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Proof Committee Hansard

SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

Estimates

(Public)

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SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE

Tuesday, 10 November 2020

Members in attendance: Senators McDonald, Rice, Sterle, Wong.

INFRASTRUCTURE, TRANSPORT, REGIONAL DEVELOPMENT AND COMMUNICATIONS PORTFOLIO

In Attendance

Senator Seselja, Assistant Minister for Finance, Charities and Electoral Matters

Department of Infrastructure, Transport, Regional Development and Communications

Executives

Mr Simon Atkinson, Secretary
Ms Pip Spence PSM, Chief Operating Officer
Mr David Hallinan, Deputy Secretary

Major Transport and Infrastructure Projects

Ms Kerry Vine-Camp, First Assistant Secretary
Mr Greg Whalen, Assistant Secretary, Program and Shareholder Management Branch

People, Governance, Parliamentary and Communication

Ms Justine Potter, First Assistant Secretary
Ms Stephanie Bourke, Assistant Secretary, Human Resources and Property

Finance, Legal and IT

Mr Brad Medland, Chief Financial Officer/First Assistant Secretary

Western Sydney Airport

Mr Simon Hickey, Chief Executive Officer
Ms Shelley Turner, Chief Financial Officer

Committee met at 16:15

CHAIR (Senator McDonald): I declare open this public hearing of the Senate Rural and Regional Affairs and Transport Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2020-21 and related documents for the Infrastructure, Transport, Regional Development and Communications portfolio, excluding Communications. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee will today examine the Department of Infrastructure, Transport, Regional Development and Communications and the Western Sydney Airport. The committee has fixed Thursday 17 December 2020 as the date for the return of answers to questions taken on notice. Senators are reminded that any written questions on notice should be provided to the committee secretariat by the close of business on Friday 20 November 2020. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice.

I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings. Any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purposes of estimates hearings. 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. The Senate has resolved also that an officer of a department of the Commonwealth 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. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. I specifically draw the attention of witnesses to an order of the Senate from 13 May 2009 specifying the process by which a claim of public interest immunity should be raised.

The extract read as follows—

Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

CHAIR: Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information or the document.

Senators, departments and agencies have been provided with advice on the arrangements in place to ensure the budget estimates 2020-21 hearings are conducted in a safe environment. This guidance is also available from the secretariat. The committee appreciates the cooperation of all attendees in the hearing to these arrangements.

Department of Infrastructure, Transport, Regional Development and Communications

[16:18]

CHAIR: I now welcome Senator the Hon. Zed Seselja, Assistant Minister for Finance, Charities and Electoral Matters; Mr Simon Atkinson, Secretary of the Department of Infrastructure, Transport, Regional Development and Communications; and officers of the department. Minister, do you or Mr Atkinson wish to make an opening statement?

Senator Seselja: I don't.

Mr Atkinson: No.

CHAIR: Senator Wong.

Senator WONG: Mr Atkinson, when we were previously having a discussion about Leppington Triangle on 19 October, I asked you on a number of occasions when you first became aware of the Audit Office's concerns about the Leppington Triangle purpose. You told the committee it was when you received the section 19 report which you said was two days before you instigated action relating to the APS Code of Conduct on 21 August. Can you tell me if you stand by that evidence?

Mr Atkinson: I've just got chronologies that we've put together—can I just ask what page of the *Hansard* that is, Senator?

Senator WONG: Page 9, page 12 and then again at page 47. So, on page 9:

When was that commenced?

... two days after the section 19 report was received.

Your answer:

Basically, when we got the first visibility of it.

... . . .

It was after that that we instigated those—

Around when?

It was 21 August.

Mr Atkinson: I think it was two days after the section 19 report was received.

Senator WONG: Correct.

Mr Atkinson: Mr Hallinan might have the exact date?

Senator WONG: You said—this is page 10:

The conduct you referred to around evaluations came to my attention when the section 19 report arrived.

And elsewhere in the evidence you indicated that that was two days prior to 21 August.

Mr Atkinson: There were a few dates there. It came to my attention just before this hearing that I'd used the section 19 interchangeably with the receipt of the ANAO preparation papers. If you recall, there was a series of discussions around which documents we were referring to. The department received report preparation papers before the section 19 report, and so that would've been the first time that we had it.

Senator WONG: So you're correcting your evidence?

Mr Atkinson: Yes, Senator—sorry, at different points on page 9—

Senator WONG: I think if you read, I asked you quite a number of times. I think it's quite clear the evidence is not correct. When did you become aware the evidence was not correct?

Mr Atkinson: Just before this hearing.

Senator WONG: Can I just ask how that is possible?

Mr Atkinson: Sorry, Senator?

Senator WONG: This had a fair bit of focus. You're the secretary of the department. You gave evidence about when you first knew. Are you seriously telling me you only became aware that you misled the committee just before this hearing?

Mr Atkinson: You asked and I said I thought it was about two days after the section 19 report. So, Senator, in terms of the report preparation papers versus section 19, I must apologise to the Senate. As you know, I was trying to answer all of your questions on that day, and I went through many, many hours of trying to answer those questions. I used the term 'receipt of the section 19 report' when I should've used the term 'received the report preparation papers'.

Senator WONG: I was asking you about your engagement of Dr Kennedy who had also received a copy of the section 19 report. On page 47 you said:

I spoke to him just in the days after receiving it and having read it for the first time.

I asked you:

The embargoed report?

You said:

No; the section 19 report—the penultimate draft.

Mr Atkinson: That was after the section 19 report.

Senator WONG: Right. When do you say you first found out you'd misled the committee?

Mr Atkinson: Just before coming to the committee. As I was going through these chronologies, I realised that we'd received report preparation papers. In my head I had the two documents as one, which is not correct.

Senator WONG: No-one brought this to your attention?

Mr Atkinson: No.

Senator WONG: You have all of these people working for you. This is an issue the Prime Minister has been asked about. It has been in the media. I asked you quite a lot of questions.

Mr Atkinson: I did try to answer all of those.

Senator WONG: I am just saying this is a key point about times and facts. You provided misleading evidence to the committee. I accept that you are seeking to now correct it, although it is still rather confusing and we will come back to that. How is it possible that the secretary of the Commonwealth department does not give us a hoy and say, 'I've got it wrong'?

Mr Atkinson: Obviously it did come to my attention that I had got another matter incorrect, and I immediately wrote to the chair to correct that matter.

Senator WONG: Let's go through this. I had a look at the performance audit process, which is on the ANAO website. There are, I think, seven or eight stages. The first is audit planning, the second is designation letter, the third is entry interview, the fourth is fieldwork and then the fifth is report preparation papers. Those are prepared once the majority of evidence has been collected, fieldwork concluded et cetera. The website says:

The RPPs are not required to be issued under legislation, but are shared with the entity(ies) to provide an opportunity for the entity to discuss the audit findings, provide feedback to the audit team, including additional context, correction of errors of fact, issues relating to sensitive information and to provide any other information if required.

You received a report preparation paper in accordance with this procedure, didn't you?

Mr Atkinson: Yes.

Senator WONG: When did you receive that?

Mr Atkinson: On 23 June.

Senator WONG: This is the problem with the misleading evidence, isn't it? It doesn't just go to the title of a report; there is quite a substantial difference in the timetable about the knowledge of the senior management of the department. You actually knew in June.

Mr Atkinson: Sorry about the characterisation. That was a genuine mistake in my evidence at the last hearing.

Senator WONG: But you knew about the deep problems associated with the Leppington purchase actually months before you first told us you knew about them.

Mr Atkinson: At the last hearing, I didn't have a detailed chronology of the response to the audit report. What I had focused on was what I talked about in my opening statement, which is what we would be doing going forward.

Senator WONG: Okay, but—

Mr Atkinson: So I was trying to answer—

Senator WONG: Hang on. First, you accept you actually knew about these very substantial allegations of corruption or allegations of misconduct, however you want to construe it, actually three months before you told us you did?

Mr Atkinson: Sorry, I don't know the exact date.

Senator WONG: You just gave me 23 June.

Mr Atkinson: Those report preparation papers went to Mr Hallinan, not to the secretary. But I would have known in the days after that.

Senator WONG: Where is Mr Hallinan?

Mr Atkinson: He is right here.

Senator WONG: Mr Hallinan, did you get these report preparation papers on 23 June?

Mr Hallinan: It would have been about then, yes.

Senator WONG: So why didn't you correct his evidence when he gave incorrect evidence at the last hearing?

Mr Hallinan: I was focused on the section 19 report evidence as provided. At that point, we were referring to section 19—

Senator WONG: No. There are a number of occasions in the transcript where this issue is traversed. At no point does anyone in the department say, 'Oh, by the way, we actually knew about this a few months back.' There is nowhere that you say that. When did you first become aware it was 23 June that you received the RPP?

Mr Hallinan: In terms of this chronology, I received this chronology in preparation for this meeting today.

Senator WONG: Wait—

Mr Hallinan: But I knew I had the report preparation paper earlier than 21 August, which I think is—

Senator WONG: No, it's 23 June.

Mr Hallinan: Yes.

Senator WONG: So you knew about the allegations of misconduct and potential corruption on 23 June? Correct?

Mr Hallinan: That's correct. I and other members of the executive had the report.

Senator WONG: You had the report. Did you read it?

Mr Hallinan: I did read the report.

Senator WONG: Mr Atkinson, is it your evidence that you didn't receive them on the 23rd because they went to Mr Hallinan?

Mr Atkinson: Sorry, I will have to take on notice the exact date that they were given to me. But, for the purposes of this committee, you can say that they would have been accessible to me about that time.

Senator WONG: Mr Hallinan, do you remember referring them or reporting them to Mr Atkinson?

Mr Hallinan: I called a meeting. I had a meeting, with Ms Spence and others identifying that the report identified some serious allegations, and we spoke about removing the individuals that were named in the report from any further participation in the department's response. And we took some actions to make sure that the individuals who are named were not part of our response to the report. We brought in additional staff to provide responses to that report preparation paper.

Senator WONG: Hang on. Why are we finding out in November about all this action that you say was taken in June, when you had so many opportunities to correct your evidence when we were last here? Why didn't you tell us about this before?

Mr Hallinan: I don't think those questions were asked of me.

Senator WONG: We asked when you first took action as a consequence of the allegations or the findings in the Auditor-General's report. That was the whole purpose of that line of questioning, which was focused on the August date because of the evidence you gave.

Mr Hallinan: I must apologise. I had focused on the dates from the section 19 report, which was the context of the discussion.

Senator WONG: Let's go back to the RPPs. They are received on 23 June. You've given me evidence that you spoke to Ms Spence et cetera. When did you speak to the Secretary about it? Was it within days? These are serious allegations. You've got a massive overvaluation with multiple requests for revaluation, which appear to be directed at amping up the valuation. How long after the first indication from the Auditor-General's office—which would have been the report preparation papers, on 23 June—did you speak to the secretary?

Mr Hallinan: I don't have a precise date, but it would have likely been in my regular catch-ups with the secretary.

Senator WONG: How often do you catch up?

Mr Atkinson: That would have been in the weekly catch-up.

Mr Hallinan: It would have been in our weekly catch-ups.

Senator WONG: Do you accept that you received the report preparation papers, Mr Atkinson?

Mr Atkinson: At about that time I would have received a brief from Mr Hallinan.

Senator WONG: Under the Audit Office process, they go to the entity. You're the most senior person in the entity. Is it your evidence or not—

Mr Atkinson: The section 19 report goes to me—

Senator WONG: No, no, I haven't got there yet. Please don't jump ahead.

Mr Atkinson: Alright.

Senator WONG: We're back on this: the first time you became aware of the seriousness of these allegations was the report preparation papers? Is that right, or did you know before?

Mr Atkinson: No.

Senator WONG: So you did know after the RPPs?

Mr Atkinson: At some point after Mr Hallinan received the report preparation papers, he briefed me on the report preparation papers, and that was the first time I would have been aware of the allegations.

Senator WONG: Is it your evidence that you received the RPPs yourself—as in, your office—or did they only go to Mr Hallinan?

Mr Atkinson: My understanding is they went from the ANAO to Mr Hallinan, but I'm not sure.

Mr Hallinan: I think there's a step in between, but we'll have confirm that.

Senator WONG: What do you mean by 'a step in between'?

Mr Hallinan: I think they were passed to me by Mr Atkinson's office, but I will have to confirm that.

Senator WONG: Mr Hallinan and Mr Atkinson, I'm putting to you that, in my previous experience, in these sorts of circumstances secretaries get these documents.

Mr Atkinson: Yes.

Senator WONG: So I'm suggesting to you that that is the case: you got them on 23 June.

Mr Atkinson: I did take that on notice before.

Senator WONG: Sure. You are now saying that it was possible they were passed by your office to Mr Hallinan, but your evidence is you that didn't read them or became aware about what was in them until Mr Hallinan and you had your catch up.

Mr Atkinson: In an abundance of helpfulness on the points you're quoting, last estimates, you asked me many questions, and I didn't have precise answers. I said: 'I think it's two days after the section 19 report. Mr Hallinan might have the exact date.' I reached beyond what I had in front of me, and now I'm getting in trouble for that. So I—

Senator WONG: You've corrected your evidence, and I'm simply asking you about it. I wasn't proposing to send you to the Privileges Committee and haul you before the Senate for contempt. I'm asking you to correct the evidence, alright?

Mr Atkinson: I'm happy to answer to the extent that I have answers that won't mislead.

Senator WONG: What is relevant here is not just the mistake in the name of the report; it's the number of months—

Mr Atkinson: Yes.

Senator WONG: because you actually don't do anything until you get the subsequent report—let's come back to that. I assume the RPPs outlined the evidence that the Audit Office had looked at—the preliminary findings, conclusions and recommendations in relation to the Leppington Triangle.

Mr Atkinson: I'll ask Mr Hallinan to talk about the RPPs.

Senator WONG: What do you remember?

Mr Hallinan: The report preparation paper provides, in effect, the evidence base that they'll use to inform their report. I don't have a copy of it with me, and I don't have the specifics of it with me. But it does include a range of information. It had additional information to what was in the final reports, included in appendices.

Senator WONG: Were you invited to provide a written response to the RPPs?

Mr Hallinan: We were.

Senator WONG: Did you?

Mr Hallinan: I did.

Senator WONG: What date?

Mr Hallinan: About 10 July. I'll have to confirm precisely.

Mr Atkinson: For precision, could we say 'about 10 July'—

Senator WONG: Sure.

Mr Atkinson: and he'll take on notice the precise date?

Senator WONG: Yes. And you prepared that, Mr Hallinan?

Mr Hallinan: I did. I prepared that in consultation with other staff involved and in consultation with others in the executive.

Senator WONG: Could you table that response, please?

Mr Hallinan: I can take on notice to get a copy of that response for you.

Senator WONG: I will just make this point, Mr Atkinson. The government guidelines for official witnesses before committees issued by PM&C do indicate:

Witnesses will receive transcripts of their evidence in the days following their appearance. The transcript should be examined promptly to establish whether any evidence needs to be corrected or clarified.

Mr Atkinson: Yes.

Senator WONG: They go on to say:

... it is most important that the committee receive that revised information at the earliest opportunity ... Officials need to keep in mind that, while their evidence remains uncorrected or unclarified they are vulnerable to allegations that they have misled a committee.

Mr Atkinson: I'm sorry; I did not intentionally to do that.

Senator WONG: We have the report preparation process. There is then an exit interview which is: held with senior entity staff—
in this case, the department—

following the ANAO's receipt of the entity's response to the report preparation papers. During the exit interview, potential conclusions and proposed recommendations are discussed. The entity also has the opportunity to provide further documentation and information relevant to the audit findings.

Did you have an exit interview with the ANAO?

Mr Hallinan: We did.

Senator WONG: Who had that?

Mr Hallinan: That was me, Ms Vine-Camp and an EL2 from the audit area of the department.

Senator WONG: Was this the EL2 who should get the PSM?

Mr Atkinson: It's a different EL2.

Senator WONG: Mr Atkinson, were you part of that?

Mr Atkinson: No.

Senator WONG: What happened in that? What was your position, Mr Hallinan, in that interview?

Mr Hallinan: It was a challenging discussion. I'd asked a range of questions of the auditors in the interview. I had advised that we were concerned by the findings, by the information that they'd found in their work to date. I asked them whether or not they'd referred it to other investigative agencies, including the AFP. They wouldn't respond to me on that question, and we were taking action in response to that. We took a range of actions to try to ensure that our approaches were controlled to secure evidence and make sure that we didn't have any problems in terms of further engagement through the ANAO and further investigations in the department. Immediately after that exit interview, I organised a meeting with the secretary and with Ms Spence and talked them through the outcomes of the exit interview and then provided a further briefing note to the secretary to talk about the sorts of responses that we would establish, which included investigating HR concerns and establishing an independent audit inside the department to track down all of the information necessary to both confirm the information that the department had provided and to basically check our evidence trail.

Senator WONG: So what were the various processes? You got an audit inside the department?

Mr Hallinan: That's correct.

Senator WONG: What else?

Mr Hallinan: And two HR investigations to commence.

Senator WONG: Are these separate to the code of conduct investigations or the precursor to them?

Mr Hallinan: That was the precursor.

Senator WONG: I want to come to the code of conduct investigations shortly. I'm asking for two things. I'm asking for a list of any documents produced as a consequence—and I've asked for the RPP response—of the exit interview. And then, as a separate request on notice, I'd like a copy of the documents. So, if you're going to have an argument about the second, you can at least provide me with the first.

Mr Hallinan: Yes.

Senator WONG: Up to the seventh stage of the performance audit process is the presentation of the draft report, which is the section 19 report. When did you receive that report, Mr Atkinson? You're in a chronology there now?

Mr Atkinson: I do have a chronology—on 4 August.

Senator WONG: Can you tell me why you told me it was on the 19th previously?

Mr Atkinson: Sorry, where did I say that?

Senator WONG: You should have read your own evidence, with respect. I don't really need to be that person. You said 'two days after the section 19 report', and then you say 'the 21st'. So I'm just trying to work out why it is—

Mr Atkinson: Sorry, I didn't say the 21st.

Senator WONG: Yes, you did.

Mr Atkinson: Mr Hallinan did.

Senator WONG: That's called dumping him in it, isn't it? Jeez, to have you as a boss—

Mr Hallinan: I misread the chronology—

Mr Atkinson: If we go to the *Hansard*, the question was on when the code of conduct started, and it was on the 21st.

Senator WONG: Which you linked to the receipt of the section 19 report.

Mr Atkinson: I actually said, 'I think it was two days after the section 19 report was received. Mr Hallinan might have the exact date.'

Senator WONG: Yes, 21 August.

Mr Atkinson: I said 'I think'.

Senator WONG: And then he says 'around 21 August'.

Mr Atkinson: That was when the HR thing—so he answered the question correctly.

Senator WONG: No, because the HR thing is connected to the section 19 report. There are two points here. One is that you keep giving incorrect evidence, which you should have checked and corrected. Let's just leave that for a moment, because you're getting defensive. I think that point is pretty clear. But the second point is that the problem with it, apart from not doing what the parliament wants, is that it means there are quite a number of months and weeks where there is not the action taken that you pointed to, and I think we're entitled to ask you why. The section 19 report was received on 4 August?

Mr Atkinson: On 4 August.

Senator WONG: Okay, so that's actually 2½ weeks before you do anything to start the code of conduct inquiries and so forth.

Mr Atkinson: As Mr Hallinan suggested, precursor works happen before that.

Senator WONG: No, hang on. Precursor work actually happened earlier—don't say things which are not correct. The evidence on precursor work, which was just given earlier, happened after 14 July.

Mr Atkinson: Yes. The section 19 report was on 4 August.

Senator WONG: Correct. But you don't actually initiate these responses that you gave evidence about or the action you were taking—

Mr Atkinson: The formal HR referral—

Senator WONG: Hang on—until 21 August.

Mr Atkinson: It was on 21 August.

Senator WONG: Okay. Can you explain this to the committee? On 23 June you get report preparation papers from the Audit Office which go to pretty serious allegations of misconduct and potential corruption in relation to the Leppington Triangle. You don't do anything about it then. Is that the evidence? You actually don't do anything until the preparatory work, which occurs after the exit interview with the Audit Office of 14 July, correct?

Mr Hallinan: After we receive the report preparation paper—as I said, Ms Spence also had it—we spoke about the contents of it, we spoke about the individuals who were named in it and we removed the individuals who were named in the report from further participation in any—

Senator WONG: How many individuals were named?

Mr Hallinan: Two.

Senator WONG: Okay. I might come back to this, but, given time, I do want to go now to the actions you have taken. When we spoke in October, you outlined a range of actions that you have taken in response to the

Audit Office report on the Leppington Triangle purchase. I'm going to ask some questions about each of those actions. The first of those is the APS code of conduct investigation, about which you told us the former IGIS, Doctor Thom, was conducting an investigation into the APS code of conduct. I just want to check. There is a contract your department has with human resources services with an entity called CPM Reviews Pty Ltd, valued at \$45,000, for the period September 2020 to 31 March 2021. Is that the contract relating to Leppington Triangle?

Ms Spence: Yes.

Senator WONG: Thank you. Can you tell me the range of investigations under that contract?

Ms Spence: That was in the document that we tabled at the previous hearings. It set out the nature of the suspected breaches that are being investigated. I am happy to retable if that would assist.

Senator WONG: I've probably got it here. How many officers is Doctor Thom investigating?

Ms Spence: One.

Senator WONG: But there were two officers that you referenced earlier.

Mr Atkinson: We did go through that in the last hearing.

Senator WONG: We both forgot things from the last hearing.

Mr Atkinson: Barbara Deegan is investigating the other one.

Ms Spence: For clarity: the investigation that Ms Thom is doing is into the Leppington land acquisition. It's related to the land acquisition; the other investigation is a separate matter.

Senator WONG: Can I be clear how Doctor Thom was engaged, who recommended her and how the fee was set?

Ms Spence: In terms of recommendations, she is someone who is known to us, we have used previously and who has also been involved in other significant investigations. In terms of the fee, I'd have to take that on notice. I'm sorry.

Senator WONG: And the inquiry or investigation by Miss Deegan? That's in relation to the declaration of personal interests issue?

Ms Spence: Yes, declaration of interests—that's right.

Senator WONG: Let's go back to the Dr Thom investigation, for which I found the attachment that you tabled last time. Who determined the scope of her investigation?

Ms Spence: We worked with Dr Thom once the contract had been entered into to work through it based on the findings and the information in the audit report.

Senator WONG: Did you consult with the Audit Office when determining the scope of that investigation?

Ms Spence: I will take that on notice, but it was based on what was actually in the report. There had been, as Mr Hallinan has already mentioned, conversations with the ANAO on the nature of the issues that they had raised, but there was a fairly comprehensive picture that was put in the report, and that was the basis for determining.

Senator WONG: The report of the Audit Office says on page 57—this is advice to decision-makers, including ministers:

The ANAO examined the 10 written briefings on the acquisition of the Leppington Triangle that were submitted to the head of the Western Sydney Unit, to senior officials elsewhere in the department (the 'decision-makers') and/or to portfolio Ministers.

So there are 10 written briefings which go to management of the officials of the department and/or ministers, over the four-year period between 2015 and 2019, correct? The audit report also says on page 65 that Mr Fletcher received two written briefings in relation to these issues in January and July 2018. Now, Mr Fletcher, when he was asked about these issues in September this year, said the information provided to him was deficient, did not lay out properly the basis for the valuation and contained an expression of opinion by departmental officials that the price being paid was reasonable. Are you aware of that statement?

Mr Atkinson: Yes, I believe that's consistent with what's on page 65 of the audit report.

Senator WONG: Thank you. Have you reviewed the two briefs this minister got?

Mr Atkinson: Yes.

Senator WONG: Did he annotate any of the briefs in relation to the purchase?

Mr Atkinson: I believe there's an annotation on one of them.

Senator WONG: What does it say?

Mr Atkinson: I'd have to take that on notice. I recall a handwritten annotation.

Senator WONG: So there's an annotation on one of the briefs that Mr Fletcher got in relation to this purchase?

Mr Atkinson: Yes.

Senator WONG: My two questions on notice—well, you've taken one, which is what the annotation says. I would also like a copy of the briefs tabled.

Mr Atkinson: Yes.

Senator WONG: The letter to which Ms Spence referred, outlining the scope of Dr Thom's code-of-conduct investigation, doesn't reference the 10 written briefings; it only references five. You can go through it, but I think that's right. I want to understand why you've excluded five briefings from the code-of-conduct investigation.

Ms Spence: In reading the letter, it talks about advice to decision-makers. I hadn't read that to say that we were focusing on five, not 10. If you let me take that on notice, I'll try and get back to you. There's quite an extensive section in there.

Senator WONG: Yes, there is. What's really interesting is that the dates of the briefings referenced, from my reading, don't include the two briefings to the minister. Can someone tell me why?

Ms Spence: I will take that on notice.

Senator WONG: It seems very odd, doesn't it? You've got a code-of-conduct investigation into this, and, magically, the two briefings to the minister, including one he has annotated, are not included in the independent investigation of the conduct of the officer.

CHAIR: I think Ms Spence has said she will take it on notice.

Mr Atkinson: I can possibly assist. In the chapeau for allegation 3, it alleges against failing to provide information to portfolio ministers.

Senator WONG: It has been a while since somebody has said 'chapeau'; I got told off when I did that! But, if you go down the particulars—(c), (d), (e), (f), (g), (h) to (l)—none of those dates are the dates of the briefs—that is, January and July—that Mr Fletcher was briefed on.

Ms Spence: I will take on notice why they didn't do it, but, as Mr Atkinson has mentioned, based on the overarching allegation, I would have thought those briefs would be captured. I will take on notice why they are not explicitly listed in (c) to (l).

Mr Atkinson: I think it's covered by the drafting.

Senator WONG: I'm interested because there are two officers. So you will come back to me as to why five briefings fall outside the scope of the investigation, including saying to me, 'Actually, they don't; they're in, including the ones to the minister'—you can come back on that. But I'm now interested as to whether or not the two briefings to the minister—sorry, I should withdraw something; it is clear from this letter that the January 2018 briefing is not included in the particulars, but, to be fair to you, it is possible that the July 2018 briefing is. It's not specifically referenced in terms of the date, but there are dates of July 2018 in there. But the January 2018 brief, which is one of the briefs to Mr Fletcher, is not included in the particulars of the scope of the code-of-conduct investigation.

Ms Spence: Without being tricky about this, it's not listed as one of the ones but I will take that on notice.

Senator WONG: Sure. Your argument is that the specific doesn't override the general, and it's probably included?

Ms Spence: Yes.

Senator WONG: Okay. I want to know if it's the same officer, though. Is the officer who prepared the January 2018 briefing to Mr Fletcher the same officer who is the subject of the investigation that Dr Thom is engaging in?

Ms Spence: I will have to take that on notice.

Mr Atkinson: I believe it is, but we've got to take that on notice.

Senator WONG: Because there are two officers who are engaged in—

Mr Atkinson: The other officer wasn't involved in this.

Senator WONG: Was there a third? Part of the argument is that people weren't briefed properly and people were saying, 'Oh, it wasn't us; we were briefed badly.' I think the public is entitled to know if that's the case. I

want to understand if every brief that a minister had is being investigated properly, and if the brief to Mr Fletcher in January 2018, if it was not done by this officer, will not be covered by the code-of-conduct investigation.

Ms Spence: My expectation is that the answer is yes, but I'd like to take that on notice, please.

Senator WONG: Are you sure it's not possible it's a different officer?

Ms Spence: As I said, I'm taking it on notice because I definitely don't want to mislead you.

Mr Atkinson: None of us has it in our heads that there's another officer.

Ms Spence: I'll take it on notice and try to get back to you today.

Senator WONG: That would be useful, thank you. It's pretty specific: is the officer the subject of the Dr Vivienne Thom code-of-conduct investigation the officer who prepared the brief to Minister Fletcher in January 2018, or is it someone else? Do I just keep talking while someone finds that out? I've got other things to ask. Where is Dr Thom's investigation up to?

Ms Spence: She has done an initial review of the documents and has provided a list of issues back to the respondent, who will now be reviewing those. So it is underway; I wouldn't want to go as far as saying well advanced, but it is certainly underway.

Senator WONG: Did you give me a completion date last time?

Ms Spence: No, I didn't. I think we discussed—

Senator WONG: Do you want to chance one now?

Ms Spence: No. I think the same answer would apply. Obviously we want to get it done as quickly as possible, but it is also important to have due process.

Senator WONG: Sure. Will the outcome be made public?

Ms Spence: I think what we said last time was that we'll make as much information public as possible, based on individual's rights and the like.

Senator WONG: Mr Atkinson, at page 12 of the *Hansard* we talked about AFP referrals. You said: I immediately moved to put in place the code-of-conduct investigation, because that was the direct allegation in the review, and I'd asked the independent reviewers in that space to consider issues around whether an AFP referral should be put in place.

Mr Atkinson: Sorry, what page was that?

Senator WONG: It's page 12, about halfway down, of the *Hansard* as printed my office or whoever's office.

Mr Atkinson: I'll see if I can answer the question without the *Hansard*.

Senator WONG: Essentially, your evidence is: you asked the independent reviewers—who were, in this context, relevantly, Dr Thom and Mr Harrison—to tell you if there was any evidence to suggest that an AFP referral should be put in place.

Mr Atkinson: I don't have the exact wording, but it was basically to see if there was information as they were going through their reviews, yes.

Senator WONG: When did you ask Dr Thom if there was any evidence that supported a reference to the Australian Federal Police?

Mr Atkinson: I'd have to take that on notice.

Senator WONG: You gave evidence previously, Mr Atkinson, that Ms Spence—you're the COO, aren't you?

Ms Spence: Yes.

Senator WONG: It says you asked your COO to engage with a view to you referring it. I'm asking whether or not what precipitated the lead-up to that is an indication from Dr Thom that there is a basis for AFP—

Mr Atkinson: No.

Senator WONG: It was not?

Mr Atkinson: No.

Senator WONG: Will you tell me what precipitated it?

Mr Atkinson: As I said last time, taking into account all the things we were doing—the independent audit we had, the two code-of-conduct investigations that were underway—I was of the view, as I looked at all those things and how they would come together, that there was still an outstanding question. That was why I made that choice.

Senator WONG: At any point, has Dr Thom indicated to you there is evidence that is supportive of or contributes to the AFP referral or investigation?

Mr Atkinson: No.

Senator WONG: Does the officer subject to Dr Thom's investigation remain suspended?

Mr Atkinson: Yes.

Senator WONG: Does the officer have any continuing contact, access to departmental resources, including email and telephone?

Mr Atkinson: I don't think so but I'll ask Ms Spence about that.

Ms Spence: I think the best way of describing it is that relevant material has been provided to the respondent but they don't have access to our email system. I'm not sure, on the phone front; I think they've still got a departmental phone.

Senator WONG: After the Leppington Triangle deal, did the suspended employee work on the Inland Rail project?

Ms Spence: One of the issues that we're being very careful about is not providing advice that would identify the individuals who are under investigation. That's been one of the challenges in this.

Senator WONG: I haven't asked for the name—

Ms Spence: No, I know—

Senator WONG: Hang on. And there are some issues that have been raised in the conduct of the Inland Rail. I think it is a relevant point, in terms of public administration, to know what other project a person currently under a code-of-conduct investigation, in relation to a purchase that is dubious, has worked on. I haven't asked everything. I just want to know if they worked on Inland Rail.

Mr Atkinson: Further to Ms Spence's point, we're trying to protect the privacy of the individual under investigation.

Senator WONG: I asked both you, Mr Atkinson, and you, Ms Spence, about your engagement with the AFP. I think this is a reasonable summation of the evidence, but feel free to correct me. You didn't know about the AFP investigation into the triangle purchase until Ms Spence made a call, on 8 October, and found out that the Auditor-General had already referred the matter. Correct?

Mr Atkinson: Yes.

Senator WONG: Prior to that, there's no contact between the AFP and the department. Is that right?

Mr Atkinson: Yes.

Ms Spence: That's correct.

Senator WONG: Has there been contact since?

Mr Atkinson: Yes. I think it was my evidence last time that Ms Spence and Mr Hallinan met with the AFP, the week after that, to talk with them about the details.

Senator WONG: Talk to them about?

Mr Atkinson: The details.

Senator WONG: How are you assisting them with the investigation?

Ms Spence: If they've got any questions, we've been providing them with any guidance they need but, at the end of the day, the ANAO has provided them with a very large amount of material that they're working their way through, I think. Mr Hallinan, is that a reasonable—

Mr Hallinan: Yes, that's reasonable. They also asked for individuals who may know about the transaction from various perspectives and whether I could give them some names, to start discussions with, around framing their considerations. I provided them three names to do so.

Senator WONG: Three names.

Mr Hallinan: Yes.

Senator WONG: Are you able to elicit at what stage this investigation is?

Mr Atkinson: I think that's a matter for the AFP.

Senator WONG: What's your understanding?

Mr Atkinson: My understanding is that they're interviewing people. Mr Hallinan might be able to add some more context from his first discussion.

Senator WONG: Sure.

Mr Hallinan: In the first discussion they said they were at very early stages of the investigative process.

Senator WONG: In which discussion?

Mr Hallinan: The discussion that Ms Spence and I had with the detective superintendent in charge of the investigation.

Senator WONG: Is that the only AFP contact that you've had, the phone call and that discussion?

Ms Spence: Yes. There were two AFP officers we've spoken to, Ian McCartney and I can't recall the name of the other officer.

Mr Hallinan: As I've said, I've provided a list of names of individuals they could speak to at the outset, so they can help frame their investigation. In addition, I've had a further discussion with the AFP to talk about what sort of information they may wish us to provide or not provide in parliamentary hearings and those sorts of matters, so that we understood exactly what ground we were on in the investigation. They've also provided us advice on how to treat public requests for information.

Senator WONG: Are all of the people whose names you've provided to be interviewed departmental officers?

Mr Hallinan: No. They are one current departmental officer, one former departmental officer and the independent auditor we have. I thought the independent auditor would be a good start.

Senator WONG: Did you say there were eight?

Mr Hallinan: No. I said three.

Senator WONG: Mr Atkinson, you told us that you had asked Mr Harrison, of Sententia consulting, to undertake an independent audit of the triangle purchase. I have to say I did wonder, given the detail in the Auditor-General's report, what you thought he was going to uncover that the Audit Office hadn't already told you about.

Mr Atkinson: The key thing for me was what happened beyond the documents. The ANAO audit approach was focused on documentation. I wanted to make sure, because there were so many direct allegations around what people knew, that the people involved were interviewed and that I had a full perspective on what happened to support future management decisions and improvement.

Senator WONG: What do you mean 'to support future management decisions'?

Mr Atkinson: Lessons learned going forward to make sure this type of thing doesn't happen again. The ANAO report focused on many hundreds of thousands of documents, but I wanted somebody who had interviewed all the people involved to get perspectives of what conversations happened beyond what was in the documents.

Senator WONG: Okay, so there's an AusTender contract, which I assume is the one for \$79,000 between the department and Sententia consulting dated 3 August to 30 December 2020. I assume that's the correct tender contract notice.

Mr Hallinan: I think so and I will confirm that.

Senator WONG: The contract was varied on 3 November. Could someone tell me why?

Ms Spence: I think it was to extend the scope of the audit.

Senator WONG: How was the scope changed?

Mr Hallinan: We'll have to confirm that. It doesn't sit with me currently.

Senator STERLE: Is there another officer at the back of the room?

Mr Hallinan: They might be downstairs.

Ms Spence: As more information became available, there was a view that it would be useful for Mr Harrison to explore some of those other issues. We can take on notice the exact changes to the scope, but it was really just in light of the issues that were coming up.

Senator WONG: What issues were coming up?

Ms Spence: Just in terms of some of the—

Mr Atkinson: The scale of the job. We'll take on notice the exact scope change, but there's a lot of documentation to go through and a lot of people to talk to.

Senator WONG: So was it at his request that the contract was varied?

Mr Atkinson: No.

Ms Spence: No, it was at our request, and we'll table an updated scope. I can confirm that the January brief that you were asking about was signed off by the person under investigation.

Senator WONG: Thank you. You tabled the terms of reference for Mr Harrison's review on the last occasion. Have they been changed?

Ms Spence: Yes—that's the change in scope that we just referred to.

Senator WONG: Do you have the revised terms of reference?

Ms Spence: I'm just trying to organise to get a copy.

Senator WONG: When did the work begin under this contract—last month?

Mr Atkinson: In August.

Ms Spence: The initial audit—

Mr Hallinan: Sorry—is the question: when did we first engage Mr Harrison, or when did the work start on that amendment?

Senator WONG: When did work begin under this contract?

Mr Hallinan: I think we engaged Mr Harrison on either 3 or 4 August. I think it was 3 August.

Senator WONG: So you must have engaged him after the exit interview.

Mr Hallinan: That's correct.

Senator WONG: How was the contract price determined?

Mr Hallinan: We sought a quote from Mr Harrison.

Senator WONG: And so you gave him what he quoted?

Mr Hallinan: Sorry?

Senator WONG: You just gave him what he quoted?

Mr Hallinan: It was a reasonable—

Senator WONG: I'm just checking what the process was.

Mr Hallinan: I'll have to confirm precisely—

Senator WONG: Yes, yes. And when will the work be completed and will the report be released?

Ms Spence: The aim is to have a report by the end of the year.

Senator WONG: You also asked Mr Harrison to indicate to you if there were any basis for an AFP referral—that was the evidence earlier—

Mr Atkinson: Yes, as he was undertaking—

Senator WONG: Yes. Has he indicated that?

Mr Atkinson: No.

Senator WONG: Mr Atkinson, you also talked about an independent review of the Western Sydney unit's systems, processes, culture and capabilities and the unit's engagement with the department's governance structures and enabling divisions. I don't understand—what's an 'enabling division'?

Mr Atkinson: The enabling divisions are the central corporate divisions.

Senator WONG: Is that you, Ms Spence?

Ms Spence: Under my group.

Senator WONG: You enable, apparently. When did the review commence, and who is conducting it?

Mr Atkinson: That review has not commenced yet.

Senator WONG: Have you got someone to do it?

Mr Atkinson: Not yet.

Senator WONG: So you want to do it but you haven't tendered it?

Mr Atkinson: I have a draft terms of reference, and we're working up a scope to go to tender.

Senator WONG: Is your thinking behind that, Mr Atkinson, that there may be a problem with the unit that extends beyond the conduct of the one or two officers who are currently the subject of further investigations?

Mr Atkinson: Well, my view is that, for completeness, I need to fully understand what's going on, and I think that, if you don't look at the culture of an organisation where something like this has happened, you might be missing something. That's why I intend to look at it properly.

Senator WONG: Do you think there's a cultural problem in the Western Sydney unit?

Mr Atkinson: I think that there's a question around culture that should be looked at. I don't have any evidence to support that yet.

Senator WONG: Do you think it's a cultural problem that goes beyond the unit to other parts of the department?

Mr Atkinson: No, Senator.

Senator WONG: So why is that unit such a problem?

Mr Atkinson: The evidence in front of us is that there has been a very substantial problem here. It is a one-off type of activity that was undertaken, and it's a unit that is different to the rest of the department in the way it was constructed in that many of the normal governance style activities that rest in corporate areas were actually embedded inside of the unit, so it's a different construct to how the rest of departments usually work. So that's why it's a capability systems and culture piece. I think that any organisation that has something like this happen should look at whether there's a cultural element to it.

Senator WONG: I'm sorry, I asked you whether or not the Harrison report will be released. Did you actually answer that?

Mr Atkinson: Yes.

Senator WONG: What did you say?

Mr Atkinson: Yes.

Senator WONG: Audit and risk committee: who was the chair at the time the audit committee considered—

Mr Atkinson: I answered that last time, but it's Geoff Knuckey.

Senator WONG: The relevant time is August 2019, which is when the audit committee received the closing letter for the audit of the financial statements. This is where the audit gets a summary of the matters that the ANAO regard as giving rise to its view that there is a significant and unusual transaction or series of transactions. Yes?

Mr Atkinson: Yes, in general terms.

Senator WONG: The name of the chair was?

Mr Atkinson: Geoff Knuckey, k-n-u-c-k-e-y.

Senator WONG: Is Mr Knuckey still the chair?

Mr Atkinson: Yes.

Senator WONG: Who were the other members at the time?

Mr Atkinson: I'd have to take that on notice.

Senator WONG: How many?

Mr Atkinson: Ms Spence might know that.

Ms Spence: I think it's five. Sorry, five in all, three externals and two internals.

Senator WONG: I was going to say five—three and two surely.

Ms Spence: Yes.

Senator WONG: Two departmental and three independent?

Ms Spence: That's right.

Senator WONG: You can't tell me who the three independent were at the time?

Ms Spence: Susan Page and Gayle Ginnane.

Senator WONG: Where the two?

Ms Spence: External, as well as the chair.

Senator WONG: In addition to Knuckey.

Ms Spence: Yes.

Senator WONG: Are they still members of the audit risk committee?

Ms Spence: Yes, they are.

Senator WONG: What are the remuneration arrangements for the chair and committee members?

Ms Spence: I'd have to take that on notice.

Senator WONG: When and how did the committee first become aware there was a problem with the Leppington Triangle purchase? Was it the closing letter that's been referred to in the report or was it earlier?

Ms Spence: I might get our chief financial officer to the table.

Senator WONG: That's a good idea.

Ms Spence: Before passing to Mr Medland, I can give you advice on the remuneration, which is actually set out in our annual report: Geoff Knuckey, \$11,340; Gayle Ginnane, \$6,180; and Susan Page, \$7,189. That's total annual remuneration.

Senator WONG: Did they know before the closing letter there was a problem?

Mr Medland: The ANAO formally put it in writing in their closing letter at the audit committee on 29 August. The financial statements were considered by the Financial Statements Sub-Committee, about a week earlier, and, at that meeting, discussion was had around the evaluation of the Leppington Triangle.

Senator WONG: Okay. So they would at least have been aware of the meeting about the—

Mr Medland: Yes. So 22 August was the financial statement subcommittee meeting, and that meeting was extended to audit committee members as well.

Senator WONG: I'll just try and put this together, then. It is clear from the audit report that the committee did not take any action in response to the matters raised by ANAO. The audit says that at page 12. On page 17 it says that the committee simply noted the concerns about the Leppington Triangle purchase. Can someone explain to me why the audit committee would only note something which was quite a significant series of concerns identified by the Audit Office?

Mr Medland: I think the closing letter also outlined that the ANAO were continuing to make inquiries and that the matter had not been closed and that, following the signing of the financial statements, they would continue to undertake those inquiries during September.

Senator WONG: Can you provide me with minutes that show that?

Mr Medland: I can provide the closing letter.

Senator WONG: I've got the closing letter, or I've got a reference to it. But the point is that it's noted; there's no action. As I understand, there was no action taken by the audit committee, and I don't understand why.

Mr Medland: What I'm indicating is that at the point of the audit committee when the closing letter was discussed the ANAO were continuing to make inquiries into the matter and it didn't seem like the matter was completed.

Senator WONG: They were in the middle of an audit. But, anyway—I will let my colleagues have a go.

Mr Atkinson: I think the closing letter will assist because—

Senator WONG: Okay.

Mr Medland: For financial statement purposes, the audit had actually been finalised. The audit committee meeting was, I think, on the 29th. The secretary and I signed the management representation letter the following day, the 30th. The auditors issued an unqualified audit opinion. So the financial statement audit had effectively completed at that point, but they were continuing to make inquiries.

Senator RICE: I only have a few questions. Hopefully I am not going to be traversing ground that has already been covered either in earlier estimates or here today. I have been doing my best to follow what has already been covered. I want to take you to paragraph 2.97 of the ANAO report that says the department didn't develop a protocol for meeting with interested parties in relation to Western Sydney until March 2018. That paragraph also says:

The protocol was not accessible to Western Sydney Unit staff from November 2019 to September 2020, which undermined its potential benefit during that period.

I just want some clarification about that. First of all, what was the date the protocol was finalised?

Mr Hallinan: The protocol itself—and this is going back somewhat beyond my period in the department—was developed as part of the advice from the AGS unit that was embedded in the Western Sydney team at the time that had been established to provide probity guidance throughout the Western Sydney airport establishment phase for that unit.

Senator RICE: When was it finalised?

Mr Hallinan: I might ask Ms Vine-Camp to provide the detail.

Ms Vine-Camp: That protocol was finalised in March 2018.

Senator RICE: What does it mean that it 'wasn't accessible'? It was in March 2018. There was a period that that protocol was in place, but it was not accessible to Western Sydney Unit staff from September 2019 to November 2020. What does that mean?

Ms Vine-Camp: A decision had been taken by an officer in the unit to lock down what we call an RMS box, where we keep information that's accessible to staff. It was a file that had personal information, probity information, in it. An officer had made a decision to lock that file down, which meant that, when the audit committee came looking and pressed on the button to access that link, it was showing as not accessible. As soon as I became aware of that, I had that box opened up and the information that people were concerned about removed from the file.

Senator RICE: Was it the same people from March 2018? Would there have been people that would have known that such a protocol existed and had access to it until November?

Ms Vine-Camp: Yes. It was routinely emailed out to staff. It was just that it wasn't accessible through the link that the ANAO was looking at.

Senator RICE: Were they the same staff, during the period November 2019 to September 2020, that had been there beforehand? Presumably, then, if they had kept a copy of it they would have had a copy of it?

Ms Vine-Camp: Yes. On entry and exit to working in the unit—at the time of inception of the Western Sydney Unit, there were extensive protocols put in place, where staff had to undertake probity training. They were provided with copies of documentation, and, if they left the unit, they had to sign documentation to release from the unit. They had that information provided to them on a routine basis. It was just that, for that period of time, if somebody could not find their copy and pushed on the link, it was not available to them.

Senator RICE: But all of the staff that were in the unit during that period of time would have been briefed about and had a copy of that protocol; they would have understood that that protocol existed.

Ms Vine-Camp: That is my understanding. I was not in the unit the whole time, but I understand that was the case.

Senator RICE: You became aware that it wasn't available in September 2020.

Ms Vine-Camp: Yes.

Senator RICE: That's when you realised it hadn't been available since November the previous year?

Ms Vine-Camp: That's right. That was in consultation with the ANAO, when I was trying to understand why they were saying they couldn't access the document. When we went back through and checked the access controls on that folder, there had been a change to those access controls in November 2019.

Senator RICE: Can you give me the specific date in March 2018 that the protocol was developed?

Ms Vine-Camp: I will have to take that on notice. I think it was late March, like 28 March, but I will need to take that on notice.

Senator RICE: Was it finalised at the same time in March 2018 as the brief for the deputy secretary's approval about the overall purchase?

Ms Vine-Camp: They were two separate documents that were created during that time. I would need to take that on notice.

Senator RICE: Can you also take on notice whether you can give us a copy of the protocol, please.

Ms Vine-Camp: Yes, certainly. I thought we tabled a copy of the protocols at the last hearing, but I can check that.

Senator RICE: Thank you. The department signed the contract for the valuation on 5 June 2017. Presumably that required an approval under section 23 of the PGPA Act?

Mr Hallinan: Yes.

Senator RICE: Who was the delegate who provided the S23 approval? What was their role?

Mr Hallinan: I don't know if I have the specifics of the delegate with me, but, given the nature of the value of that contract, it would have been a relatively junior officer in the department, under the delegations model. I think it was about \$3½ thousand, if memory serves.

Senator RICE: Could you take that on notice—the role of that delegate. Were they aware, when they provided that S23 approval, that they were authorising the department to jointly procure the valuation with the Leppington Pastoral Company?

Ms Vine-Camp: Yes, I believe they would have been. It would have been the same work area involved in both the acquisition and the procurement process.

Senator RICE: Okay. So if you could confirm that—

Ms Vine-Camp: Yes, we can confirm that.

Senator RICE: The ANAO also refers to approval from the deputy secretary, as a financial delegate, for the overall purchase. That's paragraph 4.42 of the ANAO report. Again, I presume that's also a section 23 approval under the PGPA Act.

Mr Hallinan: Yes, that's correct.

Senator RICE: Can you tell me when the exact date of that approval was?

Mr Hallinan: I think it was 15 March 2018.

Ms Vine-Camp: Yes.

Senator RICE: Is that deputy secretary still in the department?

Mr Hallinan: No.

Senator RICE: When did they leave the department?

Mr Hallinan: It was earlier this year—perhaps April, May or June. I'm not certain. We'll take it on notice.

Senator RICE: Okay, thank you. There was a letter from the department to New South Wales Roads and Maritime Services in April 2016 about the impacts of the road alignment, and the letter said, 'The Commonwealth is still comfortable in managing these impacts.' What was the role of the person who signed that letter?

Ms Vine-Camp: I might ask Mr Whalen to come up and assist you with that.

Mr Whalen: Sorry, Senator. Would you be able to repeat the question?

Senator RICE: The ANAO report tells us that there was a letter from the department to New South Wales Roads and Maritime Services in April 2016 about the impacts of the road alignment that said, 'The Commonwealth is still comfortable in managing these impacts.' I want to know what the role of the person who signed that letter was.

Mr Whalen: That letter was signed by me. My role at the time, in relation to that activity, was providing technical advice to other parts of the division and with Roads and Maritime Services about the design of the airport and potential impacts of the airport on the road and the road on the airport.

Senator RICE: Was the head of the Western Sydney Unit aware of that letter?

Mr Whalen: I'll have to check that. My expectation is that they were, but I'll take that on notice.

Senator RICE: Okay. Was the relevant deputy secretary aware of the letter?

Mr Whalen: On that specific letter, I expect they weren't, but I can check that as well.

Senator RICE: Okay.

Mr Whalen: As to the nature of the interactions with Roads and Maritime Services, given that there had already been an acquisition strategy approved ahead of the time of writing the letter, there had already been correspondence with Roads and Maritime Services from other members of the department about those issues. The letter itself was just a follow-up and an additional confirmation to RMS to earlier requests for confirmation.

Senator RICE: On notice, could we get copies of those relevant letters?

Mr Whalen: Sure.

Senator RICE: Thank you. I just have a question of clarification. I understand that there were some documents tabled before: the APS Code of Conduct, 1 and 2. Are they general APS Code of Conduct documents, or are they specifically related to Leppington?

Mr Atkinson: Are those the letters with the breach allegations in them that we tabled at estimates?

Senator RICE: Yes. So they were letters regarding breaches of the code of conduct?

Mr Atkinson: Yes.

Senator RICE: So they were specifically related to the breaches of the code of conduct in relation to Leppington?

Mr Atkinson: Yes.

Senator RICE: Thank you.

Senator WONG: I have some questions about The Northern Road alignment. I was pausing to see if anyone wanted to come to the table.

Mr Atkinson: Senator Rice was just asking about it.

Senator WONG: I'm sorry; I left the room. I'm sure we won't ask precisely the same questions.

Mr Atkinson: I'm almost sure of that.

Senator WONG: The summary of the report is: the department didn't establish value for money in its decision to reroute The Northern Road alignment to accommodate the wishes of the landowners. The report finds that the new route for the road could actually have what they describe as potential disbenefits—so downside—for the future development of the second airport. So there is not value for money for taxpayers on the rerouting of the alignment, and there is not value for money in terms of potential additional cost down the track in relation to the airport, and particularly the second runway. And there were serious concerns raised by the aviation planning and development firm. I think the summary of this—and it's quite complicated, and you probably are much more across it than I am—is: the road was moved closer to the airport site because that reduced the amount of Leppington Pastoral Company land that would need to be acquired. This was a change at the request of the landowner. It clearly benefited Leppington Pastoral Company's business operations and land value, because it essentially didn't reduce the size or continuity of their base farm landholding, but moving the road closer to the airport would have a detrimental impact on the future second runway at the airport, to the extent that the department's aviation consultant described this as a no-go. That's the summary. I have some questions about the process, but you want to demur?

Mr Atkinson: Just points of characterisation, but why don't you ask the questions and see whether—

Senator WONG: What do you—

Mr Atkinson: The point of clarification is that the movement of the road meant that it used existing Commonwealth land and minimised the amount of land acquisition that had to happen. As far as the Landrum & Brown advice goes, the final advice was not that it was a no-go. As we discussed at last estimates, the road actually did have sufficient space that it would be fine for the second runway. Those are just the two points of clarification.

Senator WONG: I'm going to push back on that. On page 22 of the report, the Auditor-General says: Due diligence and value for money was not demonstrated in the department's advice supporting the route adjustment.

The report says that the preliminary advice from Landrum & Brown:

... included that 'there are serious issues with the proposed Northern road alignment ... and I see there is a clear case for a NO GO for the proposed road due to many issues'.

Mr Atkinson: Sorry; that was the piece that I was just giving—

Senator WONG: I know. I think we've had that argument before. When was the decision taken to realign The Northern Road, and who was the decision-maker?

Mr Whalen: In terms of the decision around the realignment of The Northern Road: obviously, because the existing road runs across the airport site, it had to be realigned around the airport, and that work was being done as part of the Western Sydney Infrastructure Plan, which was being delivered as a joint project, as we mentioned in the last hearing, between New South Wales and the federal government. Roads and Maritime Services for New South Wales were the delivery partner, so they were responsible for the design, the consultation with the community—

Senator WONG: Sorry; I don't have a lot of time, because we're going to end up closing this hearing. I want to know when the decision was reached and who the decision-maker was. I don't want a whole heap of explanation about delivery partners et cetera.

Mr Atkinson: Senator, you're after the letter that went back to New South Wales agreeing to the revised alignment and the date of that?

Senator WONG: I don't know. You tell me.

Mr Atkinson: That's what the audit says.

Senator WONG: We've got a decision that the Auditor-General has criticised. I would like to know when the decision to realign The Northern Road was taken and who made it.

Mr Whalen: The decision about The Northern Road is for Roads and Maritime Services.

Senator WONG: You're saying it was the New South Wales government—

Mr Whalen: They had the final decision on it.

Senator WONG: Right. I want to be really clear about this: your evidence is that the New South Wales government is the decision-maker in relation to The Northern Road alignment.

Mr Whalen: Correct.

Mr Hallinan: It's important to note, Senator, that we're a very close partner with RMS—

Senator WONG: Please! I'm sorry, but I'm going to come to that. I don't want a lot of management talk about delivery partners; I want to know who is responsible. And my next question is when.

Mr Whalen: Roads and Maritime Services put out an options report in July 2015 after consulting and taking submissions from the community. They then published their final preferred alignment, which was the eastern alignment, on 9 November 2015.

Senator WONG: So 9 November 2015. What was the name of the document?

Mr Whalen: The final document was called *The Northern Road stage 4 options identification report*.

Senator WONG: Are you saying that's the decision?

Mr Whalen: The part that I need to explain in a little more detail is that that was about the corridor, and the corridor was in the order of 250-plus metres wide.

Senator WONG: Sure.

Mr Whalen: Following that, RMS had to take that corridor and work through a specific alignment and design just for the road, so there was some room to actually move in that corridor. They had already started the development of that alignment prior to the announcement on 9 November that that was the alignment around the airport and around Luddenham. Then the work on the specific alignment—and there were multiple options as they worked through and refined it, as you'd expect in any design process—resulted in a final alignment which was first presented by them to ourselves and other stakeholders around the end of 2015. Then that was—

Senator WONG: So some time between 9 November 2015 and 31 December they presented you with the route which included that particular decision—

Mr Whalen: They'd worked up a specific alignment—

Senator WONG: Yes, okay. So you're saying—

Mr Whalen: and that was the one specific to the Leppington Pastoral Company's land.

Senator WONG: Okay.

Mr Whalen: The rest of the alignment was pretty straightforward.

Senator WONG: I understand that—it's the only part I'm interested in. So on 9 November they put out what you've described as The Northern Road stage 4 options paper—I think that's what you called it, or options document?

Mr Whalen: *The Northern Road stage 4 options identification report*.

Senator WONG: And that left a corridor within which various decisions could be made more specifically about where a road goes and the design of the road et cetera. Is that correct?

Mr Whalen: That's right.

Senator WONG: You're saying that the final alignment, which is the decision about where The Northern Road alignment was made, was made at some point after 9 November and before the end of 2015? Correct?

Mr Whalen: That's right; that's when they developed it for the first time. Then, following that, because it was specific to the Leppington Pastoral Company's land, which is the largest piece of land along that route, they had to work with Leppington Pastoral Company to make sure that, as the landowner affected, the alignment was going to work for them as well.

Senator WONG: I'm still trying to understand decision-making, as opposed to who then talks to whom et cetera. At some point, someone in government has to make a decision. Is it your evidence that the decision on The Northern Road alignment—leaving aside every partner engagement, discussion, stakeholder et cetera process—in government was made by RMS some time between 9 November and 31 December? Is that your evidence?

Mr Whalen: That's not the final decision. My evidence is that they arrived at a preferred corridor on 9 November. That was made—

Senator WONG: I know, and then after that—

Mr Whalen: And then they refined that into specific alignment. And then that alignment was developed with the landowner, in consultation with the affected landowner, over a period of about six to seven months before it was settled. Then Roads and Maritime Services, who were also working with the department at that point in time, because the department's land is potentially involved—

Senator WONG: Okay. Please stop talking. I'm sorry. This goes to accountability, so I would like you, on notice, to provide us with a very clear explanation that doesn't involve a lot of discussion about who talks to whom and who works with whom. I am interested in who makes the decision—who is accountable to the public and to which parliament are they accountable?—on where this road goes. I understand that there are a whole range of, I suppose, narrowing of options and a whole range of discussions with stakeholders, but I actually want to know, as a matter of law and public administration, who makes the decision and when it is made. Okay? I think what your evidence says is that between the ninth, which is the options, and the end of December a decision is made.

Now, let's come back to your involvement. You, the department—according to the department of infrastructure—actually sought an adjustment. Paragraph 2.19 of the report, which is at page 24, says this department 'sought the adjustment because it minimised the impact of the road on LPC's base farm'. Then you ran the same argument that is referenced in here, that it increased—well, no. According to the Auditor—this is very interesting—'moving the route towards the airport reduced the amount of LPC land that needed to be acquired' by New South Wales but increased the amount that the Australian government had to acquire. Why did you do that? Why did we ask for that?

Mr Hallinan: I think, for this one, context around how we fund the road is important.

Senator WONG: No, no, no—

Mr Hallinan: We've—

Senator WONG: No, I don't want context.

Mr Hallinan: We fund 80 per cent of the road—

Senator WONG: I know. You've given that evidence before.

Mr Hallinan: even though it's delivered by New South Wales.

Senator WONG: You've given evidence before, but I've asked a specific question. The Audit Office says that this department sought the adjustment. The effect of the adjustment—and they make other negative comments about it but I'm not going to get into them—is that it increases how much Leppington land the Australian government purchases. I want to know why you, the department, sought the adjustment in 2015.

Mr Hallinan: I'll start and then perhaps hand over to Mr Whalen. As I understand it, RMS's initial consultations with landowners indicated that there'd be significant challenges with putting the road through the alignment that they had consulted on, and they sought our guidance on other options. For us, moving the road from directly through the airport construction zone, which was where The Northern Road previously was, was a really important piece to ensure that we could build the airport on time. At that stage, I think, we went back to RMS and provided guidance on route alignments, but I'll ask—

Senator WONG: Okay. Who did that?

Mr Hallinan: I'll ask Mr Whalen if he's got the detail on that.

Mr Whalen: Sorry, I couldn't hear that last—

Senator WONG: 'At that stage we went back to RMS and provided guidance on route alignments'. I presume that is what the ANAO referred to. Who provided that guidance?

Mr Whalen: To be perfectly clear, the request to change the alignment did not come from the Commonwealth; it came from Roads and Maritime Services.

Senator WONG: That's not what the Audit Office says.

Mr Whalen: I know it isn't, but that's what happened.

Senator WONG: Well you'd better provide some documentation—

Mr Whalen: So—

Senator WONG: because generally the Audit Office is pretty careful.

Mr Whalen: Roads and Maritime Services, as Mr Hallinan was saying, are responsible for the consultation with landowners. They conducted those consultations with LPC. The feedback from Roads and Maritime Services

was that we were likely to have lengthy delays in the acquisition process by Roads and Maritime Services for their land, and therefore a significant delay to the completion of The Northern Road. From our perspective, that was of concern because it would impact our ability to start the earthworks on the airport.

Senator WONG: Where is all this laid out? First, I note your evidence is contrary to that of the Auditor-General and the audit office, so we're going to have to resolve that because I think the public are entitled to understand that you've got the auditor saying something and you're saying something contrary to that. My second question is that, given time, I would like you to set out what you've just said with the documents that you say support it. Your assertion is that, 'Actually we didn't do it, it was RMS and they took the decision to move the road.' Is that your evidence?

Mr Whalen: They met with our department and their advice to us was that the Leppington Pastoral Company were not going to accept the alignment as proposed through their land and that we could expect significant delays with that acquisition process. To go back to the audit—and, to be fair to the auditors—what the auditors have relied upon is a letter from Roads and Maritime Services, where it does actually say that the department directed Roads and Maritime Services. But I can advise that that wasn't the case.

Senator WONG: We want some documentation to demonstrate that, and that's not unreasonable. This is a big decision and it has implications about enabling a greater amount of, potentially, corrupt but, certainly, highly problematic expenditure by increasing the amount of land that the Commonwealth purchased. Let's leave that to one side. It is reasonable to understand who's accurate about whose decision it was. Are you able to provide us with why you did it? Are there notes, documentation or letters that demonstrate that the decision wasn't from you, which is what the auditor says?

Mr Whalen: Yes, we can?

Senator WONG: A brief was provided to the Minister for Infrastructure, Transport and Regional Development in September 2015 which advised that none of the route options would adversely impact on the future use of the site for aviation purposes, which is contrary to some of the evidence. Let's leave that aside. Can you provide the committee with a copy of that brief?

Mr Atkinson: Yes, on notice.

Mr Whalen: We'll take it on notice.

Senator WONG: Your evidence is that RMS is the final decision-maker on the alignment of the road—not the Commonwealth. Is that your evidence?

Mr Whalen: That's correct, as much as it pertains to land that's outside of the Commonwealth.

Senator WONG: As much of it—

Mr Whalen: If there's a part of the road that is on Commonwealth land then, obviously, we have a decision in that.

Senator WONG: Yes. Were any ministers or their officers involved in suggesting to the department that the alignment of the road should be changed?

Mr Whalen: Not that I'm aware of.

Senator WONG: Are there any briefs to ministers about the realignment of the road, other than the one referred to in the Auditor-General's report in 2015?

Mr Whalen: That's not my area.

Senator WONG: Can you take that on notice?

Mr Whalen: We can take that on notice.

Senator WONG: Are you considering the decision-making process for The Northern Road alignment in the code-of-conduct reviews which are currently underway that we've been discussing?

Mr Atkinson: I'll have to check but I don't think they're in the terms of reference, no.

Senator WONG: Given the concerns the ANAO has raised, are you aware of whether or not the AFP investigations are also considering processes put in place around the alignment of The Northern Road?

Mr Atkinson: I'm not aware of that.

Mr Hallinan: I'm not aware of it, either.

Senator WONG: Mr Whalen?

Mr Whalen: I'm not involved in the AFP investigation.

Senator WONG: I'm asking what your awareness is.

Mr Whalen: Can you repeat the question, please?

Senator WONG: Do you have any knowledge of whether or not the AFP investigations are also considering any of the processes put in place around the alignment of The Northern Road?

Mr Whalen: I have no visibility of the AFP investigation.

Senator WONG: Mr Atkinson, have you or any of your senior officers initiated any departmental reviews to look at this decision?

Mr Atkinson: It's part of the independent audit to find out all the information about what happened at that point in time.

Senator WONG: Which independent audit?

Mr Atkinson: Mr Harrison's.

Senator WONG: Right, so the code-of-conduct investigations don't go to this—

Mr Atkinson: No.

Senator WONG: but Mr Harrison's review does?

Mr Atkinson: Yes.

Senator WONG: Why?

Mr Atkinson: Once again it's the point I talked about; the audit office focused on the documentation. I want interviews with the people who were doing the things at the time, so that we can have the full version of what happened at each of these points in time.

Mr Hallinan: It's important to note, I think, that the ANAO found we lacked documentation sets throughout this audit and, looking back in time, it's quite difficult to identify some of the decision points for these things. We are trying our best, though, and that's part of why we have Mr Harrison on board.

Senator WONG: I want to come back, though. How do you know Mr Harrison is looking at The Northern Road? Did you ask him to?

Mr Atkinson: Yes, because, across the breadth of his terms of reference, he's supposed to look at the entirety of what was considered and basically bring the interview side of it together with the documentation to give the full picture of what happened. One of the key issues is that there were documentation failures through here.

Senator WONG: Yes. Do you have any concerns about The Northern Road realignment?

Mr Atkinson: I want to know what happened.

Senator WONG: Why?

Mr Atkinson: Why? Because there was a decision and, as presented by the ANAO, based on their documentation, value for money was not proven. There are a couple of other issues; I think some characterisation issues weren't done properly and I think we need to get to the bottom of exactly what happened.

Senator WONG: The Auditor-General says there's a value-for-money issue associated with The Northern Road alignment, and you're also concerned about that?

Mr Atkinson: Yes. The Auditor-General report says there is no documentation that demonstrates value for money. With all of these things we need to understand what went around it so that we can find out what happened. This happened two secretaries ago.

Senator WONG: Same Commonwealth, same taxpayers.

Mr Atkinson: And that's why we're trying to get to the bottom of it!

Senator WONG: What decisions were made inside the department that were part of this decision-making process? There must have been a decision to put a view. I understand you have a different view to the Auditor-General but, obviously, a view was put by the department to realign the road. Correct? There's a subsequent decision to allocate money. There's a decision in terms of talking to your decision partners. What decisions do you make—does the Commonwealth make—that contribute to the realignment of the road?

Mr Atkinson: Mr Whalen has already taken on notice to give the full decision tree on that. I don't want to be at risk of not telling you the right thing.

Senator WONG: You got all nervous!

Mr Atkinson: I'm going to take a lot more on notice now! I'm done, thank you very much.

CHAIR: That concludes today's proceedings. I thank Minister Seselja, officers of the Department of Infrastructure, Transport, Regional Development and Communications and all witnesses who have given evidence to the committee today. Thank you also to Hansard, Broadcasting and the secretariat.

Committee adjourned at 18:03