghese—We did not receive any request from DFAT.

Senator FAULKNER—Have you received any requests at all?

Mr Varghese—We have received no requests through the Cole commission for documents.

Senator FAULKNER—I see. Were you aware of the request that had been responded to by the Department of the Prime Minister and Cabinet?

Mr Varghese—Only when I heard about it at estimates.

Senator FAULKNER—Am I to assume, then, that no documents from ONA have been supplied either directly or, more importantly, indirectly—because that appears to be the process—to the Cole royal commission? Is that correct?

Mr Varghese—That is correct.

Senator FAULKNER—And you were not even aware today that such a request had been made?

Mr Varghese—Made to the Department of the Prime Minister and Cabinet?

Senator FAULKNER—That there was a subpoena that DFAT was handling on behalf of the Commonwealth. As you heard the evidence, PM&C provided documents to DFAT for forwarding to the Cole royal commission. You were not aware of that until today?

Mr Varghese—No—I was not aware of those processes.

Senator FAULKNER—Now that we know that no ONA documents have gone either directly or indirectly to the Cole royal commission, are you able to say separately, as far as ONA's internal processes are concerned, whether you have taken action to check ONA records about any documentation within your agency that deals with matters that are being considered or might be considered by the Cole royal commission?

Mr Varghese—Yes, I have.

Senator FAULKNER—Was that as a result of a decision that you yourself took? In other words, proactively, you decided that yourself as head of the agency?

Mr Varghese—That is correct.

Senator FAULKNER—Did you seek advice or were you requested to do that by anyone outside your agency?

Mr Varghese—No—I initiated that process.

Senator JOYCE—In your role, as this thing was front and centre of what was going on, there would be an expectation that possibly in the future something in that regard, of information being required, may come onto the—

Senator FAULKNER—I do not know what your expectation is. Mine, until a few moments ago, was that any search for documents within the Commonwealth would have included an agency like ONA.

Senator ROBERT RAY—The evidence given today was that all agencies covered by PM&C had been asked about this, so this is news.

Senator FAULKNER—Of course it is.

Senator ROBERT RAY—You were not here then.

Senator JOYCE—I was watching it on television.

Senator ROBERT RAY—Were you?

Senator FAULKNER—Obviously you were not following the play, but fair enough.

Senator ROBERT RAY—We will speak more slowly for you next time.

Senator JOYCE—I am cut.

CHAIR—You look it, too.

Senator FAULKNER—This is an absolutely crucial issue. We now understand that the thoroughness of the Commonwealth's response to the subpoena, which was being handled by DFAT, has not included any documentation at all—no involvement at all—from the Office of National Assessments. That is what Mr Varghese has just told the committee. He has also told the committee—

Senator BRANDIS—Who was the addressee of the subpoena?

Senator FAULKNER—DFAT.

Senator BRANDIS—The ONA is not under DFAT.

Senator FAULKNER—We know that, but DFAT—

Senator ROBERT RAY—Neither is PM&C and they responded, because they were asked to.

Senator FAULKNER—But DFAT has been coordinating it. Senator Brandis, you were not here this morning either. Just so that you are aware, we were advised that DFAT was handling this, that it was the lead agency and was coordinating the response to the subpoena on behalf of the Commonwealth. That was evidence given at this committee this morning. Chair, I think you could confirm that.

CHAIR—That is correct.

Senator FAULKNER—Thank you. So just to bringing you up to speed—

Senator BRANDIS—I am just wondering who was the addressee of the subpoena.

Senator FAULKNER—I always try to be helpful to you, just so that you—

Senator BRANDIS—I know I am a bit slow, but ordinarily—

Senator FAULKNER—No, you are not.

Senator ROBERT RAY—No, you are not.

Senator FAULKNER—Compared to many others, you are right on the ball.

Senator BRANDIS—Ordinarily, the obligation to comply with a subpoena is restricted to the addressee. If the ONA is not an agency within DFAT, it would seem to fall beyond the requirement of the subpoena.

Senator FAULKNER—I do not know whether that is right or not—

Senator BRANDIS—That is the law.

Senator FAULKNER—it might be the law—but I do know the evidence that the Department of the Prime Minister and Cabinet gave this morning. But then there was no-one of your eminence at the table, so we just let it go.

Senator ROBERT RAY—We missed you.

Senator FAULKNER—Yes.

Senator MURRAY—On a point of order, Mr Chair, I get the impression the government have been verballed. Senator Brandis has given a very narrow interpretation that they should respond to a subpoena with a lawyer's mind. But the Prime Minister has said that the government will cooperate to the full with the Cole inquiry and ensure that every relevant piece of documentation will reach it. The government have said they will be fully accountable. They have not taken a legalistic, narrow view of it. I do not think Senator Brandis should be permitted to verbal the government on that basis.

CHAIR—There is no point of order, Senator Murray.

Senator BRANDIS—It is not verbalising the government and it is not a legalistic view. An obligation is an obligation and it is defined by its purpose.

Senator Abetz—Senator Murray, we have made offers to you in the past to join us but you have never taken them up!

Senator FAULKNER—I want to continue my questioning, but I will make this point through you, Chair: obviously I do not have the *Hansard* transcript in front of me, but I believe this committee was misled in evidence that was received from the Department of the Prime Minister and Cabinet in relation to the way the Prime Minister and Cabinet portfolio as a whole responded to the DFAT request. But we will check that.

CHAIR—I was not sure if that evidence related just to the department or to all agencies.

Senator ROBERT RAY—As for agencies, I do not go to the misleading part; but I will say that I think it is inaccurate at this stage.

Senator Abetz—Senator Faulkner usually goes over the top.

Senator FAULKNER—Anyway, we will check the *Hansard* record. But the most important thing here is that ONA has not provided any documents. That just goes to show how thorough the process is not. But let us get back to the search of documents that you initiated, Mr Varghese. On the process issue, when did you do that, Mr Varghese?

Senator JOYCE—Be very careful that you do not—

Senator FAULKNER—What are you on about? Very careful about what?

Senator JOYCE—Nothing. I am participating in the inquiry. That is my right.

Senator ROBERT RAY—Get a bridle and bib next time if you want to lead the witness.

Senator CHRIS EVANS—Senator Joyce is being allowed to intervene against the call.

CHAIR—I did not hear Senator Joyce’s comment, but I am sure it was useful.

Senator ROBERT RAY—He is advising the witness to be careful in answering our questions.

Senator Abetz—Sometimes you do that yourself, Senator Ray. You preface your question with the injunction: ‘Now be careful in answering this question.’

CHAIR—Senator Faulkner has the call.

Senator FAULKNER—It is one of the least controversial questions that has been asked. I asked Mr Varghese: when did you actually do this?

Mr Varghese—I do not have the precise date in my head but it would have been several weeks ago.

Senator FAULKNER—Fair enough. You might take that question on notice for us, but ‘several weeks ago’ is helpful. Did that search of records include, as we have heard from PM&C and as we would hope, a thorough file search of cables, electronic records and the like? Was it broad-ranging in an effort to nail down any possibly relevant documents? Can you confirm that to the committee?

Mr Varghese—It was as thorough a search as we could undertake.

Senator FAULKNER—In broad categories, would you say that it included ONA reporting? Would it include cable traffic, email and other electronic records, file records and the like? Would that be correct?

Mr Varghese—It would certainly have covered ONA documents, and it would have covered material that ONA had access to.

Senator FAULKNER—Did you authorise a senior officer of ONA to coordinate these searches? I appreciate that you made the decision, you authorised it and it was your initiative—I accept that. I assume that you did not necessarily actually go and do it, but you may have. Can you tell me whether you—

Mr Varghese—No, I did—

Senator FAULKNER—You actually did it yourself?

Mr Varghese—No. I asked someone to coordinate the search.

Senator FAULKNER—Was that a comparatively senior officer in your organisation?

Mr Varghese—I had a branch head oversight the coordination and I think the detailed coordination work was done below SES level.

Senator FAULKNER—When the material—some of that would have been documents; I am using the word ‘material’—was collected, was it then subject to further analysis, examination or consideration as to whether it might be relevant? Did you or some other designated officer actually have a look at all of the material?

Mr Varghese—I did not have a look at all of the material. I certainly had a look at some of the material.

Senator FAULKNER—But did you have an officer who you as the head of agency authorised to look at all of the material?

Mr Varghese—As I said, I asked a branch head to oversight the coordination process. He would have fulfilled that role.

Senator FAULKNER—So that was done at the branch head level. What happened then? Was the material collated? Was it all brought together in a file? Was it catalogued or arranged or organised in some way? What was the next step?

Mr Varghese—The material was collated. This was not material that was going anywhere like the Cole royal commission.

Senator FAULKNER—I appreciate that. You have made that point. I accept that and I understand it. It was collated.

Senator JOYCE—Apart from collating it there's not much you can do, basically.

Senator FAULKNER—It was collated. Was a new file established for all of this material? As a result of that, could you now quite easily go and put your hands on the material in ONA?

Mr Varghese—The material was collated and it remains collated.

Senator FAULKNER—Has it been provided to anyone?

Mr Varghese—No, it has not.

Senator FAULKNER—Have you been asked for it?

Mr Varghese—No, I have not.

Senator JOYCE—There is nothing unusual about that, is there, Mr Varghese? The day-to-day process of what you do in your job is to basically observe what is on the political horizon. Part of your job is to make your best management decision about those things that could possibly need your attention. Would that be a fair assumption about what you do when you go to work?

Mr Varghese—That is correct. As I said, this was a search that was initiated by me as a prudent contingency.

Senator JOYCE—I would imagine there would be a range of things—I am not going to ask you about what they are because, by the nature of your job, they are secret—that you are collating, cataloguing and observing as you go through. I imagine you are not spending every minute of every day on one specific issue. There would be a whole range of things that you would be looking at as part of your process.

Mr Varghese—That is correct.

Senator FAULKNER—It would be true, though, Mr Varghese, that the material that you have collated would have a range of classifications. Would that be right?

Mr Varghese—That would be correct.

Senator Abetz—A degree of latitude has been extended, but I think we are starting to get into a realm where we should be now treading very carefully.

Senator ROBERT RAY—I think it is a fairly unremarkable question.

CHAIR—I think that question is okay. There is a range of classifications.

Senator ROBERT RAY—Can I add this in. Are you entitled to refuse the production of documents because of their classification, be it to a royal commission or anyone else?

Mr Varghese—I do not know the answer to that. I have not had it tested.

Senator FAULKNER—But you can confirm that there is a range of classifications?

Mr Varghese—Yes.

Senator ROBERT RAY—Do you have a copy of the statement that Senator Minchin read out this morning and which was tabled here?

Mr Varghese—No.

Senator ROBERT RAY—We will get you a copy. I will give you 30 seconds to read it before I ask you questions. This is just one for the record. There is a trick at the end of it, just so you know in advance. It says that you are not, as an official appearing before a Senate legislation committee, to answer questions on the following matters. That is clear. Therefore I take the interpretation of that—and you may want to think about it—to mean that there is nothing here that prohibits you attending a meeting of the Parliamentary Joint Committee on Intelligence And Security, which is always private, and answering questions on that. The directive does not go to that.

Mr Varghese—You are certainly correct that the directive does not go to that. Whether that is permissive in relation to the other committee is a separate issue. The absence of a reference to that committee in this does not make it permissive.

Senator ROBERT RAY—Well, no. At different stages that committee will be looking into a variety of issues. You are now covered by the ambit of that committee under the legislation, are you not?

Mr Varghese—I am. As I recall, it is restricted to finance and administration.

Senator ROBERT RAY—‘Administration’ has a very wide interpretation. We have not gone through that process with you, and I do not want to put it on the record. But administration goes to the way you administer documents and respond to a variety of things. Clearly, the thing is excluded and will be respected as operational matters. I think it comes within administration. The second paragraph says ‘present his findings without parallel public questioning’, which would also be excluded if you appeared before that committee. When your finances and administration are examined annually—you are due I think on 23 March, or about then—(a) it is not public and (b) there is no directive. I just put you on notice. I will be asking questions about these areas, so you had better get a new cabinet direction to gag you; otherwise, you will be in contempt of Senate standing orders. My point is that the statement covers only Senate legislation committees.

Mr Varghese—That is correct, yes.

Senator ROBERT RAY—By the way, just for the record, so the minister and others understand it, if we do ask you questions on this we cannot put it on the public record if it is a private hearing.

CHAIR—As there are no further questions for ONA, I thank you, Mr Varghese, and your officers for your assistance tonight.

[9.34 pm]

Office of the Commonwealth Ombudsman

CHAIR—I welcome Professor McMillan and officers.

Senator CHRIS EVANS—I want to start by just getting a sense of where you are at with the DIMIA inquiries, which are now DIMA, I gather. We had a misunderstanding or argument in the Senate the other day about your outstanding reports et cetera. Senator Vanstone sought to clarify that matter and think that we ended up in more confusion. I think that she and I agreed that we were more confused than when we started. This is not a commentary on Senator Vanstone but I thought we would start with you and you could set Senator Vanstone and me and the Senate straight as to where we are up to with you in your own work. This is purely on the matter of your own work; I am not asking you to go outside that.

Prof. McMillan—I hope that I can clarify rather than add to your confusion. The office has a number of different functions in relation to the immigration portfolio but there are two of our functions on which there are ongoing reports. One is the statutory role of reporting on people who have been in detention for two years or more. That option commenced in June last year, and as of 29 June 2005 there were 152 people then in detention on whom reports had to be prepared. Subsequently there have been another 59 instances in which reports had to be prepared on people. Some of those are cases in which the person who was in detention on 29 June remains in detention. On the latest figures that I have we have received reports from the department of 211 cases of people who have been in detention for two years or more subsequent to 29 June last year. I have completed—

Senator CHRIS EVANS—So they are reports from the immigration department to you?

Prof. McMillan—That is right. So I have received 211 reports from the immigration department and my functions then is to undertake an individual assessment of the situation of the person's detention, provide the report to the minister, and then the minister is subsequently to table a statement in parliament responding to my assessment and any recommendations. I have currently provided 48 assessments or reports to the minister and the minister has tabled and responded to 14 of those. Of the 48 that I have provided to the minister, there are about six or so that were provided last week so it is not to be expected that there would be any report.

Ms Durkin—I think the debate you had the other day was in relation to a previous bulletin we had on our website that said that at that stage we had provided 17 reports, so everyone was talking about a figure of 17 reports having been provided to the minister. You will see that we have got another update on our website now that talks about 43 reports. But since we put that bulletin up there have been 48 reports delivered to the minister. So it was talking about a historical figure of 17, I think.

Senator CHRIS EVANS—I think that there was also confusion between those reports and the reports that were dealt with as a result of concerns about—

Prof. McMillan—And I will come to those ones next. To complete the description of our two-year detention reporting function, I have currently provided 48 reports to the minister and I have another 43 in advanced draft stage within the office, and those will be provided shortly, although it is hard to put a time frame on it.

Senator CHRIS EVANS—I am sure this is more a question for the minister, but, for the sake of finishing off the discussion, what does the minister have to do with them? Do you make a recommendation, or does the minister just have to sight them?

Prof. McMillan—My function is simply to prepare a statement of my analysis, with recommendations if I so choose. On most of the reports that I have provided I have made a recommendation, but not in all cases. The recommendation in some instances, for example, is that a person be granted a visa of a particular type. In some instances it is that a person be released from detention. In many instances it is simply that the minister should make a decision on the person's immigration status within a particular time frame. In other instances I have made recommendations about ongoing care, particularly if a person has suffered mental health difficulties.

Senator CHRIS EVANS—So they are specific to that person's case rather than broader recommendations—is that fair?

Prof. McMillan—That is correct. In some instances I have drawn attention to what I think are systemic difficulties in immigration detention, but for the most part in the reports, the analysis and the recommendations are specific to the person on whom the report is being prepared.

Senator CHRIS EVANS—So the minister then effectively has to determine whether or not she accepts your recommendations or wants to make an alternative decision?

Prof. McMillan—Correct.

Senator CHRIS EVANS—And there is no obligation for her to necessarily accept your recommendation; it is just advice to the minister—is that fair?

Prof. McMillan—Yes. Both my report and her response have become public documents. I have placed them on my website so that they can be easily accessed.

Senator CHRIS EVANS—When do you do that? Is it after she has tabled the response?

Prof. McMillan—That is correct.

Senator CHRIS EVANS—So you do not publish your recommendations—when the minister tables the response she tables your recommendation and her decision?

Prof. McMillan—Correct.

Senator CHRIS EVANS—So there is full transparency in the sense that the minister releases your recommendation and what she has decided to do about it?

Prof. McMillan—Yes, that is correct.

Senator CHRIS EVANS—We have 14 tabled. Are the 14 a part of the 48?

Prof. McMillan—Yes.

Senator CHRIS EVANS—So we have 14 of the 48 that have actually been tabled and there are 43 more in the pipeline?

Prof. McMillan—Correct.

Senator CHRIS EVANS—Will that be the end of it?

Prof. McMillan—No, it is an ongoing function. I mentioned that we have received 211 reports. I will have to prepare an individual report in each of those cases. In many of those cases, though, a person has already been released from detention and I expect that the report could be a fairly brief one. But the function is ongoing in the sense that, in every instance where a person reaches two years in detention on a continuing basis and then every six months thereafter, if they remain in detention, a report has to be provided by the department.

Senator CHRIS EVANS—So you are giving priority to those still in detention, I presume?

Prof. McMillan—Correct. We give priority to anybody who has come into detention.

Senator CHRIS EVANS—That means that the reports on some of those who have been in detention will lag a bit, but effectively their major problem has been solved in the sense that they are not in detention?

Prof. McMillan—Yes.

Senator CHRIS EVANS—Could it be that they have actually been deported?

Prof. McMillan—There have been some instances in which the person has already been removed from Australia. ‘Removed’ is the more common term now. ‘Deportation’ is still the word used in a limited number of instances, but ‘removed’ is the more common term.

Senator CHRIS EVANS—It is like ‘not lawfully detained’. I have to get the newspeak correct. I thought it was ‘unlawfully detained’ but I am told that is not right. It is ‘not lawfully detained’.

Prof. McMillan—Yes. In many other instances a person has been given a visa to remain.

Senator CHRIS EVANS—But there is a possibility that those who you have not had a chance to report on yet may actually have left the country?

Prof. McMillan—Correct.

Senator CHRIS EVANS—Assisted to leave the country.

Prof. McMillan—Correct. Or voluntarily chosen. In fact, one of the difficulties we have faced, and partly the reason we have been a little slower than we thought, is that the circumstances change under our feet. We prepare a report and then find that the circumstances have changed substantially in a matter of two or three weeks. Quite often there is then a sort of catch-up phase.

Senator CHRIS EVANS—So the department has already taken some action.

Prof. McMillan—That is right. And we would emphasise that we do not want our reporting function to interfere with the ordinary work process.

Senator CHRIS EVANS—So the department do not put their actions on hold—they get on with it and you report when and as you can.

Prof. McMillan—Yes. That is correct.

Senator CHRIS EVANS—Is there any time frame in which the minister is supposed to have dealt with—

Prof. McMillan—Once a person has reached two years in detention, the minister and department are required to provide a report to the Ombudsman within 21 days. The Ombudsman is then required to provide the assessment as soon as possible—‘as soon as is practicable’ or some similar statutory phrase. After receiving the Ombudsman’s report, the minister is to table a statement in the parliament within, I think, 15 sitting days of receiving the Ombudsman’s report.

Senator CHRIS EVANS—So it is tied to the sitting days.

Prof. McMillan—Yes. That can be quite lengthy, as you would be aware.

Senator CHRIS EVANS—Yes. In other words, it is similar to disallowance motions: it can be quite a long period of time if parliament is not sitting. So there is a requirement on the minister to meet that time frame.

Prof. McMillan—Yes.

Senator CHRIS EVANS—And they are all going through the system.

Prof. McMillan—Yes.

Senator CHRIS EVANS—I know you have received additional resources, but that was more, I thought, in relation to these issues of cases of concern, or however you describe them, in the other category.

Prof. McMillan—We received additional resources really for an expanded role as the immigration Ombudsman. The two-year reporting is one aspect of that; the referred immigration cases—and I will give you an update on them—is another aspect. But we have also been developing an expanded oversight role in relation to matters such as detention generally and compliance. The increased resourcing is meant to cover, generally, that expanded role that we discharge.

Senator CHRIS EVANS—What percentage of your work is now immigration based?

Prof. McMillan—The number of complaints that we receive on immigration matters is probably only about 10 per cent. But it is probably close to about 25 per cent of our investigation work. In terms of staff resources it is probably about 25 per cent of our active work.

Mr Brent—Perhaps even a touch more

Senator CHRIS EVANS—I do not mean the number of complaints but actual workload.

Prof. McMillan—Yes—of the work that we are undertaking. It is at a peak at the moment, particularly because of the initial number of two-year detention cases and the matters that have been referred post Rau and Alvarez.

Senator MURRAY—In one of the remarks you made earlier you indicated that the response of the minister must be within 15 sitting days of your report. That would be quick, for instance, in the second half of 2006, because of the number of sitting days racked up. But if, for instance, you had reported in December 2005, it might have been only in May or June—you would have a much longer time period. That is a little concerning. Is there a provision or a desire for the minister to table her statement outside of sitting days if there are not that many sitting weeks in that particular period?

Prof. McMillan—It is probably better that I say that is a matter that the parliament can more appropriately take up with the minister.

Senator MURRAY—But you would be concerned, wouldn't you, if there were a seven month delay in some cases and others were dealt with very swiftly, as they should be?

Prof. McMillan—It would lead to an imbalance in the discharge of the function although, as I indicated earlier—

Senator MURRAY—Have you conceded the matter?

Prof. McMillan—Ours is merely an assessment. We have emphasised, and the department has generally taken the view, that its administration of the immigration legislation proceeds independently. So there is, for example, nothing to prevent the department or the minister making a decision that somebody be granted a visa or released from detention independently from or concurrently with our process. But it is probably fair to say that the Ombudsman's recommendations are a statutory trigger or requirement for an issue to be addressed, insofar as there can be there that—

Senator MURRAY—I do not assume bad faith, but in case you have not thought of it as a procedural matter, could you keep an eye out for erratic reporting periods as a result of when sitting days fall?

Prof. McMillan—Yes, and we are happy to take that on board. This is an unprecedented kind of function, and after its year of discharge we will be in a good position to reflect on whether there are any imbalances or shortcomings in the way the system works.

Senator CHRIS EVANS—Going to the other group—the ones referred to arising from the Rau and Alvarez concerns—can you give me a brief summary of the scope of that and where you are up to?

Prof. McMillan—Post the inquiry into the circumstances of Cornelia Rau, there were 221 cases referred to the Ombudsman for investigation. These are cases in which a person who was in detention was subsequently released from detention as they could not be lawfully detained any longer. Our function is essentially to look at the core issue—whether the person was unlawfully detained for all or any of the period. But we have also been looking generally at the administration of the immigration legislation in relation to the cases referred to us. After receiving the 221 cases, we broke them down into a number of categories which we have signified to the parliament on earlier occasions. For example, in some of the cases we identified that there was a mental health issue—

Senator CHRIS EVANS—You broke them down into about eight groups, didn't you?

Prof. McMillan—That is right. At this stage we have identified 11 of the 221 cases as ones where a significant mental health issue arose in the detention. Those are the 11 that have been prioritised for investigation.

Senator CHRIS EVANS—Is it still 11? There was some suggestion put to me that the numbers of mental health related issues had actually increased. Is that right?

Prof. McMillan—No. The figure we currently have is 11. Of those 11, a report has been completed in draft form on one case, and the report has been provided to the department. The minister and the secretary of the department have already signified publicly and before the parliament that that report is under consideration. It is possible that that report will be publicised and published within the month. We are simply awaiting the department's formal response. We have held discussions.

Senator CHRIS EVANS—I have the sense that the minister said one had already been tabled.

Prof. McMillan—No.

Senator CHRIS EVANS—Was she referring to the earlier group?

Prof. McMillan—Yes.

Senator CHRIS EVANS—This is part of the confusion.

Prof. McMillan—The report in relation to Vivian Alvarez commenced as an independent executive inquiry and concluded as an inquiry conducted by the Ombudsman, so that was formally published as an Ombudsman report. However, there was one other case involving mental health issues. I have completed that report, provided it to the department and held discussions. I am awaiting a final response. I expect that report will be published within the month.

Senator CHRIS EVANS—So it is fair to say that the two you have brought down have been the Rau and Alvarez reports, however described?

Prof. McMillan—Rau was independent of my office, but yes.

Senator CHRIS EVANS—Do the 221 cases include Alvarez?

Prof. McMillan—Yes.

Senator CHRIS EVANS—But not Rau?

Prof. McMillan—But not Rau.

Senator CHRIS EVANS—So we have 221 cases post Rau—one is Alvarez, and that has been completed, and you have given the draft of the next one to the minister and the department.

Prof. McMillan—That is correct.

Senator CHRIS EVANS—Is there any particular timing required with that, or is that at the discretion of the minister?

Prof. McMillan—We generally ask the department to reply within 28 days. That will probably blow out by a week or so, but they have been very prompt in addressing the report.

Senator CHRIS EVANS—Are they providing you with feedback as to whether they agree or disagree or think that you have got the facts wrong—

Prof. McMillan—Correct.

Senator CHRIS EVANS—Then once you have had the feedback from the department, it goes to the minister?

Prof. McMillan—No, it is for me. I publish the report under the Ombudsman Act just as a report to the Ombudsman. There is a protocol to provide a copy to the minister and the department a few days before.

Senator CHRIS EVANS—So the minister gets the draft as well?

Prof. McMillan—Yes.

Senator CHRIS EVANS—Does she have a capacity to provide feedback to you?

Prof. McMillan—Yes, but generally that has been done in this instance through the department.

Senator CHRIS EVANS—But technically speaking, you provided it to both the department and the minister?

Prof. McMillan—Correct.

Senator CHRIS EVANS—What can you tell us about the progress of the other 219?

Prof. McMillan—Those have been categorised. Another big category is what we call ‘data cases’ where there is an issue as to whether a person had been unlawfully detained by reason that the correct data had not been provided to the department, say, about a tribunal matter. There are 44 data cases. As an internal matter we have concluded our investigation of 19 of those data cases but we propose to provide a single report on all 44 data cases to the department. So we are awaiting completion of the investigation. There are a few other cases of children who had been in detention who at the age of 10 had become Australian citizens and then have to be released—

Senator CHRIS EVANS—I know that you have given a lot of that evidence before and I do not want to go over that. I am really just trying to catch up on—

Prof. McMillan—All we have said before is that our target was to complete the investigation of all of those cases by mid year, that is, by July.

Senator CHRIS EVANS—You are not going to make it, are you?

Prof. McMillan—We are still keeping that target in mind. One case has taken enormous resources, the one that is currently with the department—

Senator CHRIS EVANS—Is this the one the minister—

Prof. McMillan—Forty-four other cases have been batched in a single report. Many of the others that we are leaving until later, I expect, are going to be much simpler.

Senator CHRIS EVANS—So the one that you have got the draft on, is that the one the minister referred to in the media the other day?

Prof. McMillan—Correct.

Senator CHRIS EVANS—And you hope to have that out fairly quickly?

Prof. McMillan—Yes.

Senator CHRIS EVANS—How long ago did you send it to the department?

Ms Durkin—I am not sure of the exact date but the department response is due on Friday.

Prof. McMillan—It would have been about the third week in January, I think, that it went to the department.

Senator CHRIS EVANS—Perhaps you could take that on notice. You think that it is supposed to be responded to by the end of this week?

Prof. McMillan—Yes.

Senator CHRIS EVANS—Have you received any more cases since the original 221 referred?

Prof. McMillan—No. There was discussion the other day between some officers of the department and staff of my own office—I was away at the time and so I have only second-hand knowledge—about referring some additional cases and there were figures mentioned. I noticed that in one of the other committees today between 16 and 27 additional cases have been referred.

Senator CHRIS EVANS—What weight should we put on that?

Prof. McMillan—I think that it is premature to put any weight on it. Again, these are active files rather than the more aged files like the ones we have got. These are active files in which a person in detention was, as I understand it, released for the reason that they could not lawfully be detained any longer. It may be that there is nothing exceptional at all—

Senator CHRIS EVANS—But is it fair to say that you are expecting to get a few more?

Prof. McMillan—We are expecting to get a few more and I will ensure that we look at each of those individually. I have yet to talk with the department about how we investigate them, whether we ask, for example, for a report and examine the department's report or whether we do a separate investigation ourselves.

Senator CHRIS EVANS—So at the moment you are thinking in the order of about 16 to 27.

Prof. McMillan—Yes.

Senator CHRIS EVANS—If your deadline is July and you are waiting on effectively the first of the next batch to come through, are you suggesting that between now and July you will get the vast bulk of those 220 reported on?

Prof. McMillan—Certainly the majority of them, is my expectation.

Senator CHRIS EVANS—Because of the grouping, effectively?

Prof. McMillan—Yes; and there is an acceleration in our rate of production in each of these functions.

Senator CHRIS EVANS—All of these are no longer in detention, are they?

Prof. McMillan—That is correct.

Senator CHRIS EVANS—I think that has sorted that for me. Can I refer you to your letter to Senator Vanstone on 26 September 2005 which I think is forwarding her the Rau matter, with the continuation of the Comrie inquiry and how you had taken it over. In that letter you say:

I take this opportunity to note that many of the concerns expressed in the report accord with matters raised by my office in recent years, especially in relation to compliance activity, the welfare of immigration detainees, and the culture of the Department of Immigration and Multicultural and Indigenous Affairs.

Are you able to expand on what you meant by those comments, what the previous concerns were and how you had expressed them?

Prof. McMillan—Probably the best place to start is with the last annual report that I tabled—that is, the Ombudsman's annual report for 2004-05. There is a report on our immigration investigations at pages 45 to 50. At page 48, for example, I refer to two reports that I had completed under section 15 of the Ombudsman Act. Details of those reports in an abridged form are on our website. One was a case of compliance and the other was a case of detention. On page 48 of my annual report I have spelt out concerns that I had raised with the department about shortcomings in administration relating to both compliance and detention. There is a similar example on page 77 of the annual report referring to an investigation I had undertaken into the adequacy of medical care provided by a contracted service provider to the department.

Senator CHRIS EVANS—That is on page 77?

Prof. McMillan—In the second column on page 77. Those are examples of the matters I referred to.

Senator CHRIS EVANS—Were these issues raised in earlier annual reports?

Prof. McMillan—Yes, some of these have been issued in earlier annual reports, and there have been previous annual reports by ombudsmen—by my predecessors—on, for example, conditions in immigration detention centres. My office has also prepared quarterly reports to the department on issues that arose in investigations that we were undertaking. In those quarterly reports I would sometimes draw attention to concerns that we had experienced generally in our complaint investigation work concerning departmental administration.

I will refer to one other specific matter. One of the issues that were raised in both the Rau and the Alvarez reports was the impact of privacy concerns, real or imagined, on efficient investigation. That was an issue I had raised with the department; indeed, as a result the Ombudsman Act was amended last year to ensure that the Ombudsman could efficiently undertake an investigation without being impeded unnecessarily by privacy concerns.

Senator CHRIS EVANS—When did you first start raising those issues with the department? When did the concerns that you have referred to start?

Prof. McMillan—The comment that is made in that covering letter of 26 September is general in character. It was meant really to be a summary of Ombudsman experience. I could go back, for example, to the Ombudsman before last, when Ms Philippa Smith was the Commonwealth Ombudsman. She prepared some reports under section 15 of the Ombudsman

Act and prepared a report on conditions in immigration detention centres. There have been reports by my predecessor, Mr Ron McLeod, as well.

Senator CHRIS EVANS—As you said, they would all be covered in the annual reports?

Prof. McMillan—Yes. The annual reports and the section 15 reports that are published on our website are probably as good a coverage as you can get.

Senator CHRIS EVANS—And what about the quarterly reports? Are they available?

Prof. McMillan—No. The quarterly reports are simply internal reports to the department which sum up. I have generally followed the pattern of trying to publicise things either in the annual report or, if I have decided that something is important enough, in a special report under section 15 of the act.

Senator CHRIS EVANS—Are you able to make those quarterly reports available now?

Prof. McMillan—I am quite happy to go back and look at what is in the reports. In principle, I cannot see any problem with that.

Senator CHRIS EVANS—I would appreciate that. If you could take that on notice and provide them, that would be great.

Prof. McMillan—Yes. I can take that on notice to do.

Senator CHRIS EVANS—If you could, that would be great. Do you report to the minister as well? You have your annual report, but do you get the chance to meet with the minister or to talk to the minister?

Prof. McMillan—I have spoken to the current minister, Senator Vanstone, on a couple of occasions. I will certainly make it a point of seeking an interview early on with the newly appointed minister assisting.

Senator CHRIS EVANS—Yes. He seems to have taken on quite a few of the functions.

Prof. McMillan—Yes. I think that is yet to be finally resolved.

Senator CHRIS EVANS—Normally parliamentary secretaries get the paperwork, from my experience.

Senator Abetz—In your day it was.

Senator CHRIS EVANS—Under governments of both persuasions, I think. You are not suggesting, though, that your reports will now go to the parliamentary secretary? They will still go to the minister.

Prof. McMillan—Yes. Under the act the Ombudsman is required to report to the minister.

Senator CHRIS EVANS—No doubt you have had contact with Senator Vanstone since all this blew up, and she has asked you to do a lot of work, and I appreciate that. But there is no formal regular reporting to the minister?

Prof. McMillan—No.

Senator CHRIS EVANS—Yours is to the department.

Prof. McMillan—Correct.

Senator CHRIS EVANS—Thank you very much.

CHAIR—Are there any further questions for the Ombudsman?

Senator MURRAY—Yes. You take an interest in freedom of information. Have you been asked by the government to have a look at any draft guidelines for any departments?

Prof. McMillan—No, I have not.

Senator MURRAY—There is nothing in the wind as to revising the way in which guidelines are presently set?

Prof. McMillan—Within the next 24 hours I will complete an own motion report on freedom of information. That will be published, but I have not otherwise been asked to look at that.

Senator MURRAY—Will that report make recommendations?

Prof. McMillan—Yes. The report is primarily an analysis of a study that my office undertook of administration of the FOI Act in a number of agencies, with a particular focus on timeliness, reason statements and assessment of charges. I draw attention in that report to a number of, I suppose, shortcomings. I draw attention in particular to the variable quality of FOI administration among agencies. I also particularly raise the issue, which I know the senator has raised in a private member's bill, of whether there should be a separate FOI commissioner, perhaps as part of the Ombudsman's office, to provide a more regular monitoring and oversight of FOI.

Senator MURRAY—Are there any major areas you will leave out of your report?

Prof. McMillan—My report did not look at, for example, the decisions on exemptions under the act.

Senator MURRAY—Because that is the issue of big contention.

Prof. McMillan—Yes. Once an exemption issue becomes contested, I have generally taken the view that if a department has a plausible basis for an exemption—for example, it has received plausible legal advice that the document is exempt—then that issue is better resolved through the Administrative Appeals Tribunal. Consequently, Ombudsman investigations and our own-motion reports have tended to look more at administration and processing rather than exception claims.

Senator Abetz—I am just concerned that Senator Murray is receiving a scoop as to what is or is not in a report which is about to be released.

Senator MURRAY—I am particularly interested in the area of contention, some of which you will cover. The exemption area is one and, as you know, that is subject to a High Court challenge. So my instinct is that you are right to leave it alone until the High Court has taken a view. Are you watching the outcome of that High Court challenge?

Prof. McMillan—I am watching the outcome of that High Court decision. It is probably fair to say that I do not think it is a scoop that it is not an issue covered in my report. It is noted in a footnote in the report, but it is not an issue otherwise discussed in the report.

Senator MURRAY—I have a particular reason to ask. Are you likely to provide an addendum or an additional view to your report once the High Court has ruled in that area? In other words, will you revisit the area of exemptions?

Prof. McMillan—That is unlikely, for two jurisdictional reasons: firstly, that case concerns a decision made by a minister and I have no jurisdiction over ministerial decisions; and, secondly, my act provides that I shall not investigate matters that have been addressed by a court or a tribunal unless there are special reasons. Once an issue of that kind has been addressed by the High Court and addressed definitively then I would see no need for me, certainly in a formal ombudsman reporting sense, to make any comment on it.

Senator MURRAY—Thank you.

[10.14 pm]

Australian National Audit Office

CHAIR—I call the committee to order and welcome Mr McPhee and officers at this late hour.

Senator MARK BISHOP—I welcome the officers from the Australian National Audit Office. Gentlemen, to start with, a Senate report came down in March of 2003 called *Report on the inquiry into materiel acquisition and management in Defence*. It was a report of the Senate Foreign Affairs, Defence and Trade References Committee. That had a range of recommendations, two in particular. They were, firstly, that ANAO conduct a cultural audit of the DMO as part of a change process and, secondly, that ANAO was:

... to produce, on an annual basis, a report on progress in major defence projects, detailing cost, time and technical performance data for each project—

and that that report be modelled:

... on that ordered by the British House of Commons ...

Can you tell us what, if anything, has happened to each of those recommendations, Mr McPhee?

Mr McPhee—Senator Bishop, it is very difficult to do an audit of cultural change in itself. We have tended to do audits of particular projects and contracts.

Senator MARK BISHOP—In the defence department, you could have got into the cultural wars, Mr McPhee. Just for my colleagues, it was a cultural audit of DMO as part of a change process. It was considered vital for efficient allocation of resources.

Mr McPhee—Our focus has mostly been on the large procurement projects. We have sought to identify lessons and experience gained over time and also to foreshadow areas where we think DMO in particular might make some improvements. The Audit Office has also been very supportive of the remediation programs currently being undertaken by Defence across a broad range of areas, particularly dealing with financial management. We have commented on that also in our reports. In terms of the particular recommendation that we look at the top 20 projects, we have—

Senator MARK BISHOP—No, I do not want to go into a discussion at this stage on your work—I am familiar with your work. I want to contain the questioning to those recommendations: the question on the cultural change audit and the second question.

Mr McPhee—Sorry. I was trying to pick up on the second issue that you raised, which was the recommendation that we report on the top 20 projects. It would require additional resources for the Audit Office to undertake that task, and we have raised that matter with government more than once.

Senator Abetz—Cheaper rent would have helped.

Mr McPhee—At the moment, the government has not seen it as a particular priority. We do a fair bit of work in Defence, as you would be aware. We do around half-a-dozen performance audits each year. We have a heavy financial statement commitment. So I am reluctant to take additional resources from elsewhere within the Audit Office's work program to devote to Defence. Unless the government and/or the parliament were to see fit to give additional resources to the Audit Office, I would not propose to pick up that Senate committee recommendation.

Senator MARK BISHOP—Okay. That report came down in March of 2003—that is a bit short of three years ago. How many times has ANAO requested additional resources?

Mr McPhee—I recall doing so twice, and I believe it may have been three times.

Senator MARK BISHOP—That is a decision of government to accept or reject your request?

Mr McPhee—Correct.

Senator MARK BISHOP—What has been the government's reasoning in not acceding to your request?

Mr McPhee—The primary reason has been the change program going on in DMO. There was a view—and quite a reasonable one—that DMO needed some time to adjust to the Kinnaird review and other reviews. At the time the government considered each request it was not considered appropriate to ask the Audit Office to do additional work.

Senator MARK BISHOP—So the government wants to see how the DMO change process beds down. Do you intend to keep raising the issue with government, or has the time for that now passed in your own mind?

Mr McPhee—I am reluctant to outwear my welcome. Having had at least two knock-backs—possibly three knock-backs—while I have not finally decided, I think there is a limit to how many times you ask government about these matters.

Senator MARK BISHOP—If you had the resources—either you found the resources internally by getting rid of other priorities or the government granted you sufficient extra resources—does ANAO have the capacity currently to carry out both of those recommendations?

Mr McPhee—We would build the capacity if required. We certainly do not at the moment, but with some adjustment we could do it. I forget our costing of the proposal, but my memory is that it was only around \$1 million or thereabouts per year.

Mr Hawley—I think it was built up over the years, so we had a learning process to make sure we understood, then we had a static phase, and then it dropped down as we got to know the processes well. I am afraid that I do not have the actual numbers.

Senator MARK BISHOP—Do you mind taking on notice how much you would require? It would presumably be a four-year cycle, a four-year commitment.

Mr McPhee—It would build in the first year and, we presume, would become ongoing.

Senator MARK BISHOP—Mr Hawley, would you mind taking that on notice and providing us with the evidence—

Mr Hawley—I will.

Senator MARK BISHOP—of what figure of additional resources you had requested of government to carry out both of those recommendations. Thanks for that. Can I turn to page 165 of the PBS that talks about the FFG project, which you reported on in your SPO audit. You did four or five different things. It was reported as slipping by \$59 million.

Senator Abetz—Sorry, what page number of which document?

Senator MARK BISHOP—I am talking about page 165—

Senator Abetz—Of what?

Senator MARK BISHOP—of chapter 3 of the—

Senator Abetz—It is not the PBS.

Senator MARK BISHOP—No, not the PBS. That would have been an attachment to the AR. It is where you listed all of the projects.

Senator Abetz—I think you previously said ‘PBS’.

Senator MARK BISHOP—Yes, I did.

Senator Abetz—But, looking at it, I do not think it goes to 165 pages.

Senator MARK BISHOP—No.

Mr McPhee—It may have been one of our reports that you are referring to, Senator Bishop. I do not have the report with me.

Senator MARK BISHOP—The report has a list of major expenditures: airborne early warning control, the maritime project, the ANZAC ship project, the FFG upgrade recommendation, the Collins replacement combat system, the SM1 missile replacement, the new heavyweight torpedo and the anti-ship missile defence. The point is that there was a \$59 million slippage in the PBS for this financial year. My question to ANAO is: do you have any intention to revisit this particular set of disasters in the FFG project?

Senator Abetz—It has just been suggested to me that it is Defence’s PBS document—

Senator MARK BISHOP—Yes.

Senator Abetz—not the Auditor-General’s.

Senator MARK BISHOP—But the ANAO has done an audit of the FFG project—

Senator Abetz—We are just trying to source the reference; that is all.

Senator MARK BISHOP—I think it was in the Defence PBS. It disclosed a slippage of \$59 million this year in the FFG project. ANAO has previously conducted an audit of the FFG project, and my inquiry is: do you have any current plans to revisit the FFG project in terms of an audit?

Mr McPhee—We set our program on an annual basis, and as we speak we are currently developing our program for the next year. In doing this, we consult with the various committees of the parliament through the JCPAA and have regard to our earlier work. We undertake a range of follow-up audits so, while I have not specifically answered your questions, that is one of the considerations we would take into account.

Senator SHERRY—When will that work program be released?

Mr McPhee—Before the end of this financial year. We seek to get it out before the start of the next year, to which it applies.

Senator MARK BISHOP—So revisiting the FFG project is actively under consideration.

Mr McPhee—Correct.

Senator MARK BISHOP—For next year's work program?

Mr McPhee—For next year's program.

Senator MARK BISHOP—In that audit you did of the SPOs, you noted that there was no paper trail and no documentation available for either DMO or the ADI for the payment of many tens of millions of dollars of expenditure on that particular frigate contract. In that context, how widespread, in ANAO's experience, is financial mismanagement of this kind—lack of a paper trail, inability to track expenditure, no confirming of receipts and no internal systems to confirm same—across other Defence projects that you have audited in more recent years?

Mr McPhee—I cannot give a general answer to that. As you would appreciate, we look at particular projects and we report on particular aspects, and one cannot extrapolate from that to the general situation. The issue of documentation within Defence is something that requires attention because it also comes up, as you would be aware, in the financial statement work that we do, where we have raised issues about the level of supporting documentation for matters from particular journal entries right through to leave processing and inventory recording. I am aware that Defence is actually focused on this matter and it is a generic issue that the department needs to deal with. But I cannot answer in any more detailed terms about how widespread that is.

Senator MARK BISHOP—In that case, let me reduce the question. In terms of the projects that you have audited, how widespread is the problem of lack of paper trail, lack of systems within the department to authorise expenditure before it is made, inability to confirm that correct expenditures have been made and inability to confirm that contracts have been complied with by contractors?

Mr McPhee—I would need to take it on notice. Mr Chapman may be able to assist here.

Mr Chapman—The question you are asking, Senator, is one that has been raised with us previously in other forums. While, again, I cannot give you a quite specific answer I tend to

look at it in terms of what has happened over a period of time. A number of our audits cover acquisitions that go back to 1995 on some occasions. I think there was perhaps a theme amongst some of those earlier audits that this issue was quite widespread. Following the creation of the DMO in 2000 and then the Kinnaird review in 2003 I probably offered the general observation that each of those events have led to some level of improvement in the project management and contract management. An issue for us going forward will be starting to focus our audit activity on projects which originated post Kinnaird. In that period we would hope to see some level of improvement. So my broad message there is that it is difficult to make generalisations going back over what could be a 10-year period.

Senator MARK BISHOP—I accepted the earlier comments of Mr McPhee. Firstly, my question was not generalised across all projects; it was particularised to audit projects that you have engaged in in more recent years. That is what we are talking about. Secondly, my question asked how common in those half-a-dozen projects have been the issues of inability to confirm expenditure, no paper trail for auditors to inspect, no documentation for either DMO or the relevant contractor to confirm that payment was entitled.

Mr Chapman—My response was seeking to position that question. The point I am making is that a number of the audits we have undertaken over recent times were projects or acquisitions relevant to the late 1990s-early 2000 period. My comment as a generalisation for those projects we looked at was that those sorts of problems were very much evident. Since those acquisitions occurred, obviously there have been a lot more projects. DMO has sought to change its operations and its activities, and the number of projects that we have undertaken that originated over the last year or two is obviously much smaller. They are the ones I think we need to start looking at going forward.

Senator MARK BISHOP—Have you identified any practice of prepaying contractors within DMO and Defence in the last three to four years? If the answer to that is yes, does that practice still continue at all?

Mr McPhee—I think there are prepayments, which we have reported on.

Senator MARK BISHOP—You have.

Mr McPhee—The issue has not been so much the fact that prepayments have been made; it is the impact on the leverage of DMO or Defence once that prepayment has been made that has been the critical issue.

Senator MARK BISHOP—Why do you say that the prepayment of some contracts impacts upon the leverage of DMO?

Mr McPhee—It means that if you have paid out a lot of the funds on a contract and you are seeking to negotiate or alter an outcome it becomes more difficult if you are not holding the funds.

Senator MARK BISHOP—If you have already paid the bill you can hardly ask for other things. Is the auditing system in DMO for payments of significant sums of money owed pursuant to contracts sufficiently robust, in that the Commonwealth is properly paying those contracts? Are you satisfied that it is? That is, if ADI or some other contractor sends in a bill

for \$1 million, \$5 million, \$9 million or whatever for part of a plane, ship or whatever, are there sufficient rigorous processes within the DMO that ensure the contract will be paid?

Mr McPhee—I think the answer is that they have procedures. We have reported from time to time on whether the procedures have been followed and whether the decisions made have been prudent. One of the positives about DMO is that they have recognised that project management is a specialist discipline—a required and necessary discipline. The client groups they are required to deal with have on the other side of the table extremely able and capable negotiators and contract managers, so DMO needs to be able to match that with its people and skills. I cannot tell you that they have it all under control—I am not sure that even they would tell you that—because our work continues to highlight areas where we think improvement is required. But the fact that the DMO has recognised that it has to do better in terms of its overall project and contract management has been a very positive development.

Senator MARK BISHOP—So they have recognised that they have had a problem in the past and they have set up guidelines for relevant officers to follow in the future, and you are satisfied that those guidelines are adequate, but you cannot say to me tonight that they are being complied with or applied in terms of major contract payments that have to be made?

Mr McPhee—I cannot say that without exception. We will be able to report on that as we review the more current procurements that Mr Chapman referred to. As we move on we will see and report on how they are going.

Senator MARK BISHOP—Do you have any plans to audit the project for the construction of the new joint headquarters at Bungendore?

Mr McPhee—We have no immediate plans. It is obviously of interest in our work planning because it involves a private financing initiative and it is a considerable investment. Our feeling would be that it is probably something that we would allow Defence to get further down the track with before we actually report to parliament on it.

Senator MARK BISHOP—So when you are concluding your internal discussions this financial year about your work program for next financial year would that be on the list?

Mr McPhee—It is potentially on the list. It is whether it makes the cut or not against other priorities that is the issue. I would be surprised if it was not covered at some stage.

Senator MURRAY—And that includes the tender process?

Mr McPhee—Including the tender process.

Senator MARK BISHOP—And the financing—the PPP?

Mr McPhee—That would be an important and new approach. We tend to like to look at different and changed approaches so that we can build up the experience both of the agency concerned and the ANAO for the benefit of the wider public service. Given that an innovative approach is involved, it would rate highly in our assessment process in terms of setting the audit program.

Senator MARK BISHOP—That project has been announced on a number of occasions and there has been a fair amount of press this year as to some problems with the tendering process and contractors allegedly withdrawing. Then there was a cutting back of the scale of

the project, and there have been local concerns as well. If you were to do an audit encompassing all of those matters plus other matters, would that best be done now, during the project or at the conclusion of the project?

Mr McPhee—Technically, it could be handled in all three ways. The question is: what is the best way to maximise the value for money that we can add to the process and to inform the parliament? We often have regard to the agency's views. We seek to be quite open in our audit planning process. We say, 'This is what we believe we should be doing but please tell us if there are any timing issues or other considerations we should be aware of before we settle the program.' I expect that we would adopt the same approach with this particular project. But I detect from you, Senator Bishop, and perhaps from Senator Murray, a considerable interest in this area. Subject to other comments we receive, we will take that on board.

Senator MARK BISHOP—You have certainly read my interest correctly. In ANAO's report No. 56, including Defence's end of year assessment on its remediation program, you noted at page 108, paragraph 5.108 a number of tasks facing Defence at present. You made a comment that prioritisation of remediation effort within Defence is required. Can you tell us what projects might be brought forward? What has Defence's reaction been to your suggestion or recommendation that there be a prioritisation of remediation efforts within that department?

Mr McPhee—Defence and we agree fully on the importance of prioritising. They have some very significant issues to deal with. The secretary of the department is extremely motivated to make a difference in this area of financial management, and he has the support of the Audit Office in that we provide support where we can to assist the Defence remediation program. We have ongoing discussions with the senior leadership within Defence so that we are all on the same track in these areas. We have been recently discussing the important things we need to do to deal with these very substantial qualifications on their own financial statements. So we have pretty open discussion about the areas that they can be working on that will make a real difference.

It is in that context that we were making the comment that while much had to be done there are some key areas where we believe substantial gains can be made. For instance, there is the example of improving controls in ongoing systems. We can go out and do stock takes at the end of the year, as they can. But, unless you can rely on the controls within the information systems and on the procedures, you will come back the next year and the same issues will be there. So we have been very keen to agree with Defence about what is important and what is not. Mr Goodwin, my senior manager dealing with the Defence audit, has just joined us at the table and he may wish to add further to that.

Senator MARK BISHOP—Mr Goodwin, the discussion I am having with Mr McPhee is about the prioritisation of remediation, what projects or works are critical and what should be brought forward. Do you have anything to add to that?

Mr Goodwin—I would probably echo Mr McPhee's comments. The need for prioritisation is around defining what controls you will first want to implement or embed, as compared to some of the substantive work, or transaction work, that you might do to validate the underlying data. It is a bit of a horse and cart question. Until you get the controls right and

deal with the data separately you could have an ongoing issue. If you deal with the data ahead of the controls, you might fix the data up. But if the controls are not there to preserve it you will have an issue going forward.

Senator MARK BISHOP—What do you mean by controls? Do you mean systems and people?

Mr Goodwin—System controls and process controls.

Senator MURRAY—And internal audit.

Mr Goodwin—Correct. One thing you do see is that the department has articulated some extensive remediation programs across the areas of the qualifications. If you take inventory as an example, they have very much gone down the path of revisiting the control framework. That is something that we are supporting and it is an important step in terms of their overall priorities to ensure that this issue does not come back and get revisited or raised again in years to come.

Senator MARK BISHOP—We have had a series of discussions over a number of estimates now with Defence as to the qualifications on their accounts, their internal reviews, their remediation program and the stage that they are at. Clearly, you are making further recommendations, and you say that they accept some of those recommendations as priorities and new control mechanisms. This all sounds to me like an evolving work in progress. From your perspective, given all that and that we know that Defence has allocated significant additional resources in the last couple of years, is it fair to conclude that progress will continue to be slow and that qualifications will have to be issued for many years into the future?

Mr McPhee—Firstly, it is a multi-year remediation project.

Senator MURRAY—This is a qualified answer.

Senator MARK BISHOP—I know that it is a leading question, but it is the heart of the matter.

Mr McPhee—There are two things you need to know about auditors, Senator Bishop: (1) we need to have a sceptical frame of mind and (2) we need to see the evidence before we lift the qualification. The point we report at is 30 June 2006 and we are not there yet. Let me just say that there are some very difficult areas within the qualifications dealing with the Defence accounts. The inventory issues, and particularly inventory pricing, are extremely difficult. They have a range of legacy issues and I think that is one area where it will take time. On the very positive side, there was a qualification dealing with the valuation of land and buildings last year. That was not a qualification in 2005; it was a qualification in 2004. Through a very focused and disciplined effort, Defence got on top of the issue and dealt with it to our satisfaction.

Senator MARK BISHOP—In terms of land valuation?

Mr McPhee—In terms of land and buildings valuation, yes.

Senator MARK BISHOP—With due respect—I ask you this now as an auditor; I have said the same thing to Mr Smith in another forum—I do not regard it as a major achievement

that Defence has been able to value its buildings. There might be hundreds of thousands of units around Australia, but it is a job for the Valuation Office. It is not rocket science to do that. Coles Myer, Woolworths and BHP do it year in, year out, with some degree of accuracy. We are talking about whether they got their leave right for personnel, for ADF; we are talking about internal controls, the spending of money.

Mr McPhee—Absolutely. You are talking to the converted in one sense. I am trying to be balanced in a sense to say that there are some very difficult areas—inventories are at one end of the spectrum; land and buildings are perhaps at the other end. There is a range of other qualifications dealing with leave balances. Taking your point, which I subscribe to, we expect a modern agency to be able to properly account for leave balances and leave liabilities and have leave recording systems that are appropriate for this day and age and for their people. Defence has not had those systems to date—hence the qualification. We will have a close look at the leave balances again this year and see how their remediation work has gone.

I guess the point I am trying to make is that, through the remediation programs, the application of discipline and a fair degree of commitment, Defence can make a difference to the qualifications. We have seen some movement. I have to say to you that the department have never been more focused on financial management in my years of looking at them. That is not to say that they will get there at the end of this year—we shall see—but it has been quite a determined effort and they deserve credit for that.

Senator MARK BISHOP—It has been a determined effort. Mr Smith let the cat out of the bag by not signing off on the first set of statements some years ago. I am not critical of his action then and his actions subsequent to that time. My question to you is: are we going to be seeing continuing qualifications for a number of years into the future?

Mr McPhee—There is a likelihood of qualifications. The question is about how severe they will be. I think that is the more significant question. I would be surprised if the department could remove the inventory qualification this year. They have the potential to remove some of the other qualifications.

Mr Goodwin—I could add something to that. One thing to understand is that even if you look at the land and buildings, which you touched on earlier, Senator, it is an incredibly large portfolio. The reason I use that as an example is that it is an example of where the remediation plans, if they remain tightly focused, remain supported by the senior leadership team—which they are—and remain adequately resourced, they will get traction in terms of clawing these qualifications back, but it will take time. In that particular case, it was a tremendously large exercise of project management by the department to get that qualification removed.

Senator MARK BISHOP—On the land and buildings?

Mr Goodwin—Correct.

Senator MARK BISHOP—Yes, it was a major exercise and they should be given due respect for having been able to value their land and buildings. But I say to you, Mr Goodwin, as I have said in other forums, that valuing thousands of buildings is essentially a routine task. We know how it is done by the AVO or by private contractors. The real issues are elsewhere in the department as to responsibility for funds, accountability, control issues and internal audits. What I am hearing you say is that at the easy end of the street they have achieved what

they were directed to achieve, but in the middle and the more difficult areas there is still a lot of work to be done. You are still heavily involved in giving them advice and—you have not said it, but I suspect it is the case—that is going to go on for a number of years yet. Is that correct?

Mr McPhee—It is a multi-year project. That is for sure.

Senator MARK BISHOP—One final issue arises out of this: the problem with the compounding of qualified audits year in, year out. If we start in the 2003 financial year, we would have been going for three financial years. They will be qualified again this year and, in some material respects, qualified in 2007 and 2008. That is clear. So we are talking about five, six and seven years as a minimum. Is that compounding effect of continuing qualified audits bringing a new set of problems that has to be attended to by Defence and supervised by you?

Mr McPhee—Our job is to report on their financial statements against an agreed body of standards and finance minister's orders. At the end of the day that is the job we have to do and we will do it to the best of our ability. Whether that brings on further issues for the Department of Defence is not my immediate concern.

Senator MARK BISHOP—But you would anticipate that as a responsible auditor?

Mr McPhee—It is an ongoing concern for the secretary of the department. One of the issues that the department has to deal with is the issue about questions of motivation, about whether the staff feel that their efforts are making a difference up there. I guess in the way I am speaking I am trying to get the message across that they are actually making a difference. It may not be perceptible from the audit opinion that has been issued on their accounts, and each year at 30 June I will make the assessment about how they have gone against the accounting standards and I will call it as I see it. But at the same time I am trying to provide the secretary with as much support from this office as we can provide reasonably, without losing any objectivity, to encourage stronger financial management performance in that department.

Senator MARK BISHOP—So stronger financial management performance in Defence is a necessary precondition to you some time in the future giving us unqualified audit statements.

Mr McPhee—Correct.

Senator MARK BISHOP—I have noted in a range of your comments in public documents that you have been of the view that some responses to past audits have been unsatisfactory. Does that mean, contrary to the Defence view that a number of remediation plans are now closed, sealed off, done, finished, that they are still open as far as ANAO is concerned?

Mr McPhee—The remediation plans are focusing on the major problem areas. These are remediation plans determined by the defence department, and the Audit Office has provided comments on the remediation plans in an attempt to be constructive and to give them a steer from our perspective as to the issues that need to be dealt with. We do a range of other work, of course, through our audits. We always provide what we call management letters to the department on the interim work and the final audit work that we do, raising a series of issues,

some of which are significant and others are less so, but it is a catalogue of areas that need attention. So the two are not incompatible. One would expect the remediation programs to broadly pick up the range of more detailed comments provided by the Audit Office. The remediation programs are large, high-level, focused plans. Our work tends to be at a more detailed level.

Senator MARK BISHOP—Do you have anything to add, Mr Goodwin?

Mr Goodwin—In part of your question, Senator, you might have been referring to some of the audit closure packs that the department forwards in response to our management letter findings. To pick up the Auditor-General's earlier comments, the litmus test in terms of the performance of the department in financial management is not always in the audit opinion that we give but in its reaction to our management letter points. To the extent those reactions are positive and are closing out the issues that we are report, then that is a good outcome. What I am aware of is that of the number of management letter points that we have raised the department has forwarded to us cumulatively in the last calendar year roughly 73 closure packs, of which we have been able to close out 34 to date. That is a tremendous outcome when you look at it relative to that in previous years.

Senator MARK BISHOP—It is a good outcome compared to previous years—I accept that. They sent you 74 for closure. You said you signed off on 33 or 34. What stage are the other 40 at? Are they unclosed?

Mr Goodwin—They are in the stage of being reviewed by our office or my team. It is not so much that we are saying that they are not closed; it is more a point of saying that the next time we will review whether we are satisfied that it is closed is when we next go back in and do our audit testing. The way the process should work is that, if we raise an issue, management would go away and look to rectify that issue. Where management are satisfied that they have rectified the issue, they would send us a closure pack. We would not take that necessarily as saying it is closed. We would acknowledge that and then the next time we are out in the field testing we would test the veracity of that. So a lot of those ones are in the process of being reviewed through what we call our interim testing and some may, by virtue of the finding, be held over to our June testing period.

Senator MARK BISHOP—I think we are talking about 39 or 40 closure packs provided to you by Defence that you are in the process of reviewing.

Mr Goodwin—Yes.

Senator MARK BISHOP—When will you be able to tell me that you have signed off on them as acceptable closure packs?

Mr Goodwin—A relatively large proportion of the ones that are still with review will be picked up in our interim audit testing, which effectively occurs from now through to the May period. So the next time would hopefully be in the June reporting that we do.

Senator MARK BISHOP—So in the June estimates you should be able to give us a much more accurate answer to that question?

Mr Goodwin—As to the status of those, yes.

Senator MARK BISHOP—Yes, as to the status of those 40-odd closure packs that you will have then reviewed. In the meantime, do you mind giving me a tally sheet of audits that are considered to be outstanding, so that I can raise them with Defence on Wednesday?

Mr Goodwin—I think that would probably be a better question for Defence to raise, given that these are points that we raised with Defence management. So it is a Defence management letter.

Senator MARK BISHOP—Yes.

Mr Goodwin—I can say that, to the extent that our numbers roughly cross reference, it is a positive sign. But, in terms of the actual management letter points and where they believe they are up to in those management letter points, it may be appropriate for Defence to comment.

Senator MURRAY—You answer like that because you do not give a running commentary; you send it to them and you let them go through it and then it comes back to you at the completion of it. That is right, is it not?

Mr Goodwin—Yes.

Senator MARK BISHOP—I understand.

Senator MURRAY—Auditor-General, Audit Report No. 28 of 2005-06, *Management of net appropriation agreements*, was an audit that fairly horrified me, frankly. I am aware that, if you find something illegal in terms of breaches of the Criminal Code, for instance, it will find its way into the courts. What happens with a breach of the Constitution? I will give you a reference. Paragraph 33 of the report says:

To the extent that amounts were identified as having been spent without appropriation, Section 83 of the Constitution was contravened. This was disclosed by the relevant agencies in their financial statements.

That is a reference to hundreds of millions of dollars—billions of dollars in some cases. I regard breaching the Constitution as a big deal. What happens?

Mr McPhee—As we came across these matters we did request agencies to disclose these potential breaches of the Constitution in their financial statements and their annual reports so that the normal accountability processes would be able to be employed if the parliament saw that as appropriate. As you are aware, our role is just to report on the matters we have found, which we do, and I guess that it is a matter for the parliament as to how it views these breaches.

Senator MURRAY—Mr McPhee, I am not a lawyer, as you know, but I was brought up to regard the Constitution as superior law and its enforcement as vital to the respect for our system. Are there no mechanisms for discipline, punishment or anything of that sort arising from a significant breach like this? This is the requirement in the Constitution that money should be properly raised and spent with due authority. This is spent without authority.

Mr McPhee—We certainly view these breaches as you do, as the most serious breaches of all in terms of legislation, and when it comes to providing the audit opinion on the financial statements we actually make particular reference to these matters in the audit opinion. That is as strong as I can report. We have reported it in our performance audit as well.

Senator MURRAY—Do you suggest that I ask DOFA what punishment regime there is for these breaches?

Mr McPhee—DOFA is best placed to answer that question.

Senator SHERRY—So you will not describe them as just technical breaches? Certainly on the words you have used, they are not.

Mr McPhee—I think that the words I used were ‘technical but important’. Sometimes ‘technical’ is used in a dismissive way and I certainly did not view it in that way at all.

Senator SHERRY—You do not regard it as dismissive. Thank you for that.

Mr McPhee—The important point that I want to make is that there were some inadvertent oversights in this area and in some cases the matters were very technical. In other cases there were quite apparent breaches as well and so there is quite a range of circumstances, as you would appreciate.

Senator SHERRY—Going back to and following on from and related to the conversation questions from Senator Bishop, I note in the additional estimates statements on page 43 the report that the ANAO will incur a deficit of \$0.9 million, primarily because of the need to fund additional financial statement auditing in the Department of Defence and that work has arisen from the need to review changes in systems and procedures. Is it fair to describe the work that you are doing with defence as putting additional pressure on your resourcing?

Mr McPhee—It is fair to say that, Senator Sherry.

Senator SHERRY—And with respect to the issue of resourcing, I note that funding to recover these costs will be sought in the context of the budget. You have not yet got authority to run the deficit—or you cannot run a deficit, as I understand it, without authority.

Mr McPhee—If I can use a technical answer in response, we do have accumulated authority. We do have accumulated appropriation cover for this expenditure and, in addition, the finance minister has recently approved the fact that we could run a deficit pending budget consideration of this funding request.

Senator SHERRY—Primarily because of this focus on defence?

Mr McPhee—Because of that focus on defence.

Senator SHERRY—You would be aware of your predecessor’s comments about resourcing for the ANAO?

Mr McPhee—Yes, I am.

Senator SHERRY—Do you agree with those comments that he made?

Mr McPhee—Like many other agencies, we do notice the resource pressures and we are conscious of the need to improve our own performance. One of the realities in our world is that we are particularly noticing the increase in the price of some of the contractors that we use. The rates have gone up much higher than the supplementation rates. The other thing of course is that our staff have particular sets of skills which are in great demand, particularly in this city. When it comes to wage increases we are conscious that we need to meet the market or else we will not have a workforce. So we are doing what we can to manage those pressures.

I have to say that we did receive some additional funding as well, so it is not exactly the case that we did not receive any, and the government has agreed that it would at least consider our request in the budget context.

Senator SHERRY—Have you identified projects that you believe should be done but are otherwise effectively on hold until the resourcing issue is resolved?

Mr McPhee—We have slowed down a number of internal projects.

Senator SHERRY—Such as?

Mr McPhee—Mainly making sure our own web page is keeping up to date with technology and meeting user requirements. We are looking to get some internal software to help with our own documentation for performance audits. We deliberately slowed that down to manage our resources more effectively until we knew we had funds.

Senator SHERRY—It strikes me that those sorts of projects will at some point in time have to be done, otherwise there will be consequences that will flow.

Mr McPhee—That is correct.

Senator SHERRY—The Wheat Board has been in the media a great deal recently. When did the Audit Office last do a performance audit of the government wheat authority that supposedly oversees the Wheat Board?

Senator Abetz—That is the Wheat Export Authority.

Senator SHERRY—Yes.

Mr McPhee—I would need to take that on notice. I do not recall one. As you are aware, I have not worked in the Audit Office continuously.

Senator SHERRY—I have tried to track this down but I could not find one.

Mr McPhee—I do not recall one.

Senator SHERRY—Do you think it is time there should be one, given the circumstances?

Mr McPhee—I think we might await the outcome—

Senator Abetz—That is trying to prejudge things, Senator Sherry.

Senator SHERRY—We know, as a matter of fact—

Senator Abetz—You are asking the Auditor-General to prejudge what the Cole commission might find.

Senator SHERRY—No, I am not. Come off it!

Senator Abetz—The inquiry may well find that the WEA is completely in order.

Senator SHERRY—Mr McPhee, in light of the current debate, will you please consider listing the Wheat Export Authority for a performance audit? I will leave it at that.

CHAIR—There is no need to answer that, Mr McPhee.

Senator SHERRY—Let us go now to the ASIC report on the implementation of the financial services licence and your performance audit of that. Time does not permit me to go through the massive range of problems identified, and I will take that up with ASIC. But,

given the range of serious issues that you identified in the audit, how would you best describe the problems identified in that audit in terms of the ASIC licensing, surveillance and the difficulties that were encountered?

Mr McPhee—I always say that one of the great benefits of a performance audit is the stimulus it provides for better administration. ASIC may not have felt that at that time but I have no doubt that it will be a positive matter for them going forward. I need to say that ASIC responded positively to the audit in the first place, in the progress of the audit and in terms of its response. I suspect it was the first performance audit of ASIC and so it is not surprising—

—**Senator SHERRY**—In this area?

Mr McPhee—Yes. And I do not recall one—again with the previous qualification—in a long period of time.

Senator SHERRY—But this was dealing with the implementation of FSR—

Mr McPhee—Yes.

Senator SHERRY—and the licensing. You could not have done a performance audit in that area before. This was a new regime.

Mr McPhee—Absolutely. It is just spreading our resources around to cover all of the territory of the Commonwealth public sector.

Senator SHERRY—But do you appreciate the seriousness of the issues when they concern individuals who are the gatekeepers, effectively, to the finance system? There seems to be an emerging series of problems and concerns with some of these gatekeepers and the way they have been operating in terms of the sale of financial products, which is just one aspect. Do you appreciate the importance of a robust licensing system and its implementation in this area?

Mr McPhee—Absolutely. I also realise the importance of the rigour in which we conduct our own audit processes. With the way ASIC have responded, I would think that they have picked up some messages not only in this area but across the broader organisation.

Senator SHERRY—Have you heard of the West Point scandal?

Mr McPhee—Not directly.

Senator SHERRY—I suspect we will be hearing a lot more about it as it unfolds. An officer has come to the table. Has he heard of it?

Mr McPhee—Brian Boyd was my senior manager for the audit.

Senator SHERRY—Have you concluded that ASIC understand the seriousness of the failure to implement the licensing regime as they should have?

Mr Boyd—I guess we would probably categorise the significant findings into three areas. The first thing is the coverage of licensing. It was intended to be extremely broad, and the report draws out some issues there in terms of exactly how much of the identifiable industry is covered by licences at this point of time. The second area is the actual issuing of licences, where you can see the rather large ramp-up in the last six months when approximately two-thirds of all licences were issued. That then had impacts on ASIC and on its ability to its job,

particularly in the issuing of licences. More particularly of concern to us was what that then led to in terms of ASIC's ability to surveil the market as well as issue licences.

Senator SHERRY—It was not an issue that you would directly oversight, but there are also the unfortunate practices of some planners, which have become all too apparent recently in some of the actions that ASIC have had to take.

Mr Boyd—The real issue that arose—

Senator SHERRY—And these are planners who have been given licences.

Mr Boyd—Indeed. The real issue that arose for us was in terms of surveilling the market post the issuing of a licence. In these sorts of areas, regulation of the market does not end with the issuing of a licence, and ASIC does not suggest it does, either. But the area that we had particular interest in was what ASIC was doing in terms of both the amount and the extent of its coverage of the market after issuing a licence. This included its surveillance activities and what other activities were being undertaken—if any. For example, in the last two months of the licensing transition period there was very little surveillance activity.

Senator SHERRY—Were you able to identify any request by ASIC to government for additional resourcing once it started—and I do not think this is overstating it—to struggle with the licensing?

Mr Boyd—One of the issues we examined was the resources which were originally provided to ASIC as a result of an output pricing review and how those resources were then allocated across ASIC and its functions. It is not always easy, because things do change and, with the way appropriations are organised these days, the funds that are provided are not limited to the inputs that were used in calculating the amount to be appropriated.

Senator SHERRY—I understand that, but ASIC obviously made an initial estimate when FSR finally passed the parliament and the regulatory regime was being put together, which ASIC obviously had a major say in. Was there any additional request once the scope of the licensing requirement and the detail that was required became apparent? Could you identify any additional resource requests?

Mr Boyd—I guess there is probably a presumption built-in to your question there. The amount of funding provided to ASIC was based on their estimates—at a very early stage—of the amount of licences they thought they would need to issue.

Senator SHERRY—Correct.

Mr Boyd—The number of licences issued was actually substantially less than they estimated. So in terms of there being a greater requirement for licensing than expected, there was not the merit there for additional resources. What you saw was that fewer licences were issued. The real issue in terms of resourcing was the sudden rise in the number of applications late in the process. In a risk management context, our concern was with what ASIC was doing to manage what was to us a very significant regulatory risk. Our comment was in terms of the absence of a comprehensive risk management plan to address those sorts of issues.

Senator SHERRY—And the level of risk that results from the so-called streaming approach.

Mr Boyd—Yes, streamlining and the extension of streamlining throughout the process is something we examined.

Senator SHERRY—And the possible consequences of streamlining and the failure to identify whether in fact the data being provided was correct. I have spoken to a couple of compliance auditors within financial planning firms about this issue. The fact is that under streamlining inaccurate and old data was given to ASIC and licences were approved on that basis.

Mr Boyd—The thing with streamlining is that there is a much reduced level of scrutiny applied to streamlined applications. That in itself is not an invalid regulatory tool. But I guess if you are going to apply less scrutiny to licence application itself, this is where the surveillance activities become particularly important. That is where our concerns were particularly highlighted.

Senator SHERRY—Didn't that surveillance activity drop because of the shift in resources?

Mr Boyd—There was essentially very little if any surveillance activity in the last two months of transition, which is when most of the applications were coming forward.

Senator SHERRY—Will you be having ongoing consultation oversight with ASIC about the licensing issue and the surveillance activities?

Mr Boyd—As the Auditor-General mentioned, this was the first substantive audit of ASIC in terms of ASIC as a regulator. We have done some work over some years on APRA. We are now turning some attention with the resources we have available to looking at other financial services regulators including ASIC. We have another performance audit currently under way which is looking at their investigation and possible referral of reported breaches of the Corporations Act from liquidators and administrators and so forth. But this is the first and we do not necessarily expect that it will be the final one.

Senator SHERRY—I do not think it will be.

Mr Boyd—We look at what the priorities are within our possible resources.

Senator MURRAY—I wanted a bit of advice from you, Auditor-General. If there were concerns for tenders for the Department of Finance and Administration with respect to the awarding of a tender for the Mint building and one of the intelligence agencies and I had heard there were concerns, should I be giving you a heads-up or should I be asking them?

Mr McPhee—You may do both if you wish.

Senator MURRAY—I just have. Thank you.

CHAIR—Auditor-General, I thank you and your officers for your assistance this evening. Thank you, Minister Abetz, for stepping in at the last moment. That completes the committee's examination of the Prime Minister and Cabinet portfolio.

Committee adjourned at 11.17 pm