



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE
AND TRADE

ESTIMATES

(Additional Budget Estimates)

THURSDAY, 15 FEBRUARY 2007

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE STANDING COMMITTEE ON
FOREIGN AFFAIRS, DEFENCE AND TRADE
Thursday, 15 February 2007**

Members: Senator Johnston (*Chair*), Senator Hutchins (*Deputy Chair*), Senators Mark Bishop, Ferguson, Hogg, Payne and Trood

Senators in attendance: Senators Allison, Carr, Chris Evans, Faulkner, Ferguson, Forshaw, Hogg, Johnston, Kirk, Milne, Nettle, Payne, Robert Ray, Stott Despoja and Trood

Committee met at 9.02 am

**FOREIGN AFFAIRS AND TRADE PORTFOLIO
In Attendance**

Senator Coonan, Minister for Communications, Information Technology and the Arts

Department of Foreign Affairs and Trade

Portfolio overview

Mr Doug Chester, Deputy Secretary

Ms Gillian Bird, Deputy Secretary

Mr Simon Merrifield, Acting First Assistant Secretary, Corporate Management Division

Ms Ann Thorpe, Chief Finance Officer

Ms Lynette Wood, Assistant Secretary, Executive, Planning and Evaluation Branch

Output 1.1: Protection and advocacy of Australia's international interests through the provision of policy advice to ministers and overseas diplomatic activity.

1.1.1: North Asia

Mr Peter Baxter, First Assistant Secretary, North Asia Division

1.1.2: South and South-East Asia

Mr Paul Grigson, First Assistant Secretary, South-East Asia Division

Ms Deborah Stokes, First Assistant Secretary, South and West Asia, Middle East and Africa Division

1.1.3: Americas and Europe

Mr Les Luck, First Assistant Secretary, Americas Division

Mr Jeremy Newman, First Assistant Secretary, Europe Division

1.1.4: South Pacific, Middle East and Africa

Mr David A Ritchie, First Assistant Secretary, Pacific Division

Ms Deborah Stokes, First Assistant Secretary, South and West Asia, Middle East and Africa Division

Mr Paul Robilliard, Head, Iraq Task Force

Ms Katrina Cooper, Assistant Secretary, Domestic Legal Branch

1.1.5: Bilateral, regional and multi-lateral trade negotiations

Mr Christopher Langman, First Assistant Secretary, Office of Trade Negotiations

Mr Peter Baxter, First Assistant Secretary, North Asia Division

Mr Paul Grigson, First Assistant Secretary, South-East Asia Division

Ms Deborah Stokes, First Assistant Secretary, South and West Asia, Middle East and Africa Division

Mr Les Luck, First Assistant Secretary, Americas Division

Mr Jeremy Newman, First Assistant Secretary, Europe Division

Mr David A Ritchie, First Assistant Secretary, Pacific Division

Mr Ric Wells, Head, China FTA Task Force and Acting First Assistant Secretary, Trade Development Division

Mr Michael Mugliston, Head, Asia Trade Task Force

Ms Gayle Milnes, Head, Japan FTA Task Force

Mr Nic Brown, Assistant Secretary, Trade and Economic Analysis Branch

Mr Tim Yeend, Special Negotiator Agriculture

1.1.6: Trade development/policy coordination and Asia–Pacific Economic Cooperation

Mr Ric Wells, Head, China FTA Task Force and Acting First Assistant Secretary, Trade Development Division

Mr Michael Mugliston, Head, Asia Trade Task Force

Ms Gayle Milnes, Head, Japan FTA Task Force

Mr Chris DeCure, Head, APEC 2007 Task Force

Mr Nic Brown, Assistant Secretary, Trade and Economic Analysis Branch

1.1.7: International organisations, legal and environment

Mr Michael Potts, First Assistant Secretary, International Organisations and Legal Division

Ms Penny Richards, Senior Legal Adviser

Ms Jan Adams, Ambassador for the Environment

1.1.8: Security, nuclear disarmament and non–proliferation.

Mr Jeff Robinson, Acting First Assistant Secretary, International Security Division

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

Mr Perry Head, Assistant Secretary, Counter, Terrorism Branch

Ms Gita Kamath, Acting Assistant Secretary, Arms Control and Counter Proliferation

Output 1.2: Secure government communications and security of overseas missions.

Mr Sam Gerovich, First Assistant Secretary, Diplomatic Security, Information Management and Services Division

Output 1.3: Services to other agencies in Australia and overseas (including Parliament, state representatives, business and other organisations).

1.3.1: Parliament in Australia

Mr Rod Smith, First Assistant Secretary, Consular, Public Diplomacy and Parliamentary Affairs Division

1.3.2: Services to attached agencies

Mr Simon Merrifield, Acting First Assistant Secretary, Corporate Management Division

1.3.3: Services to business

1.3.4: Services to state governments and other agencies overseas and in Australia.

Mr Ric Wells, Acting First Assistant Secretary, Trade Development Division

Output 1.4: Services to diplomatic and consular representatives in Australia.**1.4.1: Services to the diplomatic and consular corps****1.4.2: Provision of protection advice through liaison with the Protective Security Coordination Centre.**

Ms Lyndall McLean, Chief of Protocol

Output 2.1: Consular and passport services.**2.1.1: Consular services**

Mr Rod Smith, First Assistant Secretary, Consular, Public Diplomacy and Parliamentary Affairs Division

2.1.2: Passport services

Mr Robert Nash, Executive Director, Australian Passport Office

Output 3.1: Public information services and public diplomacy.**3.1.1: Public information and media services on Australia's foreign and trade policy**

Mr Rod Smith, First Assistant Secretary, Consular, Public Diplomacy and Parliamentary Affairs Division

Mr Ric Wells, Acting First Assistant Secretary, Trade Development Division

Mr Richard Andrews, Executive Director, Economic Analytical Unit

3.1.2: Projecting a positive image of Australia internationally

Mr Rod Smith, First Assistant Secretary, Consular, Public Diplomacy and Parliamentary Affairs Division

Mr Ric Wells, Acting First Assistant Secretary, Trade Development Division

3.1.3: Freedom of information and archival research and clearance

Mr Rod Smith, First Assistant Secretary, Consular, Public Diplomacy and Parliamentary Affairs Division

Ms Penny Richards, Senior Legal Adviser

Output 4.1: Property management.**Output 4.2: Contract management.**

Mr Peter Davin, Executive Director, Overseas Property Office

Enabling services

Mr Simon Merrifield, Acting First Assistant Secretary, Corporate Management Division

Ms Ann Thorpe, Chief Finance Officer

Ms Lynette Wood, Assistant Secretary, Executive, Planning and Evaluation Branch

Australian Agency for International Development (AusAID)**Outcome 1: Australia's national interest advanced by assistance to developing countries to reduce poverty and achieve sustainable development.****1.1: Policy****1.2: Program management****Administered items—Australia's development cooperation program.****Outcome 2: Australia's national interest advanced by implementing a partnership between Australia and Indonesia for reconstruction and development.****2.1: Australia–Indonesia partnership for reconstruction and development management**

Mr Bruce Davis, Director General

Ms Annmaree O'Keeffe, Deputy Director General, Global Programs Division

Mr Scott Dawson, Deputy Director General, Pacific PNG and International Division

Mr Murray Proctor, Deputy Director General, Asia
Ms Ruth Pearce, Senior Associate, Corporate Governance and Review
Ms Catherine Walker, Assistant Director General, PNG
Ms Judith Robinson, Assistant Director General, Pacific
Mr Alistair Sherwin, Assistant Director General, Indonesia
Ms Julia Newton-Howes, Assistant Director General, Fragile States Initiative
Ms Julie Delforce, Acting Assistant Director General, Asia Regional Branch
Mr Dereck Rooker-Smith, Assistant Director General, Initiative Support
Mr Michael Wilson, Assistant Director General, Asia Bilateral Branch
Mr Robin Davies, Assistant Director General, Multisectoral Support
Mr Alan March, Assistant Director General, Humanitarian Coordination and Public Affairs
Mr Titon Mitra, Assistant Director General, Operations Support Branch
Mr Paul Lehmann, Assistant Director General, Corporate Reform and Planning
Mr Robert Jackson, Assistant Director General, Corporate Services Branch and Acting
Chief Finance Officer
Mr Peter Versegi, Assistant Director General
Ms Therese Mills, Assistant Director General, Human Resources Branch
Mr Dave Vosen, Director, Budget Section, Australian Trade Commission (Austrade)

Austrade

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

1.1: Awareness raising

1.2: Government advice and coordination

1.3: Services and opportunities

1.4: Austrade administered: EMDGs for small to medium sized businesses and ITES loans and advances.

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

2.1: Consular, passport and immigration services.

Mr Hamish McCormick, Deputy Chief Executive Officer
Ms Margaret Ward, General Manager, Export Finance Assistance Program
Mr Tim Harcourt, Chief Economist
Ms Hazel Bennett, Analysis and Planning Director
Mr Michael Crawford, General Manager, Marketing and Communications, Austrade

CHAIR (Senator Johnston)—I call the committee to order. I declare open this meeting of the Senate Standing Committee on Foreign Affairs Defence and Trade. I welcome Senator Coonan, representing the Minister for Foreign Affairs and the Minister for Trade; and Mr Doug Chester, deputy secretary, and officers of the Department of Foreign Affairs and Trade. Today the committee will examine the portfolio additional estimates statements for the Department of Foreign Affairs and Trade, beginning with the portfolio overview followed by general non-trade outputs and enabling services. We will then move to AusAID from approximately 5.00 pm to 6.30 pm, then to Austrade from 7.30 pm until approximately 9.30 pm. Foreign Affairs and Trade output 1.1.5, bilateral, regional and multilateral trade

negotiations; and output 1.1.6, trade development policy coordination, will be examined this evening from approximately 9.30 pm.

When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions. The questions will be forwarded to the department for an answer. I remind senators to provide their written questions on notice to the secretariat promptly and at the latest by 5 pm this Friday. The committee has resolved that Thursday, 29 March 2007 is the return date of answers to questions taken on notice at these hearings.

Please note that under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice. Witnesses are reminded that the evidence given to the committee is 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. The giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The Senate by resolution in 1999 endorsed the following test of relevance of questions at estimates hearings, and that test is: 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. 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.

An officer of a department or of the Commonwealth or of a state shall not be asked to give opinions on matters of policy. He or she will 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. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist upon an answer having regard to the ground which is claimed. Any claim that it would be contrary to the public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis for the claim. When officers are first called upon to answer a question, they should state clearly their full name and the capacity in which they appear and speak clearly into the microphones.

The committee will adjourn for lunch between 12.30 pm and 1.30 pm and for dinner between 6.30 pm and 7.30 pm. We will take tea breaks at approximately 10.30 am, 3 pm and 9 pm or as required. I am advised that refreshments are available in the waiting room. I remind everyone that mobile phones should be switched off inside the hearing room. Minister, do you or your officers wish to make any opening statement?

Senator Coonan—Thank you, Chair; good morning. No, I have no opening statement, and the officers do not either.

[9.05 am]

Department of Foreign Affairs and Trade

CHAIR—Senators, we will start with questions for the portfolio overview. Senator Ray.

Senator ROBERT RAY—Firstly, congratulations, Chair, for the fastest reading-out of an opening statement in the history of estimates! Ken Howard would have been proud of you. This morning I want to raise a number of issues—and other people will then interrupt—to do with answers we have got back previously, and letters, and deal with those first.

CHAIR—Very good.

Senator ROBERT RAY—The first matter I wanted to raise is a letter dated 24 November 2006 sent to this committee correcting evidence. I note that the evidence has been corrected within about a three-week period, Mr Chester, which complies with the sorts of requirements that we have that, if inaccurate or misleading evidence is given, the record be corrected at the earliest opportunity. I understand the complexity of the issues. It took three weeks for you to respond, and on behalf of the committee we appreciate that. But I have to say that some of the corrections of this evidence would have taken us, in our questioning in the previous estimates hearings, in a slightly different direction. So let's just get some of these facts on the record. At the last hearing we were told that upon the consular visit of 27 September to Guantanamo Bay to see Mr Hicks he refused to see the consul. We now know that he did in fact see the consul for 10 minutes. I think Mr Smith can probably help us.

Mr Smith—That is correct. The evidence that I gave at the last estimates described the circumstances of that visit in terms that suggested that the consul general did not see Mr Hicks. That description was not in fact completely accurate, because the consul general did see Mr Hicks for a short period, but Mr Hicks declined to engage with the consul general; he declined to speak to the consul general.

Senator ROBERT RAY—Did the consul general ask him why he was declining to speak? This is the one area that I do not think we have covered yet.

Mr Smith—Yes. I am not sure how much of an explanation Mr Hicks provided to the consul general on his decision not to speak, but it was very clear that that was the decision that he had taken.

Senator ROBERT RAY—What we are trying to establish is whether Mr Hicks's belief that he was being punished is based in fact, and that he was being punished, or whether it was only his own perception that he was being punished, which may indicate a degree of physical and mental decline that has not been reported on yet. That is why that question is relatively important. We are just trying to establish why in fact he refused, after, I think, 16 previous visits, consular assistance.

Mr Smith—What I would say to that is that Mr Hicks certainly appears to have a perception that he was or had been punished for speaking to the consul general in the past. As I said in estimates last time, if that was the case, that would be a matter of very serious concern to us. When the issue was raised with us, we pursued it vigorously with the US authorities and we have been given on several occasions now an assurance that that is not the case.

Senator ROBERT RAY—I take it from the last part of your letter that you were again going to raise this with US authorities. Can you tell us about that?

Mr Smith—We did do that. The most recent occasion, I think, on which that was done was in a letter that was sent from the consul general to the Pentagon on 5 December. We received a formal response to that letter in late January. The issue here was a view that the moving of Mr Hicks from one camp to another was a punishment, and the US authorities confirmed that those moves were not punitive, that they were made as part of what they describe as a camp consolidation of prisoners into new facilities.

Senator ROBERT RAY—There is an additional qualification to other evidence that was previously given, and that is in relation to what had been raised with DFAT. It has now been brought to your attention, I think, that on 3 May 2006 the department received an email from Mr Terry Hicks. What was the nature of that communication?

Mr Smith—As I think I set out in the letter, that was an email message that had been sent by Major Mori to a number of addressees, not including the department but including Mr Terry Hicks, his father. Mr Hicks's father then referred that email to us. At that point we requested the embassy in Washington to pursue that with US authorities.

Senator ROBERT RAY—I see.

Senator FAULKNER—At what point did you task the Australian Embassy in Washington to pursue that?

Mr Smith—That was done more or less immediately.

Senator FAULKNER—You could certainly assure me that when you gave evidence on 2 November 2006 you and other officers present at the hearing were not aware of the email of 2 May 2006 from Major Mori that had been forwarded by Mr Terry Hicks; either did not know about it or you had forgotten its existence? You could assure me of that?

Mr Smith—Yes, I can give you that assurance. Had I been made aware of it in May of last year? At the time that I was asked the question at estimates I had no recollection of that. You might recall that this issue actually came up late in the estimates hearing, because Major Mori was at the time in Canberra in Parliament House giving a briefing.

Senator FAULKNER—Yes, I raised the concerns that Major Mori himself had raised in a briefing. I raised them at this committee meeting.

Mr Smith—That is correct. At the time that was news to me. I had no recollection at the time of the May approach, but my officers drew that to my attention after the estimates hearing. We then took steps to confirm that that was the case, to trace back the sequence of events and the follow-up that we took; we confirmed that with the embassy in Washington and that was then the basis on which I was able to provide the clarification to the committee.

Senator FAULKNER—Thank you for that. Can I also be assured, Mr Chester, that no other officials were aware of the communication or the email of 2 May 2006? I certainly accept Mr Smith's assurance, but no other officials present at hearing were aware of it?

Mr Chester—Of all the staff in the department Mr Smith would be the one who would deal with this issue, or he and his people, rather than any other area of the department.

Senator FAULKNER—The reason I ask this question, of course, is that it does really beg the question of how effectively these issues pertaining to Hicks are dealt with in the department. Here is an email of 2 May 2006 from Major Mori, the contents of which I would have thought, as accepted from evidence here, would have been concerning to the department. Yet when asked about these matters on 2 November 2006, no official present at this hearing is aware of it. You tell me if my conclusion is not reasonable, but the only conclusion I can draw is that there is a big question mark over how effectively these matters are being dealt with. For something as serious as this I am surprised that no-one is aware. I certainly accept that Mr Smith has done the right thing in correcting the record. I have moved on from that. The issue is why the record had to be corrected; in other words, why Mr Smith and other officials at the time were not aware of this serious issue.

Mr Chester—I think it probably is an unfair characterisation that you are making.

Senator FAULKNER—I am actually asking a question, Mr Chester. I am not at this stage making any characterisation—and you know I rarely do that.

Mr Chester—I think you did invite me to comment on what you were saying.

Senator FAULKNER—Yes.

Mr Chester—I would assume, but I cannot confirm it, that Mr Smith's supervisors, his line of supervision, may well have been aware of that material. But neither of his two immediate supervisors in the chain of supervision were present at the estimates hearings in November.

Senator FAULKNER—That is the point I am making.

Senator ROBERT RAY—I was going to raise the same question. We are not thumping the table and saying, 'How dare you mislead us!' and so on. We know Mr Smith is not only a helpful but a very transparent witness at these hearings. But to avoid repeats of this, we wonder if you would go back and check and say, 'Now, why didn't we have the information available?' As I said before, it would have led to another chain of questioning, and probably the department would have wanted us to go down that path given the information now before us. Do you go back and check and find out: 'How did we make these unintentional misleads of the committee in terms of the evidence?'

Mr Chester—On some occasions we may. For this one I am not aware of what was done.

Senator ROBERT RAY—I was not asking with this one. A general policy?

Mr Chester—On some occasions we will. It will depend on the nature of what corrections have to be made. My understanding of this particular issue is that it was something that Mr Smith was not aware of at that time.

Senator FAULKNER—We accept that completely. I have said that I do accept it and I also acknowledge the fact that the evidence was corrected. But my point is that it does beg the question on something as critical as this. There are two things. I raised how effectively matters relating to Hicks might be handled in the department. Of course, it also raises the issue of how seriously this accountability mechanism is taken if we are not apprised of it at the time. I think you would acknowledge that matters relating to Hicks are pretty well front and centre in terms of the parliamentary interest.

Mr Chester—As it is in the department. I do not believe there was any attempt by anyone who was at the estimates hearings who may have known about this to not disclose it. My view is that nobody here would have known the information.

Senator FAULKNER—That is the point. I accept that.

Mr Chester—That is not unusual. Mr Smith is a senior officer of the department. We would expect him to advise the committee of what he knows, and in this instance he did not know that.

Senator FAULKNER—I acknowledge that. There is no criticism of Mr Smith; he cannot report on something that he is not aware of. But those other two issues are of critical importance. In this circumstance it seems reasonable for a senator to ask the department: does this indicate concerns at a departmental level about how these issues are being handled; and/or, secondly, how the department approaches the provision of evidence to the committee in terms of the breadth of witnesses available to make sure that we do not find ourselves in that situation? I think that is a reasonable point to make.

Mr Chester—On the first question, the answer is quite clearly that we do treat this seriously, and there is no doubt about that. On the second question, I think the only alternative we would have to ensure that we had every bit of knowledge that is in the department available to the estimates committee would be to have all the staff sitting in the chairs behind. You cannot expect one, two or three people in the department to have every bit of knowledge on every particular issue.

Senator FAULKNER—I do have high expectations, on a matter that is controversial and high profile, that the best efforts will be able to be made by the department to provide witnesses who have complete knowledge of departmental activity.

Mr Smith—I might make the comment, if I may, that we have very substantial files on Mr Hicks and that reflects the very high level of attention that we give his case in my division. There is a large amount of information that before each estimates hearing we distil as best we can into the key issues that we anticipate the committee will raise. A great deal of preparation goes into these hearings. Certainly it was regrettable that I did not have that particular piece of information at my fingertips when that happened, but I think, frankly, it is unfair to characterise that as in some way reflective of inadequate attention being given to the case. If you look not at the fact that I did not have that information at the hearing but at the quality of the follow-up that was done by consular staff when that information was drawn to our attention, I think that is a much better reflection of the seriousness with which we take this particular case and the attention we give it.

Senator ROBERT RAY—We acknowledge the fact that you corrected the record at the earliest opportunity. We have had other occasions on other committees where the note has come in three or four months later, when the following day they know that it is wrong. More broadly on this area, I did notice that Minister Downer on 8 January 2007 gave an interview where he says, slightly defensively of the Australian government's position on Hicks:

We have around 180 Australians who are currently facing charges overseas, not just Mr Hicks. Now, some politicians are only interested in Mr Hicks. They have no interest at all in the other 180 Australians ...

I would like to ask: of the 180 Australians how many have been in detention for five years without charge? Do we know if any of them have been?

Mr Smith—I do not believe there are any others who would fit that description.

Senator ROBERT RAY—Do we know if any of them, having faced potential charges, might be convicted on hearsay evidence and evidence gained through coercion?

Mr Smith—I am not aware of any such cases, but again a general point worth making is that we do not control the judicial processes of other countries. When Australians transgress the law or are suspected of transgressing the law in foreign countries, they are subject to the laws of those countries. If we judge that a judicial process does not give Australians access to a process that meets reasonable standards of fairness, we will do what we can to ensure that that happens. But I cannot identify any particular cases for you.

Senator ROBERT RAY—Let us go directly to Guantanamo Bay, where the whole regime of military commissions was found by the Supreme Court to be inadequate. That prompted new legislation, as I understand it, to deal with these matters. Do we then, having an Australian affected by that, make representations at that stage about what we think of those laws? Do we make representations to those countries? Here we have, if you like, people moved, first of all, to where it was deemed to be outside the reach of the US judiciary. The Supreme Court, however, disagreed. Then we have these two points I mentioned before. Evidence can be taken as hearsay evidence. Evidence that has been coerced can be adduced as well. Do we at any point make a representation on that? I accept your position, Mr Smith; we have to accept the political regimes of every other country around the world. We will accept that. But when it is in the course of changing and affects an Australian citizen, do we make representations to that country?

Mr Smith—Do you mean in respect of Guantanamo Bay?

Senator ROBERT RAY—Yes, I am using that as a direct example. An Australian citizen has been detained for five years. It is found that the legal regime that he has been detained on is unsafe, and therefore that is rectified by a legislative act of the US Congress. In the process of that, two of the provisions would normally be an anathema to the Australian legal system. Do we make a representation at that stage? I know what you are saying in that we have to accept the ultimate result; we have no choice. But in the middle of that process do we intervene at any stage?

Mr Smith—I do not know that I can generalise. We look at each case on a case-by-case basis. The circumstances of each case are different—the nature of the alleged offence and the judicial process in the country concerned. In the circumstances that you describe it is very hard to generalise.

Senator ROBERT RAY—What is the general Australian government attitude in the sense of prosecuting someone on the basis of hearsay evidence or evidence derived from coercion? What would be the general attitude of the Australian government?

Senator Coonan—The general attitude of the Australian government is that people who are detained and tried on other countries' procedures are not something that this government has control over. We have continued to press for a fair trial for Mr Hicks and that it be carried

out expeditiously. I think that is a fair summation of what the government's current position is.

Senator ROBERT RAY—You did not quite answer my question, but thank you for that. Is it the general attitude of the Australian government, whether in Australia or external to Australia, that a fair trial could encompass the use of hearsay evidence or coerced evidence?

Senator Coonan—The view of the government is that if people become subject to the jurisdiction of other countries, obviously the trial will be according to the rules of that other country, whatever view the government has. We think that it is most important at this stage. Nobody on behalf of the government is defending the length of time that it has taken to have this matter disposed of, and other general matters to do with Mr Hicks. What we now say is that the important thing is that he be dealt with as quickly and expeditiously as possible in accordance with the rules that will now be available, and that that happen really without delay. That is really the government's position.

Senator ROBERT RAY—But the problem with that is in terms of jurisdiction. A lot of these prisoners at Guantanamo Bay are being subject to secret rendition and have never been on the territory of the United States in their life.

Senator Coonan—That is not something this government is defending. You asked me about Mr Hicks. We continue to press for Mr Hicks to be tried now in accordance with the military commission rules as expeditiously and fairly as possible.

Senator ROBERT RAY—I am going more to the point not about the length of his stay, which you and I obviously agree—

Senator Coonan—Nobody is defending that at all.

Senator ROBERT RAY—Obviously we do not have a disagreement there. But it is what follows from that, whether he is fairly detained in terms of the jurisdiction of the United States—or anyone else at Guantanamo Bay. I do not think we should forget that it is not just Australia involved here; there are 1,200-odd, as I understand it, or there were at one stage, detained, many of whom were subject to secret rendition, as we hear today, through European countries. If the legal regime is not one that we approve of, we should surely at least voice our protest.

Senator Coonan—I acknowledge there is a broader issue, but the clear obligation we have in respect of an Australian citizen is to continue to press for him to be dealt with as expeditiously as possible and in accordance with the rules that are now available.

Senator ROBERT RAY—I am trying to take the dialogue a little wider. Yes, we do have consular responsibilities. We have pursued questions on that very vigorously here and had quite a dialogue on it. But I think there is a broader issue for the Australian government and the ones that represent the Australian government's policy overseas—the department of foreign affairs. We need to look more broadly at the issue of Guantanamo Bay. Our most crucial alliance is with the United States, and if there is one thing that is poisoning the United States's reputation around the world it is Guantanamo Bay—more than anything else. That is evident at any international conference you go to. The disaffected nations of the world always

use that as their stalking horse. I am just wondering why the Australian government does not make a broader assessment on Guantanamo Bay and take it up with the US administration?

Senator FAULKNER—Just for the record, has Mr Hicks been charged?

Senator Coonan—I am sorry?

Senator FAULKNER—Just for the record so we are clear on the status, has Mr Hicks been charged?

Senator Coonan—I will ask the officer to deal with that.

Ms Richards—The process of charging has commenced. The prosecution has sworn charges. They have been notified to Mr Hicks and notified to Mr Hicks's defence counsel. There are some further steps to take in the process of charging. The charges are considered by the legal adviser to the convening authority and by the convening authority. When that consideration has been finalised, the charges will be served. At the moment they have been sworn. They are under consideration by the legal adviser to the convening authority and the convening authority, and then the final step in the charging process is for them to be served.

CHAIR—Does the judge have a role in that process?

Ms Richards—No, the judge does not have a role in that process.

Senator FAULKNER—Is that a 'no'?

Ms Richards—I beg your pardon?

Senator FAULKNER—My question was: has he been charged? I assume that what you are saying is that, no, he has not been charged?

Ms Richards—What I am saying is that the process of charging has commenced.

Senator FAULKNER—Yes, but has he been charged?

Ms Richards—The process of charging has not been finalised; it has been commenced.

Senator ROBERT RAY—Can you go back and check that thing about the judge? Because, like Senator Payne, I heard on the radio this morning that it was one of the requirements for the judge to approve—

CHAIR—I had been advised that otherwise as well by legal experts.

Ms Richards—I will certainly check that for you, although my understanding is that it is the convening authority and not the judge.

CHAIR—Can you come back to the committee, Ms Richards?

Ms Richards—Yes.

Senator ROBERT RAY—It was a reporter we were relying on.

CHAIR—Perhaps in your case, Senator; not in mine.

Senator FAULKNER—Mr Hicks will be charged when charges are served? That is right, is it not?

Ms Richards—The process of charging will be completed when they are served.

Senator FAULKNER—Yes, but you are a legal expert. Is a person charged when charges are served? I know you have told me a process has begun, but when is an individual charged?

Ms Richards—Mr Hicks is aware of the charges, as are his defence lawyers. All I can reiterate is that the process has commenced with the swearing of charges and will complete with the serving of charges.

Senator FAULKNER—Has he been charged yet or is he charged when the charges are served?

Ms Richards—He is in the process of being charged.

Senator FAULKNER—I am surprised at the evidence. Is that a longwinded way of saying, no, he has not been charged? You are not charged until charges are served, are you?

Ms Richards—The process of charging has commenced. It is under way.

Senator FAULKNER—We have heard that.

Senator ROBERT RAY—But not complete?

Ms Richards—The final step in the process is the serving of charges.

Senator ROBERT RAY—And that has not happened?

Ms Richards—That has not happened.

Senator FAULKNER—So he has not been charged?

Ms Richards—The process of charging is under way.

Senator HOGG—I understand your point, Senator Faulkner, very well.

CHAIR—I understand Ms Richards's point as well, but at the same time it is a fairly simple question.

Senator Coonan—There are steps in the manual. I think Ms Richards might be referring to the fact that swearing of the charges is the first step in the process. It is my understanding—and I may be wrong about this; obviously the officers will revert to the committee with the correct information—that following review by the legal adviser to the convening authority, the convening authority, and I think that may well be the judge, will make the final decision on whether to forward the charges to the military commission. I understand that is the process. The only thing I am not entirely sure of is whether the convening authority comprises the judge at that time.

Senator FAULKNER—What you have said is helpful.

Senator Coonan—Then final charges are served. Then within 30 days of the service of the charges there is an arraignment, I think. I have just looked at the manual. The officers will obviously revert to the committee with the precise information, but I think there is no mystery about what this manual purports to describe.

Senator FAULKNER—Thank you for that information. Just to clear up Hicks's status, my question was quite simple: has he been charged? He either has been charged or he has not been charged.

Senator Coonan—I do not know that that is quite right. There is a process for charging him. It has commenced. It has obviously got some steps. I mean, he is not not going to be charged, one would think.

Senator FAULKNER—You are not charged when someone thinks about charging you.

Senator Coonan—No.

Senator FAULKNER—You are charged after charges have been served.

Senator Coonan—You are in a process of being charged when charges have been sworn.

Senator HOGG—What is the time frame in which that process must take place and how long has the process been going now?

Ms Richards—Do you mean the process of charging?

Senator HOGG—Yes.

Ms Richards—There is no set time frame for that in the rules. However, the Australian government has made it very clear to the American government that we want the whole process, including the charging process, to move quickly and expeditiously. I think the United States is well aware of those concerns.

Senator HOGG—When did the process commence?

Ms Richards—The charges were sworn by the prosecutor on 2 February.

Senator HOGG—2 February. Does the department have in mind what is a reasonable time for that process to take place before you will intervene again?

Ms Richards—No, that would depend on the situation of the legal adviser to the convening authority and the convening authority.

Senator STOTT DESPOJA—I am not sure whether colleagues wanted to pursue more broadly the issue of David Hicks or whether you wanted to stick to the area of questioning that we have begun. But on that note, I might ask the minister for a clarification. You said for the record—excuse my paraphrasing you—that no-one is defending the length of time in which Mr Hicks has been in detention. Can I turn to the issue of defending the military commission's process or in particular the new Military Commissions Act passed in September of last year? My understanding is that the Australian government has been on record as defending the Military Commissions Act and the process to which Mr Hicks will be subjected. Am I incorrect; does the government have some queries or concerns about the military commission?

Senator Coonan—I think it is fair to say that the manual on military commissions, which sets out the process, was released on 18 January. The government understands that the purpose of the manual is to provide both a full and fair prosecution. The manual, according to my information—I must say I have not actually looked at it in the sort of detail that you might require for the purposes of fully answering this question—includes a range of what I understand to be fundamental procedural safeguards, such as the presumption of innocence, the provision of counsel, the protection against self-incrimination, a ban on evidence obtained by torture, a right to see all prosecution evidence, a right to cross-examine prosecution witnesses. And I understand that the regulations have been drawn up and reflect the fact that

the accused person was detained in a conflict situation, and they are designed to provide for trial procedures and safeguards to the accused while having in mind protection of national security interests. I know there has been some criticism of this, but the government understands that they are not entirely identical to procedural arrangements that normally apply to civil trials. I have given you an indication in the very broad of what safeguards and procedural safeguards they contain and the reasons for them.

Senator STOTT DESPOJA—I understand there are going to be some criticisms and critique of the process, but—

Senator Coonan—I am sure there will be. I am just trying to give you the understanding that I have on behalf of the government.

Senator STOTT DESPOJA—Absolutely. I am trying to ascertain what analysis the government or the department has done. For example, does the government have a view as to whether or not the Military Commissions Act complies with the Geneva conventions and—

Senator Coonan—I will ask the officers to answer.

Senator STOTT DESPOJA—common article 3(1)(d), for example? Is the government satisfied with the so-called safeguards in the Military Commissions Act?

Ms Richards—As the minister has said, the government accepts the military commission process and hopes that the trial will begin as quickly as possible. I just draw your attention to a media interview by Mr Ruddock on 31 January, where he said that the principal elements to ensure a fair trial have been met, including the presumption of innocence, the entitlement to be properly represented, and to know the evidence against you.

Senator STOTT DESPOJA—Minister, in the list of safeguards you outlined, there was the change to the issue of evidence obtained through torture. Is my understanding correct that evidence obtained through coercion is still acceptable under the new military commissions act and process?

Senator Coonan—I will have to ask Ms Richards to deal with that.

Ms Richards—Senator, as you said, evidence obtained by torture is not admissible. Evidence obtained by coercion may be admissible, but only under certain circumstances. That is where the judge determines that the evidence is reliable, that it has probative value and that it would serve the interests of justice to admit it. There is a further safeguard of an overriding requirement that the judge must not admit into evidence anything where the probative value would be substantially outweighed by the danger of unfair prejudice to the accused.

Senator ROBERT RAY—We can introduce that at estimates, can we, and get good honest evidence? We can rubber hose the witnesses?

Senator Coonan—I thought that was what was happening.

Senator STOTT DESPOJA—Is the government happy with those safeguards and the caveat on evidence obtained through coercion? Is the government comfortable with that?

Senator Coonan—I am not sure that that is the right description. The government is in a position where these are the rules that will now apply to the trial of Mr Hicks. We think that

they are commensurate and consistent with being able to have a fair trial, and we are very exercised about trying to make sure that it happens as expeditiously and as fairly as possible.

Senator STOTT DESPOJA—Does the government have a view as to whether or not a trial of Mr Hicks under the second Military Commissions Act would be inconsistent or consistent with the Supreme Court decision involving Hamdan? Does the government believe that the process is now—

Senator Coonan—Ms Richards might correct me, but my understanding was that, following the Supreme Court case, the amendments and the establishment of the military commission specifically accommodated the criticism contained in the Supreme Court case.

Senator STOTT DESPOJA—I have some questions about consular visits involving Hicks, but perhaps my colleagues would like to follow that up.

Senator FAULKNER—Yes, I have some broader questions. We heard from the Department of the Prime Minister and Cabinet—it seems like a lifetime ago, but it was actually only on Monday—that our ambassador to the US, Mr Richardson, had formally met with US officials regarding the Hicks matter on or around 22 January this year. Can you confirm that that took place, Mr Chester, regarding the Hicks matter?

Mr Chester—I will ask Ms Richards to answer that.

Ms Richards—I do not have a note of it here, but I believe that is correct.

Senator FAULKNER—These were representations that Mr Richardson was making on behalf of the Australian government regarding Hicks; is that correct? There may have been other elements to the meeting, but that was obviously a primary reason for it. Can you confirm that?

Ms Richards—I do not have a record of the meeting.

Senator FAULKNER—Do we know who the meeting was with?

Ms Richards—I do not know that. I believe it was with a number of different authorities in the US, but I do not know for sure.

Senator ROBERT RAY—Would you like to take that on notice and inform us?

Ms Richards—I will take that on notice.

Senator FAULKNER—Mr Chester, is this a matter that you think we ought to be able to have some information on? A high-profile meeting between Ambassador Richardson and US authorities took place, I think, on 22 January. I would certainly like to follow through on some elements of this. Is there no briefing note on it? Is no-one aware of it? It was flagged in an earlier estimates hearing by the Department of the Prime Minister and Cabinet how critical this was in terms of the Prime Minister progressing his view on the Hicks matter, but no-one in DFAT knows about Ambassador Richardson's meeting.

Mr Chester—I am not sure that is what Ms Richards said. She was aware of the meeting but did not have with her the details of the meeting.

Senator FAULKNER—Yes, you are aware of the meeting, but does anyone know what actually took place and who Mr Richardson met with?

Mr Chester—As Ms Richards said, she does not have that information with her at the moment.

Senator FAULKNER—Can you confirm that the Hicks matter was raised at that meeting with persons unknown? This is the defence that the Department of the Prime Minister and Cabinet put before us about how seriously the Commonwealth was taking the issue of Hicks.

Senator ROBERT RAY—That was two days after the Newspan.

Senator FAULKNER—That was two days after the Newspan, yes.

Mr Chester—We will have that information back in the department. We just do not have it with us at the moment.

Senator ROBERT RAY—Give us a time line on when you think you can get it here. I know they will all be watching. Well, not all.

Mr Chester—We will see what we can do.

Senator FAULKNER—I have not heard an admission yet from anyone at the table. I am struggling because I do not know Mr Hicks's status and whether he has been charged or not. I think we all know, but no-one will say it. You will not say it. You cannot tell me whether Mr Hicks has been charged or not, Mr Chester? Has he actually been charged? Can you confirm whether he has been charged or not?

Mr Chester—I have nothing to add to what Ms Richards said.

Senator FAULKNER—I wonder if this would be because Mr Howard said that Hicks would be charged by the middle of February. Let us check the date today. This is the middle of February. This is the reason of course for the preposterous non-answers I am receiving to my question: has Mr Hicks been charged? It is almost a comedy routine from witnesses at the table, because no-one will give an answer. This is because Mr Howard said that the Australian government was going to insist that Hicks be charged by the middle of February, and of course Mr Howard's deadline has been completely ignored by the US.

Senator Coonan—I do not think that is correct. We are looking at the establishment of a military commission. It is a different procedure. There is a process when somebody is charged under a military commission. The charges have been sworn and the process is now underway for the convening of the military commission at which there will be a formal arraignment and charges will be read. It is a different process to when there is an existing court and someone is charged at a police station. It is a different procedure—

Senator FAULKNER—We know that.

Senator Coonan—and the steps in that procedure are underway.

Senator FAULKNER—As a senior minister in the Howard government, I assume you are aware of Mr Howard's public deadline; he was going to insist that Mr Hicks be charged by the middle of February. He has not been. Hence we have this absurd language being used at the table by witnesses—loyally, if transparently and laughably—who are trying not to say that the US has basically thumbed their nose at Mr Howard's deadline. I want to know—

Senator Coonan—I do not agree with that and I am not prepared to let that just stand on the record. My senior colleagues most closely responsible for the supervision of this matter

from the government's perspective, Mr Downer and Mr Ruddock, have both publicly said in a joint media release on 3 February that the swearing of the charges, in their view, is a timely development that meets the Prime Minister's recent call to charge Mr Hicks before mid-February.

Senator ROBERT RAY—Timely!

Senator Coonan—I think it is appropriate, from the government's perspective, that I put that on the record. You can make whatever comments you like, but this is a different process and the government takes the view that the American authorities have certainly responded to Mr Howard's call on that matter.

Senator FAULKNER—The reason no-one knows about Mr Richardson's meeting, and no-one can assist me, remarkably, with Ambassador Richardson's meeting, is that this was the meeting where the deadline of mid-February was communicated to US officials—that is true, isn't it, Senator Coonan? Of course, no-one wants to provide any evidence on that now, because Mr Howard's deadline that Hicks should be charged by mid-February has been treated as a joke by the US authorities.

Senator Coonan—That is your contention; I reject that.

Senator FAULKNER—It is not a contention; I was told that in evidence. You had better correct the PM&C evidence.

Senator Coonan—I am not going to correct the evidence; I am going to say what, from my perspective, is happening with this charging process. I have referred to Mr Downer's and Mr Ruddock's joint press release, they being the two ministers in the government most closely associated with this matter. So far as they are concerned, there has been a timely meeting of Mr Howard's request by the American authorities.

Senator ROBERT RAY—Where do they say that?

Senator Coonan—Apparently in a joint press release.

Senator ROBERT RAY—Yes, but where do they say Mr Howard's deadline has been met in that press release?

Senator Coonan—I understand it is a joint press release dated 3 February.

Senator ROBERT RAY—But you do not have it here?

Senator Coonan—No, I do not actually have it—I have an excerpt of it—but I will get it for you.

Senator FAULKNER—What I want to understand is whether the information I was provided earlier in the week is accurate in relation to Mr Howard's concerns being progressed with US officials at a meeting Ambassador Richardson held on 22 January. This seems to me to be a perfectly reasonable, proper and, frankly, standard question to ask the Department of Foreign Affairs. Mr Chester, as the senior official at the table, are officials seriously saying that they have no evidence to present or knowledge of what happened at that meeting—whether Mr Howard's deadline and issues relating to Hicks were progressed with American authorities at that meeting by Ambassador Richardson, who happens to work for your

department, about which there would be colossal cable traffic and the like and reporting? Are you really saying that to us?

Mr Chester—As I said, we do not have that information with us at the moment.

Senator FAULKNER—Can anybody assist me? You do not know about Ambassador Richardson. I am starting to get very worried about the way the Department of Foreign Affairs and Trade works, with senior officials at the table not having a clue about Ambassador Richardson's meeting of 22 January. This ought to worry people. Can anyone tell me how Mr Howard's deadline of mid-February was progressed with American authorities? How was it progressed with the US? How did Australia communicate Mr Howard's views? You do not even have to go to the fact that they thumbed their nose or have ignored Mr Howard—we know that—but how was Mr Howard's deadline progressed with the US?

Ms Richards—My understanding is that it was progressed through the ambassador, and I believe it was at that meeting of 22 January. It is simply that I do not have the details of it with me, and we will check that for you.

Senator FAULKNER—We do not know who it was progressed with?

Ms Richards—I believe it was with a number of US agencies, but as I said I do not have those details with me at the moment.

Senator FAULKNER—Do we know whether Mr Howard's public deadline that Hicks should be charged by mid-February was put to those officials from US agencies?

Ms Richards—I have no reason to believe that it was not.

Senator FAULKNER—So we do not know?

Ms Richards—As I said, I do not have that record of that meeting with me now.

Senator FAULKNER—Has there been any response to those representations, apart from the fact that we know they have been ignored because they have not been met. Has there been, Mr Chester, any response that you are able to share with the committee from US officials or authorities on Mr Howard's ignored deadline of mid-February?

Senator Coonan—Are we going to go on with this ignored deadline? We know that from—

Senator FAULKNER—Use 'deadline'; take out the word 'ignored' if you want to.

Senator Coonan—I do not have the details; Mr Chester may. The government's perspective is that the process started on 2 February and we do not agree that the deadline, so-called, has been ignored. Mr Chester might have some details as to what the steps were.

Senator FAULKNER—Thank you.

Mr Chester—No, I have nothing further to add.

Senator ROBERT RAY—Got sucker punched there.

Senator FAULKNER—That is what we call in Rugby League terms a 'hospital pass', and you dropped it. Your knock-on was seen by everyone.

Mr Chester—It is the wrong game.

CHAIR—It is the wrong game.

Mr Chester—Thank you, Chair. My perspective is that Ambassador Richardson made those representations and, as a result of those representations, charges were sworn on 2 February.

Senator ROBERT RAY—Hold on, how do you know it was as a result of those representations? It could have happened, anyway? How do you know that?

Mr Chester—Maybe I am over-claiming there. Not long after that—

Senator ROBERT RAY—You do not know who they met with and you are not certain what propositions were put, so don't tell us that, as a result of those representations, something happened.

Mr Chester—Soon after those representations, charges were sworn.

Senator ROBERT RAY—That could have been coincidental or it could have been through Dennis's great representations; we do not know yet.

Senator FAULKNER—My question was—and I hope you can assist me with this, Mr Chester—are you able to share with the committee any responses to the Australian representations? They do not seem to know much even about the Australian representations. Are you able to share any responses from the US to those representations that you seem to know very little about?

Mr Chester—I am not, but Ms Richards may.

Ms Richards—I simply say that, generally, I think the US is very well aware of our concerns, and the fact that the charges were sworn on 2 February suggests that they are moving to meet those concerns.

Senator FAULKNER—How are you able to say to us, Ms Richards, that the US is well aware of our concerns? I am happy to accept that. But you have said that with some confidence. Very few statements have been made with any confidence at all by witnesses at the table this morning. I am delighted to hear you expressing that view with such confidence. Let me know why you have such confidence?

Ms Richards—It is not just the Prime Minister; Mr Downer has raised this issue on a number of occasions. Most recently he raised it with Secretary of Defense Rumsfeld.

Senator Coonan—Gates.

Ms Richards—I beg your pardon; I am a bit out of date.

Senator FAULKNER—He doesn't know what he doesn't know. Mr Rumsfeld is history.

Senator ROBERT RAY—He now knows.

Ms Richards—I am sorry, I misspoke. I should not have said Rumsfeld; I should have said Gates.

Senator FAULKNER—So Mr Downer spoke with Mr Gates—yes? Did he press the February deadline for the charges being laid?

Ms Richards—Mr Downer has already said in his press release of 3 February that the swearing of the charges meets the Prime Minister's recent call.

Senator FAULKNER—We would expect him to say that. Did he raise the issue of the actual swearing of charges? We know that Mr Downer has tried to define Hicks's being charged as not actually being charged and not being sworn or charges not being laid. We all know that there has been an attempt to redefine the laying of charges. But what did Mr Downer actually put at this discussion with Mr Gates?

Ms Richards—My understanding is that he reiterated the need for the matter to be dealt with expeditiously.

Senator FAULKNER—What other representations are we aware of?

Ms Richards—I do not have further details.

Senator FAULKNER—All we know of is one meeting between Mr Gates and Mr Downer. The department cannot be serious. It shows how serious the government is, doesn't it?

Mr Chester—There has been quite a range of representations by ministers and our embassy over the last two or three years asking the United States to expedite the case against, firstly, Hicks and Habib and then obviously subsequently just Hicks. As I said, those representations have been by ministers and others over, probably, around three years.

Senator FAULKNER—Three years? Given that charges still have not been laid, I think it is not unreasonable to come to the conclusion that all of those representations from Australian ministers have been ignored. They have just been ignored, have they?

Mr Chester—No, I would not characterise it as that—

Senator FAULKNER—What would you say? Just unsuccessful? Just treated contemptuously?

Mr Chester—There has been—

Senator FAULKNER—Or they were not fair dinkum?

Mr Chester—As you know, there has been a lot of activity in relation to the charges. There has been a number of cases in—

Senator FAULKNER—No, that is not right at all. I do not accept that, sorry. All I know is that the Hicks issue has become a major public issue and it is starting to have a broader impact. As you know, colleagues and I have raised it at this committee for literally years. There is a change of view in the Australian community and growing concern about it. That is the only difference, is it not? It is just politics.

Mr Chester—I will repeat what I have said. There have been representations by ministers over the last two to three years asking for both the Hicks and the then Habib cases to be moved quickly and to be expedited.

Senator FAULKNER—Do you have a list of those representations that you can provide to the committee?

Mr Chester—I have information on some. I do not have a list that I could provide to the committee at this stage.

Senator FAULKNER—Let us know when you have.

Ms Richards—If I may come back to a previous question that was asked regarding whether there was a role for the judge in the laying of charges. I can clarify that now, if that is appropriate. As I said before, the charges are reviewed by the convening authority. She herself is a former judge of the US Court of Appeal for the armed forces. However, she will not be the judge in the trial. The judge who will sit in the actual case does not have a role in reviewing the charges.

Senator ROBERT RAY—Minister, do you have that press release now?

Senator Coonan—Yes, I have.

Senator ROBERT RAY—We have read it here, too.

Senator Coonan—You don't want me to—

Senator ROBERT RAY—I would like you to find that section that you thought might have been there that I cannot find in it.

Senator Coonan—What was the point that you were seeking out of the press release?

Senator ROBERT RAY—It was seeking whether the press release was talking about the Prime Minister's deadline.

Senator Coonan—It said:

The swearing of charges is a timely development that meets the Prime Minister's recent call to charge Mr Hicks before mid February. However, the Government remains anxious to ensure that his case is dealt with expeditiously and fairly, and will continue to press the United States. The charges are attempted murder in violation of the law of war and providing material support for terrorism. If the charges are approved by the Convening Authority of the military commissions, they will then be formally served on Mr Hicks ...

Do you have that?

Senator ROBERT RAY—It just seems to imply to me in that press release that charges have not yet been laid and they have confirmed it there.

Senator Coonan—I do not think so. It is a process to charge and it is a different procedure from a civil procedure, obviously.

Senator ROBERT RAY—It is like saying the full hearing of the estimates committee is in process. But it is not over. It is not complete.

Senator Coonan—Maybe it is analogous to this. When charges are sworn you have some idea of what you are going to be charged with. Obviously, when you turn up to court there can be amendments to the charges. This is the same sort of process. It is a different process, but it is analogous.

Senator ROBERT RAY—I assume we have looked at the structure of the military commissions and the legislation associated with it. Did the legislation contain provisions as to time limits on charging? What were those and when do they run out?

Ms Richards—There is no time limit on that process of charging that I described before. There is no time limit for the time between when the prosecutor swears the charges and when charges are served. The time limits that have been referred to, the 30 days and the 120 days, run from the time when the charges are served.

Senator ROBERT RAY—What do you mean by ‘served’? You said there is no time limit between the start of the process and the end of the process. Where again is the time limit?

Ms Richards—The time limit is once the process of charging is completed with the serving of charges.

Senator ROBERT RAY—We have not completed that process yet?

Ms Richards—We are in the middle of that process.

Senator FAULKNER—Charges have not been served?

Ms Richards—The charges have not been served. The charges are in the—

Senator FAULKNER—Thank you. Charges have not been served.

Ms Richards—That is correct.

Senator Coonan—They have been sworn.

Ms Richards—They have been sworn.

Senator FAULKNER—Thank you. That has taken an hour and eight minutes.

Senator ROBERT RAY—But once we get to the point, and we can all agree, when the charges are finalised, there are then time limits for the hearing. Is that what you are telling me?

Ms Richards—That is right.

Senator ROBERT RAY—It has to be heard within 120 days?

Ms Richards—The first time limit is 30 days. At that point there must be an arraignment where the accused appears before the court, charges are read and the accused pleads. Then 120 days is the maximum time within which the military commission members are assembled.

Senator ROBERT RAY—Is there a discretion in there for either the prosecution or the defence to allow for a delay towards the end of 120 days rather than an earlier hearing? Or is that purely a decision of assembling the commission and their timetable?

Ms Richards—My understanding is that that is the outer limit. I guess practically things could move more quickly.

Mr Chester—Senator Faulkner had asked for an indication of the representations that had been made over the last two or three years. I thought it might be useful just to go through some of those. These are ones in relation to representations the embassy, Mr Downer and Mr Ruddock had made. I think if we start in January 2004, Mr Ruddock emphasised to the Pentagon the need to expedite the cases of both Hicks and Habib.

Senator ROBERT RAY—Yes, ignored.

Mr Chester—In February 2004 the post raised the same issues with the Pentagon.

Senator ROBERT RAY—Ditto.

Mr Chester—In April 2004 the post raised the same issues with the Pentagon. In July 2004 Mr Downer raised with Secretary Powell the need to expedite the cases of both Hicks and Habib. The post against in August 2004 raised it with the Pentagon and the White House. In March 2005 Mr Downer asked our then ambassador to raise our serious concerns with the ongoing delay of the Hicks trial with the National Security Adviser. In May 2005 Mr Downer raised the issue with a number of members of the administration, asking them to expedite the Hicks case. In June 2005 the post raised the same need to expedite the case with the departments of defence, justice and the NSC. In July 2005, Mr Ruddock raised this with the US Attorney. In September 2006, Mr Ruddock raised this with the Pentagon, the Department of State and the Department of Justice. In November 2006, the post raised the same issue with the justice and state. In December 2006 at AUSMIN Mr Downer again raised the Hicks case with the Secretary of State and the Deputy Secretary of Defence. That is quite a number of representations over a three-year period.

Senator ROBERT RAY—Do we have any idea why then, with up to 10 to 11 representations, they have been so ineffective? Poor advocacy?

Mr Chester—I think you know there are other issues going on surrounding the process, with the various challenges in the US court system, which obviously had some impact on the timing.

Senator ROBERT RAY—It seems to me our friends in the UK were far more successful in their advocacy.

Senator HOGG—Mr Chester, were there any representations between 07/05 and 09/06? That is quite a long gap.

Mr Chester—Say that again—07?

Senator ROBERT RAY—In 07/05 I think Mr Ruddock made some representations, and then the next you reported on was 09/06. In other words, a year and two months went by.

Mr Chester—There were a number of meetings and discussions, but I do not have before me whether the specific issue of expediting the cases was raised, so I would need to check that.

Senator ROBERT RAY—You might also check why there were no high-profile representations made during that period. It seems to me that—

Mr Chester—I was not trying to indicate that there were not any high-profile representations made. What I said was that I had information on Mr Downer, Mr Ruddock and the post. I am aware that there were other representations, but I do not have the details of those and when they were made.

Senator HOGG—You might check that for us and get back to us.

Mr Chester—It is probably something for PM&C, but I will see what we can do.

Senator ROBERT RAY—I am happy to reconvene PM&C, but I am short a couple of votes.

Senator NETTLE—During any of those representations was there ever a request by Australia to return Mr Hicks to Australia?

Ms Richards—The government's position has been that Mr Hicks faces serious charges that should be tested.

Senator FAULKNER—That is not an answer to the question. I have asked questions about what occurred in these representation, particularly the one of 22 January, and no-one could respond. Whatever the government's position is is one thing. What was asked is what occurred in relation to the representations. No-one could answer my questions about representations. If you cannot answer the question about what was said, someone should say so instead of just mouthing some government platitude, line or spin. I think we ought to be at least consistent with the way we deal with the non-answers to our questions.

Senator NETTLE—I can ask it again. It was whether in any of those representations Australia has asked for David Hicks to be returned to Australia.

Ms Richards—I will take that question on notice.

Senator NETTLE—I would imagine it would be something that you would know.

Ms Richards—A lot of representations have been made over a long period.

Senator NETTLE—There have been reports of the Prime Minister's comments to the party room last week, and subsequently Mr Ruddock also referred to those matters, saying that if the Australian government asked for David Hicks to come home there would be positive movement on that. I think it is a fair question from those comments that the Attorney-General made last week to say in any of these representations, given that Foreign Affairs is the main department doing the representations: has there been a request that David Hicks be returned to Australia?

Ms Richards—I just need to be a bit careful, because there is a matter before the Federal Court at the moment and that question of whether the government should ask for Mr Hicks's repatriation is part of the litigation. It would not really be proper for me to go into any details on that particular question.

Senator NETTLE—It was the Attorney-General who last week raised this question about the Australian government asking for David Hicks to be returned. That was not in the context of a court case. He did not seem to have a concern last week in talking about that. I will just ask you again whether in any of those representations there has been a request for David Hicks to be returned to Australia.

Ms Richards—I will take that question on notice, if I may.

Senator NETTLE—It is hard to believe that you are not able to provide us with an answer to that question. Can you give us a time frame in which you may be able to provide us with an answer to that question?

Ms Richards—We will provide an answer as soon as we can.

Senator ROBERT RAY—Are you not providing the answer because you do not have the information or are you not providing the answer because you require guidance to know whether it is appropriate to provide it?

Ms Richards—I am not providing the answer because I do not have the information.

Senator ROBERT RAY—Thank you.

Senator NETTLE—Earlier Mr Smith raised the issue of concerns that David Hicks was being punished as a result of consular visits. I want to take you to the letter that was released in the media from David Hicks. I understand it was given to the consul during the most recent visit. In the text of that letter it says:

Only last week an American impersonated an Australian embassy official by claiming he was ‘from the Australian embassy in Washington’.

Has the department looked into the allegation that an American was impersonating an Australian Embassy official?

Mr Smith—We believe that is most likely a result of a misunderstanding. You might be aware that there was a visit to Guantanamo Bay that included a short visit with Mr Hicks by a representative of the US Embassy in Canberra. We suspect what happened is that Mr Hicks mistook that as referring to the Australian Embassy in Washington. It was simply a case of misunderstanding.

Senator NETTLE—You believe that was a misunderstanding? Is that because you have investigated that matter?

Mr Smith—We do not think it is an issue that needs investigation. No US official would have masqueraded as an Australian Embassy official.

Senator ROBERT RAY—As a DFAT official?

Mr Smith—As an Australian Embassy official or a DFAT official.

Senator NETTLE—I think it is a really serious matter if people from other countries are pretending to be Australian Embassy officials. You say you do not think that is likely to ever happen. My question is about whether the Australian government has done anything to determine whether that has happened or not.

Mr Smith—As I said, we believe that the most likely explanation is that that was simply a misunderstanding.

Senator NETTLE—I am trying to give you an out by saying on what basis do you believe that is the most likely explanation. Have you looked into it?

Mr Smith—We have been briefed by the US Embassy on that visit. They certainly did not give us any basis to believe that the American official would have sought to meet Mr Hicks under false pretences, and the explanation is most likely that it was a simple misunderstanding on Mr Hicks’s part.

Senator NETTLE—You were briefed by the US Embassy on that visit. Was that before or after having received Mr Hicks’s letter?

Mr Smith—That was after the visit took place but before we received the letter from Mr Hicks.

Senator NETTLE—So having received the letter from Mr Hicks in which he claims that an American was impersonating an Australian Embassy official, are you saying that you have done nothing to determine whether or not that is the case?

Mr Smith—What I am saying is that we do not think it is a credible suggestion that an American official would have impersonated an Australian government official, and it is most likely the result of a misunderstanding.

Senator NETTLE—So because you do not believe him you have not bothered investigating it?

Mr Smith—As I said, we do not think that it is a credible suggestion.

Senator STOTT DESPOJA—Senator Nettle has referred to the letter that David Hicks provided to Mr McAnulty—is that correct? Mr Smith, I think you are the person who can explain to me the details of Mr McAnulty's visit. I am curious as to whether or not that was a planned visit and whether or not David Hicks's lawyers were given notification.

Mr Smith—Yes, it was a planned visit, and both Mr Hicks's lawyers and Mr Hicks's family were given notice of that visit.

Senator STOTT DESPOJA—How much notice were they given? On what date were they notified of his intention to visit?

Mr Smith—I might have to check the precise date, but let me make a couple of additional comments by way of background that might be useful to the committee. These visits, as you know, take place on average every three to four months. Another visit by the consul-general was scheduled at around this time. The last visit of course you will recall was in late September of last year, when Mr Hicks declined to speak to the consul-general. This concerned us and it was something that I took up with Mr Hicks's defence counsel, Major Mori, in a meeting in early November. Major Mori agreed with me that it would be desirable for Mr Hicks to speak to the consul-general and that it would be in his interests to do so. Major Mori told me that he would do what he could to encourage Mr Hicks to speak to the consul to convey any concerns or issues that he had that he would like us to take up with the US authorities. Major Mori also at that time, or shortly afterwards, suggested that one way in which we might be able to encourage Mr Hicks to engage with the consul-general was to schedule the next consular visit at the same time as the defence team was in Guantanamo Bay. The suggestion to have the visit take place at the same time had originally come from Mr Hicks's defence team.

Senator NETTLE—When did that conversation with Major Mori and the details you just outlined take place?

Mr Smith—That took place in early November.

Senator NETTLE—That was a conversation while he was in Australia?

Mr Smith—That is correct. That meeting took place on 6 November. Just to continue, there were a bit of toing and froing, as there always is, with the precise dates of these visits. Part of the problem is that commercial flights to Guantanamo Bay are fairly limited and it can be difficult from time to time to get a seat on a flight. The dates of Mr McAnulty's visit

moved around a little, but ultimately they were able to settle on the dates of 30 and 31 January, which did of course coincide with the visit by the legal team.

Senator STOTT DESPOJA—When did you settle on those dates?

Mr Smith—I think that was some time in the later part of January, but I am not sure that I have the precise date that the bookings were finalised. I will have to check the precise date we notified the legal team or the family. But we certainly did give advance notice. One of the things we habitually do before these visits is to notify the family and ask the family if there are any messages that they would like to us to convey to the consul and to Mr Hicks in this case.

Senator STOTT DESPOJA—That would be appreciated, because I am having difficulty reconciling the claims by his civilian lawyers that it was unexpected. I think you have seen it in the media. His American civil lawyer, Josh Dratel, has also said on record that they were interrupted by ‘unexpected’ consular and medical visits. So it would be of value to know exactly when that was settled and the dates. In fact, can you put on record the dates of the consul general’s visit. Was it the 30th and 31st?

Mr Smith—It was 30 and 31 January. I might also add that the consul general met Major Mori very early in his visit—I think it might even have been over breakfast—and told Major Mori that of course that he would be seeing Mr Hicks after Mr Hicks’s initial meeting with his legal team, and Major Mori expressed no concern at that time.

Senator STOTT DESPOJA—Obviously the consul-general was on a civilian or a commercial flight.

Mr Smith—On a commercial flight.

Senator STOTT DESPOJA—Does Australia pay for that?

Mr Smith—The Australian government pays for that, yes.

Senator STOTT DESPOJA—I understand according to the estimates on Tuesday of the Attorney-General’s Department that the consul-general was given a tour of camp 6. Is that correct?

Mr Smith—That is correct.

Senator STOTT DESPOJA—I think the word, and I am happy to be corrected—I do not have the *Hansard*—that the officials used was ‘inspection’ and I think the word ‘extensive’ was used. But I am not sure if that was in relation to an extensive inspection of the facility. How does the consul-general describe his inspection of that facility or his visit and what is the department’s understanding of what kind of a tour he got of the facility?

Mr Smith—He was certainly given a tour. Whether you would call it an inspection or a tour, I am not sure that there is a particularly important distinction there. He saw Mr Hicks’s cell. He saw the recreation facilities. He saw the medical facilities and he had extensive discussions with camp authorities.

Senator STOTT DESPOJA—So the recreational facilities and the cells?

Mr Smith—The recreation area; that is right.

Senator STOTT DESPOJA—My understanding is that in order to get to the cells or to walk past the cells to get to the recreation area he would have passed a billboard or a notice board, as it has since been publicly referred. I believe it is quite large. I am happy to have it clarified by the consul-general or the department. The notice board is about five feet by six feet. I am not sure if someone wants to clarify that. It is the same billboard that at the same time had pictures of Saddam Hussein on it. Did the consul general report that in his write-up or report on his tour?

Mr Smith—He did not report that he particularly noticed this. It was part of his report because at about that time the defence team made some public references to the poster in question. That was an issue that the consul-general took up with the US authorities. If you bear with me for a moment, I will tell you what he said.

Senator STOTT DESPOJA—Are you able to clarify whether or not he actually saw it?

Mr Smith—I do not believe he saw the posters himself. What the Guantanamo Bay authorities advised was that posters with Arabic and English captions have always been displayed for detainees. The purpose of those posters was to inform detainees about what is going on in the outside world. The poster referred to by Mr Hicks's legal team showed several pictures of Saddam Hussein, including one of him being captured, one of him in court and another of him when the verdict was being handed down. The US authorities advised us that the poster did not contain any photos of his execution or his corpse. The poster, we are told, was put up prior to his execution—that is Saddam Hussein—and was removed as soon as the authorities learnt that it had been interpreted by some as intimidating.

CHAIR—Can I just intervene. We want to break for morning tea, but before we do Senator Evans has some matters that he wishes to put on the record and which he has consulted the committee about. Senator Evans?

Senator CHRIS EVANS—Thank you, Mr Chairman. I wanted to put on the record my very serious concerns at the evidence by Defence yesterday in relation to the matter of the ex gratia payment application made by the families of four Australian servicemen who are now deceased and that were the subject of inquiries during our military justice inquiry. Can I say that it appears to me that the committee was seriously misled in terms of the facts at the hearing yesterday. We were advised that the lawyers acting for those families had been tardy in the prosecution of the claims on behalf of the parties, that there had been no further correspondence by the lawyers to the ministers after their letter of 30 September 2005 and that there had been limited correspondence from the ministers of the government to the lawyers. Effectively Defence said that there is little they could have done in the interim and that the information sought in Mr Billson's letter of 29 January was their attempt to progress matters, because they were unable to do so. This is of course in relation to families who have suffered terribly in recent years. They have lost their loved ones. They have been seriously concerned at what they saw were the inadequacies of Defence's investigations of the deaths, and they are seeking closure in these matters and have been frustrated at every turn. I would like to table a series of letters that I think correct the record. I am sure Defence will seek to correct the record in due course. But given the seriousness of these issues, I do not think it ought to wait until the next hearing when Defence may seek to clarify the record.

I would like to table first of all a letter of 30 September from Slater & Gordon to Senator Robert Hill, the Minister for Defence, where the original request for ex-gratia payment was made. I would like to table Senator Robert Hill's response to that letter. I think there might have been an earlier response, but I do not have that. Defence advised the letter from Slater and Gordon to Hill was sent on 13 September. Apparently Senator Hill responded. I do not have that. There was a follow-up letter, which was not I think made clear yesterday from, Slater and Gordon to Hill on 30 September 2005. The minister responded to Slater and Gordon, representing the families on 16 November 2005, in which he said—and I am not sure this was made clear yesterday—in his final paragraph:

The matters you have raised will be considered on a whole-of-government basis. I will write you to again when I have further information.

So the minister took responsibility for pursuing the matter.

On 19 May 2006 Slater and Gordon again wrote to the then minister, Dr Brendan Nelson—and I will table that letter—in which they refer to their letters of 13 and 30 September 2005, in which they advise that they are yet to receive determination in relation to the claim, that the families are anxious to receive a response, that they welcome the opportunity to meet with the minister and that they advise they look forward to his determination and are available to discuss the matter. This was a letter on 19 May 2006 to the minister, which was not revealed to us yesterday. There is also a letter of 18 October 2006 from the office of the Hon. Bruce Billson, the Minister Assisting the Minister for Defence, where he advised one of the families that the issues concerning the ex-gratia payment were currently being examined and that the minister would write again when he had further information. Of course, there is a letter that we referred to yesterday, which was the letter from Mr Billson of 29 January, which then seeks to have further information a year and a half on provided by the legal firm. He indicates he has asked Defence legal to make early contact and says that is necessary for Defence's handling of the claim. At the end of January 2007, in response to the original claims in 2005, Defence now seek to get the parties to provide information which they say is central to resolving the matters.

As we are aware, I think there was a quite different impression left with the committee by Defence yesterday. I think it is very unfortunate and is of serious concern to me that we were left with quite a wrong impression. I would expect Defence to correct the record as soon as possible, but I thought in fairness to the families we should get this on the record now. It is not only a slur on a law firm—and they can look after themselves—but it would of course create a doubt in the mind of the families that they were being represented properly. I think that was unfortunate, so I raise it. I seek permission to table the letters. I would ask the minister to advise the Minister for Defence to look at these matters and perhaps he could advise the committee of his response when he has had a chance to look at all of these issues.

Senator Coonan—During the break I will make contact with the minister's office and see if I can give the committee some indication of a response.

CHAIR—The documents are so tabled.

Proceedings suspended from 10.37 am to 10.51 am

CHAIR—We will continue with the matter of Hicks. Senator Stott Despoja?

Senator STOTT DESPOJA—Can I just continue where I left off regarding the details of the tour of camp 6 by the consul-general? I am not sure, Mr Smith, if you have had any further information or if you have got a report on his visit. In particular, as I mentioned previously, I am interested in whether or not he was cognisant of the notice board and what was on it and, in addition to that, if he saw any leaflets that were provided in the so-called communal area outside the cells and before the recreational facilities that also had images of Saddam Hussein, and I believe one with a noose on Saddam Hussein?

Mr Smith—I do not have any more specific information than the information I have just provided, but my officers are going back and checking that and if there is anything more we can tell you I will do that. Again, I will come back to the advice the American authorities gave us when we raised this matter with them, and that is that the poster did not contain any photos of his execution.

Senator STOTT DESPOJA—I hear you loud and clear on that point. Can I ask you then to find out if there is any report, either by the consul-general, or any understanding, of leaflets that are also provided to detainees in a so-called communal area? I understand that those leaflets, or at least one of them, had an image of Saddam Hussein which involved a picture of a noose. I am happy to get clarification on that, but that is my understanding.

Mr Smith—I will have to check that and provide some advice as soon as I can.

Senator STOTT DESPOJA—Is there no further update on the dates when the legal team was notified?

Mr Smith—My staff are checking that and they will get that to me as soon as they confirm the dates.

Senator STOTT DESPOJA—Thank you very much. I will let Senator Nettle have a go.

Senator NETTLE—On that issue you said that the US authorities removed any posters when they understood there was an impression that people thought that it was intimidating; is that what you said before?

Mr Smith—That is the advice we were given by the US authorities, that the poster that I think was the subject of some discussion was put up prior to Saddam Hussein's execution and was removed as soon as US authorities learnt that it had been interpreted by some as intimidating.

Senator NETTLE—In the US press, Josh Dratel, who is one of Hicks' legal team, is quoted as saying that the text accompanying the Saddam photo read:

Because Saddam chose not to co-operate and not tell the truth, because he thought by lying he could get released, for that reason he was executed.

To me that reads as though it was after he was executed and that it has intimidation involved quite clearly in its purpose by such words. So maybe when you go back and check on that, you might keep in mind that that is the report in the US press about what the legal team said was on the poster. It does have the other information that you provided from the Guantanamo Bay headquarters to say that there were pictures of the capture, the court appearances and the sentencing. The same article quotes that that was what was written on the posters. Maybe

when you are coming back to us with some information you could address that. Perhaps you could address now how those words sit alongside the statement by the US that the posters were not designed to intimidate detainees at Guantanamo Bay.

Mr Smith—I think probably the best way to do it is to just check back with US authorities to see if we can get some precise information on precisely what language was accompanying those posters and just reconfirm the sequence of events.

Senator NETTLE—I wanted to ask you about visits to Guantanamo Bay by parliamentarians. This is the discussion that we had with the Attorney-General's Department yesterday. We were asking about the process that people would proceed to. Following on their model, I understand the US and UK parliamentarians have had inspections of the Guantanamo Bay facility. Does the department, and perhaps even the government, have any difficulty with the Australian parliamentarians requesting an inspection of Guantanamo Bay facilities?

Mr Smith—My colleague, Ms Richards, will respond.

Ms Richards—I believe Senator Ellison said the other night in estimates that he would see no objection in principle to parliamentarians seeking such visits.

Senator NETTLE—That question had been answered by the Attorney-General's Department and there was some discussion the other night that it was a Foreign Affairs' responsibility, I thought I would ask the question in Foreign Affairs as well. Is there no difference to what Senator Ellison said? That is fine, if that is the response.

Ms Richards—We do not see any objection either.

Senator NETTLE—Perhaps you could explain the process by which an Australian parliamentary delegation could request an inspection of Guantanamo Bay?

Ms Richards—This is a matter for the US authorities. I understand the suggested process is that parliamentarians who would wish to do that should put an application to the US Department of Defense.

Senator NETTLE—Senator Brown has made a request to visit Guantanamo Bay in the past. I just want to run you through that process and see if we can try to clarify what the process is. Last year Senator Brown wrote to the US ambassador to Australia requesting permission and the assistance of the US government to visit Guantanamo Bay. He received a letter from the ambassador saying that he should talk to the Australian embassy, which acts as a clearing-house for all requests to visit Guantanamo Bay. He then wrote to the foreign minister, Alexander Downer, in October, requesting that he facilitate a visit to Guantanamo Bay. On 16 October the foreign minister wrote back saying that, if he wanted to visit Guantanamo Bay, he should write to the US Secretary of Defense. So he wrote to the US Secretary of Defense asking permission to visit and received a letter back refusing the request and quoting, 'I encourage you to discuss your request with your colleagues within the Australian government.' That series of events that Senator Brown has experienced has gone full circle in going to the US, being told to ask the Australians, going to the US and then coming back to the Australians. I am just trying to work out where you go to start that process. Who is responsible for determining whether or not Australian parliamentarians can visit Guantanamo Bay and what process do you suggest for pursuing that?

Ms Richards—The Australian government does not have a role in that process. It is a decision for the US authorities, so the suggested route would be to seek permission to visit from the US Secretary of Defense.

Senator NETTLE—And would the Australian government be able to assist with such a request?

Ms Richards—The Australian government would not have a role in making a decision. I think it is open for parliamentarians to approach the US Secretary of Defense directly.

Senator NETTLE—So when Senator Brown approached the US Secretary of Defense directly, he was told, ‘No, and I encourage you to discuss your request with your colleagues within the government of Australia.’ From following that process that you suggest, which is what Senator Brown did last year, he got an answer back saying no and telling him to talk to the Australian government. You are telling us to go to the US; we go to the US; they say, ‘Talk to the Australians.’ What do you suggest we do in that instance?

Ms Richards—All I can say is we do not have authority to agree to requests or otherwise to visit Guantanamo Bay, so that is a matter that ultimately can only be decided by the US authorities.

Senator NETTLE—What assistance could the Australian government provide for Australian parliamentarians requesting from the US to have an inspection of the Guantanamo Bay facility?

Ms Richards—I think that is a matter for the government to decide.

Senator NETTLE—Can I ask the minister?

Senator Coonan—I would suggest that Senator Brown write back to Mr Downer with that chain of events and correspondence. From your chronology, I did not hear you say that Senator Brown had actually then gone back to Mr Downer following the response from the US authorities.

Senator NETTLE—No. In the middle of the chain of events he went to Mr Downer. Mr Downer’s not at the end.

Senator Coonan—Yes, I know in the middle he did. I am just saying that, to round it off, that is what I would suggest that Senator Brown may wish to do.

Senator NETTLE—Can I just ask whether Foreign Affairs was consulted about Senator Brown’s request to visit Guantanamo Bay?

Ms Richards—As you mentioned, Senator Brown did write to Mr Downer.

Senator NETTLE—So in that way.

Ms Richards—I might just mention that—I think this was discussed at the other estimates committee meeting—the US does seem to draw a distinction between requests to visit particular detainees and requests to visit the facilities. I cannot speculate on the US reasons but that may have been a factor in the case of Senator Brown’s request.

Senator FAULKNER—Could I ask about this issue of consular visits with which we are dealing at the moment? Mr Smith, could you give us, just for the record, a brief report on

outcomes of Mr McNulty's attendance at Guantanamo Bay on 30 and 31 January this year, which you have told us about? Are you able to do that? I am talking particularly of contact or non-contact with Hicks.

Mr Smith—Yes, I can do that. Mr McNulty visited, as I said before, on 30 and 31 January. He met briefly with Mr Hicks on both those days, and on both those occasions Mr Hicks declined to engage in discussion. He was given a tour of the facilities at camp 6. This, of course, is the facility to which Mr Hicks was moved in December and so had not been visited by the consul general earlier, so he was able to see the facilities that I described earlier. He also spent some time following up with Guantanamo Bay authorities on a number of matters of concern relating to Mr Hicks's health and welfare, and I can give some information on that. We provide a full and detailed account to Mr Hicks's family, of course. I will not go into all of the details but, essentially, what was reported from that visit was that there were no major concerns with Mr Hicks's health and welfare—at least, no concerns were evident to the consul general. Of course, he is not a medical practitioner.

He did pursue this issue of Mr Hicks's health with the medical professionals who are employed by camp authorities to provide those services to detainees. What he was told was that Mr Hicks was assessed by a trained psychiatrist on 30 January. This, of course, was pursuant to a request that the government had made. Again, I will not go into the details of that but, essentially, what the professional medical staff told us—and the Guantanamo Bay chief medical officer was part of that discussion—was that Mr Hicks did not display symptoms of anxiety and depression, and that his general health was pretty good, 'pretty good' being the expression they used. As I said, a more detailed report has been provided to Mr Hicks's family. If they want to put that into the public domain that is a matter for them.

I might add, too—because there has been some misleading media coverage on this issue—that the assessment that I have just referred to, by the Guantanamo Bay psychiatrist, took place over a period of between 20 and 25 minutes and the psychiatrist did explicitly identify herself before speaking to Mr Hicks. She described Mr Hicks during that process as being open and talkative.

Senator FAULKNER—Open or openly?

Mr Smith—'Open and talkative'.

Senator FAULKNER—This terminology about his general health being 'pretty good': is that a medical assessment? What does that mean, 'pretty good'?

Mr Smith—What I am conveying is the characterisation of his health that was provided by the medical staff of Guantanamo Bay.

Senator FAULKNER—And that is it in a nutshell? 'Pretty good' does not sound like much of a medical assessment to me.

Mr Smith—As I said, more detailed information has been provided to Mr Hicks's family, but they did not identify any particular concerns with his health. They said he did not display any symptoms of anxiety and depression. There was some additional information which for privacy reasons I think it is better I do not go into.

Senator FAULKNER—I will not ask you about that. You spoke about the consul general's contact with Hicks on 30 and 31 January, and that he 'saw him briefly on both days'. What does 'briefly' mean? Are we talking about just a couple of minutes, or what?

Mr Smith—It was, I think, over a period of something like 10 minutes. What he did, I think, in that time, on both occasions, was to reiterate to Mr Hicks that he was there as a consular official to assist in whatever way Mr Hicks would like him to assist with Mr Hicks's welfare, including, obviously, taking any issues of concern to Mr Hicks up with the Guantanamo Bay authorities. On both occasions, as I said, Mr Hicks declined to engage and did, on one of those occasions, pass to Mr McAnulty the letter that has been discussed earlier.

Senator FAULKNER—So about 10 minutes on each day, was it?

Mr Smith—It was about 10 minutes on 30 January.

Senator FAULKNER—Yes. And on 31 January?

Mr Smith—I cannot immediately identify that information. I will have to come back to that when I can find it. Again, it was a brief discussion in which Mr Hicks declined to engage with the—

Senator FAULKNER—So these—

Mr Smith—I am sorry—I have just found the reference. The visit was for just less than 10 minutes.

Senator FAULKNER—Let us say for about 10 minutes on both days; fair enough. And on both occasions Hicks declined to engage; on both days—is that correct? I hear what you say about the handing of the letter, which we know about.

Mr Smith—Yes.

Senator FAULKNER—And what do we mean by 'declining to engage'? Does that mean very limited verbal interaction or communication between the consul general and Hicks? Is that what we mean? In other words, the consul general is talking and Hicks is not responding?

Mr Smith—Minimal response, I think is the best way to characterise it. The consul general told Mr Hicks that the visit had been arranged in the interests of his welfare, and explained the consular role, which is essentially about ensuring the welfare of detainees in this case.

On the 30 January visit, when the letter was handed over, Mr McAnulty wanted to establish that the sentiments in the letter—effectively 'I do not want to see you'—were correct. On that occasion Mr Hicks did not respond and Mr McAnulty told Mr Hicks that he would remain available during the course of that day and then he would return to the interview facility to see Mr Hicks on 31 January.

On 31 January there was a very brief exchange in which Mr McAnulty asked Mr Hicks if he was okay. Mr Hicks said, 'Yes.' Mr McAnulty said, 'Do you want to talk?' Mr Hicks said, 'No.' Mr McAnulty said, 'Are you sure?' Mr Hicks said, 'No, I don't want to talk.' He went on to explain again the welfare purpose of the visit. He asked Mr Hicks if he had any messages for his family that he wanted the consul general to pass back. Mr Hicks said, 'No.' Mr McAnulty again said that he would remain available during the course of the afternoon if Mr Hicks was to change his mind.

Senator FAULKNER—Mr Downer puffs himself up and always says the number of consular visits that there have been to Mr Hicks. Is that 18 now?

Mr Smith—Eighteen visits to Mr Hicks at Guantanamo Bay.

Senator FAULKNER—Over what period of time?

Mr Smith—The first visit to Guantanamo Bay was May 2002.

Senator FAULKNER—What date in 2002?

Mr Smith—It was 14 to 16 May 2002.

Senator FAULKNER—How many of those 18 consular visits have been non-visits in the sense that there has been no engagement by Hicks?

Mr Smith—Two.

Senator FAULKNER—August of 2006 and January of 2007, is it?

Mr Smith—September of 2006 and the January visit this year.

Senator ROBERT RAY—How many different consul generals have visited? There is not a personality problem here, is there?

Mr Smith—There have been three DFAT officials visiting and Mr McAnulty, who is the consul general now, has conducted six of those and certainly the first four. There were no issues. It is not a personality issue.

Senator FAULKNER—No doubt you have seen the comments by Mr Hicks's lawyers about the alleged impact on Hicks of his incarceration. These, of course, followed a visit of his legal team that was effectively held concurrently with the consular visit of Mr McAnulty. They were basically there at the same time; I think that is correct.

Mr Smith—That is correct.

Senator FAULKNER—Have you seen the claims that have been made by Mr McLeod and others about the conditions that Hicks has been held in?

Mr Smith—We have certainly seen a number of those reports, yes.

Senator FAULKNER—Has Mr McAnulty, as the departmental representative, reported on those conditions as well?

Mr Smith—He has reported on the conditions of Mr Hicks's detention in some detail, yes.

Senator FAULKNER—Are you able to confirm whether Hicks is locked up for 22 hours a day?

Mr Smith—That is correct.

Senator FAULKNER—You can confirm it is 22 hours a day?

Mr Smith—That is correct.

Senator FAULKNER—What happens for the other two hours?

Mr Smith—He has access to a recreation area for those two hours, and I think in that time he also has access to shower facilities.

Senator FAULKNER—Are you able to confirm that, as of the end of January this year, that Hicks had seen the sun three times since he has been at camp 6 in early December?

Mr Smith—It is hard to confirm something like that. What I can say, though, is that the access that Mr Hicks has on a daily basis to the recreation area—the exercise yard—is a voluntary option for him. He is not required to go. On a number of occasions, he has declined to make use of the exercise yard. The camp authorities do maintain records of the use that detainees make of the exercise yard, and we are told that Mr Hicks declined on 21 occasions during January to leave his cell to take exercise, so that suggests he went 10 times. Because they, as I understand it, rotate the prisoners through the exercise yard, the time of day that that two-hour block that he has may change. It may be in the morning, it may be in the afternoon or it may be in the evening. I do not know how many of the 10 times that he did use it did give him access to sunlight. I do not know what the weather is like in Guantanamo Bay at this time of year, but I think the point to underline is that the option is there for Mr Hicks to make use of the exercise yard at times when he has not.

Senator FAULKNER—But it is quite possible in fact that he has seen the sun only three times since being at camp 6 in early December, because obviously some access to the exercise yard would be at night, I assume, from what you are saying.

Mr Smith—It is possible that it was, yes.

Senator FAULKNER—From these extensive records that the camp authorities keep you would know which days in January that Hicks used the exercise yard?

Mr Smith—I do not have that precise information. What I have is the information that I have given you: he used the exercise yard 10 times and he declined on 21 occasions.

Senator FAULKNER—Do you know which times of the day?

Mr Smith—No, I do not.

Senator FAULKNER—It could all have been 10 pm to midnight for all we know.

Mr Smith—I do not know.

Senator FAULKNER—Or 1 am to 3 am, couldn't it?

Mr Smith—My understanding is that the period that they are able to use the exercise yard does not extend into the middle of the night but possibly it could—

Senator FAULKNER—What is the period that the exercise yard can be used?

Mr Smith—My understanding is that it is morning, afternoon and evening. Again, there are a number of prisoners they need to rotate through the exercise yard. I do not have the precise times.

Senator FAULKNER—We do not know. So we do not know, in this definition, when morning begins and when evening ends?

Mr Smith—I do not have that detail, no.

Senator FAULKNER—This again comes from Hicks's legal team; in this case I think it is Mr McLeod, but do not hold me to that. Is it true that Hicks's toilet paper is rationed? Did Mr McAnulty check that out?

Mr Smith—Yes, we did. There have been occasions when that has been done as a security measure.

Senator FAULKNER—What is the security involved with his toilet paper?

Mr Smith—The problem is, we are told, that some detainees have used toilet paper to block toilets and cause flooding.

Senator FAULKNER—Has Hicks done that?

Mr Smith—Not that I am aware of.

Senator FAULKNER—Can you explain to me why Hicks's toilet paper has been rationed?

Mr Smith—That is a security measure that was introduced by the camp authorities in relation to obviously a broader problem. It is an issue we have taken up with the American authorities.

Senator FAULKNER—When did you become aware that Hicks's toilet paper was being rationed in Guantanamo Bay?

Mr Smith—That may have been an issue that was drawn to our attention in November. If you will bear with me, I will see if I can get that precise information for you.

Senator FAULKNER—How was it drawn to your attention?

Mr Smith—I said earlier that I had a discussion with Major Mori at my invitation in November. We discussed a number of concerns that he and the defence team had about Mr Hicks's welfare and conditions. That is one of the issues I believe he raised at that time.

Senator FAULKNER—Major Mori?

Mr Smith—That is correct.

Senator FAULKNER—So he raises it in November?

Mr Smith—That is correct.

Senator FAULKNER—On 6 November?

Mr Smith—That is right. That meeting took place on—

Senator FAULKNER—That was the earlier meeting you mentioned—

Mr Smith—That was the November meeting, yes.

Senator FAULKNER—Having been raised, what did the department of foreign affairs do?

Mr Smith—We took it up with US authorities.

Senator FAULKNER—When?

Mr Smith—The consul general wrote to US authorities on 5 December outlining a range of issues on which we sought responses.

Senator FAULKNER—So you took that up a month later?

Mr Smith—Let me try and explain the process to you. At this first discussion I had with Major Mori in November, we discussed a range of issues and concerns. It can perhaps be described as an ongoing discussion that we have with the defence team. I said to Major Mori that we wanted to ensure that these things were properly pursued. I said to him that we wanted to look at the best way to do that in the best interests of Mr Hicks. It was a very cooperative and constructive exchange. Major Mori himself said that there were some other issues and he wanted to reflect on the way in which we might take that up with US authorities. He had a visit planned to Mr Hicks; I think that was in late November or early December. Again, the dates of these things can change. Major Mori asked us to await some advice from him as to how he would like us—the terms in which he would like us to and any other issues he might like—to take up with US authorities. That dialogue that took place during the course of November, which included some email exchanges with my staff, was then pulled together in this request that we put to the US authorities on 5 December.

Senator FAULKNER—When did this rationing of toilet paper begin? You became aware of it via Major Mori on 6 November 2006. Are you aware of when this began, or is this a camp 6 specific measure, or what?

Mr Smith—Mr Hicks was in camp 5 at that point.

Senator FAULKNER—Sorry, camp 5.

Mr Smith—I do not know that the defence team put a specific date on when this took place.

Senator FAULKNER—Is it still taking place? It was still obviously an issue as of the end of January this year so that is a couple of months after it was raised. You are not aware of any security reasons for it in Hicks's case. Is it still an issue? Is he still having his toilet paper rationed?

Mr Smith—I will have to check that and provide you with an answer as soon as I can get the details from my staff.

Senator FAULKNER—You mean we do not know?

Mr Smith—No. I think we probably do know; I just do not have that particular detail in front of me.

Senator FAULKNER—Is it true that Hicks has not been able to comb his hair since going to camp 6? Just for the record, I used the terminology 'camp 6' before. When did Hicks go from camp 5 to 6?

Mr Smith—It was 16 December of last year, I believe.

Senator FAULKNER—I must admit I had assumed that the toilet paper problem was a matter only relevant to camp 6; I had not understood that this had been such a long-term problem. That is standard procedure in both camp 5 and camp 6, is it?

Mr Smith—The move to camp 6 took place after we made this request to the American authorities. When we became aware of the move to camp 6, we asked them to provide that information in respect of camp 6. I can give you that information now. These are the conditions that currently apply in camp 6. The advice is as follows: toilet paper is rationed to

30 sheets at a time but additional supplies can be provided as requested. On the comb issue, we are told by the Americans that again this was a security issue. Combs were being used by some detainees to fashion into weapons so they were confiscated, but the advice we have is that a comb is available to Mr Hicks in the shower room.

Senator FAULKNER—I, of course, am in no position to make a judgment; all I can do is ask you about it. Hicks's Australian based lawyer has said that Hicks has not been able to comb his hair since going into camp 6. Are you saying that is not right?

Mr Smith—What I am saying is that the camp authorities have told us that a comb is available in the shower.

Senator FAULKNER—As of when?

Mr Smith—That is the current situation.

Senator FAULKNER—Yes, but when did that become the situation?

Mr Smith—I cannot tell you whether that has always been the case since Mr Hicks moved to camp 6 or whether that is something that has been done more recently.

Senator FAULKNER—Mr McNulty has done his grand tour of Guantanamo Bay, and the tour of Guantanamo Bay included sighting Hicks's cell. That is correct, isn't it?

Mr Smith—That is correct.

Senator FAULKNER—Was Hicks in the cell when the consul general went to the cell?

Mr Smith—No, he was not.

Senator FAULKNER—Where was he?

Mr Smith—He was meeting with his lawyers.

Senator FAULKNER—Can you inform the committee what conditions the consul general reported about the cell, please?

Senator Coonan—While Mr Smith is looking for that information, I just wish to inform the committee that during the break I made telephone calls to Minister Billson's office and I expect to be able to say something to the committee in response the matter Senator Evans raised later today.

CHAIR—If you flag a possible timing in advance to that with us, Senator Coonan, we will try and make sure that Senator Evans is available for when you are able to assist us.

Senator Coonan—I will follow it up again at lunch and see if I can give you a better indication.

Mr Smith—I apologise. I have got a lot of paper in front of me because, as I said before, we have a lot of information about all this and a lot of reports. The information that Mr McNulty reported on the cell that Mr Hicks is in is as follows: it is a cell that measures 3.6 metres by 2.3 metres. It has two glass observation panels in the door to the cell. The glass is clear to allow guards to check the detainee's welfare; that is a protection against the risk of suicide. There is no direct sunlight through the window. The cell doors are solid but have a central ventilation hole in them to enable communication to take place without the door having to be opened. The doors have about a four-centimetre gap between the door and the

floor which again allows some noise to carry through. The cell contains a double bunk. This is the cell that Mr Hicks is in; some of them are single bunks. Although it is a double bunk, in Mr Hicks's cell, he is the only occupant of that cell. It has a moulded plastic table, a moulded plastic seat and a moulded plastic bookshelf for sitting, reading and writing. The cell has a toilet and a washbasin. There is no camera in the cell. That is all the key information. I can also add that the cell is climate controlled with the temperature set at 25 degrees Celsius. Mr Hicks, of course, has access to fresh air when he is in the exercise yard.

Senator FAULKNER—Was Mr McAnulty able to make an assessment of the number, types of and adequacy of personal effects that Hicks has in his cell?

Mr Smith—This is not really an issue that has been raised with us as a matter of concern.

Senator FAULKNER—I am not raising it as a matter of concern. I do not know whether it is a matter of concern or not. I am just asking you. I would like to see how thorough, first of all, the consul-general's report was.

Mr Smith—We know Mr Hicks has access to books.

Senator FAULKNER—We will get to access to books in a little while. Access to books is different from having books in his cell, which he is in for 22 hours a day. Let's get to that in a moment. I am asking what is in the cell. The consul-general has visited and he has examined the cell. I appreciate what you have told us about the furniture and the structural elements of the cell, but I am now moving on to the personal effects.

Mr Smith—I do not have any information on that.

Senator FAULKNER—I would like to come back to a range of things to follow this through.

Senator STOTT DESPOJA—I wanted to clarify one thing with you. I understand that guards have access to the cell, as in they can see through a window on the door. Did you say there was a window in the cell? You said no access to sunlight.

Mr Smith—That is correct. The windows are in the door of the cell.

Senator NETTLE—Both windows?

Senator STOTT DESPOJA—Two slits.

Senator NETTLE—You said before that there were two windows. Are they both in the door?

Mr Smith—The door to the cell has two glass observation panels.

Senator NETTLE—They are the only windows in the cell?

Mr Smith—I apologise. Next to the door there is a door-length glass panel in the wall. There are the two observation panels in the door. Next to the door there is a glass panel that is the length of the door.

Senator KIRK—I would like to go back to the matter that we were discussing earlier about the psychiatrist who visited Mr Hicks. I understand from what Mr Smith said that the person who assessed Mr Hicks's psychiatric wellbeing recently was a Guantanamo Bay physician. Is that correct?

Mr Smith—That is correct.

Senator KIRK—It was not a person who was in any way independent of Guantanamo Bay and of the US administration, as I understand it.

Mr Smith—It was a medical professional employed by Guantanamo Bay authorities to provide health care to detainees.

Senator KIRK—I want to know whether or not at any stage an independent medical assessment has been made of Mr Hicks—that is, somebody from outside of the facility and preferably an Australian?

Mr Smith—I am a little cautious about trying to interpret the expression ‘independent’. We were advised by Mr Hicks’s defence team that a psychologist had been allowed to visit Mr Hicks previously as part of the defence team and that such a visit took place. We were not advised of that at the time and we certainly were not informed of any concerns that that psychologist had about Mr Hicks’s state of health at that time. In fact, we were not aware of that at all until it was raised with us in November last year.

Senator KIRK—The name that I have is Professor Paul Mullen, who visited Mr Hicks in February 2005. Would that be the individual whom the defence team employed?

Mr Smith—That may be. As I said, that was an individual employed by the defence team. We were not told about that at the time.

Senator KIRK—You said you were not quite sure how to interpret ‘independent’. On my interpretation, and perhaps we will use that interpretation for the purposes of the argument, it means someone who is from outside the facility and not in any way associated with Guantanamo Bay or the US administration or perhaps even the Australian government. That is how I interpret ‘independent’. If I could just take it from there and ask you whether or not at any stage the Department of Foreign Affairs and Trade has sought to arrange for an independent assessment of Mr Hicks.

Mr Smith—This was an issue that arose in the discussion that I had with Major Mori in November, when he told us about this earlier visit by a psychologist. He told us that he was in the process of trying to arrange another such visit and he asked whether we could check whether or not that was going to be possible. I might also say that, at the same time as this discussion that I had with Major Mori, the Attorney-General met with Mr Hicks’s family when this issue was also discussed, and the Attorney is on the record as indicating that, in coming out of that visit, he asked that a fresh assessment be done of Mr Hicks’s health.

Senator KIRK—A fresh assessment which could have then been the follow-up assessment that we have been discussing by the Guantanamo Bay psychiatrist, or did the Attorney request for an independent medical assessment to be made of Mr Hicks?

Mr Smith—The Attorney-General is on the record as saying that the individual who was to conduct that health assessment is a matter for US authorities. Let me continue and tell you what we did in response to all this. In my discussion with Major Mori I undertook to pursue that request with US authorities. In the letter that I referred to earlier that was sent in early December to the US Department of Defense, we put this request to them, and just for absolute clarity I will read you the terms in which the request was put to the United States:

Major Mori has asked whether Mr Hicks could be visited by an independent mental health professional employed by his legal defence team. Major Mori claims that a psychologist had been allowed to visit Mr Hicks in the past and he was in the process of arranging another visit but had heard that Guantanamo Bay authorities were now not permitting visits by mental health professionals employed by Mr Hicks' defence team.

We (that is, the Australian government) would like to know if independent health professionals are allowed to visit detainees and whether such visits have been allowed in the past. If not, the Australian government is requesting that an assessment be carried out by Guantanamo Bay personnel.

Senator KIRK—What was the date of that letter?

Mr Smith—It was 5 December last year.

Senator FAULKNER—Signed by whom?

Mr Smith—Signed by the consul-general in Washington.

Senator FAULKNER—And, of course, a ministerial brief would have gone up to Mr Downer before that was signed off?

Mr Smith—There was certainly a broad process of consultation on this matter, given in particular that the Attorney-General had been involved in discussions with Mr Hicks and we wanted to ensure that the request properly reflected the terms of the Attorney-General's undertaking to Mr Hicks's family.

Senator FAULKNER—The Australian government asked for a psychological assessment in January this year. Can you tell me when the most recent previous psychological assessment was requested by the Australian government?

Mr Smith—I am not aware that there had been an earlier request specifically for a psychological assessment. We have been assiduous throughout all the dealings that we have had with the American authorities to ensure that Mr Hicks has access to a high standard of medical support, and we have not had concerns about the adequacy of that medical support, such that we have needed specifically to make a formal request for a psychological assessment.

Senator FAULKNER—It took five years for the Australian government to request the first psychological assessment of Mr Hicks? Five years of incarceration and after five years we thought we might have a psychological assessment?

Mr Smith—No. You asked me about a request, not about whether a psychological assessment had been conducted.

Senator FAULKNER—Is that the first request for a psychological assessment?

Mr Smith—I have not said that there were no previous psychological assessments.

Senator FAULKNER—What I am asking is whether that is the first request for a psychological assessment in five years.

Mr Smith—This has been the only occasion on which we have been asked by Mr Hicks, his family or his defence team to arrange for such an assessment.

Senator FAULKNER—Do you only ask for psychological assessments when the family requests that?

Mr Smith—We monitor his welfare and if we are concerned that he is not getting adequate health care then we will take steps to ensure that he does get it.

Senator FAULKNER—We all know that there is a lot more activity around Hicks in the last couple of months than we have seen in five years. As I said before, it is becoming a more sensitive and contentious political issue. We all know that.

Senator KIRK—On the letter dated 5 December 2006, what response did you get from the US authorities?

Mr Smith—What I will do is read you the precise terms in the response that we received from US authorities.

Senator KIRK—Who was the response from?

Mr Smith—The response was from the Office of the Assistant Secretary of Defence. It states:

The department (that is, the Department of Defence) generally does not allow independent medical professionals to meet with detainees at Guantanamo. Mr Hicks, like all detainees at Guantanamo is provided exemplary health care. He has regular access to medical specialists who address all of his medical concerns. Should Mr Hicks require additional medical evaluation, it generally will be conducted by the professional medical staff at Guantanamo. I will pass on your request for medical assessments of Mr Hicks to the US Southern Command, to the Guantanamo Bay authorities. Those authorities assured me that Mr Hicks' physical and mental health condition is good.

That obviously led to the assessment that took place on 30 January, which I have described.

Senator KIRK—What was the date of that letter?

Mr Smith—It was 26 January this year.

Senator KIRK—Basically they are coming back and saying to you: thanks for your request, but we are not going to let an independent person go in and see Mr Hicks.

Mr Smith—What they said is that they do not normally allow independent medical professionals to meet with detainees.

Senator KIRK—Did they set out any exceptions or give you any leeway? Have you been back to them and pursued it with them?

Mr Smith—Yes, we have. What they have told us subsequently is that, under the arrangements for the military commission process, the defence team will be allowed to have a medical health professional as part of that team. That is a similar arrangement to the one that applied earlier and that was the circumstance under which the psychologist whom I referred to earlier visited Mr Hicks.

Senator KIRK—I am trying to follow this through. Essentially, they have said to us, the Australian government, that they will not permit us to bring someone independent into their facility to assess the mental health and welfare of an Australian citizen. Does that sum it up?

Mr Smith—What they have said is that the department generally does not allow independent medical professionals—

Senator KIRK—I am wondering about this: 'generally does not allow'. It seems to me that they are not completely ruling it out. It is that they generally do not. I wonder whether or

not you have gone back to them and tried to pursue that and work out in what circumstances an independent medical assessor would be allowed. I would have thought in the circumstances and given what we are hearing about Mr Hicks, especially recently, that he does not seem to want to speak to consular officials. He must be experiencing some difficulties and I would have thought that it would be in the interest of our government to try to get to the bottom of that and perhaps pursue with the American government us sending in an independent person whom he can speak to, whom he will perhaps feel comfortable with, and not somebody who is a medical official or practitioner on the staff of Guantanamo Bay detention facility.

Mr Smith—Let me make a couple of points in response. Firstly, as the Attorney-General has said, it is the prerogative of the detaining authorities to determine who provides that medical support. The second point, as I said, under the military commission arrangements early on in that process, the defence team will be able to have an independent medical professional.

Senator KIRK—I understand that, but I was asking about the Australian government.

Mr Smith—You suggested that Mr Hicks may have been reluctant to speak to the psychiatrist. That is not the information that we have. In fact, I think she described the discussion with him and his behaviour in that discussion as open and talkative. We have no reason to doubt the competence of the professional medical staff at Guantanamo Bay. You might be aware of the report of the UK House of Commons Foreign Affairs Committee visit, where they described the standard of medical care for detainees as very good. That concurs with the view that I have just expressed that we really have no basis to question the competence of those medical professionals.

Senator KIRK—I understand that you are saying to me that you are happy to accept the care that they are prepared to give to Mr Hicks, that you are not prepared to take it any further and question it, and demand that an independent person go in there. I accept that.

Senator FAULKNER—You cannot assist us with what personal effects are inside Mr Hicks's cell?

Mr Smith—I am not sure that I have got the information in a level of detail that you are seeking. Without wanting to appear unhelpful, I can see whether I can get some more information and get it to you quickly.

Senator FAULKNER—I would appreciate that. You raised the issue of books and bookshelves. How many books at any one time is Mr Hicks allowed to have in his cell?

Mr Smith—Two.

Senator FAULKNER—What is the access to books like?

Mr Smith—He is allowed access to two books in his cell. He has 52 books in total. He is allowed to keep two books in his cell at any one time and the others are available to him as required.

Senator FAULKNER—Is there a library of 52 books?

Mr Smith—The advice that I have is that there are 52 books belonging to Mr Hicks that are kept in an adjoining cell or a nearby cell.

Senator FAULKNER—Did the consul-general check the adequacy of the footwear available to Hicks for those times that he goes to the exercise yard?

Mr Smith—That has been an issue in the past that Mr Hicks has asked us to raise with US authorities. I believe that is an issue that has been resolved. I do not think it is an issue that has been brought to our attention as a problem.

Senator FAULKNER—Can you confidently say to us that is no longer an issue?

Mr Smith—I believe that to be the case.

Senator FAULKNER—With the consul-general's inspection of the Guantanamo Bay facility, are you able to say to us whether Hicks's cell is identical to other cells in the facility?

Mr Smith—I understand that all the cells in Camp 6 are the same or very similar. We know that one difference is that there are cells with single bunks and some have double bunks. Mr Hicks has a double bunk even though he is the sole occupant of the cell. Generally, the cells are all uniform.

Senator FAULKNER—How many people are currently incarcerated in Camp 6?

Mr Smith—I will have to take that question on notice.

Senator ROBERT RAY—Can I be reminded which countries have had their citizens repatriated from Guantanamo Bay? We know about the United Kingdom.

Ms Richards—I believe there are a number of others, but I would have to check that for you.

Senator ROBERT RAY—I am trying to find a country equivalent to Australia that has still got one or more of its citizens at Guantanamo Bay. Can you suggest one?

Ms Richards—I believe there is a Canadian citizen in Guantanamo Bay who has also had charges sworn against him.

Senator ROBERT RAY—There is Canada and Australia. Can you indicate how many countries have come to an agreement to have their citizens repatriated?

Ms Richards—No. I would have to check that.

Senator ROBERT RAY—You have no idea.

Senator FAULKNER—Have there been any efforts to repatriate Mr Hicks? That is not Australian government policy.

Ms Richards—I can confirm—this was a question raised earlier in the morning—that there have been no representations made to have Mr Hicks repatriated to Australia.

Senator TROOD—Ms Richards, earlier this morning you mentioned the distinction between evidence gained by torture and coercion in relation to the Hicks matter. Can you provide the committee with any information about the distinction between those two forms of evidence?

Ms Richards—That is difficult to do without looking at a case-by-case basis. Generally the definition of torture is acts by officials causing severe mental or physical pain or distress for the purpose of gaining information.

Senator TROOD—That kind of evidence is not to be admitted in these proceedings?

Ms Richards—Correct. Evidence obtained by torture is inadmissible.

Senator TROOD—What kind of evidence might be admitted under the coercion definition?

Ms Richards—It is very difficult to be precise. The best I could do is to say: evidence falling short of that definition—also again subject to those conditions which I mentioned before. That is, the judge determines evidence which may have been provided under coercion is reliable—that it has probative value, that it is in the interests of justice to admit it and that, as an overriding safeguard, despite any probative value, if it was substantially outweighed by the danger of unfair prejudice then it may not be admitted.

Senator TROOD—Is that a legal definition of what these terms mean? Can it be defined in either US law or in relation to the commission law?

Ms Richards—Those conditions I just mentioned are in the rules for the military commission.

Senator TROOD—Does the Australian government know whether or not it is intended to lead any evidence in relation to Mr Hicks that might have been acquired through coercion?

Ms Richards—No, we do not know that. What I can say is that we have consistently insisted that Mr Hicks be treated properly and humanely. Allegations have been made that he has been mistreated and on every occasion we have taken those up with the US authorities. In fact, at the insistence of the Australian government, there have been two investigations into allegations of abuse, both of which concluded that there is no evidence that Mr Hicks has been mistreated.

Senator TROOD—Do you conclude from that, that there is unlikely to be any evidence led that might have been derived from coercion?

Ms Richards—I am not in a position to say what evidence the prosecution may seek to lead.

Senator TROOD—I am indebted to the Law Council of Australia for this advice, and perhaps you could confirm or clarify whether this is accurate. The Law Council seems to be of the view that evidence obtained using cruel, inhuman or degrading interrogation techniques is admissible if it is obtained before December 2005. Is that your understanding of the position?

Ms Richards—That is a reference to the detainee act. Prior to that date, evidence that is coerced may be admissible but subject to those four conditions which I mentioned.

Senator TROOD—What is the significance of December 2005?

Ms Richards—That was when the Detainee Treatment Act was introduced and added that extra clarification. I would have to say it would be a question of fact in each case as to whether that definition applied to any particular evidence.

Senator TROOD—Is that a matter that the defence can contest?

Ms Richards—Yes. It would be open to the defence counsel to contest admissibility of evidence.

Senator TROOD—The general statement that evidence obtained using cruel, inhuman or degrading interrogation techniques is admissible is not necessarily correct?

Ms Richards—No. It would be subject to that overriding requirement that no evidence may be admitted despite its probative value if it would substantially result in an unfair danger of prejudice.

Senator TROOD—Is that a matter of fact or a matter of law—unfair danger of prejudice?

Ms Richards—That would be a matter for the trial judge to determine.

Senator TROOD—Do you know whether or not there are any precedents or any principles which might guide the interpretation of that phrase?

Ms Richards—I am sure there is a body of law, which presumably the judge would have regard to.

Senator TROOD—You are not familiar with that body of law that you can help us with?

Ms Richards—It is not usual for the government to provide legal advice to the committee.

Senator TROOD—I am not asking you to provide legal advice to us. There are enough lawyers here. I wanted your view as to whether or not there were some principles upon which this could be tested.

Senator FAULKNER—Senator Kirk is a distinguished lawyer, as is our chair.

Senator ROBERT RAY—Senator Johnston.

Senator FAULKNER—Senator Payne perhaps.

Ms Richards—There would be a range of principles that would be relevant.

Senator STOTT DESPOJA—I just want to clarify some issues in relation to the consul-general's visit on the 30 and 31 January. I understand your comments previously that Major Mori, in discussions with you in November in Canberra last year, discussed the possibility of a visit that coincided. I would like clarification now or for you to take on notice as to whether or not the consul-general specifically gave confirmation in January this year to the lawyers of David Hicks that he would visit David Hicks at the same time as they did in January. I want to make very clear that he confirmed that he was visiting, not confirmed that he was not visiting. He was not talking about a trip in February or March perhaps, but he was talking specifically about a trip in January. I would like that confirmed for the record please. In relation to your question to Senator Faulkner, you indicated that the consul-general met with David Hicks on two occasions and you have given us the specifics of those meetings. I would like to know: was that with the permission of David Hicks's lawyers at the time, and why did he go the second time, given that he was not interested or indicated that he was not willing to talk with the consul-general on the first occasion? Did the consul-general go back with permission?

Mr Smith—On the first question, I am just getting confirmation of the precise dates on which both Mr Hicks's legal team and Mr Hicks's family were advised of the date of the visit. The date did move around a bit but we will check that precisely for you.

Senator STOTT DESPOJA—Moved around a bit in terms of days or months?

Mr Smith—In terms of days.

Senator STOTT DESPOJA—Could it be that one visit might have been proposed for January and then another for February? Were they talking about different days or dates within January?

Mr Smith—We were talking about a period over late January/early February. They were the dates that they were looking at. The dates were eventually pinned down to the dates that we are aware of. As I said, I will confirm the dates on which the advice was provided to the legal team and the family. On the second question, it is not usually the practice to require the consent of a legal team for an Australian consular official to visit a consular client. The consular client can take advice from a lawyer, but ultimately it is the decision of the individual as to whether or not they want to see or talk to the government official—the consul-general in this case. I described what happened on the first occasion. I have indicated that the consul-general made clear to Mr Hicks that he would remain available to see Mr Hicks if Mr Hicks changed his mind. He then arranged to make himself available again on the second occasion on 31 January, just to ensure that Mr Hicks was quite firm in his decision not to see the consul-general. The problem that we face here is that, if we were to say after the first exchange, 'Okay, Mr Hicks doesn't want to see us; let's just leave,' we would be criticised for leaving too early and not providing adequate opportunity for Mr Hicks to have access to the consul-general. He quite deliberately, and I think quite rightly, remained there. He had other things that he could very easily do in talking to camp authorities in the terms that I have described, but also to give Mr Hicks a second opportunity. I think that was entirely appropriate and correct.

Senator STOTT DESPOJA—I was not questioning whether or not you thought it was appropriate, and I understand the point about permission being required or not. I just wanted to ask you if you were aware that he had the consent or the permission of the lawyers and, indeed, the Australian citizen. I just want to clarify this. Did he go ahead, as he was entitled to do, with the consent and the support of the legal team? Even though he did not need it, did he decide that he was going to visit David Hicks on those two occasions or certainly on the second occasion, regardless?

Mr Smith—He made a judgement that it was appropriate for him to make himself available to Mr Hicks on 31 January. He spoke to Major Mori, as I told you, on the morning of 30 January. Mr Mori did not express any objection to the consul-general seeing Mr Hicks.

Senator STOTT DESPOJA—Let us get this clear. Major Mori at the time expressed no concerns?

Mr Smith—Correct.

Senator STOTT DESPOJA—This is the visit that you are suggesting that Major Mori and the legal team knew of in advance? I just want to make very clear that they were not already

meeting with their client when the consul-general showed up unexpectedly. Do you suggest that is the wrong scenario, and that they had advance notice of this specific visit and they were not caught out—Major Mori, Josh Dratel or Mr David McLeod? They knew that the consul-general was going to turn up while they were speaking with their client. Is that your understanding?

Mr Smith—When they were speaking with the client. I will check the precise date at which we finally confirmed the date of the visit with the legal team. As I said, the dates did move around a little. I had the discussion as early as November with Major Mori, when we talked about the value of having the visit take place—the two visits taking place at the same time.

Senator STOTT DESPOJA—I do not doubt that. I understand that is definitely the case.

Mr Smith—The exchange that I described between the consul-general and Major Mori on the morning of the 30th was at the beginning of the consul-general's visit, and Major Mori, I understand, expressed no objection to the consul-general seeking to speak to Mr Hicks. I might also add that one of the points that the consul-general made to Guantanamo Bay authorities, and he reiterated this to the legal team, was that he did not want his time with Mr Hicks to intrude on the time that Mr Hicks had available to see his legal team. He made that point quite explicitly to camp authorities and to the legal team.

Senator STOTT DESPOJA—If the lawyers did not express any objection, did they express their surprise?

Mr Smith—They expressed their surprise publicly.

Senator STOTT DESPOJA—Did they express their surprise to the consul-general?

Mr Smith—As I said, Mr McAnulty spoke to Major Mori in the morning and whether he expressed surprise I do not know, but as I said we did give him prior notice, and I will get you that date.

Senator NETTLE—You gave us some details about David Hicks's cell. Can you give us any similar details in relation to the recreation facilities that he is able to access?

Mr Smith—I can. The recreation area is 15.2 metres by six metres in size without a roof. It is subdivided into five areas, which are fenced by a mesh fence. Each of those areas is a little over six metres by a little over three metres. That arrangement is a security measure designed to prevent physical contact but not interaction between prisoners who are in the area at the same time. The area is outdoors and has fresh air. In other words, it is not climate controlled as the cells are. The timing of access to the area is as I described before, rotated between the detainees. Some have access during the day and some in the evening. Also, as I described earlier, it is an entirely voluntary arrangement. Detainees are not compelled to spend time in the exercise area.

Senator NETTLE—I understand that there is another area inside rather than outside where detainees can go. I do not know if it has been referred to before as the library or the recreation communal area. Do you have any details about that?

Mr Smith—No, I do not. The other area that I believe they have access to is the showers, but essentially Mr Hicks spends his time in his cell and in the exercise yard when he chooses

to go and then has access to the shower. You may be thinking of Camp 5 where Mr Hicks was before. There was what was described as a study room or a library, which Mr Hicks also had access to, although he chose not to make use of it.

Senator NETTLE—How does Mr Hicks access books in the new Camp 6 facility?

Mr Smith—He has two books in his cell. If he wants others they are brought to him. The other 50 books, which are part of his collection, are brought to him at his request.

Senator NETTLE—How regularly is he able to change the books that he has in his cell?

Mr Smith—I am not aware that there is any restriction on that. The advice we have is that he is able to change those as he requests.

Senator NETTLE—With the outdoor exercise area, you were saying that it is surrounded by a wire wall. It is not a concrete wall but a wire wall?

Mr Smith—I am not aware of the material that the perimeter wall is made from but that area—that 15- by six-metres area—is divided up into a series of five areas that are fenced by mesh fencing.

Senator NETTLE—How big is each of those areas? From what you have described, I presume a detainee can be in one of those five parts of that area.

Mr Smith—Each of those is a little over six metres by a little over three metres.

Senator NETTLE—Perhaps this is a question for the minister. Is that considered an adequate area for exercise?

Senator Coonan—By whom?

Senator NETTLE—By the Australian government.

Senator Coonan—I do not know whether the Australian government has a view specifically on the size of exercise areas but I can certainly get you that information.

Senator NETTLE—Thank you.

Senator FAULKNER—I have one related matter. There were claims, which arose out of a US report which was released under freedom of information laws, which went to the issue of an allegation that a prisoner was anally assaulted by military police at the US Joint Interrogation Facility at Kandahar. There has been publicity about David Hicks reporting to his family when they visited him at the Guantanamo Bay facility in 2004 that he had also claimed to be anally assaulted during interrogation by the US in Afghanistan while he was hooded and restrained. David Hicks's father has, in fact, made public statements about this particular matter. Are you aware of this issue?

Mr Chester—I am vaguely aware of it. I do recall this issue.

Senator FAULKNER—I am interested in knowing what efforts the government had undertaken to try to establish the veracity or otherwise of these particular allegations.

Ms Richards—I have some information on that. I did mention that at our insistence the US had carried out two separate inquiries into allegations of abuse. During those particular investigations, Mr Hicks himself did not raise allegations of this kind of sexual abuse. I can also say that he has never raised those with any Australian government officials. We became

aware of that kind of allegation when it was raised on a *Four Corners* program on 31 October 2005, and, following that *Four Corners* program, our embassy in Washington raised those allegations with the US authorities. The US authorities said that they would investigate any credible information which supported the allegations, but, based on the *Four Corners* transcript, it did not appear that there was such information. Our embassy in Washington also followed up the allegations with Mr Hicks's lawyer, Major Mori, and asked Major Mori whether he had any further evidence to substantiate the allegations of mistreatment. We did offer to provide any new information to US authorities for investigation, but Major Mori has not provided us with any evidence in support of those allegations. However, if there is any new evidence, obviously we will take it up immediately.

Senator FAULKNER—It is quite possible, given the nature of these allegations, that this is something that Mr Hicks may have been more comfortable raising with his family than with his lawyers. That is an assumption; how would I know. They definitely were raised with his father. Has any thought been given to actually talking to Mr Hicks senior about these allegations, about which Mr Hicks senior has commented publicly, at least in the media. For example, I read a recent media commentary quoting Mr Terry Hicks. Let me quote it to you. This was on 8 February this year. The article states:

“He said—

and I interpolate that the ‘he’ is David Hicks—

“He said he was anally penetrated a number of times,” Mr Hicks said yesterday. “They put a bag over his head, he wasn’t expecting it and didn’t know what it was. It was quite brutal.”

The reason this has come to attention again is because of this US report that is released under FOI laws, which goes to an incident in February 2002 where another prisoner alleged some form of anal assault. You have indicated that this has been raised with Major Mori, given the public statements that have come from Mr Hicks's father, but has it been progressed with the Hicks family at all?

Ms Richards—As far as I am aware, the Hicks family has not asked us to raise those allegations again.

Senator FAULKNER—I did not ask whether they have asked you. You have raised it with Major Mori. That is what you have informed the committee. Is that right?

Ms Richards—We previously raised it with Major Mori and he was unable to provide us with any additional evidence.

Senator FAULKNER—You took the initiative to raise it with Major Mori. We have, in the media, Hicks's father giving quite a graphic description of this allegation. I wondered if anyone had the initiative to raise it with Hicks's father.

Ms Richards—I do not believe that it has been raised with Mr Hicks's father.

Senator FAULKNER—The status of this is that there are no ongoing investigations into these claims?

Ms Richards—As I said, two very thorough investigations have been undertaken, and we have since followed up to see if there was any additional information which would have to be followed up, and there does not seem to be any change in that situation.

Senator FAULKNER—Have the investigations that have been undertaken specifically related to an assault on Hicks?

Ms Richards—I understand those investigations did not because those allegations were not raised at the time.

Senator FAULKNER—That is what I heard you to say. Now in the public arena we have these quite graphic descriptions of an anal assault that allegedly is described by Mr Hicks senior:

They put a bag over his head, he wasn't expecting it and didn't know what it was. It was quite brutal.

And:

He said he was anally penetrated a number of times ...

Then Mr Hicks senior says his son could not see who assaulted him but could hear American voices, and so forth. This is obviously a development that has occurred since the matter was raised with Hicks. Was the department aware of what Mr Hicks senior has seen fit to put in the public arena via the media?

Ms Richards—Yes, the department has seen those reports.

Senator FAULKNER—When did the department become aware of those reports?

Ms Richards—I do not recall the date.

Senator FAULKNER—Are these the recent reports that we are talking about? I am reading an article on 8 February 2007. A week ago. Is that the report that the department is aware of?

Ms Richards—Yes.

Senator FAULKNER—Are there any earlier reports?

Ms Richards—I am not aware of any earlier reports.

Senator FAULKNER—Had the department been aware of allegations of this sort of abuse relating to David Hicks prior to their publication in the media?

Ms Richards—The department was aware of allegations that were made in October 2005, and those were the allegations that we raised both with the US authorities and with Major Mori.

Senator FAULKNER—How did the department become aware of those allegations?

Ms Richards—Those allegations were made on a *Four Corners* program.

Senator FAULKNER—I was not aware of the *Four Corners* program nor have I seen a transcript, but I have seen the recent media coverage of this. Are they similar in nature to what I have quoted from the newspaper?

Ms Richards—Like you, I have not seen the transcript of the *Four Corners* program.

Senator FAULKNER—Regardless of what is in the *Four Corners* program, these are serious allegations and they are now in the public arena. Are you able to assist me, Mr Chester, as to whether there is going to be any follow through of this?

Mr Chester—I do not know whether there will be follow through. We will look at those claims and see whether they are fresh claims compared to the claims that were made in October 2005 and then, as we have done over the last four or five years when there have been new allegations or new claims made, we will take them up with—

Senator FAULKNER—These are claims of the utmost seriousness. I am sure you accept that. I will just flag with you that we will obviously be raising the Hicks matter at the next estimates round, as we have in many previous estimates rounds, and I do not think that is going to come as a shock or surprise to you. I specifically flag with you that I want to follow this particular issue through. If it might assist Ms Richards, I could perhaps point to the publicity about this in the name of Mr Hicks senior on or around 8 February this year.

Senator ROBERT RAY—I think this is the last question on this broad subject. In summary, what we have heard today is that when an Australian citizen is at Guantanamo Bay we have 18 consular visits and a whole range of representations made to the US administration on a range of issues. The question is: aren't there scores of individuals at Guantanamo Bay who have never had a consular visit and have never had anyone to represent their interests? What is the Australian government's attitude to those individuals at Guantanamo Bay?

Senator Coonan—Obviously the Australian government takes responsibility for our citizens. I do not think we would see it as our role to be intervening on behalf of everyone else in Guantanamo Bay and understanding in the sort of detail that we do about the visits and matters relating to Mr Hicks that that level of detail would also be extended to other citizens. You could not possibly know all the circumstances under which people were kept in that place.

Senator ROBERT RAY—I did not ask you to intervene but to express a view that you do have. We are not just isolationists. We are world citizens. We take an interest in what happens, in a justice sense and a human rights sense, right around the world. We have taken evidence at this committee about raising human rights issues in Indonesia, in China and elsewhere, and this is a human rights issue. Australia is a sophisticated, well-organised country, with a capable consular service that can intervene on behalf of its citizens. We know that. Surely there are dozens and dozens of other people who have been there four to five years and who have gone through some horrible process of rendition and they have never had a visitor. They have been kept in a jail for 22 hours a day with two hours exercise and they may not have the same language skills as David Hicks, and we do not care about them. Is that what you are saying?

Senator Coonan—I am not saying that at all. Nobody is seriously suggesting that is appropriate. As a government with a citizen in this predicament, we have responsibilities that we have been talking about for the last few hours, and that is what we are doing.

Senator ROBERT RAY—It seems to me what you are saying is that, if Mr Hicks came home tomorrow, this government would have no concern with the various things that have occurred at Guantanamo Bay.

Senator Coonan—I am not saying that. What I am in a position to speak about today on behalf of the government and with the detailed evidence of the officers is what we are doing in respect of an Australian citizen.

Senator ROBERT RAY—Yes. That is what you have been asked about. Now I am extending it more broadly as to the Australian government's attitude to some of these individuals who have not had a visitor in five years, have not had the competent representation that we provide. Surely our heart goes out to them. This is not to say in any way a comment on their innocence or guilt. I am not commenting on that at all.

Senator Coonan—I understand how you put it.

CHAIR—We will move on to the next topic.

Senator ROBERT RAY—We could start this one with a simple question but I think we will have to pursue it after lunch. It seems a while ago since I said I was going to follow up some questions on notice. This is the second one, which is question 25. I asked a question about legal opinions as applying to parliamentary privilege in relation to Mr Trent Smith. The second part of it asked for the legal opinion to be tabled. I note with disappointment the failure to table it, but I am resilient about these matters. It is not the first refusal I have had; probably the thousandth. The first part of the question does not compute with the previous answers that I have received. I asked who provided the information—I did not ask at what cost but I will now—and that usually has been provided, and then the legal opinion not tabled. So I repeat the question: who provided the legal advice and, I add now, at what cost?

Mr Chester—My understanding is that we do not usually answer the question in relation to who gave the legal advice.

Senator ROBERT RAY—Where is your precedent for that?

Mr Chester—I will need to check with my lawyers.

Senator ROBERT RAY—So you are betting your corporate memory against mine?

Mr Chester—No, on this one I am not prepared to put money on the table.

Senator ROBERT RAY—I was not putting money on it; I was putting prestige on the table.

Senator FAULKNER—Kudos.

Mr Chester—No, I will pass on that, on this occasion.

Senator ROBERT RAY—I will not press the point here, Mr Chester. I again ask you to check past precedents because on many occasions I have heard who has provided the legal advice just before they rebuff me and say that they will not table it.

Mr Chester—I will check.

Senator ROBERT RAY—I am serious about this because Senator Johnston, Senator Payne, Senator Faulkner and I are long-term members of the Privileges Committee and we know very few legal firms have much knowledge about parliamentary privilege. That is why I am interested to know who you went to.

Mr Chester—I will just answer that quickly. I will undertake to check whether this is the longstanding practice. If it is, I will come back and tell you that. If it is not then we will answer those questions.

Senator ROBERT RAY—Thank you. We will be following up with a few more questions on this area straight after lunch, so you need to be prepared, not on the legal thing but on the Trent Smith case.

Proceedings suspended from 12.30 pm to 1.30 pm

CHAIR—We will continue with questions from Senator Ray.

Senator ROBERT RAY—Could I have an update as to costs that may have been spent in what we have often referred to as the ‘Trent Smith circumstances’?

Mr Chester—The costs that were given at the last session of the estimates hearings remain the current costs of the department.

Senator ROBERT RAY—The last time we addressed this issue there was pending court action. Has that transpired, or is that still awaiting?

Mr Chester—Mr Smith has elected to go to the AIRC to challenge his termination as being an unfair termination.

Senator ROBERT RAY—Yes.

Mr Chester—That was on 17 November last year.

Senator ROBERT RAY—It has not progressed any further than that at this stage?

Mr Chester—There have been directions hearings in relation to that. The hearing itself is not likely to take place until early next month.

Senator ROBERT RAY—This is where it has been at, in this particular sphere and in no other spheres?

Mr Chester—That is correct. Since 17 November it has been in the Industrial Relations Commission.

Senator ROBERT RAY—We will leave it there in that case and let them tackle the various issues around it. Chair, last time I raised questions about a visit by Mr Mark Steyn. I did ask the minister at the table, I thought, to take a matter on notice but I cannot find an answer to it or the question listed. That was the cost of the *Conservative* magazine dinner held at old Parliament House. I could possibly understand there is a bit of to-ing and for-ing about it because the minister offered to do her own research and get it. I said, ‘No, estimates does not work this way’. It is a formal question.

Senator Coonan—I am sorry, I know I have not done anything more personally.

Senator ROBERT RAY—Nor should you have. I thought the department had taken that question on notice to get me an answer. I may have missed it, so can you enlighten me?

Mr Chester—I was not here last time so I am not sure what we did. My understanding is that dinner was not an event that the department was involved in, organised or carried out.

Senator ROBERT RAY—I am sorry. The minister was involved in it. Right throughout the documents, there is this mysterious dinner which of course the department only hears about very late because no one wanted to let them know that the whole idea of Mr Steyn coming here was to go to that dinner. It is stressed in the DFAT documents that this private dinner is a non-fundraising activity. The reason I sought the cost of the ticket was to measure off whether that was a correct statement or not.

Mr Chester—I am sorry, you want the cost of the ticket. I do not have that information with me.

Senator ROBERT RAY—There are two aspects to this. I understand that you do not have the information. Was that regarded as taking a question on notice though? If you go back and read the transcript, I would have thought it was, but I do not think you did take it on notice and I do not think you ever tried to respond.

Mr Chester—It was certainly not in the answers to the questions that we provided back to the committee, no.

Senator ROBERT RAY—I said:

How much were the tickets?

Senator Coonan said:

I will have to check that for you.

I said:

You do not mind taking it on notice?

Senator Coonan said:

No, I do not mind. I will go and have a look at my cheque book.

That diverted us off to say that was not the proper procedure, et cetera. I would have thought what proceeded, basically was a commitment to take the question on notice. Every now and then one slips through the net, I accept that. I would like you to continue to take it on notice and I would like an answer on that subject.

Mr Chester—Yes.

Senator ROBERT RAY—I did ask last time how come Mark Steyn got invited out under the program. There was a bit of vagueness about it, so I FOI'd certain documents from DFAT. I have to commend DFAT; they were massively cooperative.

Mr Chester—As always, Senator.

Senator ROBERT RAY—You are under oath here, Mr Chester! Let's not go too far! So I was supplied with these. I think they constitute about half the documents because, for valid reasons, a whole range of documents were not supplied to me on the basis of irrelevancy, personal details et cetera. I have read through them all. The first thing that struck me was the department initially opposed Mr Steyn coming out on the program. That is right, isn't it?

Mr Smith—There was an exchange within the department about the proposal for the visit and one area of the department expressed a view that there were other candidates that should be considered. That view was taken into account in the consideration of the proposal.

Ultimately, it was decided that, firstly, the proposal met the guidelines for the IMV program we are talking about and, secondly, it was worth doing.

Senator ROBERT RAY—There was a preference, wasn't there, for two trade journalists, specialists in trade, to have priority at that stage?

Mr Smith—That particular area of the department identified a number of other possible candidates for the program. This is very much the way we manage the program. We canvass views fairly widely as to possible candidates. There is always a bit of juggling. There had been a proposal for Mr Steyn to visit earlier—it might have been the previous year—and that was not possible. The proposal was reactivated, looked at against other possibilities, and the decision was taken then to proceed with it.

Senator ROBERT RAY—Hence the reference in the papers to considering Mr Steyn 'again'. It was not that he had previously been, but there had been a previous proposition?

Mr Smith—That is correct.

Senator ROBERT RAY—Then the minister's office intervened to press Mr Steyn's claims, let me say, as they have every right to do. They do that, Mr Chris Kenny and others?

Mr Smith—That is correct.

Senator ROBERT RAY—They lobby for him. In a minute to the secretary about Mr Steyn, document No. 50 starts off, 'At Mr Downer's request,' so Mr Steyn's visit has got full ministerial approval, hasn't it?

Mr Smith—That is correct.

Senator ROBERT RAY—It is stressed throughout the documents that the key thing for Mr Downer's office is to have Steyn in Canberra for meetings and a function on 16 August. It is a pretty repetitive theme throughout all the documents and all the email, isn't it?

Mr Smith—Certainly there was a reference to that occasion which was always characterised as a private event from the early stages of the planning of the visit, yes.

Senator ROBERT RAY—I do not want to go into it with the officials. Having read all the documents it is absolutely clear to me that the idea of getting Mr Steyn out here at this time was to get him to the dinner which is a dinner for a conservative magazine which many prominent members of the government went to. It in no way affects the Labor party, I want to put that on the record. This group exists to destroy other Liberals, not the Labor Party. I want to make quite clear that we do not have any axe to grind here.

Senator FAULKNER—Maybe that means we should support them.

Senator ROBERT RAY—When was it decided to reimburse him for one-third of the travel? Reading through the documents I do not see an early commitment from that; it seems to come in late in the piece.

Mr Smith—I cannot recall exactly the point when that was decided. The way we did it, there were two other organisations that were co-sponsoring the visit. We had a discussion with them about what would be a reasonable division of the costs of the visit in total and that was the basis on which that final amount was determined.

Senator ROBERT RAY—I thought it might have been on the basis, as the documents show, that the air travel became a little too expensive for the other two organisations. Mr Steyn makes it completely clear there is no way he would ever travel United. That is a good ad for Australia's airlines, by the way. It is very patriotic for us. Did the airfare come to over \$17,000?

Mr Smith—I am not sure that I have the details on the total cost of his airfare. I know what our contribution was.

Senator ROBERT RAY—Multiply that by three and you can tell me.

Mr Chester—Ours was \$5,600.

Senator ROBERT RAY—Yes, just on \$17,000 business class return.

Mr Chester—It was \$16,800.

Senator ROBERT RAY—I think it was \$17,000, but I could be wrong there. We pick up one-third of that. As part of this, we get a dinner hosted by Mr Todd of DFAT. Initially that was for how many people? It was for about three or four, wasn't it? Wasn't that the original intention?

Mr Smith—Let me have a look at the program. I think the original idea was that that would include three others. That is correct.

Senator ROBERT RAY—By the time we get down to Madam Yip's, a most commendable eating establishment in Canberra, we get Mr Downer fronting up, four of his staff, the chief of staff, the minister for aged care and a senior adviser from the Prime Minister's office. It blew out a bit, didn't it? Who put the message out there was a free feed about? You can confirm that that dinner cost \$550?

Mr Smith—\$500 is the detail I have got in my brief. My understanding is that the dinner involved the individuals—the number we described before—and some of the others you refer to dropped in to the dinner at some point.

Senator ROBERT RAY—Did they pay? Who paid for the drop-ins?

Mr Smith—I do not know from my notes whether or not they ate or drank anything. Maybe they did. The total bill came to \$500. That is the information I can give you.

Senator ROBERT RAY—I think you will find it is \$556. What part of the department is that billed to? Is that billed as part of the trip's cost or is it billed back to another part of the department?

Mr Smith—That amount, as with other amounts associated with that visit, would come from the international media visits program budget.

Senator ROBERT RAY—Mr Steyn does a day's activities in Canberra. The note is that at some stage we will get him dropped off, but he can get a cab back because it is a private dinner, but it turns out not. Am I right in saying that the chauffeur-driven car given to him in Canberra cost \$1,108 for the day; is that right?

Mr Smith—I have the costs of the ground transport that we provided in Sydney, Canberra and Melbourne. I do not have it broken down. The total cost was \$2,546.32.

Senator ROBERT RAY—Documents provided to me for that day in Canberra, the 16th, show that his car costs for the day were \$1,108. I hope he learnt a lot on that day.

Mr Smith—We see this as having been a very successful visit under the program.

Senator ROBERT RAY—Let me see—success. Mr Steyn goes into an ecstatic praise of the Prime Minister and the Foreign Minister and bags the Labor Party. Of course, I can assume some would regard it as a great visit.

Mr Smith—He left the country having had a very good program in which he met members of the government, members of the opposition and senior officials of the department. He had very good discussions, as we understand it from him, about Australia, Australian foreign policy and Australia's role in the region. All of that gave him an appreciation of Australia that enabled him, we think, to become a good and effective advocate for Australia in the work that he does as a senior correspondent and journalist. That is fundamentally the objective of the media visits program.

Senator ROBERT RAY—He was already praising up the Liberal-National Party government in Australia and bagging others long before he ever arrived here. You are right; I think he enjoyed himself. If I had a chauffeur-driven car all day and a free feed down at Madam Yip's, I would be travelling well too. That is all on that. Are we going to chase up at some later stage the cost of the dinner? That is only to check whether it was a fundraiser or whether it was a cost recovery. In designated question 37 taken on notice, where I asked for the total cost and things like that—thank you for providing that information—I did ask at one stage what were the DFAT costs associated with Mr Steyn's visit. I got back the answer:

DFAT incurred minimal salary costs in organising the visit. These costs have been absorbed and separately calculated.

I accept that absolutely. I would have thought all the toing and froing in DFAT, when I only have half of the documents, shows me that an inordinate amount of time was spent on this. Certainly it is one of the worst sets of organisation I have ever seen, with the amount of email traffic required for its organisation. I do not know that it was a minimal cost. I know you absorbed it, but I do not know that it was a minimal cost, given the amount of staff hours involved in all this toing and froing. You might look at that answer at some later stage. That is all on Mr Steyn and his visit. No, there is one other thing. It is now true that Mr Steyn's staff have written offering to repay the money, isn't it?

Mr Smith—Yes, we did get a message from them offering to do that and we said it was not our practice to seek reimbursement.

Senator ROBERT RAY—That was because the matter had been raised in the all-powerful estimates committee? It was because of the publicity on the trip that came out of the estimates committee that he offered to repay?

Mr Smith—The perception that Mr Steyn or his staff had was that this was reflecting negatively on Mr Steyn's reputation and he offered to reimburse the Australian government. We declined that offer.

Senator ROBERT RAY—I wish you hadn't. That is all on that. Continuing on with the questions that we put on notice last time and you took on notice, there is question 33, which I

do not think affects you, Mr Smith. I asked about the provision of various equipment, and thank you very much for the answer. I note from the answer that the department has provided Minister Downer with pay TV coverage in his office. They have taken the business value package. That is right, is it? I am glad we have the minister for communications here; we are going to have an absolute expert.

Mr Chester—Yes, that is what the answer says.

Senator ROBERT RAY—That would be at \$62.50 a month?

Mr Chester—I need some help here.

Senator ROBERT RAY—\$62 a month for 57 channels—seven sports channels, five news channels—is that right?

Senator Coonan—That would be approximately right.

Mr Chester—I do not believe we have with us the monthly costs of the service or the details of the service.

Senator ROBERT RAY—You might confirm what you are paying. That is the easiest way to do it. You also provide a pay TV package to Mr Downer's residence; is that right?

Mr Chester—That is right.

Senator ROBERT RAY—It is not the same service, is it?

Mr Chester—No, it is something called the business digital package.

Senator ROBERT RAY—That has every channel that the business value package has, which is the one he has in his office, including the five crucial news services. But in addition to that it has six movie channels and other add-ons, doesn't it?

Mr Chester—I do not know.

Senator ROBERT RAY—Why are we paying for a different package? We are paying for it for his electorate office and his home, when the crucial part which goes to his office could have just gone to his home. Why does the taxpayer need to pay for his movies or whatever else has been added in? I do not understand that.

Mr Chester—I do not know the details of it. I will have to take it on notice and try and find out. I do not know how much the department pays for these services or whether we pay.

Senator ROBERT RAY—To be fair to the minister, there is also a strong possibility that the minister is personally paying for the additional channels, other than the basic 57. Let us leave that door open and find out whether that is the case too.

Senator Coonan—It is also a fringe benefit.

Senator ROBERT RAY—No, it is not.

Senator Coonan—Yes, it is if it is in your home.

Senator ROBERT RAY—We have got a different view of fringe benefits. I retract what I said.

Senator Coonan—I can assure you if the department pays—

Senator ROBERT RAY—I am agreeing with you.

Senator Coonan—Yes.

Senator ROBERT RAY—I had a different interpretation. I thought you meant it was a side benefit.

Senator Coonan—No.

Senator ROBERT RAY—You are talking about the taxable rate.

Senator Coonan—Yes.

Senator ROBERT RAY—My point is that it is a marginal decision for a minister to have pay TV put into their home, but I accept it. The rest of us pay, but I accept that. But you do not get all the bonus channels; you pay for them yourself, because watching *Casablanca* is not to be subsidised by the taxpayers.

Senator Coonan—What about *An Inconvenient Truth*?

Senator FERGUSON—*Casablanca* is a foreign affair.

Senator Coonan—I am just being funny.

Senator ROBERT RAY—You are not entitled to the Nickelodeon channel.

Mr Chester—It is not clear to me what these packages are or whether they are packages that can be split up or whatever. I need to check that out as well.

Senator ROBERT RAY—I did not come here without research. I am clear on what they are. I would think the business value package is about the lowest number of channels you can get in a package. You cannot pick and choose. The business digital package is a business value package plus. I am wondering why the plus, when you have got it just for the news channels; that is the way you justify a department paying for it. It may well be that the minister has ordered the business digital package and is paying the difference, the extra money. I do not know, but I would like to know.

Mr Chester—We will find that out.

Senator FAULKNER—Being a nark I am going to approach Foxtel and ask them to have a special Howard government package which has just the five news channels. I am sure that will please everyone. I will have to raise it at estimates again.

Senator Coonan—Enjoy that because I do not think that they would consider that was economical.

Senator FAULKNER—We will test Mr Williams out.

Senator Coonan—We certainly will. We will see if I am right.

Senator FAULKNER—It is too late to round out the Howard government.

Senator ROBERT RAY—I want them rounded out of office, which is a slightly different thing—or hounded out would be fine. That is all on that particular subject, Chair.

Senator CHRIS EVANS—I am not familiar with the order, but it does fit generally under general questions. I would like to ask about the reporting today in the *Age* about the approval of building a US base in Geraldton in Western Australia. The report is that we have been

negotiating with the United States for three years to build a new US military installation at Geraldton near the existing facility. I wonder whether Foreign Affairs can advise me. I know it is primarily a defence matter in the sense that it would be built on defence land, but I wonder what Foreign Affairs can tell me about the negotiations and process and their engagement in this decision, if it is true.

Mr Luck—I do not think I am in a position to enlighten you on this. It is a matter for the Department of Defence. I have only seen the report this morning in the *Age* and I do not have any detail that I can provide you.

Senator CHRIS EVANS—Can I take from that that you do not know whether the department has been engaged in the issues, or that you have not been?

Mr Luck—I have not been and I do not know that the department has. It is a Department of Defence matter.

Senator CHRIS EVANS—Yes, but I would have thought, given that it is a negotiation between the two countries about a very substantial matter, that at the very least you would have been in the loop or advised of negotiations. How do these things normally occur? I know Defence has direct relations with Defense in the United States. I would have thought if there was a decision to build a new US military base in Australia someone might have mentioned it to you.

Mr Chester—I am sure an area of the department was aware of this, but I do not know which area at this point in time.

Senator CHRIS EVANS—Perhaps the department can find something out or find a relevant officer. We might come back to it a little later rather than explore it now and share our ignorance.

CHAIR—What is the next issue?

Senator FAULKNER—I have another brief general question. A constituent has raised with me something they may have come across through personal experience. I thought it was of sufficient interest to raise it with you. It is not a personal matter; it is a policy matter. The constituent claimed that there were such a number of social and personal links between the Torres Strait islands and PNG—marriages and the like—that there are no longer any passport controls between PNG and the Torres Strait. The constituent asked me why that might be the case. I was not able to help, but I knew you would be. I am asking you if that is the case and, if it is, why is it so?

Mr Chester—I do not know the answer to that. I think what you are saying is there has been a change and there is no longer any passport control.

Senator FAULKNER—I am not aware if there has been a change. It is a matter which has been raised with me by a constituent. I thought this was a perfect general question to ask the Department of Foreign Affairs and Trade because I did not have the expertise to answer it myself. It may or may not be factual.

Mr Chester—It was not something I honed up on prior to coming here. I did not expect this one.

Senator FAULKNER—I thought you would cover all bases. David A Ritchie may well be able to help.

Mr Ritchie—The agreement between Australia and PNG on the Torres Strait does contain provision for traditional movements across the board which may be without passports. That may be what your constituent asked.

Senator FAULKNER—I understand. Have there been any changes to that arrangement?

Mr Ritchie—Not to my knowledge. I can check and get back to you.

Senator FAULKNER—That is quite a longstanding arrangement, isn't it?

Mr Ritchie—It is, yes.

Senator FAULKNER—We are talking decades.

Mr Ritchie—That is my recollection.

Senator FAULKNER—But you are not aware of any changes?

Mr Ritchie—No, I am not aware of changes.

Senator FAULKNER—I will be able to report that to the constituent who raised it with me. By the way, are there any particular security issues that are raised because of that?

Mr Ritchie—There have been allegations of movements of drugs and arms across the border, but these have been looked into and my understanding, from the AFP and others, is that there has been no basis for those allegations.

Senator FAULKNER—Is this based on a formal MOU? It is a formal agreement of some description, isn't it?

Mr Ritchie—Yes. It is the Torres Strait agreement.

Senator FAULKNER—There have been no changes to that?

Mr Ritchie—No. There are periodic reviews of it. In fact, every year there is a review but there have been no changes.

Senator FAULKNER—Thank you for that.

Senator ROBERT RAY—It is probably an appropriate time to do a quick review of the Cole inquiry. I understand there are a few witnesses about. If we get those, we will proceed.

CHAIR—I am not sure we were expecting that, but nevertheless—

Senator ROBERT RAY—They were. They are keen, in fact.

CHAIR—It is a very versatile department.

Senator ROBERT RAY—Yes. Firstly, what were the costs that accrued to DFAT coming out of the Cole inquiry?

Ms Bird—I will give you the costs using perhaps the same categories as we have used previously, for consistency purposes.

Senator ROBERT RAY—As long as it is a full and comprehensive coverage, we are happy whichever way you do it.

Ms Bird—Let me start with the legal costs then. I should perhaps indicate at the beginning, we do think that these costs will be the final costs for the Cole inquiry. As I said, let me go through the categories. These figures are as at 9 February, but we hope are the final ones. Total legal costs are \$997,841. I should indicate they have gone down from the ones I gave you at the last estimates. The reason for that is we have had reimbursement from Comcover of \$500,000 towards the legal costs incurred by the department.

Senator ROBERT RAY—Why was that?

Ms Bird—We have an arrangement with Comcover under which, as part of the Comcover policy, they cover up to a maximum of \$500,000 of legal costs arising from an officer, including a former officer, being legally compelled to attend the inquiry, even if a wrongful act is not alleged, if attendance at the inquiry arises out of the normal course of duties of the organisation.

Senator ROBERT RAY—If I asked what your expenses were and what your costs were, I would get two different answers.

Ms Bird—Yes.

Senator ROBERT RAY—The expenses in fact are almost \$1.5 million and your costs are \$997,000.

Ms Bird—Correct. The expenditure is, as you said, close to \$1.5 million. It is \$1,497,841, but the cost to the department is \$997,841.

Senator ROBERT RAY—From the taxpayers' point of view they would think almost \$1.497 million?

Ms Bird—We have insurance with Comcover that covers our legal costs.

Senator ROBERT RAY—Other costs?

Ms Bird—Travel costs—I should indicate these have gone down slightly also from the figure we gave you last time. The total travel costs are \$136,536.

Senator ROBERT RAY—Any other expenses?

Ms Bird—Yes. There is the final category which we have called other administrative expenses. That is \$34,347.

Senator ROBERT RAY—Are you able to estimate the amount of staff hours that have had to be spent on that?

Ms Bird—As we have discussed at previous estimates, that is really not possible. It has been absorbed within the department's staffing costs.

Senator ROBERT RAY—The department of finance will want to know why you can absorb all these extra things, why you had fat in the system.

Ms Bird—As we discussed previously, we are a very flexible organisation. We reorganise to meet peak demands.

Senator ROBERT RAY—I will pass that on to Finance that you are flexible, capable and able to be reorganised. Good luck at the ERC.

Mr Chester—We put off doing other things.

Senator ROBERT RAY—What did you put off then?

Mr Chester—I do not think you could—

Senator ROBERT RAY—What functions did not you fulfil?

Mr Chester—I do not think you could list—

Senator ROBERT RAY—This flexible, capable department.

Mr Chester—the particular items, but staff were moved from parts of the department to other parts of the department to cover this, so there would be less resources in other areas.

Senator ROBERT RAY—You move people from the western front to the eastern front; I was just wondering for what purpose. What was not done?

Mr Chester—There were reduced resources in a number of other areas of the department, so things were slowed down in our corporate area. Things that perhaps would have been done were postponed for six months or so before they were carried out.

Senator FAULKNER—Could I just ask you to repeat that other figure; I did not get it all.

Ms Bird—Other administrative expenses were \$34,347.

Senator FAULKNER—Just on the \$500,000, is that a professional liability insurance figure? Is that how you would describe it?

Ms Bird—It is part of our policy with Comcover, which covers a range of things I understand, but it includes legal costs when officers of the department have to appear before a legal inquiry.

Senator FAULKNER—It is actually for legal costs. It was obviously in the legal costs area.

Ms Bird—Yes.

Senator FAULKNER—I am just trying to understand whether this is what broadly is defined as professional liability.

Mr Chester—The policy we have with Comcover covers quite a lot of areas. I mean, we have a lot of our assets insured with Comcover. Our Comcover policy also includes legal cases—for example, in the current Trent Smith case, the department's expenses are being covered by Comcover, and it also covers, as Gillian said, the instances where individual staff of the department are required to appear either in court or before commissions.

Senator FAULKNER—How often would you say, Mr Chester, the Department of Foreign Affairs and Trade has an insurance payment under Comcover?

Mr Chester—That we get reimbursement from Comcover?

Senator FAULKNER—Yes.

Mr Chester—I do not know the answer to that. We could probably find out. I am only aware of these two instances in relation to legal matters, the Trent Smith case and Cole. With damage or loss of certain assets that are covered, some of those claims would be reasonably regular.

Senator FAULKNER—I think you or Ms Bird indicated that \$500,000 figure is a maximum payment under Comcover. Could you confirm that? I believe that was the evidence that has just been given.

Mr Chester—That is right.

Senator FAULKNER—Is this the first time that maximum payment has been made to DFAT?

Mr Chester—I would need to check, but I suspect that that is probably a maximum payment in relation to that particular coverage. There may not be maximum payments in relation to other elements of the insurance cover we have.

Senator FAULKNER—Yes. But I am asking has the department ever previously reached the maximum payment figure of \$500,000?

Mr Chester—I would need to check that. I do not know.

Senator FAULKNER—Does DFAT pay premiums to Comcover?

Mr Chester—Yes, we do.

Senator FAULKNER—Has the payment of this \$500,000 affected your premium?

Mr Chester—Not yet—if it does.

Senator FAULKNER—That is a masterful answer, even for you. That is one of your best efforts, 'not yet'.

Mr Chester—I suspect it will. I am assuming that the premium is calculated in a similar way to our Comcare premium and the way other insurance companies calculate premiums. I would expect it may have an impact in the future but, given this is a whole-of-government scheme, I would think the impact will be fairly minimal compared to the benefit that we have got out of the policy.

Senator FAULKNER—What are your premiums to Comcover?

Mr Chester—Hopefully, our CFO can answer that.

Senator FAULKNER—Hopefully.

Mr Chester—I do not think we have an answer, but we might have a ballpark figure. We will take it on notice.

Senator FAULKNER—Are you really saying to us you do not know how much you are—

Mr Chester—We do not have it here.

Ms Bird—We do not have it here. I would rather not mislead you.

Senator FAULKNER—No. I do not expect you to, Ms Bird. Perhaps this is one where a quick telephone call back to the one or two people who are listening over there in the RG Casey building might be able to assist us.

Mr Chester—We will do that. It is readily available.

Senator FAULKNER—Yes, I would have thought so. Given your comments about the service-wide implications of premiums, which I heard, do you know whether other agencies are claiming from Comcover for costs relating to the Cole inquiry?

Mr Chester—I do not know.

Ms Bird—We are not aware of it.

Senator FAULKNER—I thought you were suggesting that this might be the case.

Mr Chester—No, not at all.

Senator FAULKNER—That there were service-wide implications.

Mr Chester—I was talking about the fact that Comcover is a service-wide insurance scheme.

Senator FAULKNER—Yes.

Mr Chester—Given that there are a number of agencies contributing to it, that was the only point I was making.

Senator FAULKNER—I was asking whether the premiums were affected, and I thought you were suggesting that one element of whether the extent to which premiums are going to be affected—I suspect they are given your answer ‘not yet’—was from some understanding that other agencies were also drawing on this cover.

Mr Chester—No. I do not know what other agencies are doing and whether they are drawing on Comcover, or even whether they have insurance with Comcover in this particular area.

Senator FAULKNER—Just so we can get the full picture in relation to Comcover, DFAT and AWB, are there any other claims that might be stress claims or workers compensation claims or something like that are—

Mr Chester—That is Comcare rather than Comcover.

Senator FAULKNER—Is it ‘only’? Does Comcover cover only legal risk? I thought you were saying there are a whole range of areas, but legal—

Mr Chester—It covers assets, whereas Comcare involves workers compensation.

Senator FAULKNER—Are there any Comcare claims?

Ms Bird—Not that we are aware of, no.

Senator FAULKNER—If there were, I am sure you would be aware of them.

Ms Bird—I am not aware of any.

Senator FAULKNER—I did not mean to interrupt Senator Ray’s flow there.

Senator HOGG—On the figures that you gave us, Ms Bird, are they inclusive or exclusive of GST?

Ms Bird—These figures are GST-exclusive.

Senator FAULKNER—Can you take on notice my question about Comcare claims then? You said, ‘Not that we are aware of.’

Mr Chester—Comcare claims in relation to—

Senator FAULKNER—Stress, workers compensation or whatever it might be in relation to the AWB. If there were any, and that may have been an element of it.

Mr Chester—We will take that on notice

Senator FAULKNER—Mr Chester, to save time, can I ask on notice whether the department could please provide a disaggregation—a breakdown—of the three categories: legal costs, travel costs and other costs. It might save us a considerable amount of time and the advantage for the witnesses at the table, of course, is that it means there are no follow-through questions on the disaggregation. Can you provide that?

Ms Bird—We can do it now if you wish.

Senator FAULKNER—No, I thought we might save a bit of time. Can you provide it on notice? It depends how long it will take. How long will it take?

Ms Bird—The breakdown of the legal costs is very straightforward, if you wish that now.

Senator FAULKNER—All right.

Ms Bird—The legal costs, broken down, are: barristers' fees, \$282,867; the solicitors' fees for the department and its employees, \$1,103,497; and the legal costs for our current and former employees who sought separate legal representation are \$111,477. Those of course are aggregate amounts. You deduct \$500,000 for the total legal costs.

Senator ROBERT RAY—A newspaper article in the *Australian* of 30 November contained the unkind headline, “‘Duped’ Downer sees no need for change”. It was reported there that Minister Downer said there was no need for a major review of DFAT's internal procedures. He said that his department had already had another look at how sanction regimes were generally administered. He is then quoted as saying:

They have just made sure the procedures are effective and adequate ... There have been some minor changes.

My first question is: what are the minor changes?

Ms Bird—As the minister indicated, we are constantly keeping our activities, including obviously in the sanctions area, under review to make sure that we are performing those tasks as efficiently and as effectively as we can. With the handling of sanctions in the department, the prime responsibility for that is in our international legal branch, which works closely with the geographic areas. They are constantly looking at how we implement those sanctions with a view to making sure that they are kept fully up to date. It is worth indicating maybe that there are a lot of different sanctions regimes; it is not a case of one template. We need to make sure that each and every sanction regime is properly and effectively implemented.

Senator ROBERT RAY—Commissioner Cole, in volume 4, page 85, paragraph 30.179, said:

DFAT did not have in place any systems or procedures in relation to how its staff should proceed in response to allegations relating to the breach of sanctions.

What have you put in place to meet Mr Cole's criticism or observation, whichever way you want to approach it?

Ms Bird—If we become aware of information which could reasonably be suspected to relate to an offence under Australian law—that would obviously also relate to the sanctions—the department’s general practice is that this will be referred to the Australian Federal Police. That is set out in a number of areas; for example, it is explicitly set out in our code of conduct for overseas service.

Senator ROBERT RAY—That, of course, presumes that those reading this information (a) bother to read it, and we know in many instances in the department and ministerial offices they were not read, and (b) be able to interpret and understanding that there is a problem.

Ms Bird—We also conduct workshops and training on issues such as foreign bribery offences under Australian law to ensure that officers are appropriately briefed, and we of course have our own legal area which officers can consult on these matters.

Senator ROBERT RAY—When is the next training class to brief staff on the procedures to deal with fraud?

Mr Chester—These are regular workshops that we do. I think they occur every two to three months in Canberra and at overseas posts. They are compulsory courses for all staff going overseas on posting. They are compulsory for all new starters in the department and, as Ms Bird said, in these conduct and ethics workshops there is a focus on this particular element.

Senator ROBERT RAY—Would it be possible at any stage to invite not a large number but a select number of MPs to sit in and watch this process to satisfy themselves that the training is thorough and detailed?

Mr Chester—I am happy to look into that.

Senator ROBERT RAY—Thank you.

Mr Chester—It is probably something you should take up with the minister, I guess, but it sounds sensible to me.

Senator ROBERT RAY—We do not often shoot the breeze, the minister and I. It is not that I dislike him at all, but we do not. So I thought I would take it up here as a more convenient way of doing it. In his report, Commissioner Cole stated at volume 4, page 83, paragraph 30.171:

The critical fact that emerges is that DFAT did very little in relation to the allegations or other information it received that specifically related to AWB, or related generally to Iraq’s manipulation of the Programme. DFAT’s response to the information and allegations was limited to seeking AWB’s assurance that it was doing nothing wrong.

How do you respond to that critique?

Ms Bird—Commissioner Cole’s report is very carefully and tightly written and I think it is very important to take a strand through to its completion. If you read on after that particular quote that you have just read he then goes on to conclude, ‘DFAT’s lack of action is explicable for a number of reasons.’

Senator ROBERT RAY—Hold on. This is not me asking for you to make an adverse judgement on the particular paragraph I have read out; it is me asking you to respond that,

having made that observation—we are not allocating blame one way or the other; we will do that at some later stage if you like—what action has the department taken to correct this perceived criticism by Cole?

Ms Bird—As I said, I do not take that as a criticism because he then goes on to list—I can go through them if you wish—six reasons why that was the case. They are in volume 4, pages 84 to 87, and I can go through each of those six, but they are six good and sound reasons which explain the action we took at the time.

Senator ROBERT RAY—But implicit in what Cole is saying is he would not want you to repeat it. Even though he finds reasons that this occurred, the clear implication is that he would like you to take steps—he does not make recommendations because that was not in his terms of reference—to make sure that you can handle these issues better in the future. If you do not read it that way, I feel sorry for the department.

Ms Bird—With respect, I think any fair reading of the report would show that we handled this properly and professionally and we will continue to do so.

Senator ROBERT RAY—You might say that in the reading of the report. We may disagree. I do not agree with you, if that is your interpretation of the report. That is not for us to debate here. How many sanctions regimes are we currently looking at? Is it nine?

Ms Richards—There are currently 12 UN sanctions regimes in place.

Senator ROBERT RAY—What is the responsibility of DFAT to see that those sanctions are enforced?

Ms Richards—DFAT takes a coordinating role across the government in implementing UN sanctions into domestic law. There are a number of agencies involved. DFAT is one of them. Depending on the sanctions regime, there will be a number of other agencies involved who share a role in implementing the sanctions. Principal among those are the Australian Customs Service, the Department of Defence, the Department of Immigration and Citizenship; and, if there are travel restrictions, the Department of Transport. There may be other agencies depending on the design of the sanctions regime.

Senator ROBERT RAY—Are you continuing to take a post-office box approach, or are you being a little more supervisory of these ones?

Ms Richards—We are continuing to take our responsibilities seriously.

Senator ROBERT RAY—So, the post-office box. Have we had any complaints or allegations of breach of any of these 12 sanction regimes we are currently taking a dilatory interest in?

Ms Richards—No, I am not aware that we have had any complaints of allegations or breaches.

Senator ROBERT RAY—There are allegations, are there not, in terms of the UN and the North Korean regime, or is that more in the aid area?

Ms Richards—I do not believe that aid is covered in the UN sanctions regime against North Korea.

Senator ROBERT RAY—There is some investigation of the UN into North Korean programs, isn't there? Can you remind me of what that is?

Mr Baxter—There is an audit that has been agreed to of the UN development program activities that have been undertaken in North Korea. So that comes under AusAID.

Senator ROBERT RAY—We are not participating or assisting in that, are we?

Mr Baxter—I think we have an interest in it because we have delivered assistance through UNDP to North Korea in the past.

Senator ROBERT RAY—I thought I read somewhere the minister's view that we were not really going to involve ourselves in it. Am I mistaken there?

Mr Baxter—It is an internal UN audit of the program, which has been ordered by the governing body that looks after UNDP. I am sure AusAID will have more details.

Senator ROBERT RAY—It is a very tight program in AusAID, I understand, so I am not sure whether we will get at it. One of Commissioner Cole's recommendations is that the Customs (Prohibited Export) regulations be amended to incorporate a prescribed form that those applying to export would be required to complete. Is that a matter solely for Customs, or does DFAT have a role in that proposed regime?

Ms Bird—An IDC is currently being chaired by the Attorney-General's Department to look at three of the recommendations that Commissioner Cole made, and that includes that particular recommendation.

Senator ROBERT RAY—It is a work in progress, in other words?

Ms Bird—Yes, that is right.

Senator ROBERT RAY—That is good. Commissioner Cole said in volume 1, page 76, paragraph 269, that both the minister and the officers of the department had pointed out that DFAT 'had no powers to investigate suspected breaches of sanctions or to require the production of relevant documents'. Is that right and how do you respond to his recommendation that an appropriate body be given the power to obtain evidence and information of any suspected breach of sanctions?

Ms Bird—Yes. That is correct, and that is one of Commissioner Cole's recommendations. That is one of the three that are being looked at in the IDC.

Senator ROBERT RAY—I should have known that. It is another work in progress. That is good. Another issue that came out of the Cole inquiry was with regard to correspondence between the AWB and DFAT, on the subject of Jordanian trucking companies, that occurred in October-November 2000. Commissioner Cole noted that the signed version of Mr Stott's letter could not be located in DFAT's files, that the files contained no record of who drafted DFAT's reply and that there was no record or recollection of the legal branch providing any advice or input into the letter signed by Ms Drake-Brockman. That is on volume 4, page 39. Does this point to a weakness in DFAT's ability in tracking documents and, if that is the case, how do you intend to rectify that?

Ms Bird—We do take our record-keeping responsibilities very seriously. I should note that we provided to the Cole commission more than 6,000 documents. This is the only case in

which there was a comment on the manner of the documents' production or filing. We certainly do take our record-keeping responsibilities extremely seriously.

Senator ROBERT RAY—I am not talking about you launching a witch hunt here, but when it becomes obvious that there is inadequate record-keeping, Mr Chester, what do you do about it? Do you go back, track down and try to find the culprit? I am not talking about a Trent Smith type witch hunt here, but just for your own sake, to know where you went wrong so you can rectify it in the future.

Mr Chester—I guess in any organisation if there are issues that come to the attention of management where you think there could be some changes made, you try and investigate them and see whether you can make some changes to make the situation better in the future. With record-keeping in the department, I think it is an issue for all government agencies and the private sector—and no doubt this place here as well—that over the last 10 or 15 years new challenges have emerged in relation to record-keeping, particularly the massive growth in electronic records that are being produced: emails and the like.

DFAT has been quite active over the last five to 10 years in trying to ensure that we do keep abreast of good record-keeping practice. We have done quite a deal of work on electronic record-keeping. We continue to provide training and look at how we can improve our paper record-keeping. That is an ongoing process, and I think it will be an exercise that will be with us for many years to come. But the amount of information that we have to deal with is a challenge.

Senator ROBERT RAY—Is the problem one of record-keeping or retrieval? I know both are linked. You actually put in a variety of documents to Cole at different times, as you discovered more and more, didn't you?

Mr Chester—I think there are challenges on both sides. The retention of records is an issue where we have to focus more on staff awareness, staff training and ensuring that staff understand the obligations of record-keeping. The Public Service has changed dramatically in the last 15 or 20 years. Twenty years ago, the first thing public servants were all taught and learnt was good record-keeping. That is not necessarily the first thing they are taught and is drummed into their heads these days. As I said, at DFAT we have realised that there is a need to make sure that all our staff, when they start in the organisation, are well aware of those record-keeping obligations.

I turn to the issue of retrieval. We have a mixed system; we have a paper system and a number of electronic systems, so retrieval, again, is a challenge. The storage of all this material must be such that it can be easily identified and easily withdrawn from the system to look at. That is one of the projects we have been working on now for a couple of years: an electronic data management system that will allow us to easily retrieve material on particular topics. To use your words, it is still a work in progress.

Senator ROBERT RAY—I turn to one last direct thing coming out of the Cole report. Commissioner Cole found, I think at volume 4, page 60, paragraph 30.116, that none of the relevant DFAT officers could recall seeing or being provided with any of the unassessed intelligence reports indicating that sanctions were being breached by Iraq by levying fees on contracts for the supply of humanitarian goods. What steps has DFAT taken to ensure that

intelligence is distributed to and read by those officers whose responsibility it is to vet and approve applications for the export of goods to countries that are currently under a sanctions regime, or were under a sanctions regime?

Mr Chester—I am not sure whether I can really answer that, other than to observe that I would expect that material relevant to any particular area of the department goes to that area of the department.

Senator ROBERT RAY—You would assume and you would like, but it did not occur.

Mr Chester—We do not know that it did not occur. All we know is that the officers cannot recall reading it.

Ms Bird—I think also it is only fair to say that, in the Cole context, these documents did not refer to Alia. Only one of them referred to wheat, and that one showed in fact that kickbacks were not being paid, so I do not think there is a suggestion that there was intelligence which, if it had been drawn only to the appropriate official, would have led to different action. I do not think that is a fair characterisation of what the Cole report found and, as Mr Chester said, I think we have good systems in place to ensure that intelligence is marked to the appropriate officers.

Senator ROBERT RAY—I think if that was in one case I would agree with you, because it is very easy for a letter to slip through, but from what we gather there was a fair bit of a smell around about this and basically no-one picked it up. I am trying to look into the future. We can go back and rejig the past all day if we want to, but every one of my questions is trying to link that this was identified as a problem or a part problem; what is the department going to do to try to avoid it occurring in the future? I am not trying to be negative here.

Ms Bird—I do not think it was identified as a problem. In fact, in Commissioner Cole's findings, he indicated that the evidence is clear that no-one in the Australian intelligence community, let alone DFAT, regarded the scattered information available of sufficient importance to seek to draw the available material together, let alone assess its credibility.

Senator ROBERT RAY—Exactly. Therein is the problem—that is, you have unassessed raw intelligence without people having the ability to understand its implications.

Ms Bird—If I could go on, Commissioner Cole indicates that it now has credibility only by the application of hindsight and with the knowledge gained from the independent inquiry committee's final report and material discovered in this inquiry.

Senator ROBERT RAY—The thing about intelligence is that it is not evidence and we know it is not evidence. The real art is detecting from it things that can lead you to go and chase evidence. That is my point. So much intelligence is gathered in this country that goes nowhere because people do not understand how to use it, how to interpret it. Apparently everything is hunky-dory; you know how to do it. I beg to differ.

Senator FAULKNER—I have a follow-on issue in relation to the breach of import sanctions, which was canvassed in our last hearing on 2 November 2006. I use the word 'canvassed' advisedly because senators from the opposition were blocked in receiving answers to questions about seven alleged breaches of UN sanctions on imports from Iraq. One related to a shipment of Iraqi oil in October 2000 and six others at the time were not

identified—and, as far as I know, have not been identified since, but they had been referred in February 2006 to the AFP for investigation. Ms Bird certainly is aware of this background and no doubt you have brought yourself up to speed now, Mr Chester, as well. The excuses—and they seemed flimsy at the time—that were provided in refusing to answer questions from me and Senator Ray were that these matters were before the Cole inquiry. That was the excuse given for the broad refusal to answer questions about procedures for handling applications to import goods from Iraq during the time of the UN sanctions regime. With the benefit of Commissioner Cole's report can we now hear from the department whether or not these matters were before the Cole inquiry?

Ms Bird—The Cole inquiry was looking at the operation of the oil-for-food program in its entirety. As you have seen, it is a very comprehensive report. It covered a lot of issues. They certainly had material before them which dealt with the way the oil-for-food scheme operated across the board.

Senator FAULKNER—Does the Cole inquiry deal with this issue about import sanctions at all, about which questions were asked in the last estimates round but not answered? Does Mr Cole report on that at all?

Ms Bird—Commissioner Cole does not report on the issue of oil imports. My point was that before the Cole inquiry there was material which related to the totality of the oil-for-food program and the way in which it operated. That clearly was an import as well as an export scheme. They were pretty comprehensive sanctions against Iraq.

Senator ROBERT RAY—That is fine, but let us get a clear answer to Senator Faulkner's question. He asked you: to your knowledge—and you cannot have perfect knowledge on this—did the Cole report comment on the seven cases of potential breach of sanctions of importing oil or chemicals to Australia?

Ms Bird—I am not aware offhand of a particular comment in the Cole report, but I should indicate that there were of course many thousands and thousands of documents before Commissioner Cole. I have not gone through each and every one of them.

Senator ROBERT RAY—No, no—come on. You are not being asked now to go back and justify your position of three months ago and you are not being asked whether documents may or may not exist; you are being asked in the volume report, to your knowledge—I think you have read it fairly thoroughly, because you have responded today—was there any mention of this issue? If there was, we would like to know because it would help us in our inquiries.

Ms Bird—We are not aware of a specific reference to oil import, but he did look at the whole machinery of the oil for food program and the way it operated. He looked at the role of the UN, for example, in vetting contracts. We are looking at the chapter now, but I think you are right: there was not a specific thing on oil imports, if that is what you are asking.

Senator ROBERT RAY—In other words, to our knowledge Cole did not investigate this set of allegations; that is to put it very specifically. He may have looked at the totality of the oil for food program.

Ms Bird—No, you are correct. He was looking at the three particular cases that were referred to: AWB and the other two. In doing so he did, of course, have to look at the way the oil for food program operated.

Senator FAULKNER—In fact, these matters were outside his terms of reference, weren't they?

Ms Bird—Yes, that is correct.

Senator FAULKNER—I am glad you acknowledge that now, because you certainly did not acknowledge that at the hearing in November last year.

Ms Bird—I think I actually said at the hearing that it was outside the terms of reference. If I did not, you are correct, that is correct—

Senator FAULKNER—They are outside the terms of reference.

Ms Bird—Yes.

Senator FAULKNER—I think Senator Ray and I attempted to ask a range of questions in relation to these seven cases. This department may not know, but are these matters still before the AFP to the knowledge of the Department of Foreign Affairs and Trade?

Ms Bird—What I can say is that there is obviously an ongoing investigation that the AFP is conducting, but, really, questions on that investigation are probably best directed to the AFP. As you know, we did refer seven matters to the AFP—

Senator FAULKNER—I am not going to ask about the AFP investigation, but it was your department, was it not, that referred the matters to the AFP?

Ms Bird—We did.

Senator FAULKNER—So I have asked: to the best knowledge of the Department of Foreign Affairs and Trade—you may not know—are you aware whether that investigation is ongoing or it has been concluded?

Ms Bird—We get periodic updates from the AFP, but I do think it is best if the AFP talks about the status of their investigation; they are best placed to know what can and should be put in the public domain.

Senator FAULKNER—All I am asking is whether your department has been informed by the AFP that the investigation has concluded? I am not going to ask questions of the Department of Foreign Affairs and Trade that are better directed to the AFP, but, given that your department is the referring department on these seven matters, I think this question is perfectly reasonable and, frankly, the sort of question that has been asked at estimates committees like this for decades.

Ms Bird—I do understand and I hope you appreciate my caution as I simply do not want to stray into matters which are legitimately those of the AFP and where I feel they are best place to answer, but in answer to your direct question I can say we have had an update that has given us a state of play on those matters that have been referred.

Senator FAULKNER—Your answer to this question has an impact as far as senators are concerned on the sorts of questions we ask, because we have an impeccable record of not

trampling into areas that are operational matters. When I say 'we', that is we in the Australian Labor Party. We do respect those sorts of delineations and boundaries. We certainly try not to inadvertently trample into those sensitive operational matters, and that is one of the reasons that I asked the question. Beyond that, I think it is a perfectly reasonable question and certainly does not go to the matter that could be described or defined as operational in any way, shape or form. But there is a point to it apart from that; it is so senators have in their minds what the status of such an investigation is and it does in fact inform our questioning. Can I now ask a question that was also canvassed on 2 November 2006: what were Australia's obligations in regard to United Nations' sanctions on imports from Iraq? Is the department now in a position to explain those obligations or outline them to this committee?

Ms Bird—As well as having a ban on exports, except in certain circumstances which were the oil for food, there was also a ban on imports from Iraq, but the sanctions regime did allow for imports of oil under certain circumstances.

Senator FAULKNER—Is Ms Richards going to provide a little more information?

Ms Richards—Yes. There are a whole range of UN resolutions establishing this scheme. Security Council resolution 661 of 1990 imposed a comprehensive sanctions regime, including a complete trade embargo and financial embargo. That started in August 1990. That was subsequently amended to create the oil for food program, which allowed for the supply of goods, humanitarian goods and payments intended for medical purposes or foodstuffs in humanitarian circumstances. That was introduced by resolution 986 of 1995 and became operational in May 1996. Those international legal obligations were implemented into Australian law by a range of different measures—in particular, the trade embargo was implemented under the Customs (Prohibited Imports) Regulations and the Customs (Prohibited Export) Regulations.

Senator FAULKNER—Could I now ask a question in relation to the obligations that Australia has in relation to UN sanctions on imports from Iraq. Which agency or agencies had responsibility for ensuring compliance with those sanctions? Whose job was the compliance responsibility?

Ms Richards—Again it was a shared responsibility, with a number of agencies involved. Obviously the Australian Customs Service has overall responsibility for the Customs Act and regulations; however, in relation to this sanctions regime, the Minister for Foreign Affairs had a power to issue permits in respect of particular imports and exports if he was satisfied that the import or export would not breach Australia's international obligations, and that would generally be considered if it fell within one of the exemptions to the scheme. In terms of final enforcement, obviously AFP is the body with investigative enforcement powers in relation to Australian domestic law.

Senator FAULKNER—But the AFP's role would only be in the event of a referral from either of the other agencies, wouldn't it?

Ms Richards—Yes.

Senator FAULKNER—Can officials at the table now confirm that the company BP wrote to DFAT in 2001 to request a retrospective approval for an October 2000 shipment of Iraqi oil into Australia?

Ms Bird—Yes, I can confirm that.

Senator FAULKNER—Can you confirm the date of that communication?

Ms Bird—Yes—it was in December 2001. I can give you the precise date, if you like. It was 4 December 2001.

Senator FAULKNER—Who had the responsibility of determining the issue of respective approval at a departmental level? Where does that fall within your bureaucracy?

Ms Bird—The request that BP made was made to our Middle East and Africa branch. That branch sought legal advice on the matter.

Senator FAULKNER—Appreciating in the circumstances that the Middle East branch sought legal advice, in the ordinary course of events are the approvals handled at that desk in that branch?

Ms Bird—Yes.

Senator FAULKNER—In normal, uncontroversial circumstances?

Ms Bird—Yes, that is correct.

Senator FAULKNER—Legal advice was sought?

Ms Bird—Correct.

Senator FAULKNER—Can you say when was it sought?

Ms Bird—Yes. That was also in December and possibly into January. It was after that request.

Senator ROBERT RAY—Mr Chester wants to know who you sought legal advice from.

Senator FAULKNER—Can you answer Mr Chester's question?

Ms Bird—I cannot go into the content of the advice. I am not sure if I should say who we asked, either, but we did seek legal advice.

Senator ROBERT RAY—Take the 'who you asked' on notice and consider it in the context of the other lawyers.

Mr Chester—I am still working on that.

Senator ROBERT RAY—I know.

Mr Chester—I am reluctant to lose this one, so I am still going.

Senator ROBERT RAY—You will find a precedent your way, but there will be precedents the other way, too.

Mr Chester—That is where I have got to at this stage.

Ms Bird—I would not want to mislead. We sought that advice from in-house.

Senator FAULKNER—I was going to ask whether it was internal or external.

Ms Bird—It was internal, and our legal area also consulted the Attorney-General's Department.

Senator FAULKNER—As a result of that legal advice, is it true that certain action was taken in relation to the retrospective approval?

Ms Bird—As I said, I will not go into the detail of the legal advice we got, but suffice to say that—it is on the public record—the upshot was that we did not issue an import permit retrospectively.

Senator FAULKNER—That is right. Retrospective approval was not given?

Ms Bird—That is correct.

Senator FAULKNER—Who is the decision maker in that instance? Is that done in the Middle East branch, is it done at a more senior level of the department or elsewhere?

Ms Bird—It was done in the Middle East and Africa branch, following consultation with our legal area, which in turn consulted the Attorney-General's Department.

Senator ROBERT RAY—What happens then? You have not given them retrospective approval, which basically implies that their import has not had approval. What then happens? Whom do you report that to? Is it to the Federal Police straightaway?

Ms Bird—No. It might also help if I go through what else we did on this matter.

Senator FAULKNER—By all means. If you would like to give us a status report on it, it might save a lot of time.

Ms Bird—In addition to seeking the legal advice on whether or not a retrospective permit could be issued, we also went to the UN to check whether BP had a valid UN approval for the oil shipment. That is obviously a very important piece of information. BP provided us with a UN approval and we sent that to UN mission so that we could follow up with the UN. We did that in parallel. It is an important point to make. We were not looking at an issue which was a breach of UN sanctions. There was an issue to do with the permit under the customs regulations, but importantly there was a UN approval for this shipment. Those were the two things that we wanted to verify. We wanted to check on the UN approval and we wanted to get advice on whether we could retrospectively issue an import certificate. On the latter we were not able to do so.

Senator ROBERT RAY—Did you get a response from A-G's when you consulted them?

Ms Bird—We did get advice. I will not go into the advice, but the upshot was that we were not in a position to issue a retrospective import certificate.

Senator ROBERT RAY—I am not asking you for the advice, but if you go to A-G's with a potential problem that could involve illegality are they only entitled to give you advice back or can they have some form of derivative use that signals an investigation by them?

Ms Bird—You would really need to ask the Attorney-General's Department. We asked for specific advice, which they provided us.

Senator ROBERT RAY—I assume you are looking at the legalities of things and, when you seek advice from A-G's, if they come to the conclusion that something is not legal, can they take independent action to pursue it or are they bound as a client by you just to give you advice?

Ms Richards—That is a question that would have to be put to the Attorney-General's Department.

Senator ROBERT RAY—You are the client. You should know the conditions on which advice is given to you. Is there some form of derivative use attached to this?

Mr Chester—That is a good question. I do not know the answer.

Senator ROBERT RAY—Neither do I. I have no idea. One of the things that we will ponder about is that nothing is done about this in this time frame, yet several years later the matter goes to the Federal Police. Why didn't it go to the Federal Police then?

Ms Bird—As I said, at the time we looked at this issue. There were discussions with Customs and it was decided that no further action was required on that matter.

Senator ROBERT RAY—What changed?

Ms Bird—The difference is that, particularly in the context of the Volcker report, we were in a very different position in, say, late 2005-early 2006 than we were back then, in terms of the information that was then available about the extent to which the oil for food program had been systematically corrupted. That had been done worldwide by a large variety of companies. With the benefit of hindsight and everything we knew about the problems that there had been, we wanted to be doubly sure that any compliance concerns which had come up during the course of the oil for food program were properly investigated. That is the difference.

Senator ROBERT RAY—Were you unaware of the other six cases when the Middle East section sought legal advice and dealt with this matter? Were you thinking that there was only one case?

Ms Bird—This was the one case on which the advice was sought.

Senator ROBERT RAY—When did you learn about the other six cases?

Ms Bird—I am reminded, and it is quite correct, that I need to be very careful what I say about matters which are the subject of ongoing police investigation.

Senator ROBERT RAY—Yes, you have to be. It cannot be adduced in that investigation. It is privileged from that point of view, but if it affects public perceptions—

Ms Bird—We checked with the AFP again and have been advised that we should not comment on matters that may reveal sources of information, investigatory practices or prejudice ongoing investigations. I will bear that in mind and answer your questions as best I can with that in mind.

Senator ROBERT RAY—We will bear it in mind too, and you will remind us. You have to understand that we are not legally bound by the AFP strictures, but we would like to assist them. It is a difficult road. When did you become aware of the other six cases?

Ms Bird—As I said, we are getting into matters which are subject to an ongoing investigation.

Senator ROBERT RAY—I doubt that. When these matters were referred to the Federal Police, had they been in the public domain?

Ms Bird—No, I do not believe so; not that I am aware of.

Senator FAULKNER—Were all the matters referred at the same time?

Ms Bird—Yes. It might help if I explain the referral process a little bit. As we mentioned at the last estimates, the referral was made by the secretary of DFAT in February last year. That was a general referral. We then had discussions with AFP about what was required for them to take this forward and that led to us presenting in April of last year a detailed dossier which dealt with those seven particular cases.

Senator ROBERT RAY—Do you know how many other imports of oil by BP occurred in that period at which point they had approvals? Have you been able to go back and track the pattern of BP's oil imports from Iraq?

Ms Bird—Yes. Our records indicate that BP imported oil from Iraq on four other occasions.

Senator ROBERT RAY—We are finished with that area. I just wanted to move on to the engagement of a consultant. It is Spherion Recruitment Solutions, otherwise known as Verossity. I understand the department employed them four times in 2004-05 and three times in 2005-06. I noticed the reason given, which stands in strict contrast to Mr Chester's earlier statement, was to assist in the preparation of ministerial speeches, yet we have heard about how you move people around the department and maximise resources. Why in heaven's name do we have to go and hire someone to write Mr Downer's speeches, vacuous though they are?

Ms Wood—Would you mind repeating your question please?

Senator ROBERT RAY—I noticed that Spherion Recruitment Solutions were engaged four times in 2004-05 and three times in 2005-06 to assist in the preparation of ministerial speeches. My first question is: why cannot the minister's staff of 14 and the departmental staff, bordering on approximately 2,040 employees, assist? Why do we have to bring in outsiders to write a minister's speeches?

Ms Wood—As you are aware, the consultant assisted in the preparation of a relatively small number of speeches. To set it in context, in the last six months of last year, from July to the end of December, the speechwriting unit that we have set up in the department assisted with the preparation of 68 speeches. Comparatively, the services of the outside consultant were quite small and this year we have not employed an outside consultant to assist with the preparation of speeches at all.

Senator ROBERT RAY—How many people are in the speechwriting area and whom do they write for?

Ms Wood—There are two people in the speechwriting unit, a speechwriter and an assistant speechwriter, and they are assisted in preparing their speeches with input from across the department, depending on the subject of the speech.

Senator ROBERT RAY—What speeches were Verossity employed to assist with in 2004-05 and 2005-06?

Ms Wood—Do you want me to list those?

Senator ROBERT RAY—Yes.

Ms Wood—There were seven speeches. One was input into a terrorism white paper, which was drafted in the department.

Senator ROBERT RAY—Do you get the department to draft the white paper but someone else helps draft the minister's speech on it?

Ms Wood—I do not have the full details of what Spherion prepared specifically on that. I know it was input into work related to the terrorism white paper. If you wanted further details, I would have to take that on notice.

Senator ROBERT RAY—Not at this stage.

Ms Wood—They provided some input into an inter-faith dialogue in December 2004.

Senator ROBERT RAY—I am not quite sure I understand that. Where is this inter-faith dialogue?

Ms Wood—I understand that the inter-faith dialogue is a regional initiative to build bridges between religious communities in our region. Again, I would have to find more details of what that was about.

Senator ROBERT RAY—That is ringing a bell now. I remember it at the time. I take it that means DFAT is not too strong on faith, Mr Chester, because they could not write it!

Mr Chester—I would not draw that conclusion.

Senator FAULKNER—I would not have found that question necessary to ask. I knew you were not!

Ms Wood—I should also point out that with the seven speeches that the external consultant was engaged to provide assistance with, he did not claim costs for two of them. One was not completed, and one—

Senator ROBERT RAY—We will get to that. We will go through the seven.

Ms Wood—The third one is one that the consultant did not claim for because it was judged that the speech contained a political component.

Senator ROBERT RAY—Which one is that?

Ms Wood—That was the Earle Page lecture in May 2005.

Senator ROBERT RAY—This is the one where the Labor Party are accused of being cowards, basically. We remember it well—collaborators in the 1930s and all that stuff.

Senator FAULKNER—So there are claims for the other ones, but not the political ones.

Senator ROBERT RAY—I am glad we did not pay for that one.

CHAIR—We are always on the edge.

Ms Wood—I should point out that the external consultant does have to sign an undertaking that any advice that is provided is consistent with APS values and, on the basis of that, he did not claim for any remuneration for that speech.

Senator ROBERT RAY—He did a freebie.

Senator FAULKNER—But he got paid for the other ones.

Ms Wood—The fourth one was an economist round table in June 2005 relating to the economy and the environment.

Senator ROBERT RAY—I do not want to verbal you here, but am I right in saying that those four are 2004-05?

Ms Wood—That is right.

Senator ROBERT RAY—Then we go on to the second tranche.

Ms Wood—We are still in 2005. There has not been anything since 2005 that was provided by the external consultant.

Senator ROBERT RAY—The financial year 2004-05 and then 2005-06.

Ms Wood—That is right.

Senator ROBERT RAY—I assume the first four are in 2004-05 and the next three are in 2005-06?

Ms Wood—That is correct. Number five was an input into a Hillsong speech in July 2005.

Senator ROBERT RAY—A bit more faith. Do we know where that speech was delivered?

Ms Wood—I do not have that information but I am prepared to find out for you.

Senator ROBERT RAY—No.

Ms Wood—Number six was input into a Tange lecture in August 2005. The topic was regional foreign policy challenges and the consultant was contracted to provide input into the Conrad Laucke lecture in September 2005 but was unable to complete it due to a family situation, personal reasons.

Senator ROBERT RAY—Is this a former senator?

Senator FAULKNER—It is Condor Laucke.

Ms Wood—I am sorry, it is Condor Laucke.

Senator ROBERT RAY—A distinguished former President of the Senate and no longer with us unfortunately. Why was that not completed?

Ms Wood—That was not completed for personal reasons. There was a situation with his family that he had to attend to.

Senator ROBERT RAY—So basically there were charges for five speeches?

Ms Wood—That is right.

Senator ROBERT RAY—Did that come to \$11,364, averaging over \$2,200 a speech?

Ms Wood—I would have to add those numbers up. I have got the answer here, which was a question on notice, but I have got the aggregated amount for each speech, rather than the total.

Senator ROBERT RAY—We will get it for each speech. I think I have the total here. No, I may be looking at the same thing as you.

Mr Chester—The \$11,000 looks about right.

Senator ROBERT RAY—I would like to get it per speech. What was the charge to help the minister speak on the terrorism white paper?

Ms Wood—\$3,900.

Senator ROBERT RAY—Do you know how long the speech was?

Ms Wood—No, I do not.

Senator ROBERT RAY—It would be about \$2 a word by the look of it. The inter-faith dialogue; there would be a discount on that, I hope!

Ms Wood—\$1,354.

Senator ROBERT RAY—Earle Page is a zero sum?

Ms Wood—That is right. There was no cost.

Senator ROBERT RAY—Even that is over-valued. The economist round table?

Ms Wood—\$780.

Senator ROBERT RAY—The Hillsong speech?

Ms Wood—\$4,550.

Senator ROBERT RAY—Have we got a copy of that speech anywhere that we could have?

Mr Chester—I do not have one with me.

Senator ROBERT RAY—If you had, we would have worried! I am putting it in a question to be taken on notice.

Mr Chester—It would probably be on the minister's website, so I am sure it is available.

Senator ROBERT RAY—I am not sure, because it goes back a financial year.

Mr Chester—No.

Senator ROBERT RAY—If it does not involve enormous expenditure and research in your department, and if your up-to-date record keeping is as good as you say it is, you should be able to give us a copy of the Hillsong speech. We have one to go, which is the Tange lecture.

Ms Wood—That was \$780.

Senator CHRIS EVANS—It got cheaper as it went along

Senator ROBERT RAY—No—no. 5 was the most expensive. What was the speechwriter's role in the Earle Page lecture?

Ms Wood—He was asked to provide material on freedom and foreign policy, but it did not meet the contractual guidelines on apolitical material and so therefore it was not paid out of departmental moneys.

Senator ROBERT RAY—Do we know if Mr Downer has a speechwriter in his office within his 14 staff?

Mr Chester—There is no-one in his office designated as speechwriter.

Senator ROBERT RAY—Normally the department knocks over a draft and it is an iterative process between the department and the minister's office.

Mr Chester—That is the normal course.

Senator ROBERT RAY—I thought that was the case.

Senator CHRIS EVANS—Can I take it that the minister paid for the Earle Page speech himself?

Ms Wood—That is not clear from the material that I have.

Mr Chester—We do not know that.

Senator CHRIS EVANS—That was implicated; I am not putting words in Ms Wood's mouth. The implication was that someone else had paid for it. Did the speechwriter provide an invoice and the department decided that it was not within the guidelines, or did the speechwriter decide of their own initiative that it was not within guidelines?

Ms Wood—I would have to look into the details of that. The speechwriter was engaged through Verossity, formerly Spherion. I understand that they undertook the negotiations with the speechwriter about whether the material was consistent with their contractual obligations or not. I would have to look into that.

Senator FAULKNER—Do we know who the speechwriter was?

Ms Wood—Yes.

Senator FAULKNER—Who was it?

Ms Wood—Mr Christopher Pearson.

Senator ROBERT RAY—Got it in one!

Senator FAULKNER—Thank you very much—game, set and match!

Senator ROBERT RAY—I have a serious question: who chose Spherion? This is the same person who writes in the newspapers every second day bagging us. He is not a bad bloke, but he bags us. Who chose Spherion?

Mr Chester—We have a standard contract with Spherion that we use for short-term engagements within the department.

Senator FAULKNER—It is just scandalous, it really is.

Senator ROBERT RAY—Wasn't Andrew Bolt available, or Greg Sheridan, or Piers Akerman? Christopher Pearson got paid \$4,550 to write a speech for Alexander Downer for Hillsong!

Senator FAULKNER—He got nought dollars for the Earle Page lecture contribution.

Senator ROBERT RAY—Not only have we got the snout in the trough; we have all the trotters as well. We had better move on.

Senator NETTLE—Can I have an interlude?

Senator ROBERT RAY—Chair, a voice from the back is seeking the call.

Senator NETTLE—I wanted to ask some questions on climate change. The government made some comments about taking ‘new Kyoto’ to the Nairobi climate change conference. I am wondering whether any document on that was presented in Nairobi that was prepared by the department?

Ms Adams—The ‘new Kyoto’ refers to the government’s policy of supporting a new international framework for international cooperation on climate change. That basic policy was discussed and promoted in various parts of the Nairobi conference. There is no particular one document that is a new Kyoto proposal, but we made various statements about our position on supporting a new international framework that is capable of engaging all major emitters on a broader basis than the existing agreements.

Senator NETTLE—I wanted to know whether there was a document called ‘new Kyoto’, because that was how the announcement sounded, but there was not, it was a concept in other representations.

Ms Adams—Yes.

Senator NETTLE—I understand that a meeting is coming up soon—the G8 Plus 5—in the United States on climate change post 2012. I am wondering whether Australia has been invited to attend that meeting?

Ms Adams—Are you referring to a meeting that is on this week in Washington?

Senator NETTLE—I knew it was going to be soon in the US.

Ms Adams—There is certainly no shortage of international meetings on climate change but if you are referring to the meeting in Washington, it is the GLOBE MP Legislators Forum. Australia was invited to participate in that and we have observers there.

Senator NETTLE—My description is G8 Plus 5. Does that sound right?

Ms Adams—It is part of the G8 Gleneagles dialogue. There are various components of it. G8 Plus 5 is one component of it. The GLOBE meeting is a parliamentary wing, if you like, of the G8 group.

Senator NETTLE—You said we are represented there as observers?

Ms Adams—Yes.

Senator NETTLE—Who is representing us there?

Ms Adams—The embassy in Washington is observing.

Senator NETTLE—Is there anyone in the embassy in the US who has specific expertise in climate change?

Ms Adams—Yes. We have particular people who have responsibilities on climate change. I should make it clear that Australia was invited to participate but, because it is a parliamentary sitting period, it was not possible to have parliamentary representatives there.

Senator NETTLE—Were we invited to participate as observers or as members?

Ms Adams—As members. Australia is in the Glen Eagles dialogue process. There are about 20 or so countries. Australia is one of those.

Senator NETTLE—In relation to our involvement in that conference, what position or what brief are we taking on mandatory reduction targets to that discussion?

Ms Adams—If you are speaking about the meeting in Washington this week, it is not a formal negotiation on particular governments' positions.

Senator NETTLE—We are not taking a position in relation to targets.

Ms Adams—No.

Senator NETTLE—I understand that towards the end of last year Kofi Annan made a proposal about including in the millennium development goals the significant reduction of the loss of biodiversity by 2010. He said at the end of last year that the UN had asked all member parties to the biodiversity convention, which includes Australia, to respond to that proposal. Do you know if we have been approached about that and if we have responded?

Ms Adams—I would have to check to be accurate. We are active members in the biodiversity convention but beyond that I would need to check the details of that specific call.

Senator NETTLE—I would appreciate it if you could check if we have been asked to respond to that and, if we have responded, how we have responded.

Ms Adams—Yes, certainly.

Senator NETTLE—Also, could you provide whether our response is public or not, and obviously provide the response. I wanted to ask about our involvement in the Nuclear Suppliers Group. I understand that the next meeting of the Nuclear Suppliers Group in April is going to discuss the US-India nuclear technology deal which, of course, is outside the non-proliferation treaty. As I understand it, that Nuclear Suppliers Group operates by consensus, so Australia would have the capacity to block a decision to go ahead with the US-India nuclear technology deal. Can you provide any information on what position Australia is taking to that meeting of the Nuclear Suppliers Group about the US-India deal?

Ms Kamath—I will start off by saying that the Nuclear Suppliers Group has not yet been asked to make a formal decision on that issue. The next meeting of the Nuclear Suppliers Group is the annual plenary meeting that is taking place in Cape Town, South Africa in April this year. I anticipate that there will be further discussion of the issue. As yet, the Nuclear Suppliers Group has not yet been asked to take a position on it. I can also confirm, as you said, that the Nuclear Suppliers Group takes its decisions by consensus.

Senator NETTLE—Is the Australian government taking a position to that April meeting with regard to the US-India treaty?

Ms Kamath—It is not yet an issue. I might say in a more general sense that the issue relates to the US-India civil nuclear cooperation initiative and the government has already expressed its support for that initiative in a broader sense.

Senator NETTLE—Even though it is outside of the nuclear non-proliferation treaty?

Ms Kamath—The government has welcomed the deal. In fact, the Prime Minister was in India at the time when the US and India announced agreement on a plan for India to separate its civil and military nuclear facilities.

Senator NETTLE—How does that sit with our responsibilities as a signatory to the nuclear non-proliferation treaty?

Ms Kamath—I can make a distinction between two issues. You have the US-India civil nuclear cooperation initiative, which the government has welcomed essentially for three reasons. Firstly, it allows for expansion of international atomic energy agency safeguards in India. Secondly, it is targeted at India's energy sector and looking at meeting India's energy needs in an environmentally friendly way. Thirdly, as Mr Downer has stated in parliament, it is about strengthening the strategic relationship between the US and India, which is a good thing for Australia's interests. Attached to that, the US would like to pursue the issue of international civil nuclear cooperation with India and currently the guidelines of the Nuclear Suppliers Group preclude most forms of civil nuclear trade with India. That would require the Nuclear Suppliers Group taking a decision to make an exception to its guidelines, but no decision has been made on that as yet. There are two separate issues, but in the general sense the government has welcomed the US-India civil nuclear cooperation initiative but has not yet taken a position on the issue of seeking an exception in the NSG to its guidelines.

Senator CHRIS EVANS—I was going to ask a similar set of questions. I see Mr Downer is quoted as saying that Australia was thinking about whether it ought to export uranium to non-NPT parties. I would like to know whether that reporting is correct and what that means.

Ms Kamath—What I can say is that the government's current policy is that Australia only supplies uranium to countries that are parties to the nuclear non-proliferation treaty and, in addition, Australia requires a bilateral safeguards agreement with the country concerned. In the case of supply to non-nuclear weapons states, Australia also requires what is called an additional protocol on strengthened and safeguards.

Senator CHRIS EVANS—I know that used to be our policy, but Minister Downer has given a couple of public hints now. He said:

We are thinking about it—

that is, changing our position—

and we have been talking with the Indian Government about whether it would be possible to put together some arrangement with India whereby we could export uranium and be sure that that uranium could only be used for civil purposes ...

Mr Downer is publicly canvassing the option of us selling uranium to India even though they have not signed the nuclear non-proliferation treaty. I am asking whether you provided advice to that account. What is going on in terms of preparation for a change in policy?

Ms Kamath—I do not think that there is anything going on. The Prime Minister and Mr Downer have said that it is an issue that is being kept under review. That is all I can say.

Senator CHRIS EVANS—What issue is under review?

Ms Kamath—The whole issue of civil nuclear supply to India. As Australia is a member of the Nuclear Suppliers Group, it is in very much an information-gathering mode about the US-India civil nuclear initiative.

Senator CHRIS EVANS—I am not asking about the US initiative, I am asking about Mr Downer publicly canvassing the option of Australia supplying uranium to India without it

joining the nuclear non-proliferation treaty. He is reported as saying that we are thinking about doing that. There are press reports coming out of India that the Indians expect us to change our position. I am asking: has that been under active consideration? Is there any work going on in relation to changing our policy or reviewing our position? Have we been, as is reported, discussing with Indian officials a change in position?

Ms Kamath—No, we have not been. What happened was that in May last year—evidence has been given on this in previous estimates—Australian officials visited New Delhi to explain Australia's policy on uranium supply. The purpose of the visit was essentially a fact-finding visit to learn more about the US-India civil nuclear initiative, but, as has been explained in previous estimates, Indian officials have been very public about it and raised the issue of uranium supply. Australian officials explained what Australia's policy was and our requirements, including safeguard requirements.

Senator CHRIS EVANS—That is fine, but the reason people are beginning to think that we might be considering it is because the foreign minister is saying so.

Ms Kamath—What both the foreign minister and the Prime Minister have said is that it is something that is being kept under review, but there would also need to be good reasons to change the current policy.

Senator CHRIS EVANS—Can you confirm that the review includes reviewing whether or not we will export uranium to India without it becoming a signatory to the nuclear non-proliferation treaty?

Ms Kamath—I do not think there is a review. We have the current policy.

Senator CHRIS EVANS—You told me that we kept it under review.

Ms Kamath—We are keeping the whole issue under review.

Senator CHRIS EVANS—What is the issue, world peace or the export of uranium to India?

Ms Kamath—How the US-India civil nuclear initiative will proceed. There are a number of steps that have to take place—

Senator CHRIS EVANS—I am not asking you about the US initiative. I am asking about an Australian government decision.

Ms Kamath—A number of steps have to take place, including the Nuclear Suppliers Group agreeing to change its guidelines.

Senator CHRIS EVANS—Are we lobbying inside the Nuclear Suppliers Group to change the policy in relation to India?

Ms Kamath—The discussions that take place in the Nuclear Suppliers Group are confidential between the participating governments of that group.

Senator CHRIS EVANS—If there was a change in view from the Nuclear Suppliers Group, would that open the way for us to export uranium to India?

Ms Kamath—You have to make a distinction between the Nuclear Suppliers Group agreeing by consensus to make an exception to its guidelines to allow for civil supply to India

and the Australian government changing its own national policy. Participating governments in the Nuclear Suppliers Group can have stronger national policies than the guidelines of the NSG itself.

Senator CHRIS EVANS—But the first step would be for the Nuclear Suppliers Group to change its policy and that would then open up the option for Australia to change its national policy and supply uranium to India?

Ms Kamath—It would be a matter for the Australian government.

Senator CHRIS EVANS—At the moment you are telling me that the Nuclear Suppliers Group's policy is a barrier to that occurring; is that fair?

Ms Kamath—The current guidelines of the Nuclear Suppliers Group preclude most forms of civil nuclear trade with India, that is right.

Senator CHRIS EVANS—Thank you.

CHAIR—We want to have a break for afternoon tea. The committee will adjourn and reconvene at 3.45pm.

Proceedings suspended from 3.30 pm to 3.45 pm

CHAIR—We will continue with questions from Senator Nettle.

Senator NETTLE—Thank you. This is an issue I addressed last time as well, which concerns climate refugees or migration movements as a result of climate change. I want to ask whether there has been any request, formal or informal, to Australia from Pacific island governments requesting assistance from the Australian government regarding migration due to climate change.

Ms Adams—As I think we addressed at the last estimates, no, there has not been any specific request. This issue is discussed from time to time in Pacific meetings, but there has been no request for specific special immigration provisions.

Senator NETTLE—I worded the question carefully because I recall that from last time. I am not asking about a specific request about a particular migration. I am asking about a meeting to talk about the issues of migration due to climate change.

Ms Adams—No, there has not been a specific meeting. The issue was discussed at the Pacific Islands Forum and there is an agreed outcome from that meeting in the 2005 Pacific Plan where leaders agreed, and I will quote you the language, 'should a genuine need arise, consideration of measures to address population dislocation'. That language has been agreed by Pacific leaders, including Australia.

Senator NETTLE—Which Pacific Islands Forum was that? Was that in 2006?

Ms Adams—It is in the 2005 Pacific Plan.

Senator NETTLE—Was it discussed at the 2006 Pacific Islands Forum meeting?

Ms Adams—Yes, I think that is right.

Senator NETTLE—You think it was?

Ms Adams—David is the one who was at that meeting, not me.

Mr Ritchie—The Pacific Islands Forum meeting is a meeting between leaders of the forum, and there is a retreat to which only leaders go. I am not privy to discussion in that context. The Pacific Plan itself, in which that particular section is mentioned, was endorsed by Pacific leaders at the Pacific Islands Forum. There is a section in the forum communique. Could I read that for you? It gives us an idea of the way the issue has been considered.

Senator NETTLE—Sure. Can you just tell me if we are talking about 2005 or 2006?

Mr Ritchie—We are talking about 2006.

Senator NETTLE—Thank you.

Mr Ritchie—The communique is dated 24-25 October 2006. It states:

Leaders reaffirmed their commitment to the Pacific Island Framework for Action on Climate Change 2006-2015 and noted that development of initiatives under the Framework is identified as a priority for action under the Pacific Plan—

which is the document previously referred to—

along with mainstreaming climate change into national sustainable development strategies. Leaders urged the Secretariat of the Pacific Regional Environmental Program to give priority to its work in translating the Framework into on-the-ground progress.

Senator NETTLE—Beyond discussions which have been around a general plan for all Pacific islands, have there been any individual meetings between Australian officials and officials from any particular country? Have there been bilateral discussions on this issue with any Pacific island nations?

Ms Adams—Not to my knowledge.

Senator NETTLE—You are not aware of any requests for such bilateral meetings from any Pacific island nation as well?

Mr Ritchie—No.

Ms Adams—No, not on that specific issue.

Senator NETTLE—I will ask about one other climate change issue, which is about APEC and whether the Department of Foreign Affairs and Trade is working on any proposals relating to climate change for APEC.

Ms Adams—The Department of Foreign Affairs and Trade is indeed working on APEC as a major priority for 2007, and I think at this early stage all sorts of issues are being discussed. Climate change is one of many issues that have been looked at as possible APEC issues for the year.

Senator NETTLE—Are any specific communiqués or agreements in relation to climate change being prepared for APEC?

Ms Adams—There was a reference in the APEC leaders communique from last year on clean energy and environment issues. I do not have it with me, but that called for a report to leaders this year. Yes, that is part of the APEC work.

Senator NETTLE—It is a report from a decision out of the last APEC meeting?

Ms Adams—The issue was included in the communique from last year's APEC leaders meeting.

Senator NETTLE—So in terms of the agenda for the next one, you are saying there will be a report on that?

Ms Adams—Perhaps 'report' is not exactly right, but it called for leaders to come back to this issue this year.

Senator NETTLE—There is no preparation for a specific document, agreement or communique at this stage?

Ms Adams—I am not the APEC ambassador, and I do not know if the declaration is in—if they have begun drafting on that. It is probably a bit early. It is one of the issues that is well and truly on the broad APEC agenda.

Senator NETTLE—I will leave that and move to another area. I want to ask some questions about Thaksin Shinawatra and his visit to Australia. Did he meet with any Australian officials during the visit?

Mr Grigson—No, he did not.

Senator NETTLE—Is that 'no' to formal and informal meetings?

Mr Grigson—That is right.

Senator NETTLE—I note media reports about him looking to establish himself in Australia. Would that create any diplomatic problems for Australia in terms of our relationship with the current Thai government?

Mr Grigson—I saw the same reports about him considering buying property in Sydney. As far as we are concerned, if he meets the Foreign Investment Review Board requirements, he can buy property in Australia.

Senator NETTLE—Is it correct that he is currently being investigated for corruption by the Thai government?

Mr Grigson—I have seen media reports to that effect, yes.

Senator NETTLE—Do we have an extradition treaty with Thailand?

Mr Grigson—I do not know. I would need to check for you.

Senator NETTLE—Please do that. So there is no concern on the part of the Australian government about media reports regarding his future plans to stay in Australia?

Mr Grigson—Not at this stage. All we have is the media report. He may or may not buy property.

Senator NETTLE—The foreign minister has the capacity to cancel anyone's visa if they think it would be against our foreign policy interests. Is that anything that has been raised in relation to him?

Mr Grigson—No.

Senator PAYNE—I assume this means we are dealing with 1.1.2 in the program, which I know is a unilateral action on my part to look at the program. I just thought I would have a go.

I know Mr Grigson knows how predictable I am on these matters, so he will be ready to talk to me about Laos, anyway. Is there any update on the status of the missing Hmong children?

Mr Grigson—This is the 27?

Senator PAYNE—Yes.

Mr Grigson—No. We are continuing to make representations, as you know, about that issue. There have been additional issues in the past month or two concerning Hmong—

Senator PAYNE—I want to ask you about those.

Mr Grigson—We have used that as an opportunity to raise again the 27.

Senator PAYNE—I assume you are referring to the efforts of the Thai authorities to deport a number of Hmong back to Laos recently?

Mr Grigson—Yes.

Senator PAYNE—Is Thailand a signatory to the refugee convention?

Mr Grigson—No.

Senator PAYNE—Australia, I understand, has indicated that we are prepared to take a number of those Hmong as, I assume, part of a refugee intake?

Mr Grigson—Yes.

Senator PAYNE—Do we know how many that will likely be?

Mr Grigson—Up to 200 I believe is the number that DIAC is looking at.

Senator PAYNE—Have we raised with Thailand our concerns about their apparent change in attitude, if that is the right turn of phrase, in terms of returning Hmong to Laos?

Mr Grigson—Yes, on several occasions.

Senator PAYNE—And have those representations borne any fruit, Mr Grigson?

Mr Grigson—We are hoping they have. One of the reasons that we think the repatriation that had been agreed with Laos did not go ahead was as a result of our representations, along with those of other countries.

Senator PAYNE—What other countries are participating in it?

Mr Grigson—From memory, the US, Canada, and I think the UK, but I would need to check for you.

Senator PAYNE—This might not be a question for you; it may in fact be a question more appropriately for the Department of Immigration and Citizenship: what previous Hmong intake have we had in Australia? Are you aware?

Mr Grigson—I do not know.

Senator PAYNE—I will take it up with them. I have one other question in Mr Grigson's area in relation to Burma—also predictable. With respect to the recent reports of India's support for Burma in terms of sale of arms, effectively: have we raised that with India?

Mr Grigson—Certainly, we have spoken to India on several occasions, along with many other countries, about the best way to achieve some progress in Burma. You know our policy,

which is a ban on arms sales. I would need to check the detail of what we had raised with India at the time, but certainly we have spoken to them on several occasions, along with other countries, about Burma

Senator PAYNE—Could you do that for me on notice?

Mr Grigson—Yes.

Senator PAYNE—Thank you. I understand there has also been an extension of the detention of the deputy NLD leader as well. Have we raised that with the Burmese?

Mr Grigson—We have made a number of representations in the past six months on human rights, including political prisoners—at least half a dozen that I can recall.

Senator PAYNE—The Burmese are saying that there are no political prisoners there.

Mr Grigson—They do continue to say that.

Senator PAYNE—If you could come back to me with the detail of those representations, that would be helpful.

Mr Grigson—Sure.

Senator TROOD—Since you are here, Mr Grigson, I thought I might take advantage of your presence. I want to ask you about the recent initiative that the Indonesian government seems to be undertaking in relation to Iraq. Could you fill the committee in on what you understand about that.

Mr Grigson—I only know what you have seen in the media reports. We have encouraged Indonesia over time to take a greater role in international affairs, but I am not privy to any particular detail of the discussion it has been having with others about Iraq.

Senator TROOD—I appreciate you may not know the detail of any kind of overtures they may have made, but has the department made any assessment as to whether or not this reflects a significant shift in the nature of Indonesian foreign policy, or is it just a single venture?

Mr Grigson—I think it is part of a continuation of a trend we saw emerge over the last year or two of Indonesia seeking to play a broader regional and global role, and we think that is quite positive given that the present Indonesian government is a moderate voice. We encourage them in those undertakings both regionally and globally.

Senator TROOD—Am I right in saying that the President left the meeting in Cebu earlier than other leaders from ASEAN? What explanation was there for that?

Mr Grigson—I think he had pressing domestic commitments.

Senator TROOD—You do not attach any particular significance to Indonesia's commitment to ASEAN or the East Asia Summit or anything of that kind?

Mr Grigson—Certainly not. Indonesia remains a leading light in ASEAN—something we support.

Senator PAYNE—I turn to the Philippines and the recent report in relation to the activities of a minority of the Philippine army. A report handed down in Manila indicated that elements of the army are judged to have been behind the shooting of a number of activists, community

workers, farmers and journalists numbering in the many hundreds over some time. What is the nature of our human rights engagement, if any, with the Philippines?

Mr Grigson—Are you referring to the Melo commission report?

Senator PAYNE—Yes.

Mr Grigson—I understand that has been handed to the Philippine government. Although it has not been made public, the commissioners have made some comment on that. We have made representations on eight occasions in the past six months or so concerning extrajudicial killings. We welcomed President Arroyo's comments in July that she was deeply concerned about those. It is an issue that we continue to follow up.

Senator PAYNE—In terms of our formal or program engagement in the Philippines, is there anything specifically related to human rights or anything that involves the military?

Mr Grigson—I would need to check for you. Certainly, in past years we have provided support to human rights bodies in the Philippines but I would need to get you the details.

Senator PAYNE—Thank you. That would be helpful.

Senator ROBERT RAY—I might just follow up on Senator Trood's question. I think he asked why someone left early.

Senator TROOD—Yes.

Senator ROBERT RAY—Thank you. I noted in a press release from the minister's office that he announced his visiting Cebu on 9 and 10 December for the East Asia Summit but it was then postponed. I noted he did not go to Cebu. Why not?

Mr Grigson—I think he had a prior engagement, a prior international commitment.

Senator ROBERT RAY—This is dinner in Hollywood?

Mr Grigson—I understand it was a program in the United States.

Senator ROBERT RAY—It was a dinner in Hollywood, basically—a bit more attractive, apparently, than going to Cebu. Someone may have left early, but someone did not even go. Did DFAT invite Ismail Yusanto, a prominent Indonesian member of what is sometimes described as an extremist group, Hizb ut-Tahrir, to a security conference that it sponsored in August 2004?

Mr Grigson—No, we did not.

Senator ROBERT RAY—'No, we did not'? Do you know if he attended that conference?

Mr Grigson—Yes, he did.

Mr Chester—Yes, he did.

Senator ROBERT RAY—But you did not invite him. How did he get there then?

Mr Chester—I will ask Mr Head to answer that.

Mr Head—In 2004, Yusanto attended a conference, 'Islamic Perspectives on the States, Society and Governance in South-East Asia', in Canberra over 30 and 31 August. The conference was organised by Aus-CSCAP, an organisation based at ANU, I believe. The aim of the conference was to deepen understanding between Australia and Islamic leaders in

South-East Asia, and the invitation to Yusanto was extended by those conference organisers. While there was some financial support provided to those organisers, we were not specifically responsible for the invitation list. It was based on their perceptions of people who would make a valuable contribution.

Senator ROBERT RAY—There would have been no direct subsidy of Mr Yusanto's trip. There may have been indirectly in as much as some money was given to the conference organisers.

Mr Head—His trip could have been funded ultimately by the assistance provided to the conference organisers, but it was not a direct link between the department and Yusanto.

Senator ROBERT RAY—Did Mr Yusanto meet any DFAT officials while he was in Australia during that trip?

Mr Head—I would have to check that.

Senator ROBERT RAY—According to *The Canberra Times* of 30 January, Mr Yusanto is a regular guest at the Australian Embassy in Jakarta. Is that right?

Mr Head—I understand that he has been on occasion invited to participate in embassy events. Whether you would describe it as regular, again I would have to check that.

Senator ROBERT RAY—I saw a report in the *Age* of 31 January in which Mr Ruddock on Sydney radio said it was a mistake to invite a prominent Indonesian member of Hizb ut-Tahrir—and then names Ismail Yusanto—to a security conference in Australia. The report goes on to say that he confirmed that the department of foreign affairs had invited Mr Yusanto to the conference. He is in error there. We have now established that through the evidence. I am wondering whether any attempt has been made to reconcile Mr Ruddock's view of this individual with invitations to the embassy.

Mr Head—When this gained prominence, the matter was looked at, and the facts are as I have stated—that Mr Yusanto had been at some embassy functions previously, and the details of the Aus-CSCAP invitation were as I stated.

Senator ROBERT RAY—One could say that, at the last major conference he attended, he had a bit of a break-out, didn't he? He had a bit of a slash outside the off stump about Islamic states and other matters.

Mr Head—I would assess that those comments he made have been drawn to our attention and would be—

Senator ROBERT RAY—Taken under advisement.

Mr Head—Yes, exactly.

Senator ROBERT RAY—Thank you. While we are on those sorts of subjects, I am totally confused by an issue that arose on 8 January this year, when the foreign minister made some comments surrounding the matter of the Saudi Arabian government providing funding to a mosque in Adelaide. I have reread these things four or five times and I cannot really decipher what happened. Can anyone assist me? He seems to have condemned something that did not occur and then withdrawn it partially. I really cannot follow this as an issue. Can anyone assist me?

Mr Chester—Ms Stokes can assist you.

Ms Stokes—Senator, what is your question?

Senator ROBERT RAY—I am trying to get to the bottom of this issue of the Saudi Arabian government funding a mosque in Adelaide that seems to have been partly condemned by Minister Downer but then, in a following article on 9 January, there is a headline ‘Downer’s Office Clears Up Mosque Funding Misunderstanding’. I am trying to get to the bottom of where the misunderstanding is.

Ms Stokes—Perhaps I can let you know some of the processes we follow in this area. Would that be helpful?

Senator ROBERT RAY—It will be, but then there will be other questions because it does not directly answer my question. But go on, please.

Ms Stokes—Since 2004, the Saudi Arabian government has sought the Australian government’s views about applications for funding of organisations in Australia. This is not an Australian government requirement. It was an initiative of the Saudi Arabian government. So we do not make any decisions about approving or funding institutions in Australia by the Saudi Arabian government. We happen to be the conduit for receiving applications for funding, or at least we are informed of applications for funding, and we convey these to the relevant Australia agency for its views, which are then conveyed to the Saudi embassy. It is then a matter for the Saudi government to decide whether they fund or not.

Senator ROBERT RAY—Was there ever a proposal given to the Australian government for the Saudis to fund a mosque in Adelaide?

Ms Stokes—My advice is that it would not be appropriate to comment on particular applications.

Senator ROBERT RAY—The foreign minister, Mr Downer, broke that precept that you are binding me by and commented on it. Is that right?

Ms Stokes—I am speaking on behalf of the department.

Senator ROBERT RAY—What do you have to say to that, Minister? I have just been told that the department cannot comment on whether the Saudis tried to fund a mosque in Adelaide, which I accept at face value. I am actually asking about the foreign minister’s miscomments about it. How do I find out about that? He has commented on it. In fact, he virtually apologised to the Saudis afterwards. They got pretty angry about it, and his office had to go into spin mode to get him out of it. So he can, and I can’t. Is that right? Let me just quote and help you out, Minister.

Senator Coonan—I am just being updated about the line of questioning. I am sorry; it was remiss of me. I was reading something else. I do apologise.

Senator ROBERT RAY—That is all right. On 8 January, at a doorstep interview in Adelaide, Mr. Downer said:

But in relation to one mosque, there is an application for funding from the Saudi Arabian government, not from extremist organisations.

It is good enough for the minister to comment on it but not for me to get an answer on it.

Senator Coonan—The information that I have is that we do not approve or make decisions about the funding of Australian Islamic institutions by the Saudi Arabian government, and any decision about funding is not ours but the responsibility of the Saudi Arabian government.

Senator ROBERT RAY—We just heard evidence that they approach us and inform us of these things and want feedback. It is slightly at odds with what you are saying; not totally. Maybe Ms Stokes can help us there. What is the position? We are not going to an individual one now; we will come back to that.

Ms Stokes—I do not see a conflict between what Senator Coonan has said and what I said.

Senator ROBERT RAY—They do come to you to inform you and get feedback, don't they?

Ms Stokes—No. Their feedback is provided by the Saudi embassy.

Senator Coonan—There is no requirement, as I understand it.

Senator ROBERT RAY—I am wondering what the practice is. On 8 January, Foreign Minister Downer, in a doorstep interview in Adelaide—and it is not just on this matter—talked about Australians detained in Iraq and later on he talked about David Hicks. In the middle, the reporter asked:

You mentioned today on radio some... about funding from extremist organisations towards a mosque here in Adelaide. Can you enlarge on that?

He goes on to comment about this. We hear from the official at the table that we do not comment on individual cases. I am sure the official does not mean to criticise the foreign minister, but I cannot read it any other way than as a criticism of the foreign minister. Did he shoot his mouth off?

Senator Coonan—No. I would suggest to you, Senator Ray, that the point about it is that the Saudi Arabian government would obviously want to ensure that any organisations which may receive funding are not of concern to host governments. That is an appropriate level of cooperation, I would have thought, from the Saudi authorities, but there is no requirement that funding applicants seek approval.

Senator FAULKNER—Is it true, Senator Coonan, that the day after Mr Downer made his statement the Saudi embassy issued a media statement, a public statement, which apparently is a pretty rare event, I understand, for the Saudi embassy? Can one of the officials confirm that is the case? I thought this would be something the department of foreign affairs would be well apprised of.

Mr Chester—That they issued a press release?

Senator FAULKNER—Yes. They issued a press statement, which is a pretty rare event, the day after Mr Downer made his comments. Could that be confirmed by Ms Stokes.

Ms Stokes—Yes, they did.

Senator FAULKNER—Thank you for confirming that. Isn't it true that, in that press statement, the Saudi embassy used the term 'shocked' by Mr Downer's comments?

Ms Stokes—I do not have the text of their statement in front of me.

Senator FAULKNER—It is in the statement. Isn't it also true that not only have they said they were shocked by Mr Downer's comments but they went on to complain—and I now quote from the Australian Associated Press of 16 January:

Advice was always sought from the Department of Foreign Affairs and Trade before any Saudi financial assistance was given to Islamic bodies in Australia.

That is fundamentally the issue that Senator Ray has been canvassing with you. The committee is trying to establish whether that is the practice that the Saudi embassy are engaged in. They have certainly said so publicly. Can you confirm that that is the case?

Ms Stokes—I think what you have just said fits with what I have said and also with what Senator Coonan has said about the process.

Senator FAULKNER—Mr Downer, as a result, has then claimed he has been completely misunderstood. In other words, he blew it. That is right, too, isn't it?

Ms Stokes—I do not believe there is any misunderstanding between ourselves and the Saudi government.

Senator FAULKNER—Mr Downer had to say that he had been misunderstood—which he probably had not been but he had to try to crawl out of it in some way—and had not intended to criticise the Saudi government. He backtracked at a million miles an hour. Is that true?

CHAIR—You are asking for an opinion on a statement from a minister.

Senator FAULKNER—I will ask Senator Coonan.

CHAIR—That's better.

Senator FAULKNER—All my questions are directed to Senator Coonan but sometimes she has her nose in her papers and does not respond.

Senator Coonan—You are absolutely right; I should have been listening, but sometimes these questions go on and on with absolutely no point. I am also a very busy person, as you are, so I do things where I think I can achieve something.

Senator FAULKNER—You can help us with this, then.

Senator Coonan—You have my full attention. I have not read the statement to which you refer. The officers have advised me that I am correct in telling you what the practice is and what the arrangements are. Really, the rest of it is just comment from you.

Senator FAULKNER—Wasn't a spokesman for Mr Downer later quoted as saying that the foreign minister had been 'misunderstood' and that he had not intended to criticise the Saudi government? It is true that I editorialised and said he blew it. That is a nice way of saying he blew it.

CHAIR—Some people would say that you verbalised the witness.

Senator Coonan—With the greatest respect, is this something that is a proper subject for an estimates inquiry? You and I are canvassing a view that you might have. I do not agree with you.

Senator FAULKNER—I am just asking whether the spokesman said it. I have been listening with interest.

Senator Coonan—I told you what the position is as far as the policy perspective and the department's practice are concerned. They are answers that you are entitled to elicit. Apart from that, that is your commentary, if you want to cast aspersions, but I do not agree with it.

Senator FAULKNER—I want to know from you whether it is true. After what occurred in mid-January, after the Saudi embassy produced a rare press statement saying that they had been shocked and outlining the process, is it true that a spokesman for Mr Downer said after that that the foreign minister had been misunderstood and he had not intended to criticise the Saudi government?

Senator Coonan—I would have to refer that to the minister.

Senator FAULKNER—I hope the minister's spokesman is not being misquoted. There has certainly been no correction since from the minister or the minister's office.

Senator Coonan—I am quite certain that the spokesman was not misquoted but I will refer it to the minister, because I do not have personal knowledge of that matter and I am not going to guess.

Senator ROBERT RAY—I prefaced my first question on this by saying that I cannot get to the bottom of or understand this. We have been going for 20 minutes on it and we are no further advanced on this particular issue. I am trying to understand whether, if the Saudi government is going to invest in some sort of mosque or some other educational thing, as a matter of courtesy they come and discuss it with the department of foreign affairs, not to get approval but to discuss and inform, and they are entitled to get feedback, if necessary, from the department of foreign affairs. Is that the case?

Senator Coonan—That seems to be the case, yes.

Ms Stokes—We convey feedback from the relevant Australian agency that provides a view.

Senator Coonan—Yes.

Senator ROBERT RAY—You cannot say individually whether on this occasion the Saudi government made an approach—even though everything in the paper almost certainly tells us—on a particular mosque in Adelaide, to which the foreign minister, being on his home turf, and you never lose any points in this country for attacking Islamic extremists, had a dip and then made a mistake. Is that right? That is about the only thing that I can draw out of it.

Senator Coonan—The first part of your proposition is true, so we have got the practice clear. I will refer the second part of the line of your inquiry to the minister, because I do not have personal knowledge of that.

Senator ROBERT RAY—I do not expect you to, Minister. I know Senator Faulkner is anxious to return to a subject that we covered a few minutes ago, but I have one other small issue. The press reports of the Iraqi diplomatic officials here whose rotations have ended suggest that they would like to permanently settle in Australia. Have they, at any stage, sought political asylum, which is a matter for DFAT, or are they seeking asylum under the various provisions that exist under the Department of Immigration and Citizenship?

Ms McLean—The former diplomats have not sought any form of political asylum.

Senator ROBERT RAY—Have they been in discussions with DFAT about their general situation?

Ms McLean—We have had a meeting with them but the matter rests with the Department of Immigration and Citizenship.

Senator ROBERT RAY—I understand the final decision as to whether they stay or go does. Have they expressed a view that Iraq is not safe to go back to?

Ms McLean—The applicants?

Senator ROBERT RAY—Yes.

Ms McLean—No, not to us.

Senator ROBERT RAY—They have given you no reasons why they would like to stay here in those discussions?

Ms McLean—When they approached the department, they spoke to us. This was after they had made their original application to the Department of Immigration and Citizenship. They spoke to us about their personal circumstances and their families.

Senator ROBERT RAY—If you read the media, it is totally unclear. Seeking asylum—

Ms McLean—They have made no application for asylum.

Senator FAULKNER—I want to understand a little more about the department's relationship with Spherion Recruitment Solutions or Verossity. Which terminology is it better to use for this company? It appears to have two names.

Mr Chester—Verossity is its most current incarnation.

Senator FAULKNER—Let us use that. Are you able to outline to the committee what contractual arrangements the department has with Verossity?

Mr Chester—I do not have the precise details of our relationship, but generally we use Verossity in a number of ways. Firstly, to assist us in our recruitment processes, which includes the administrative work that relates to a recruitment process—the receiving of applications, photocopying, collating, contacting applicants that have been shortlisted and, on occasions, more often than not, to provide a scribe for the selection panel, and a scribe then writes up a report and works with the selection panel in finalising the report. They do that kind of work in our normal recruitment processes, but the actual decisions on recruitment are retained by the selection panel, which is predominantly made up of DFAT staff.

We also use Verossity as a source of non-ongoing staff who may be required in the organisation. For example, if we have an administrative position vacant and we need short-term relief staff, we draw on staff that Verossity have. As part of our contract their staff are security cleared so we do not have that three- to six-month delay in having people cleared before they can come into the department. Verossity have a number of staff that are pre-cleared that we can draw upon. They are the two main parts of the contract.

Senator FAULKNER—How long have you had a contractual relationship with Verossity?

Mr Chester—Verossity or its predecessor?

Senator FAULKNER—Verossity or its predecessor, Spherion Recruitment Solutions?

Mr Chester—We have gone to tender on a number of occasions over the years. I would need to check the precise date.

Senator FAULKNER—Can I find them in the annual report?

Mr Chester—Yes, they are listed in the annual report.

Senator FAULKNER—Can you give me a page number? I will grab the annual report.

Senator ROBERT RAY—Were you going to say about eight years?

Mr Chester—It was something like that. It was probably 1997-98.

Senator ROBERT RAY—Are you able to tell us who the principals of this firm are?

Mr Chester—I do not know. I could take that on notice.

Senator ROBERT RAY—Do you know where they are based, in which state or territory?

Mr Chester—Under the original arrangements, it was a Canberra firm, but I am not sure where Verossity is headquartered.

Senator FAULKNER—Have they been selected through an open tender process?

Mr Chester—Yes, that is right.

Senator FAULKNER—Obviously, if it is eight years then it has been on more than one occasion?

Mr Chester—That is right.

Senator FAULKNER—So the annual report ought to tell us the most recent occasion, we would hope. Would that be right?

Mr Chester—It is not in our annual report. It is in the online annex to the annual report, I am told.

Senator FAULKNER—That is why I could not find it.

Senator ROBERT RAY—Can you give us the website so that we can look it up.

Mr Chester—You go to www.dfat.gov.au and you will find a link to our annual report.

Senator FAULKNER—But someone ought to be able to tell us the dollar figure for this contract and when the contract was let. I think that's a fairly standard question for estimates and I am sure you would agree, Mr Chester.

Mr Chester—I will see and I would hope we can do that.

Senator FAULKNER—I would appreciate that because other questions will no doubt flow from the answer, when we hear it. Relief staff and a scribe for recruitment—what about speechwriting? You did not include speechwriting in that outline.

Mr Chester—That was included in the part of the contract that deals with the provision of non-ongoing staff. That is the temporary assignment or not ongoing.

Senator FAULKNER—And speechwriting is identified in that, is it?

Mr Chester—We do not set out within the contract what kinds of positions we want to fill but, where we have a need for a non-ongoing employee, we will look to Verossity to provide that employee.

Senator FAULKNER—If you were looking for support for ministerial speeches, Verossity then identifies an individual who might be able to assist—is that the case?

Mr Chester—I do not know if there is a standard way that we would do this.

Senator FAULKNER—I bet it's not standard; I've worked that one out. I am interested how it happened in a particular instance, but I accept that won't be standard. I think I worked that one out a little while ago. What is the contract worth?

Mr Chester—In 2005 it was \$137,696.36. It is not clear in here if that is the financial year or a calendar year.

Senator FAULKNER—Are there figures for other years or other financial years?

Mr Chester—No, that's all I have. According to this information that I have here it is for the calendar year 2005.

Senator FAULKNER—Does this contract depend on the amount of work with a recruitment service and relief staff? Obviously that would be a little demand driven, wouldn't it, from the department?

Mr Chester—It is. It does depend on the amount of work.

Senator FAULKNER—So that's a base contract figure, is it?

Mr Chester—No. This is how much we paid under the contract in that year.

Senator FAULKNER—That is how much you paid under the contract?

Mr Chester—Yes. It is for services provided.

Senator FAULKNER—Is there a base contract figure that you can point to for each year?

Mr Chester—I will need to take that on notice. I do not have that with me.

Senator ROBERT RAY—Can you also take on notice who the principals of the firm are?

Mr Chester—Yes.

Senator FAULKNER—In relation to the fact that we have been able to discover that Mr Christopher Pearson was engaged to write Mr Downer's speeches, seven of them—it was the company Verossity that engaged Mr Pearson. Is that right?

Mr Chester—That's correct.

Senator FAULKNER—How does this work? Does the department say, 'Look, Mr Downer wants assistance with certain speeches; please go and find somebody'? Or is it, as I suspect it is, 'Nudge-nudge, wink-wink, we would like you to put Mr Christopher Pearson on the payroll, and the fact that he is on the payroll won't become very clear because he is going to be subcontracted to Verossity'? How does it work?

Mr Chester—I do not know what their arrangements were for the involvement of Mr Pearson.

Mr Chester—Who is the departmental officer who has an interface with Verossity? Someone must do it. Is it direct from the minister's office?

Mr Chester—No, the department's engagement with Verossity is primarily through our corporate management division, but other line areas of the department also have an interaction, particularly in the employment of non-ongoing staff.

Senator ROBERT RAY—Who in the corporate area dealt with this issue and can help and assist us with our inquiries? Would the witness who was here before know?

Mr Chester—I do not believe so. I think this predates Ms Wood's time.

Senator FAULKNER—Can Ms Wood help us?

Ms Wood—I would have to take it on notice. I do not have the specifics of the arrangement but I know that it was done in accordance with the Commonwealth Procurement Guidelines. As to the exact nature of how it was organised, set up and when it was arranged—there were two contracts—I would have to take that on notice.

Senator FAULKNER—We know there were two contracts. Is that because it was over two financial years?

Ms Wood—The information I have is that the first contract was on a one-off basis for two speeches and the second contract was for a period of time and it involved five speeches. So the two contracts were slightly different, but I do not have any further information at this point.

Senator FAULKNER—Do we know which officer of the department made the arrangements? Without naming the person—I am just asking, first of all, whether you can identify which official in DFAT negotiated with Verossity on these two contracts?

Mr Chester—I do not know. I would need to take that on notice. I suspect it was probably in our executive branch but I cannot be sure of that.

Senator FAULKNER—Do we know whether the minister or somebody in the minister's office requested that Mr Pearson be engaged by Verossity or do we know, which sounds a little unlikely, that Verossity decided that, because they had been asked to assist the minister with seven speeches, they would try to find Mr Pearson? How does it work?

Ms Wood—If you permit, I would rather take this on notice so that I can go back and see the specific paperwork that supported these decisions—rather than speculate on what might or might not have happened two years ago.

CHAIR—I think that's a legitimate request, Senator Faulkner.

Senator FAULKNER—I do not want Ms Wood to speculate but I do want the committee to be provided with as much information as the officials at the table have. Ms Wood has the benefit there, as Mr Chester had, of a substantial briefing note. Mr Chester, of course, ought to be able to at least outline to the committee—I hope he could—what standard operating procedure and best professional practice would be in DFAT that he has been telling us about to date. How would it work?

Mr Chester—It could work either way.

Senator FAULKNER—Are you saying that Mr Downer might get on the phone?

Mr Chester—I was talking generally. You are asking generally how this might work in the organisation. On some occasions it will be individuals identified and we will employ them under our contract with Verossity. Other times it will be us going to Verossity saying that we have a need for someone with these skills and they will provide us with options to choose from. That is the practice of the organisation. In relation to this particular engagement, unfortunately the extensive briefing note that I have does not indicate which of those two ways was used. It is on that basis that I would like to take that on notice and find out.

Senator FAULKNER—Were you aware before today's hearing that Mr Christopher Pearson had been responsible for the preparation of seven of the minister's speeches and that had been paid for by Australian taxpayers?

Mr Chester—I was aware that he had been engaged to assist on speeches. I was not aware of the number.

Senator ROBERT RAY—Is there still such a thing as the Foreign Affairs Council?

Mr Chester—Yes, there is.

Senator ROBERT RAY—Mr Pearson was on that, wasn't he, or is he still on it?

Mr Chester—I believe he was on it. I am not sure whether he is still on it.

Senator ROBERT RAY—Are any of those positions paid or are they all voluntary?

Ms Wood—They are voluntary.

Mr Chester—Yes, he is still on the Foreign Affairs Council.

Senator ROBERT RAY—He is on the Foreign Affairs Council giving advice. Is he also on the SBS Board?

Senator Coonan—Yes, he is.

Senator ROBERT RAY—Is he on the National Museum Board?

Senator Coonan—I am not sure about that, but he is definitely on SBS.

Senator FAULKNER—I am sure of it. I can assure you that he is. He has been appointed to the National Museum Board and has been on it since 1999. I think his term runs out in about 2008.

Senator ROBERT RAY—I am trying to establish a pattern. Christopher Pearson not only writes newspaper columns supporting to coalition, day in and day out. The only time that he has ever broken ranks was to attack Mr Costello when he looked like taking on Mr Howard. That was the only time. Every day, week in, week out, month in, year in, year out, there the truckler is, supporting government policy, bagging the Labor Party.

CHAIR—Do we have any questions?

Senator FERGUSON—It is nearly as good as reading Phillip Adams.

Senator ROBERT RAY—There is one Phillip Adams. There are about 15 of these characters and you are appointing them to every board that moves.

CHAIR—Let us have a question.

Senator FAULKNER—I have a question to the minister. I do not mind what speeches Mr Pearson writes. He can write what he likes but, if he is paid for by the Commonwealth and he writes on foreign affairs issues and other government related issues, do you think that he should put a disclaimer at the end of his articles?

Senator ROBERT RAY—Of course he should.

Senator Coonan—He is quite entitled, as indeed is anyone who is qualified, to have a contract to write about things.

Senator FAULKNER—I completely agree with you. Do you think he should put a disclaimer like other people do at the end of their articles?

Senator Coonan—He is not writing an editorial. He is making a contribution to a speech.

Senator FAULKNER—He is being paid to write the minister's political speeches.

CHAIR—With respect, Professor Peetz never puts that he is fully employed by the ACTU. Let us get back to some proper questions.

Senator Coonan—The problem with Senator Faulkner's contention is that, where he was overtly involved in some political exercise in a speech, he was not charging for it. That was fairly clear.

Senator ROBERT RAY—I have been trying to track down the Hillsong speech. That is the one we paid approximately \$4,000 for. It is not on Mr Downer's website, is it?

Ms Wood—I would have to check the website. I know the department is tracking down a copy at the moment.

Senator ROBERT RAY—Did he deliver the speech? Did you check that he delivered the speech before you paid?

Mr Chester—I vaguely recall that he did deliver the speech.

Senator ROBERT RAY—Do you know where or when?

Ms Wood—It was on 4 July 2005.

Senator FAULKNER—Where at?

Ms Wood—I do not have a venue listed here.

Senator ROBERT RAY—Can you try to track down a copy of the speech for us?

Ms Wood—Yes.

Senator ROBERT RAY—I could be wrong. Sometimes you cannot find things on websites and someone else finds them. We found a lot of the others, but we did not find this one.

Senator FAULKNER—Have you taken on notice that you will be able to provide the committee as soon as possible with information about Mr Christopher Pearson's engagement and how this was organised with the company Verossity?

Mr Chester—Yes.

Senator ROBERT RAY—I would like to ask a question about the problems of an Australian businessman in China. Mr Miles Ellery has been prevented from leaving China since August last year. I understand there is a commercial dispute. I would like to ask what assistance DFAT has given Mr Ellery. I think he has complained, I am not saying validly, about the lack of assistance that he has been getting. I would like to check that with the officials.

Senator Coonan—I am in a position, at an appropriate time, to make a comment in relation to the matters raised by Senator Evans.

Senator FAULKNER—I would also like to refer to one other matter just to conclude it. This is the one that we were dealing with a moment ago. Perhaps we should not interrupt Mr Smith and come back to Senator Coonan's answers, but this is directed to you, Senator Coonan. I have been very reliably informed that you were at the Hillsong function yourself. Can you confirm that?

Senator Coonan—Which Hillsong function? I have been to one in my life.

Senator FAULKNER—The one in July 2005 where Mr Downer gave a speech.

Senator Coonan—Mr Downer did not give a speech at any function that I have been at that was also a Hillsong function.

CHAIR—I think we need to say that you have been unreliably informed.

Senator FAULKNER—Perhaps.

Senator Coonan—I would like to add to that. It is possible that he may have said something when I was not there. It was a very long evening. I guess I had better check, but I have no recollection of him delivering a speech when I was there.

Senator ROBERT RAY—You would remember a \$4,600 speech.

Senator FAULKNER—You would certainly remember one of Mr Downer's speeches. Was the date Tuesday, 5 July 2005?

Senator ROBERT RAY—I have got 4 July.

Mr Chester—It was 4 July that was mentioned by Ms Wood.

Senator FAULKNER—It was 4 July, and an AM radio station the next morning, to quote their transcript, stated:

Peter Costello wasn't the only representative from the Federal Government there last night

I interpolate last night as being the 4th—

also there was the Foreign Minister Alexander Downer, Communications Minister Helen Coonan, and Workplace Relations Minister Kevin Andrews.

We have at least been able to confirm that you were there.

Senator Coonan—I do not necessarily say that it is inconsistent with the speech having been delivered, but it was a convention as best as I can recall. I was not there for the duration so, rather than saying categorically that no speech was delivered, I should check that. I am just saying that I do not recall it.

Senator FAULKNER—I am on your side, Senator. Mr Downer's speeches are unforgettable.

Mr Smith—You raised the case of Miles Ellery in China. Consistent with our usual practice, we have been doing what we can to assist Mr Ellery in this matter within the usual limitations of the consular role. This is essentially a legal dispute that Mr Ellery has with some former business partners in China. In the early days of the dispute our consular officials in Shanghai spoke with the court authorities involved and sought confirmation that the case against Mr Ellery had been submitted in accordance with Chinese law. There was a degree of concern at the time about Mr Ellery's medical condition and we sought to ensure that Mr Ellery was able to access appropriate treatment. In September 2006, Mr Ellery made an application to the court for permission to depart China and the Consulate-General in Shanghai made representations in support of an expedited decision on the matter, given Mr Ellery's medical condition. The application was rejected by the court on 26 September. The legal dispute itself was ongoing at this time and, in late October 2006, the Consulate-General made written representations to the foreign affairs office of the province seeking an early court decision or an expedited process. The decision was handed down by the court on 12 January in favour of the plaintiff and Mr Ellery was ordered to pay an amount of money. I should say that Mr Ellery was the defendant in this case. The court order was that Mr Ellery should pay an amount of money plus court costs. Mr Ellery approached us on 23 January to seek assistance to have the restriction on his departure from China lifted. We discussed that with Mr Ellery through his legal team and we made further approaches to the Chinese government in early February to again have consideration given on compassionate grounds to Mr Ellery's request to be able to leave China. That is where the matter is at this point.

Senator ROBERT RAY—Is there any perception in the department that this is going to be a problem in the future for business people trying to do business in China, in that locals use the courts as a means of commercial leverage, rather than just have it treated on its merits?

Mr Baxter—There are a range of provincial and national laws that apply in China and sometimes the application of those laws can be confusing and difficult for foreign business people, including Australians, to understand and to work their way through. As a government, we provide assistance through our embassy, through Austrade and through other publications that we put out. It is not an uncommon occurrence for commercial disputes to be based on different interpretations of Chinese law.

Senator ROBERT RAY—We might revisit this at a later time, so thank you for that.

Senator TROOD—I assume we are somewhere in the vicinity of output 2.1, Consular and passport activities. I would like to do something that would be rather novel in today's proceedings and that is to ask a question in relation to the additional estimates statements. On page 29 there is a reference to the \$30.39 million for costs associated with evacuating Australian citizens, permanent residents and their immediate families from Lebanon in 2006. Can you give us a breakdown for that figure that is mentioned at page 29?

Mr Smith—I can do that. The breakdown I have is as follows. The cost of evacuations by sea—that is, evacuations from Beirut to Cyprus and to southern Turkey—is \$10.68 million. The repatriation of Australians by air—that is, the flights on which we brought people from

those first points of safety back to Australia—was \$14.429 million. The cost of accommodation for the evacuees—that is, the point between first evacuation from Lebanon and repatriation to Australia—came to \$3.26 million. There were additional transport costs. For example, moving people from the port of Mersin to Ankara, where they caught connecting flights, and other internal transport, for example, in Cyprus. We had to move quite a lot of people around, as you will appreciate. That came to \$941,000. The costs associated with the use of the Beirut Convention Centre, which is the place we used as a processing point for evacuees in Beirut, came to \$259,000. The costs of medical support and meals for evacuees came to \$805,000. Other miscellaneous costs including, for example, costs for interpreters, visas and some ex gratia payments came to \$73,000.

Senator TROOD—Were these all people who were entitled on some standing to be residents of Australia? They were either citizens or permanent residents. Did they have visas which allowed them to return to Australia without question?

Mr Smith—These were the costs of evacuating all of those whom we evacuated and all of those whom we repatriated. The government took a decision at the time not to seek recovery of those costs from the individuals who were evacuated and repatriated, except in a couple of circumstances, and that is where the individuals were Australian-Lebanese dual nationals who were permanently resident in Lebanon, or where individuals could seek reimbursement, for example, of unused air tickets back to Australia or get some sort of financial restitution through an insurance policy, although that is essentially going to be a voluntary process of recovery.

Senator TROOD—How many people would you expect to be in that category?

Mr Smith—It is very hard to say. We were not able to gather that kind of information when we were managing the evacuation, so the way that we are approaching this recovery process is to invite the individuals to, in effect, self-nominate.

Senator TROOD—What was the last part of that sentence?

Mr Smith—What we are doing in order to manage the financial recovery process is to invite the individuals who were evacuated and repatriated to self-nominate—in other words, to identify themselves as individuals who were in those groups of exceptions.

Senator TROOD—Has anybody self-nominated?

Mr Smith—That process is really just getting under way now.

Senator TROOD—I presume you do not expect this to be a short-term process. Are you anticipating this may take some time?

Mr Smith—Yes, we expect so.

Senator TROOD—Have you made a calculation as to how much you expect to recover, were you to be successful in this enterprise?

Mr Smith—It is very hard to say, but we do not expect it to be a great deal. It will certainly not be close to the costs to the government of the evacuation.

Senator TROOD—\$30 million is a lot of money. How much is a great deal? A million? \$500,000? \$20 million? Do you have any sense how much money we might be talking about?

Mr Smith—I would think it would not be more than in the order of hundreds of thousands of dollars.

Senator TROOD—On what basis did the government make the decision not to recover for the most part?

Mr Smith—It reflected a view that individuals were caught up in extraordinarily difficult circumstances. No-one could have predicted that commercial air services would have been cut when they were, and it was seen as very much a reflection of the seriousness of the government's consular role for those costs to be covered by the government.

Senator TROOD—This was all done rather rapidly, was it not? 'Emergency circumstances' might be a good way to put it. Over what period did this activity take place?

Mr Smith—The evacuation was organised very quickly when the hostilities broke out in Lebanon. The decision on the cost recovery arrangements or, if you like, the categories of individuals from which the government would seek reimbursement, was decided by the government fairly early on in the process.

Senator TROOD—I am struggling to recollect, but didn't the whole evacuation process take place over about a week or so?

Mr Smith—It was a little longer. The whole process took a little longer than a week, but certainly less than two weeks.

Senator TROOD—Which air service companies were engaged for that purpose? Was it Qantas?

Mr Smith—Qantas did provide a number of flights. I cannot recall the exact number. We used commercial air charter services for all the others.

Senator TROOD—Thank you.

CHAIR—Minister?

Senator Coonan—I have two things. I will come to the matter to do with Senator Evans. Just for more abundant caution in relation to Senator Faulkner's line of questioning about a Hillsong conference, I just turned up my diary sheet. It refers to the first evening of a conference, so I certainly would not be making any claims about whether or not Mr Downer delivered a speech at a Hillsong function. I wanted to make it perfectly clear that I was there for a part of it.

The second thing that I wanted to revert to was Senator Evans's comments this morning in relation to evidence presented yesterday at this committee by Mr Mark Cunliffe, the head of Defence legal. I want to make it very clear that the following information is being provided to me by the minister assisting the Minister for Defence, Mr Bilson. The statement is:

Mr Cunliffe did not mislead the committee. He provided the committee with dates of relevant letters between Slater and Gordon, and ministers in relation to a request for ex-gratia payments to the families for deceased servicemen. Mr Cunliffe did not refer to a letter from Slater and Gordon to the Minister for Defence of 19 May 2006, as this letter had not been provided to Defence. This letter was referred to the office of the minister assisting the Minister for Defence as he was already dealing with the matter. Mr Cunliffe did not refer to a letter to Mr and Mrs Shields of 18 October 2006 from the Chief of Staff to the minister assisting the Minister for Defence as this was an interim letter advising them that the minister

was examining the issues raised in their correspondence of 4 December 2006 and had not been provided to Defence Legal. Mr Cunliffe's evidence to the committee yesterday accurately outlined how this complex and unprecedented request has been dealt with by Defence Legal. Mr Bilson assures the committee that he remains committed to finalising the issues surrounding the claims made by Slater and Gordon on behalf of the families affected by these tragedies.

I am sorry I cannot elaborate on any of these matters, but I would certainly be prepared to refer any matters that you wish to raise arising out of this statement to the minister.

Senator CHRIS EVANS—I would like to make it clear that I do not accept that we were not left with the wrong impression. The evidence is that Defence did not know that the minister, Mr Nelson, was in receipt of a letter and proceeded to paint a picture that we had not heard from the plaintiffs or their lawyers on the basis that they had no knowledge of the letter that was sent to Minister Nelson and was forwarded on to Mr Bilson. That is completely crazy.

CHAIR—That is a matter for another day. I would like to go on with AusAID.

Mr Smith—I wanted to add to an answer that I gave a few minutes ago in relation to the Ellery case. I did not want to leave the committee with an impression that we were no longer active on this case when I said that was where the matter rested. I have just been advised that there are a number of further steps that we are taking. This is a case that has had a degree of high-level attention. The parliamentary secretary for Foreign Affairs has been very closely involved. He has very recently spoken to Mr Ellery and reiterated that we stand ready to provide further assistance.

CHAIR—I would like to go on with AusAID.

Senator ROBERT RAY—I have one more area and it will not take long.

CHAIR—We will need to hurry it because we have a huge list of things to get through tonight.

Senator ROBERT RAY—I know that.

CHAIR—Which group?

Senator ROBERT RAY—I have a question on the annual report. Page 185 talks about the department issuing 283 media releases on behalf of portfolio ministers and parliamentary secretaries, 18 department media releases and 58 notes to the media. When I check on the availability on DFAT's website of departmental press releases and ministerial ones, they are all there, but it would appear that the notes to the media are not there. What are notes to the media and are they public documents?

Mr Smith—They are documents that are made available publicly. Essentially they are notes to alert the media to opportunities, for example, for doorstops by the minister, briefings by departmental officials and that kind of thing.

Senator ROBERT RAY—Do they not go to issues of substance?

Mr Smith—No.

Senator ROBERT RAY—That is okay then.

CHAIR—Let's have AusAID.

Senator CHRIS EVANS—Just before you do that, I would raise the issue that the department was going to check whether they knew anything about the agreement to have a new Defence facility at Geraldton. That was in today's media. I note that the minister has been commenting publicly about that. I am not sure if that was in the parliament or at a doorstep. Has the department had any success in finding out whether they knew anything about it?

Mr Chester—All I have been able to find out or been advised of whilst we have been here is that some officers in the department were aware of this. That is about the extent of it. We are not involved in negotiations or anything beyond that.

Senator CHRIS EVANS—I might put some questions on notice. I am pleased to know that you had heard about it.

Mr Chester—I will confirm that we will be back at 9.30 pm for trade issues—is that correct?

CHAIR—Yes, the secretary tells me that is correct.

Mr Chester—Will there be senators here for us?

CHAIR—I will be here.

Senator CHRIS EVANS—I understand Senator Carr will be here with bells on.

[5.07 pm]

Australian Agency for International Development (AusAID)

CHAIR—I welcome the Director-General of AusAID, Mr Bruce Davis, and officers from AusAID. The committee will now examine the topics nominated by senators for AusAID. When written questions on notice are received, the chair will state for the record the name of the senator who submitted the question. The question will be forwarded to the department for answer. I remind senators to provide their written questions on notice to the secretariat promptly and at the latest by 5.00 pm this Friday. The committee has resolved that Thursday, 29 March 2007 is the return date for answers to questions on notice. Please note that under standing order 26 the committee must take all evidence in public session. We will go to questions from Senator Ray.

Senator ROBERT RAY—We had some dialogue with AusAID, mostly truncated because of the government direction on the Cole inquiry, so we might briefly return to that. What money in cash did AusAID provide either Mr Flugge or Mr Long to carry out their duties in Iraq?

Mr March—The Australian government provided in cash to the agricultural team in Iraq \$1.8 million in five transfers. That was because at the time there was no functioning banking system in Iraq.

Senator ROBERT RAY—I remember that part of the evidence. That is \$1.8 million. Did that go to one or two individuals? I mentioned two before, but I was never clear.

Mr March—It went to the agricultural team in Iraq over a period of time. It was managed by that team. At any stage there were up to three agricultural team members, and at times

there was only one. It depended upon the security arrangements whether or not we had a lot of advisers there.

Senator ROBERT RAY—Can you tell me who those three were.

Mr March—That was Mr Trevor Flugge, Mr Michael Long and at other times Mr Roger Hartley, who was an agricultural team member, and then towards the end of the agricultural team's presence a Ms Kelly Jane Pritchard.

Senator ROBERT RAY—How many tranches went over for the \$1.8 million? Can you tell me that?

Mr March—There were five separate tranches.

Senator FAULKNER—Is that A\$1.8 million?

Mr March—Yes, it is A\$1.8 million.

Senator ROBERT RAY—Did all of the money emanate out of Australia or was it drawn out of other banks overseas and taken into Iraq?

Mr March—One of the consignments was drawn by a contractor on an overseas bank, so it was drawn electronically from Australia, picked up in cash in the region and transported in. The other four were cash from Australia. May I be absolutely clear on the amount to which we are referring to?

Senator ROBERT RAY—Yes.

Mr March—It is \$1.878 million.

Senator FAULKNER—Were those five consignments in Australian dollars or in another currency?

Mr March—They were all in Australian dollars. I can give you the five tranches if you wish.

Senator ROBERT RAY—Yes.

Mr March—Initial tranche, June 2003, A\$597,551; October 2003, A\$400,000; January 2004, A\$300,000; February 2004, A\$224,816; and April 2004, A\$355,518.

Senator ROBERT RAY—Which one of those was drawn overseas?

Mr March—The initial one was drawn via a bank in Kuwait. The subsequent four were cash from Australia.

Senator ROBERT RAY—I think you found yourself bound not to comment last time or, if you did comment, I am not sure whether it was considered or not, but what steps did you take to assure yourself that you were compliant with AUSTRAC requirements?

Mr March—All cash leaving Australia was reported to the authorities. The people taking the cash had a letter, in many cases from myself and in other cases from a counterpart, saying that this is the purpose of the money, this is the amount and this is why it has been taken out of Australia. That was tendered to Customs on departure.

Senator ROBERT RAY—In terms of the security of the transfer of the money, how was it taken out?

Mr March—The initial shipment was secured by the US military from Kuwait into Baghdad. The subsequent ones were secured by Control Risk Group, the firm providing security services to AusAID.

Senator ROBERT RAY—Did you use a private firm to transfer the money?

Mr March—We were using a private security firm to provide security for Australian civil advisers in Iraq. They were on contract to AusAID. When we had occasion to transfer cash, we made use of their staff changeover to escort the cash in.

Senator ROBERT RAY—They were sending people from Australia over to do internal work and you coincided that with their taking the cash in?

Mr March—Absolutely.

Senator ROBERT RAY—I understand that now. Do you have a total breakdown of how this \$1.878 million was spent and what it was spent on?

Mr March—Yes, I have that in broad detail. I presume you would like that.

Senator ROBERT RAY—Yes.

Mr March—In broad detail, US\$380,000 was for the rehabilitation of the Ministry of Agriculture building.

Senator ROBERT RAY—That was for capital works?

Mr March—Yes. Again, in this is in US dollars, because the Australian dollars were transferred to US dollars on arrival. The second item was the rehabilitation of Iraqi Grains board building. That was for \$US595,000. There was the purchase of satellite communication equipment, phone and computer systems for agricultural offices, \$US53,100, and then local survey studies and agricultural activities, \$US27,000 to \$US30,000.

Senator ROBERT RAY—Is that the lot?

Mr March—I believe so, yes.

Senator FAULKNER—Where was the exchange made from Australian dollars to US dollars? I must admit I had assumed the original money would have been carried in US dollars, but obviously that assumption was wrong. Was it exchanged in Iraq itself?

Mr March—I am sorry, I do not have that information. I will have to check whether it was exchanged. It left Australia as Australian dollars. Whether it was exchanged en route or in Iraq, I do not have that information.

Senator ROBERT RAY—I am rather puzzled as to how it could possibly be exchanged in Iraq when they do not have a banking system, and this is the reason we took cash over initially.

Mr March—That would be my assumption, but I do not know that definitively.

Senator ROBERT RAY—Could you take on notice where the Australian dollars were converted into US dollars? Who acquitted this expenditure? I am sure the individuals concerned did, but what was the departmental process to audit the fact that all the money had gone to the right area?

Mr March—The agricultural team reported back at various stages of the activities undertaken in Iraq. You will appreciate there were a number of things happening at the same time. Over time, each of the activities were brought to fruition with written acquittals against each of the activities, and the full \$1.8 million has been acquitted.

Senator ROBERT RAY—I am sure the receipts match the expenditure. Given the history of a couple of these people, I am a little more concerned that the original contract can be established as being fair and reasonable. Have we taken any steps to establish that?

Mr March—In each instance of the building rehabilitation there was a specific contract with a quite complex list of works, activities and material to be supplied that was entered into in advance of the cash being provided, and then the cash was drawn down against a body of work as that work was undertaken.

Senator ROBERT RAY—You, no doubt, would have looked at this; I have not. Was any reference made in the four-volume Cole report to these transactions?

Mr March—No, I do not believe there was.

Senator ROBERT RAY—I do not think there would have been, either. We will not reflight the past ground of two estimates ago. I thought we could have asked all of these questions then, but I could not find any reference and you have not, either?

Mr March—No.

Senator ROBERT RAY—That deals with the cash issue. Who actually paid the salary, remuneration or the contract, if you like, of the four people you mentioned that dealt with this cash—Mr Flugge, Mr Long, Mr Hartley and Ms Pritchard?

Mr March—AusAID did.

Senator ROBERT RAY—Are you able to tell me how much in each case? A couple have been reported publicly already, but is there a reason why you cannot tell me?

Mr March—Only a lack of warning on the question. I can give you the amount of money that AusAID paid to Mr Flugge, and I can give you the amount for Mr Long. I do not have the details for the other 29 Australian advisors that we had on contract at the time.

Senator ROBERT RAY—We will just do two of them, then.

Mr March—Certainly. Mr Flugge, who was on an initial contract for 274 days and then 38 days on call at a daily rate, was paid a total of fees, reimbursables and GST of \$978,776. The breakdown of salary and allowances was \$717,136; airfares, accommodation, communications and reimbursable, \$261,640.

Senator ROBERT RAY—Which department chose Mr Flugge for this? Can you fill us in on that?

Mr March—Certainly. In early March 2003, the government agreed that Australia should take a formal role in the rehabilitation or phase four of Iraq post conflict reconstruction, and it was agreed that that should be in the agricultural sector. Following officials consulting on what shape that might take, the government approved that we should seek to form a senior agricultural advisory team, and we went about putting up those names. We went to government with recommendations of possible people to populate the team, and we had two

lists. On one list were the potential leaders and senior people in the teams, and the others were more junior functionaries. In all, 27 names were put to government. That included names being sourced from ABARE, AFFA, the World Bank, the Asian Development Bank, previous commercial arrangements that AusAID had entered into with people in the sector, and the South Australian and Western Australian governments. A list of 27 possibles was put forward. That was the process.

Senator ROBERT RAY—I see. Was Mr Flugge in that 27?

Mr March—Yes, Mr Flugge was in the shortlist for team leaders.

Senator ROBERT RAY—So he was in the 27, in other words?

Mr March—Yes, sir.

Senator CHRIS EVANS—With those rates that you gave us for Mr Flugge, my rough calculation is that he is on about \$2,300 a day? Is that right?

Mr March—I believe it is \$2,500 a day.

Senator CHRIS EVANS—So \$2,500 a day was Mr Flugge's salary and on top of that there were the reimbursables?

Mr March—Yes.

CHAIR—Is that tax free?

Mr March—Mr Flugge's taxation arrangements are a matter between him and the Taxation Office. AusAID does not enter into that.

CHAIR—Is there any consideration of that when the fee is set?

Mr March—No, it is not a consideration when we go through that process. We undertake a commercial negotiation with the individuals concerned.

Senator ROBERT RAY—Did you see the statement by Mr Flugge shortly after appearing before the Cole inquiry that he was a door opener, that he was deaf and that he had no memory capacity?

Mr March—Yes.

Senator ROBERT RAY—I do not blame you for his appointment. But paying someone \$2,500 a day to be a door opener, having no memory, being deaf and not being able to hear any conversations—are there any more jobs going like that in AusAID? I am finished as a senator. I thought I might move on. That was a rhetorical question, quite appropriately ignored. It does seem passing strange.

Senator FAULKNER—Can we get the details of Mr Long's engagement?

Mr March—Mr Long worked for 149 days. His contracted daily fee was \$1,665. There were reimbursables on top of that. The total salary and allowances paid to Mr Long were \$264,314.

CHAIR—Was that payable to Mr Long himself?

Mr March—I beg your pardon—thank you for correcting me. That was paid to the contractors with the AWB for the services of Mr Long.

Senator CHRIS EVANS—But the money was paid directly to Mr Flugge?

Mr March—Yes. The contract for Mr Flugge is moderately complicated. The initial contract for the period 26 April to 19 December 2003 was directly with Mr Flugge. When we asked him to stay on a part-time basis to 30 March 2004, that was through a separate contracting arrangement.

Senator ROBERT RAY—Do you have a breakdown of Mr Flugge's reimbursables? I think you said it was over \$200,000. Did I mishear that?

Mr March—Yes, I did mention a figure of \$261,000.

Senator ROBERT RAY—Do you have a breakdown of those expenses?

Mr March—No, I do not have that.

Senator ROBERT RAY—Could you get that for us?

Mr March—Yes, if it is available.

Senator ROBERT RAY—Could you mention again what that was for? I heard you say communications and airfares.

Mr March—It was for airfares, accommodation and communications.

Senator ROBERT RAY—Those three. How many days did he spend there?

Mr March—It was a total of 274 contracted directly, with a subsequent 38 as part time.

Senator ROBERT RAY—That is almost \$1,000 a day.

Senator FAULKNER—Is that the number of days of the contract or the actual days that he spent there? How do we define the days? Is that days in Iraq or just days on contract?

Mr March—That is days on contract.

Senator FAULKNER—How many of those 274 days were spent in Iraq?

Mr March—The majority. I would not have the detail. I do not have the detail with me.

Senator FAULKNER—Could you take that on notice?

Mr March—Certainly.

Senator FAULKNER—Also, for the 38 additional days, can you give me the proportion of those spent in Iraq, if any were spent in Iraq?

Mr March—Certainly.

Senator ALLISON—These are my usual questions about sexual and reproductive health in our programs. I am wondering whether the department has seen the latest report by the UK All Party Parliamentary Group on Population and Development? Its report released last month was titled *The return of the population growth factor: its impact on the millennium development goals*. Has the department had a chance to look at that document?

Ms O'Keefe—No, I have not had a chance to read that report. Thank you for bringing it to my attention.

Senator ALLISON—It talks about the importance of contraception in achieving the millennium development goals. It says that a global population of 10.5 billion would be

unsustainable unless contraception were given a higher priority. That brings me to our own immediate region. In East Timor I understood that we were relooking at our aid program, which until recently did not cover sexual and reproductive health. What is the progress there?

Mr Wilson—It is true that we are reviewing the entire scope of our program to East Timor, and in fact we are looking at assistance in the health sector most broadly but including reproductive health as one of those sector strengthening priorities.

Senator ALLISON—Are we about to do something?

Mr Wilson—As you mentioned at the last estimates hearing, the government of East Timor has developed a reproductive health strategy based on the concept of reproductive and sexual rights. The major challenge is the low awareness, access to and use of contraceptives in Timor-Leste, and we are developing a health sector support program of around \$30 million over the next five years with the World Bank, which will include a strong focus on maternal and child health. The AusAID NGO cooperation program has already provided funding to Murray Stokes International and to an organisation called Sexual Health and Family Planning Australia, which I know you are aware of, for reproductive health care and training services.

Senator ALLISON—Will the \$30 million be mostly in maternal and child health or will some be designated for contraception per se? It is my understanding that the rate of contraception use in Timor-Leste is still as low as 10 per cent. Is there a target to increase that and, if so, what is it and is Australia contributing to that?

Mr Wilson—No. As far as I am aware, there is not a specific target along the lines that you suggest. Our health sector program is aimed to build the capacity broadly of the health sector in East Timor strongly in coordination with the East Timor government, and the World Bank is a major partner in that.

Senator ALLISON—I will ask you again: what has been agreed between us and the Timor-Leste government in this respect? Do you see there not being a focus on this area of contraception?

Mr Wilson—There will be a focus on reproductive health. In principle, that has been a strong part of our discussions, but no agreement has been finalised on this program yet.

Senator ALLISON—When do you expect agreement?

Mr Wilson—In the next few months.

Senator ALLISON—Papua New Guinea is not in a much better situation with regard to contraception. I understand that it is still the case that three-quarters of married women do not use contraception, even though they would like to.

Ms Walker—Can you repeat your question?

Senator ALLISON—We were discussing the program in PNG to expand the availability of contraception. I just mentioned that the latest statistics show that three-quarters of married women do not have access to contraception, and I expect a high percentage of those would wish to. How is progress going on the greater distribution of contraception in PNG and what is Australia doing about it?

Ms Walker—The focus of our health sector support in PNG is to support the government of PNG's own national health priorities, and we are spending about \$55 million to support PNG's national health plan. I cannot give you details of the exact support that we are providing through this swap arrangement to contraception, but I could take that on notice and provide some further detail to you.

Senator ALLISON—I can understand that we are following PNG's plan. That is a good thing, but what is in there with regard to contraception?

Ms Walker—I would have to take that on notice.

Mr Dawson—One of the main activities Australia has supported over time in Papua New Guinea is the procurement and distribution of health centre kits to supplement the PNG government's own supplies. Those kits include antibiotics, treatment for malaria, syringes, contraceptives and other items. They supply 40 per cent of all health centre requirements. The composition of those kits is determined by the PNG government's minimum standards for district health service guidelines. The main point is that, if it were not for Australian assistance, the basic supply of essentials for the operation of health centres really would not occur, so there is a great deal happening by way of supply of materials for health centres in PNG.

Senator ALLISON—There was an issue some time ago of non-government organisations not agreeing to handle contraception. Has that matter been resolved?

Mr Dawson—I am not aware of that issue.

Senator ALLISON—I understand that the Catholic Church runs some non-government organisation health services in PNG—

Mr Dawson—It certainly does.

Senator ALLISON—where contraception will not be dispensed? Is that still the case?

Mr Davis—My sense in PNG is that it is not possible to just talk about it in quite those blanket terms, that there are some parts of the country and some dioceses where there is much more openness to doing that than in others. I think it does vary around the country.

Senator ALLISON—I was not referring to the cultural norms of the Papua New Guineans but to service providers.

Mr Davis—That is right. That is what I was referring to, too. In some dioceses the approach is more liberal than in others.

Senator ALLISON—Do we have alternative arrangements in place where service providers delivering AusAID programs are in this category?

Mr Dawson—Perhaps we need to take a step back. Fundamentally, as Ms Walker has indicated, our support for health services in Papua New Guinea is to support the delivery of the PNG government's own national health centre strategy and plan. At the end of the day we make a contribution to the delivery of services by the government of Papua New Guinea. In that sense we are not responsible for the delivery of services to every health centre. We make a contribution to that in partnership with the government of Papua New Guinea.

Senator ALLISON—So you are saying that we are doing what the PNG government asks us to do?

Mr Dawson—We are doing a great deal in the area of health by way of delivery of basic medical and health centre supplies. But it is not the whole picture. The other picture is the government of PNG's own contributions and obviously the contributions through non-government organisations, such as churches, that do run a significant part of the health service.

Senator ALLISON—Has the PNG government asked for more assistance in this respect?

Mr Dawson—I am not aware of any specific request for additional assistance in this area, but we could take that on notice.

Senator ALLISON—Turning to the minimum initial service package, the department has been encouraged to include those packages in its response to emergency situations. Is that under consideration at the present time?

Mr March—We are looking at possible support for that minimum initial services package. The Australian Reproductive Health Association has put a proposal to us and we are examining it. The proposal that they have put to us would mean provision of five project pilot activities for up to 50,000 people, expanding to provide services to potentially half a million people over a one-year period. We are looking at that. We have not taken a decision.

Senator ALLISON—Have you assessed the effectiveness of that proposal?

Mr March—That is one of the issues that we are looking at obtaining information on in terms of how this has been performing.

Senator ALLISON—When is the decision expected or the end of your evaluation?

Mr March—I do not have a fixed time. It is something that is on our books at the moment. I would assume it is in a matter of weeks.

Senator HOGG—My first question goes to the additional estimates statement. I note that there is no additional estimates statement for AusAID. Can you give me a reason for that? The obvious reason is that there has been no variation, but I find that a little hard to believe.

Mr Dawson—We have consulted with the Department of Finance and Administration on this issue. The advice from the department of finance is that agencies are required to include statements in the additional estimates submission where there are any changes in appropriation or outcomes. In our case there have been no changes at additional estimates for either the appropriation or the outcome. There is no statement of savings, either. Therefore we have taken the view, with the agreement of the Department of Finance and Administration, that it was not necessary to include a statement.

Senator HOGG—I think that is quite sensible, but it struck me as strange when you were looking for the connector there and it was not there. That is handy indeed. I have had this explained before, but can you explain the difference between departmental expenditure and administered expenditure? Is it treated any differently in your agency from other parts of the portfolio or do you follow the same line as everyone else?

Mr Davis—I can start and maybe others can add to my comments. The basic distinction for us is that departmental expenditure is for the basic administration of our agency's operations. The administered vote is centred around all aspects of program development, delivery and implementation. Given the nature of the program, clearly a very large proportion of the total amount is on the administered vote.

Senator HOGG—Given that you have not changed the outcomes, and given that you have not changed anything else in the original PBS, there is no change therefore to departmental or administered expenses as well? I can just assume that? There is no trick in this.

Mr Dawson—Yes.

Senator HOGG—The other thing that I want clarified as well is the government's commitment to increase or double the ODA, as I understand it. Is that purely and simply the AusAID component or is it, as I believe it to be, the AusAID component plus the other government department components as well?

Mr Davis—It is the latter. As you say, the agreement by the government was to double the total level of ODA, which is the full picture of all expenditure by both AusAID and all other legitimate sources over that period through to 2010.

Senator HOGG—So on that disaggregation, which we have now worked out well between us, when I look at that as it progresses, it will not be a doubling just simply in the AusAID component or the other governmental departments component; it will be a totality?

Mr Davis—That is right.

Senator HOGG—That is what I always understood. Thank you very much for confirming that. Can I go back to a question that I had on notice from 2 November. It was in respect of DAC sector codes and information surrounding that. The response that I received basically said that, when the information system that you were developing was available, then this information, which was quite complex to put together at that stage, could be put together and supplied to me. Is that information system now available? Is it up and running? I think on the last occasion the indication was that it would be available either late last year or early this year.

Mr Jackson—Yes, that information is available on the system now.

Senator HOGG—That is available? In respect of the previous questions on notice, question 92 and I think question 60, would it be possible therefore to respond to those questions and give me that response with the information that is now available?

Mr Jackson—Yes. I do not have the information at hand, but we can respond to those now with that information.

Senator HOGG—How instantaneous is the availability of this information out of this new system that you are now able to access?

Mr Jackson—It is not exactly a press of the button. There does have to be some data manipulated in there to come out with the relevant information. But it is not a laborious process.

Senator HOGG—In the past I understand there was a statistical summary that you put out, *Australia's International Development Cooperation (Green Book)*, which generally came out two years after the information became available. With this new system we are looking at a collapse in that time lag; is that a correct assessment of the system?

Mr Jackson—Yes.

Senator HOGG—I turn to the Millennium Development Goals. Can I find out the status of Australia's contribution against the Millennium Development Goals?

Mr Davis—In a way I think we have to unpack the question a bit. There is a range of goals. Clearly, nothing stands out more importantly than the first, which is about poverty reduction. On that broadest and most important goal our contribution is very much one of joining with others in working towards achieving the goal. In many ways, that is the basis of the work on the white paper during last year—that is, looking at the most efficient and effective manner to address the issues that were going to be important in making a strong Australian contribution to that goal. Beyond that, clearly there is a range of more specific goals in areas such as health and education. I might ask Ms O'Keeffe to comment further on that.

Senator ROBERT RAY—Can you advise me of any monitoring processes that you have in place and any measurement processes that you might also have in place?

Ms O'Keeffe—Can I answer the previous question, because my answer will merge in with the question that you have just put as well?

Senator HOGG—Yes, I thought it would. That is why I have led into that.

Ms O'Keeffe—Of the eight Millennium Development Goals, Mr Davis has already talked about the broader poverty reduction aspect. The others include universal primary education, gender equality and empowering women, child mortality, improving maternal health, combating HIV and other diseases, and environmental sustainability, and the eighth is the global partnership. That puts the developed world very much on notice to engage in a partnership with the developing world. I will focus on the other five that I mentioned. Coming out of the white paper are a number of policies that deal with particularly health and with education. To begin with, however, an overarching principle of the aid program is gender equality, which obviously is one that matches very clearly millennium development goal No. 3. The minister will be launching AusAID's gender policy on 1 March, and that will make it very clear what the aid program's goals and objectives are in furthering that millennium development goal of gender equality.

In terms of child mortality, maternal health and combating HIV and other diseases, last August the minister launched the aid program's health policy, which of course also came out of the white paper. The focus of that particular health policy is very much on women's and children's health. It is also on burdens of disease, which takes into account those diseases such as HIV and other significant diseases in the region, including potentially avian influenza but also tuberculosis and, very importantly, malaria.

The third focus of the health policy is strengthening health systems. I think we all recognise that no matter how much we want to reduce child mortality and improve women's

health it cannot be achieved in the long run if the health systems are inadequate. That is why in the health policy itself there is such a focus on strengthening health systems. In terms of the environmental sustainability goal, that too is going to be the subject of a policy paper currently being developed by AusAID.

Senator HOGG—When is that likely to be released?

Ms O’Keeffe—At this stage it is likely to be released probably in June this year.

Senator HOGG—I hear what you say, but is there any tangible way in which the progress being made can be measured so that we can actually see the outcome for the investment that is made through the budget?

Mr Versegi—Under the white paper there is a commitment to produce an Annual Review of Development Effectiveness, the first of which will be due later this year. That will be reporting against an enhanced performance assessment framework we are doing for the program. That enhanced framework is attempting to track progress against some of these broader strategic goals, such as the Millennium Development Goals, whether it be on poverty, health or education, particularly at an individual country level. Because those goals are subject to a range of different influences, mostly recipient government owned policies, other donors—a whole range of factors—we also want to go down underneath that and be a bit more specific about what Australia itself through its aid program is seeking to contribute to those broader goals at either a country level or at a sectoral MDG level. We are anticipating that the Annual Review of Development Effectiveness will be able to report on that. It will track progress and give a picture of how things such as the Millennium Development Goals are tracking in our region in particular, which is the focus of our program. We will then go underneath that, because the attribution of what Australia is contributing to that is, of course, one of many factors. What we are trying to do is, while tracking progress against those broader goals, to come down and try to identify what specifically Australia is contributing to, and be much more specific about our objectives and our indicators of progress. We anticipate that to be a pretty important focus of the annual report of development effectiveness.

Senator HOGG—I was going to come to the Annual Review of Development Effectiveness anyway, because it seems to me that a number of things are interlinked here. I believe last year in the minister’s statement on aid, in the foreword, he gave an indication—a fairly strong indication:

Indeed the announced increases in aid are contingent upon the continued effective application of resources and the performance of partner governments and institutions.

That is where your monitoring process comes in, and I can understand that. It continues:

In this respect, the Government will publish an *Annual Review of Development Effectiveness*, the first later this year to provide a practical link between additional aid and effectiveness.

That has not materialised, as far as I can see. Why has it not materialised if the minister gave it such importance in the budget statement of 2006-07?

Mr Versegi—On the budget statement, I read that statement as being the financial year, so ‘later that year’ being 2006-07, which is what the budget paper was referring to. We did give some consideration to producing an early Annual Review of Development Effectiveness

within the office. We really had not had enough time since the establishment of the office to provide any greater information than was already provided in the annual report. Whilst we gave some consideration to that, we thought it was better to spend the time on reviewing some of the systems of information that we will need to produce a robust annual review for 2006-07.

Senator HOGG—When will the first report be produced?

Mr Versegi—It will be produced for the 2006-07 financial year and it will be available later in calendar year 2007—so later this year.

Senator HOGG—Will it be produced in conjunction with the annual report, will it precede the annual report, will it be post the annual report or what?

Mr Versegi—It will be post the annual report.

Senator HOGG—Post the annual report.

Mr Versegi—Yes.

Senator HOGG—It is something that we will have to read independently of the annual report. Can you give us any idea of the sort of format that we can expect? Will you be testing the format so that people like myself and others who need to interpret these documents can have a reasonable attempt to understand them the first time around?

Mr Versegi—Absolutely. I think the first annual report is going to be an important one so as to get some feedback from key stakeholders like yourself and so we can improve what the report looks like and the information it is conveying.

Senator HOGG—Given that you have this Annual Review of Development Effectiveness, who will put this together?

Mr Versegi—The Office of Development Effectiveness.

Senator HOGG—As I understand it, the Office of Development Effectiveness is part of AusAID; is that correct?

Mr Versegi—The office reports directly to the Director General of AusAID—that is correct.

Senator HOGG—Is the Office of Development Effectiveness independent of AusAID or is it part of AusAID? I am just trying to work out the relationship and to work out how it can report on itself in effect.

Mr Davis—It is part of AusAID. As Mr Versegi said, it has direct access not only to myself as Director General—it reports directly to me in a day-to-day sense—but also it reports to a development effectiveness steering committee, which includes very senior people from four other core agencies-departments—Prime Minister and Cabinet, Foreign Affairs and Trade, Treasury and Finance and Administration. It has direct access as well beyond AusAID and beyond its engagement with AusAID—

Senator HOGG—What will it report on, though? What are the benchmarks against which it will report and how will we know what those benchmarks are?

Mr Versegi—The report will be based on an enhanced performance assessment framework that we are introducing into the agency. That is trying to answer three questions.

Senator HOGG—Will that be in the PBS that comes out for 2007-08 or is this something again independent of the PBS?

Mr Versegi—Yes, it will be in the PBS. It is basically asking three questions of all our programs. What are the results of the programming we are running? So really it is about what are the impacts and the outcomes that we are achieving with that. The second one is: what is the quality of our program management? Are we doing our activities and our programs according to best international aid practice? The third will be a question about: are we meeting the white paper commitments? As you know, the white paper made a number of commitments around gender equality, anti-corruption and working with partner government systems. The third set of questions are: are we doing the things that we said we would do in the white paper? They will be produced and we will get information on that for each of the major country programs, which will then be assessed by the ODE and then analysed and assessed and put into the Annual Review of Development Effectiveness.

Senator HOGG—I would imagine that a lot of the reporting will be qualitative reporting, not quantitative reporting. Quantitative reporting is fairly easy to interpret. Qualitative reporting can be sometimes very difficult to interpret.

Mr Versegi—Absolutely.

Senator HOGG—How will we from this side be able to make an assessment about the veracity of the qualitative reporting? On quantitative, we can always argue about the figures, but qualitative is a different matter.

Mr Versegi—There will be a couple of ways. The most important way is that for most of our major country strategies—I should add, too, we are also going to produce information on a sectoral and thematic level—they will be guided by either country strategy performance frameworks or performance frameworks that are included in sectoral thematic policies. Ms O’Keefe talked about the health strategy, for instance. That will have a performance framework. You will know what it is that we sought to achieve. You will also know what are the indicators we are going to use to see whether we have achieved it or not. So when we do the Annual Review of Development Effectiveness we will be actually going back to that information and looking at the information that we have and assessing the veracity of that as ODE and then presenting our findings in the Annual Review of Development Effectiveness.

Senator HOGG—In the meantime, what is in place to measure how the agency is performing now in this area?

Mr Versegi—Most of the information at the moment is at activity level. One of the things in our reviewing of the information that is available is that AusAID has very strong activity-level information. You have very good monitoring and evaluation information for individual activities. What the white paper is demanding us to do is to really go upstream and say what is the impact of this at a country, regional or thematic level. Some of our programs are doing that. What we are doing now is trying to introduce more systematic and more rigorous approaches to strategy-level outcomes to complement the very strong focus on activity-level outcomes. This is something that a lot of donors in the aid community are struggling with

right now, because clearly the further you go up in terms of finding out what you are trying to achieve, the more difficult attribution is, and the more difficult it is to actually get reliable information. It is a real challenge for us to do this. We have been discussing this with other donors, such as the World Bank and DFAT and really trying to learn from them what they are up to. We are all pretty much wading into this together. It is very much something that will evolve over a number of years.

Senator HOGG—How then will this be audited—and I presume you would have to audit it—to at least test the quality of the decisions that are arrived at? How will you do that?

Mr Versegi—A lot of the information that we have is going to be peer reviewed internally but also with external people. When we get information, say, on what the PNG program may have achieved over the past year, that information will be peer reviewed, chaired by ODE, by independent experts that we bring in to help us decide whether that has been as rigorous as it could be.

Senator HOGG—Will this be used as a tool for targeting aid as to where aid may well need to go in the next year and the quantum, whether it needs to be increased or reduced?

Mr Versegi—First and foremost, this is really about managing the program as best AusAID can. The information that is generated from this is intended to inform managers about the success or otherwise of their programs and whether or not strategies need to be rethought and recalibrated depending on that information. We are seeing the external thing as just as important, but we see the internal demand and the internal benefit of the new performance assessment framework as fairly paramount as well.

Senator HOGG—I understand that you were going down the path of establishing a performance strategy and you have used the words intermingled in what you have been saying there. What is the status of that at this stage?

Mr Versegi—We have a working version of a performance assessment framework, which is basically asking those three questions. What are the results, what is the quality and are we meeting our white paper commitments? Underneath that there is a total of basically 14 questions. We are piloting these now for seven countries for this 2006-07 year, and that also includes piloting of a new quality reporting tool, which is trying to answer that second question about the quality of what we are doing. Between now and the end of the financial year we are going to pilot and test these in a couple of cases before rolling it out for the whole program in 2007-08.

Senator HOGG—Are you able to give us some idea of what you are doing there?

Mr Versegi—Yes, hopefully.

Senator HOGG—I am asking you to take it on notice. There is limited time between now and 6.30. But if you can give us something that gives an outline of what you are actually doing so we can get a feel for it now, it would be helpful indeed.

Mr Versegi—Shortly we are hoping to put something up on the ODE website, which is on the AusAID webpage, to let people know what our latest thinking is and what the timetable is—so that people get an idea of where we are heading.

Senator HOGG—How soon will that be?

Mr Versegi—I suspect by the end of the month.

Senator HOGG—In which case I will not ask you to take it on notice. I do not want duplication. If what you are putting on the website is what you would give me, that would be good. Also, I have heard about a performance assessment framework. This was discussed in the supplementary estimates in November last year. What is the difference between the performance strategy and the performance assessment framework?

Mr Versegi—Absolutely none.

Senator HOGG—None? It is one and the same?

Mr Versegi—The framework is really setting out the questions to be answered. The strategy is really about how we are going to go about doing that.

Senator HOGG—I have a further concern. In the OECD DAC paper *Whole of government approaches to fragile states* AusAID is described as being DFAT's institutional younger sibling. The paper also goes on to talk about the fact that things are very much led by DFAT under the supervision of PM&C. I cannot lay my hand on the document for the moment. Anyway, that is the broad description in this document. Where does that leave the ODE in terms of its ability to make assessments of programs such as RAMSI and so on when other agencies may well be the lead agency and AusAID is not necessarily seen as being the lead agency? Does that cause a difficulty?

Mr Dawson—I do not think so. Mr Versegi might want to add something additional, but the Office of Development Effectiveness is very much the organisation mandated to monitor effectiveness across the whole of Australia's official development assistance. That obviously includes whole-of-government undertakings such as the Regional Mission to Solomon Islands and the in-house cooperation program with PNG.

Mr Davis—When you move upstream to the sort of policy settings and the work on those, we have established a separate Fragile States Unit within the agency, which is very much a whole-of-government body, and we could talk more about that if you wish.

Senator HOGG—I think time will prevent me. I am interested in a number of other things, but unfortunately time is going to be against me. I want to move on to another issue. I understand AusAID is about to change premises at some stage. I am looking for some information on the proposed change. Firstly, I understand that there is a building in London Circuit. How is the progress of that building going in terms of accommodation for AusAID?

Mr Jackson—We are on target for a completion in early June, with a relocation at the end of June or early July this year.

Senator HOGG—So you will relocate early July? What is the annual cost of the lease, please?

Mr Jackson—In square metre terms it is \$382 a square metre for 9,200 square metres.

Senator HOGG—I do not have my calculator. How much per annum is that?

Mr Jackson—Approximately \$3.5 million a year.

Senator HOGG—Will I find that \$3.5 million in the current PBS? Are you paying rent on that at this stage?

Mr Jackson—No, we do not start paying rent until we actually occupy the premises in July.

Senator HOGG—So even though fit-out is being progressed at this stage no rent is being paid?

Mr Jackson—That is correct.

Senator HOGG—I understand it is a building being built from scratch; is that correct?

Mr Jackson—That is correct.

Senator HOGG—The annual lease cost of \$3.5 million therefore should be reflected in the 2007-08 PBS? The cost of the fit-out?

Mr Jackson—The cost of the fit-out is about \$13 million. I will get the exact amount for you. It is \$13.65 million.

Senator HOGG—\$13.65 million? Was that always the proposed cost of the fit-out?

Mr Jackson—Yes.

Senator HOGG—This is where I am confused. I read the proposal that was put before the Public Works Committee. I will read from the report of the Public Works Committee:

The estimated cost of the proposed fit-out of new leased premises for AusAID is \$9.5 million, excluding GST.

Does your figure include GST?

Mr Jackson—No, it does not include GST. The fit-out figure I am quoting actually includes the IT fit-out as well. When we went before the public works committee it did not include the individual IT fit-out. It included the basic hardware for the server room.

Senator HOGG—Can I take you briefly through it. It said:

furniture and fittings;

partitions, ceilings and doors;

services and infrastructure;

preliminaries;

professional fees;

a contingency sum; and

an escalation allowance.

That is what was said in the original report. Has that figure of \$9.5 million for those components blown out?

Mr Jackson—No, not at all.

Senator HOGG—Coming within budget?

Mr Jackson—It is within budget.

Senator HOGG—If I take off \$9.5 million, there is roughly \$4.1 million for IT?

Mr Jackson—Yes, there is approximately \$4.1 million for various IT components, and that includes the actual desktops, secure networks and so forth put inside the building.

Senator HOGG—Are you not moving anything out of your existing premises and into the new premises? Are you starting from scratch with all new equipment? Is that the way I am to interpret this?

Mr Jackson—Yes. We are actually at the end of the lifecycle of the current fit-out. We have actually extended it two years so that we could refresh the complete IT network.

Senator HOGG—That is the additional \$4.1 million on top of the other \$9.5 million. It seems a lot to me, but obviously that was not a grave concern at the Public Works Committee.

Mr Jackson—It is currently below the industry standard at the moment—the industry estimates.

Senator HOGG—I understand that you said you were moving there in early July. How many staff do you currently have and will they all move in on the same day? What will happen?

Mr Jackson—Our current staffing figure is approximately 630, and we are planning at this stage to probably relocate over three weekends.

Senator HOGG—All 630?

Mr Jackson—Over those three weekends.

Senator HOGG—Into those premises?

Mr Jackson—There is to be a separate premises as well.

Senator HOGG—I thought that. What is the separate premise for?

Mr Jackson—Due to the initiatives in the white paper there has been a short-term expansion in the number of staff, and therefore we have leased a smaller premises on a much shorter time frame to accommodate those staff.

Senator HOGG—What is the time frame for the London Circuit premises?

Mr Jackson—That is a 15-year lease.

Senator HOGG—Any options?

Mr Jackson—There is another five-year option on top of that.

Senator HOGG—Where is the alternative premises?

Mr Jackson—In Allara Street.

Senator HOGG—Is that an existing building or a building under construction?

Mr Jackson—No, it is an existing building that we have leased for approximately six years.

Senator HOGG—Six years? It is not a short-term lease, then. It is a fairly substantial lease. Given that you people made the decision back in, as I understand it—

Mr Jackson—2004.

Senator HOGG—As I understand it, in terms of space requirements, based on evidence tendered before the public works committee, the report stated:

In its main submission AusAID stated that, at 9,556 square metres, the NLA of the existing premises is surplus to requirements. It argued that the 9,000 square metres of NLA available in the new premises would provide adequate accommodation, particularly as the flexibility of the new floorplate would allow a more efficient use of space.

You made that decision in 2004 and, before you have even moved into it, you have had to go out and lease other premises for at least six years. Is there any option on that?

Mr Jackson—No.

Senator HOGG—What is the cost of the lease? I hope you do not have a square metre cost.

Mr Jackson—No. It is approximately \$1.1 million.

Senator HOGG—\$1.1 million per annum?

Mr Jackson—When we decided on the building in London Circuit, it was prior to the announcement of the government's white paper on aid. Since then we have had, as I said before, an increase in staff to accommodate the implementation of that.

Senator HOGG—I am glad you raised that point, because my understanding is that that is not what was said by the report of the public works committee. This is why I am mystified by this whole process. The report of the public works committee, at paragraph 3.25, says:

The Committee was informed of a downward trend in AusAID's head office staffing levels over the past five to 10 years, and was also assured that the Australian Government's recent announcement concerning an increase in the aid budget was not likely to impact on the head office staffing situation. AusAID explained that the agency would pursue alternative methods of delivering its aid and development programs, which would reduce the number of head office staff required.

I am quite surprised that you offer that as a reason for now going out and seeking another property.

Ms O'Keeffe—I will add to what Mr Jackson has said. If we go back a bit in history, the commitment to almost double the aid program was before the development and release of the white paper. It is really the white paper that has been the trigger for the projected expansion, not just in staff but also in resources and the requirement to underpin the aid effectiveness agenda with increased staff and other resources. That is why, as Mr Jackson said, in the medium to short term we have had to increase staff. We could not foresee it at the time of the PWC.

Senator HOGG—I am surprised about that. Your staffing now is at 630. I understand the current building holds in the order of 550 staff. I will come back to that in a moment. Could I get a cost of the fit-out of second premises?

Mr Jackson—Approximately \$5.5 million.

Senator HOGG—That is another \$5.5 million. Is that a complete-from-scratch fit-out of this premise? Or are you taking across the existing equipment, existing office furniture and fittings and so on?

Mr Jackson—The components we will be taking across will be chairs and desks, and the rest of the fit-out will be new. Also, the building will become our disaster recovery site for our IT network.

Senator HOGG—That is fine. But it is an additional \$5.5 million fit-out and \$1.1 million extra per year in terms of rent. What about the IT fit-out? In terms of London Circuit, it is costing an additional \$4.1 million. What is the cost of the fit-out for IT? This is where your IT is going. What is the cost of fit-out there? And then what are you going to do at the end of the six-year period, if this is your disaster recovery centre for IT? I am quite worried.

Mr Jackson—I will just go back a step. It will be a disaster recovery site that we would have to have, in any case, be that in the Allara Street building or in another location.

Senator HOGG—If that were the case, why would you not have sought to site it in the first instance in the London Circuit premises?

Mr Jackson—Because it is a disaster recovery site. If there were any issues with London Circuit, such as power, fire or any of those, we can automatically switch all of our systems that link all our posts straight over to the Allara Street site, and we can maintain full—

Senator HOGG—That is different. You are now talking about a two-premise strategy as opposed to a single-premise strategy, which was the option canvassed before the public works committee. If you wanted a two-building strategy, that is fine. But it seems now that we are looking for ways to justify the Allara Street building, which is an extra \$1.1 million for six years—that is an extra \$6.6 million—and an extra \$5 million, so that is an extra \$11.5 million. Then we go to what will have to happen at the end of that six-year period. At the end of the six-year period there is no option, as you said in your own words, for a further extension of the lease. It seems that you have entered into a fairly confined lease in that sense. What are the options at the end of the six-year period?

Mr Jackson—As my colleague said, AusAID's program is expanding at the moment and we will be devolving offshore. By that stage we would have probably gone through a large part of that devolution and will have far more staff overseas or a far greater presence overseas. That building should not be needed by then.

Senator HOGG—If that building is not needed, where do you intend to put the people who will be in the Allara Street building?

Mr Jackson—With the expansion of our offshore profile, I would envisage that there will be more staff overseas and therefore the contraction which we always forecast would happen will happen in Canberra.

Senator HOGG—Yes, I accept your argument. I am not going against that. Where do you intend to put the staff? Will you be putting them in the London Circuit building? If that is the case, you just argued against your own case for establishing the Allara Street building.

Mr Jackson—In the short term we need that extra capacity.

Senator HOGG—I am not arguing against your need for the extra capacity. I am just finding the situation that you now find yourself in quite extraordinary indeed. I am not blaming you personally.

Mr Jackson—No, but the choice for the building relocation and the size of that building was done in 2003-04. The launch of the white paper has had a significant impact on the agency, and therefore for a shorter period while we devolve the program we do need excess

capacity. Once that capacity tails off with a greater presence overseas and a reduced number in Canberra, we can relocate back to the one site at London Circuit.

Mr Davis—A large portion of the extra capacity we need in that shorter period is in fact IT contractors who are engaged in the building of our new management information networks and the like, which we were talking about earlier when Mr Versegi was here. It is things like that that in the shorter term we need extra capacity for, but it is not something that we would anticipate being required on an indefinite basis.

Senator HOGG—I know that other senators want to ask questions. I have just two more questions. When was the decision taken to seek the lease for the Allara Street building? Who made that decision and has the minister ticked off on that decision? Is it in the forward budget at any stage?

Mr Davis—We will take those on notice and get that information for you.

Senator HOGG—Given the hour, I am not going to pursue this matter any more tonight. But you should come equipped for the budget estimates in May, because I still think you have a lot to answer for in terms of the planning and the management of the resources that are put at your disposal by the public purse. I will leave it at that.

Senator PAYNE—I did not have an opportunity to ask the department any questions in relation to matters in the Pacific, but this is an opportunity to ask AusAID about this. In relation to recent events in the Solomons, Tonga and Fiji specifically, what impact, if any, has that had on AusAID's capacity to deliver projects or for their service providers to deliver projects in those countries?

Mr Dawson—I think it is a quite broad-ranging question. But as a general proposition—

Senator PAYNE—One takes one's chances where one gets them there, and they are reasonably limited.

Mr Dawson—As a general proposition, I think the events across the Pacific have not had a significant impact so far on our capacity to deliver planned programs. However, events in the Solomon Islands are certainly of concern in terms of the ability of the Regional Assistance Mission to Solomon Islands to carry out its mandate. That mandate, as you would know, stretches from the law and justice sector through economic and financial management to overall machinery-of-government issues.

There is apparently a very real prospect of sections of the police force being rearmed, and there is a large degree of difficulty in maintaining the integrity of the law and justice system because of actions of the government in relation to the appointment of particular officials, for example, and pressure has clearly been placed on individuals, who have left the country in some circumstances. That makes it quite difficult to continue to deliver the sort of assistance envisaged across the law and justice sector. Similar sorts of difficulties apply in other areas, particularly in economic and financial management.

Senator PAYNE—Thank you very much. If there is anything that you want to add to that answer, Mr Dawson, would you do so on notice in relation to other activities? Ms O'Keefe, we discussed at the two previous estimates, albeit briefly, the Asia-Pacific Business Coalition on HIV. I think there was some indication that you might be able to obtain for us a program of

activities, but I do not think that we have seen that. Can you update us on that or perhaps undertake to pursue that on notice if necessary?

Ms O’Keeffe—I would like to just give you an update, if I may, and if you need more I will provide that. I am not sure if you were able to see the coverage of a couple of weeks ago, on 31 January, when the business coalition was very much at the centre of developing the PNG business coalition.

Senator PAYNE—Yes, I did see that.

Ms O’Keeffe—Margaret Jackson and Lachlan Murdoch, the chair and deputy chair respectively, as well as Ian Thorpe were the guests of honour at the launch. The success of that launch can be attributed very much to the Asia-Pacific Business Coalition CEO, Mr Stephen Grant, who has been very energetic not just in developing the PNG Business Coalition on HIV/AIDS but also in supporting the revitalisation of the Thai business coalition. He has also taken advantage of the work in PNG to bring together a network of national business coalitions or those sorts of organisations that could, as the next step, become national business coalitions. This includes Singapore, Vietnam, Indonesia and Myanmar. In fact, he had a workshop prior to the launch of the PNG business coalition. He got people to come to PNG so that the lessons they have learnt in the work that they have been doing in their respective countries could be shared with the new PNG business coalition.

The business coalition in PNG has been already so successful that they have managed to raise enough funds to support themselves in the running of it for the next three years. It will include companies such as Steamships, Air Niugini, and Bells. A large number of companies have contributed to the development of the business coalition there. What is important, though, is that NASFUND, the private sector’s most important superannuation fund, is going to be the host organisation. They have the largest access to employees throughout PNG. Through that network they will be able to improve the advocacy and education approach. But, very importantly—and this is the underlying aim of the Asia-Pacific Business Coalition—the coalition wants to strengthen the workplace policies that various companies in PNG have so that their employees have access not just to information but also to appropriate prevention support, should they actually be infected with HIV, and treatment and care.

Senator HOGG—I want to confirm for the agency that the timing available this afternoon was not of my doing; obviously I would have liked more time. There are other issues that I want to raise. I will put those questions on notice, and there are a couple of other things that you have to get back to me on notice as well.

Proceedings suspended from 6.34 pm to 7.37 pm

Australian Trade Commission (Austrade)

CHAIR—I call the committee to order. I welcome Mr Hamish McCormick, Deputy Chief Executive Officer, and officers of Austrade. The committee will now examine the proposed additional expenditure for Austrade. When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions. The questions will be forwarded to the department for answer. I remind senators to provide their written questions on notice to the secretariat promptly, and at the latest by 5 pm on Friday. The committee has resolved that Thursday, 29 March 2007, is the return date for answers to

questions taken on notice at these hearings. Please note that under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice. The Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

Senator CARR—I will begin with some general questions. The export market development grants scheme provides for grants to reimburse small and medium sized enterprises up to 50 per cent of export promotion and marketing expenses. That is correct, isn't it?

Mr McCormick—That is right.

Senator CARR—What is its current cap?

Ms Ward—I am interpreting your question as being the cap on the size of the company; is that correct?

Senator CARR—The size of the program.

Ms Ward—The appropriation for the current year, 2006-07, was provided in the budget last year at \$160.4 million. As you may have seen in the portfolio additional estimates statement, Austrade has at this point in time estimated that the expenditure for this year will be of the order of \$151.52 million, so we have notified in the additional estimates that there is an estimated savings from the budget estimate of \$8.88 million.

Senator CARR—What will happen to that \$8.8 million?

Ms Ward—It is not automatically available beyond this year.

Senator CARR—So it is returned to the consolidated revenue?

Ms Ward—It would do so unless the government were to take action to change that.

Senator CARR—I see. So at this time you have an underspend of \$8.8 million. Are you likely to expend it before the end of the financial year?

Ms Ward—Our estimate for the year has been made following the close of the application period for the current year. So we have taken into account the number and value of applications. We have also taken into account estimates for some applications which have been carried forward from last year—still to be processed—and the expenditure that we estimate to spend on administration. Part of those estimates does incur making an estimate of how much we may adjust the claimed value of applications still to be processed. It is necessarily an estimate, so it is possible that that figure may vary from the estimate in the statements.

Senator CARR—Your professional judgement at this point is that you have an \$8.8 million underspend?

Ms Ward—There is \$8.8 million that we will not be drawing down from the appropriation. That is correct.

Senator CARR—That will return to consolidated revenue if it is not spent?

Ms Ward—As I said, there is nothing in the legislation to incur it to be drawn down, so it would remain in the consolidated revenue unless other actions were taken.

Senator CARR—So it goes back to consolidated revenue. Is there anything you could have done to avoid that situation?

Ms Ward—This is a scheme which is very dependent on the applications that are received and the value of those applications, and it is a reimbursement program, or partial reimbursement, as you outlined earlier. Therefore it depends on the expenditure made in the previous financial year by those eligible companies or businesses that apply.

Senator CARR—How long have you been with the program?

Ms Ward—Are you asking me personally?

Senator CARR—Yes.

Ms Ward—I have been in this job for just over five years.

Senator CARR—So you have some history. That is the reason I asked. You have some knowledge of the program?

Ms Ward—That is correct.

Senator CARR—Are you able to give an indication of how the program has moved over the last five years? Has the number of firms that have participated increased or decreased? What is the situation?

Ms Ward—You want to go back five years; is that correct?

Senator CARR—I actually want to go back to 1996-97 by the time I have finished, but let us just start with five years, because that is your direct knowledge.

Ms Ward—I do have a time series here which dates from 1997-98.

Senator CARR—Thank you. That would be ideal.

Ms Ward—I should say from the beginning that it dates from that date because that is when there was a change to the legislation. There have been several changes to the legislation in the subsequent period, which has changed eligibility applicable to the business that can apply. Therefore there are breaks in the time series.

Senator CARR—Would you be able to give me a table?

Ms Ward—Yes.

Senator CARR—Can you hand that up; is that possible?

Ms Ward—Yes.

Mr McCormick—We have only one copy here at this stage.

Senator CARR—There is a photocopier out the back. Is it possible to get that photocopied? It will save me a lot of time if I have the table in the front of me.

Mr McCormick—We can give you the relevant extracts from it.

Ms Ward—While this has two footnotes on it which make sense to me, I would prefer to take it on notice to be able to give you a table that explains quite clearly the changes in the figures.

Senator CARR—That is fine. It helps my questions if I have it in front of me. I am more than happy for you to provide me with another table on notice. If I have that information in front of me, it will assist me in the questions I wish to ask. You speak of the cap. How does that cap currently work? There is the appropriation cap. Is there a cap on the size of the firms?

Ms Ward—Yes, that is one of the eligibility requirements set out in the legislation. That current size of firm is set at \$30 million annual income.

Senator CARR—How has that changed over time? It is currently \$30 million.

Ms Ward—In legislative changes made in 2003 the size eligibility was reduced from \$50 million to \$30 million. If you wanted to go back before that, I would need to take that on notice to be certain.

Senator CARR—If you could, please. I would like the information back 10 years to see the additional changes to the legislation on the size of the firms that have been able to participate and how the eligibility criteria have changed.

Ms Ward—Do you want it in detail on the differences in the eligibility criteria?

Senator CARR—The broad outline is that it has gone from \$50 million to \$30 million. Are there other changes?

Ms Ward—Yes, there have been other changes in eligibility requirements over that period of time, and in entitlements under the scheme. There have been a few different changes. I can provide you with all of those over that 10 years.

Senator CARR—If you would not mind, that would be appreciated. Has the scheme been undersubscribed? If you have \$8.8 million underspent this year, would you describe that as undersubscribed?

Ms Ward—It is not a scheme with a set number of applications.

Senator CARR—So you would not use the term ‘subscribed’?

Ms Ward—It is not for me to use a term at all. I think that is a policy question.

Senator CARR—I am just trying to understand it. You would appreciate it is my first time here. I might use terms that you are not familiar with. Would you say that the program was underspent in any of the other years, or is that a term we do not use either?

Ms Ward—There is an appropriation set for the program. In the budget papers we always estimate applications and recipients, but we do not make targets, so I do not think either of those adjectives is appropriate.

Senator CARR—If we go back for the last five years, have there been any other years when the number of applications has not been greater than the amount of money provided? I take it that it was \$170 million or thereabouts in the last five years—would you say \$164 million?

Ms Ward—Do you want to go back five years?

Senator CARR—Yes, please.

Ms Ward—In 2002-03 there were no funds unspent, neither were there any funds unspent in the following year. In 2004 there were funds not drawn down from the appropriation.

Senator CARR—That was 2005, was it?

Ms Ward—It was 2004-05. Last year, 2005-06, there were funds that were not drawn down from the appropriation. It is our current estimate that there will be funds not drawn down in the current year.

Senator CARR—How much were the undrawn funds in the last three years? We have an estimate of \$8.8 million this year, and I presume for the previous year it was an actual. How much was that?

Ms Ward—In 2005-06 there was \$25.2 million not drawn down from the available appropriation.

Senator CARR—And in the previous year?

Ms Ward—In 2004-05 there was \$19.3 million not drawn down from the available appropriation.

Senator CARR—In the previous two years it was right on the appropriation, was it?

Ms Ward—No, it was not right on it. By definition, you can only draw down what is appropriated.

Senator CARR—You could be overdrawn. Were you overdrawn?

Ms Ward—Under the rules of the scheme that are set out in the legislation, there is a two-tranche mechanism for paying grants to ensure that you cannot in fact overspend. In those two years, that mechanism was used to ensure that we used all of the appropriation but could not be in a position of overspending it.

Senator CARR—So it is not possible to overspend, and that is the only three years in the last five that were underspent. And that was the amount of money returned to consolidated revenue?

Ms Ward—Not drawn down from consolidated revenue; that is correct.

Senator CARR—You do not have any way of carrying it forward—that is the point I am making—and your answer to that is?

Ms Ward—There is no automatic way under the legislation to carry it forward.

Senator CARR—The government can make a decision to carry it forward.

Ms Ward—There is a mechanism by which they can move moneys forward if that is decided.

Senator CARR—Have they chosen to do that?

Ms Ward—There was one year in which \$10 million was moved forward. That was from 2004-05 to 2005-06.

Senator CARR—Why was that year different?

Ms Ward—In the budget papers at the time it was said that there had been an election commitment to provide additional moneys to the scheme and, consistent with that, the money was moved forward.

Senator CARR—At what points in the year do you evaluate your spending commitments? Is there a process?

Ms Ward—Could you clarify what you mean by that?

Senator CARR—Yes. At what stages in the year is the process of the review of funding undertaken?

Ms Ward—Again, I am sorry. Do you mean the review of the current year?

Senator CARR—Every quarter do you assess the number of applications against funds or do you wait until the end of the year and work out whether or not you have spent all the money?

Ms Ward—As has happened this year, for additional estimates, if we believe there will be a variation that we should report from the budget estimate of the appropriation to be used for the year, we are required to report it. But we are not in a position to do that until applications have closed for the year.

Senator CARR—Thank you for the table. It is much appreciated. It says that for 1997-98 the total value of grants was \$147.3 million but you spent \$154.8 million. Is that right?

Ms Ward—That is correct.

Senator CARR—I thought you were saying to me before that you could not overspend.

Ms Ward—There was a transition period when the scheme first moved into the new legislation, in which there were still some payments being made under the old legislation. Although that is before my time, I understand that there were additional moneys available for payment of the old scheme applications, if that makes sense.

Senator CARR—I see. So that was the same explanation that could be given in 1998-99, where there appears to be an overspend again, from \$144 million to \$152 million?

Ms Ward—With those figures, as you will see in the brackets in the heading, it says ‘plus administration expenditure’. The other column you are looking at is ‘total value of grant payments’. The total figure includes all grant payments plus administration.

Senator CARR—So the overspending comes through the administration, does it?

Ms Ward—No, that is not correct. With a budget of \$150.4 million, it is not possible to go over the \$150.4 million, but, as I was trying to outline, for those two years you are looking at where it is in fact over \$150.4 million, that is because there were additional moneys for applications being assessed under previous scheme rules.

Senator CARR—Obviously I have misunderstood something here. Reading down the list, every year has an overspend; is that right? You have total value of grants for each year in one column. For one year it is \$147 million to \$154 million for the total expended in the second column. If I look at the year 1999-2000 it is \$135 million to \$143 million—

Ms Ward—The difference between those figures would be the amount spent on administration of the scheme.

Senator CARR—I am right. Every year there is a higher figure in the second column than there is in the first? That is correct, is it not?

Ms Ward—That is correct, because of the administration component.

Senator CARR—So the administration component in every year can be calculated by taking the difference between the first figure and the second figure?

Ms Ward—Except in the case of those first two years.

Senator CARR—So the administration figure appears to be quite substantial in the later years, if you go through them. Let us take 2004-05. The total value of the grants is \$123.9 million and the total expenditure is \$131.1 million. Do I take it from that that the additional expenditure is administration?

Ms Ward—That is correct. That has not actually varied very much at all in those figures.

Senator CARR—So it is about \$7 million or \$8 million? Is that what you are saying?

Ms Ward—That is correct.

Senator CARR—A total of \$7 million or \$8 million to administer \$150 million? That is what the scheme costs to run?

Ms Ward—As set out in the legislation, the administration costs of the program come from the appropriation, and it is capped at five per cent of the appropriation. It has varied between 4.7 per cent to 5 per cent, if we work it out on those figures.

Senator CARR—So the number of applicants has increased only very slightly over the last 10 years—from 3,251 to 3,812?

Ms Ward—Yes. As I have said earlier, these are not comparing like with like, because the rules of the scheme have changed over that time.

Senator CARR—What year could we use as a standard base year?

Ms Ward—Under the current rules of the scheme, if you were looking at the most recent figures, that first came into effect from 2004-05 applications.

Senator CARR—Which year was it?

Ms Ward—2004-05 was the first year of effect of changes in applications.

Senator CARR—So the number of applications has gone down?

Ms Ward—No, it has gone up.

Senator CARR—Go through that with me, will you?

Ms Ward—In 2004-05, it was 3,588, the following year it rose by 4.9 per cent and this year by 1.2 per cent.

Senator CARR—I see what you mean. Why was there a 10 per cent drop between 2004 and 2005?

Ms Ward—Because of the rule changes that came into effect. We touched on them earlier. The scheme changed the upper limit of annual income size for applicant companies from \$50 million to \$30 million. There were also other changes, but that is one clear one.

Senator CARR—Why do you think it has only increased by one per cent this year and 4.9 per cent the previous year?

Ms Ward—We tend to get yearly fluctuations reflecting various things that affect business decision making. What we have seen here is an increase that has not been as large on size but is a continuing strong increase, including in the value of applications. I do not have any further strong explanation as to why it would vary from 4.9 per cent to 1.2 per cent, but that continues to be an upward trend.

Senator CARR—Why is it there is a difference between the number of applicants in the third column and the total number of grant recipients? Does that take away the number of people you rejected?

Ms Ward—The total number of grant recipients will have various factors built into it. As you have just indicated, some applications will not have met the requirements of the scheme and have not been paid a grant. Some applications will not have finished with their processing for various reasons and have been carried forward. It will also include, for the same reason, some applications that have been resolved during the year but do not relate to the applications that are actually in the same year, because they have been carried forward, so there is a mix of factors in the end result. Yes, there will always be some applicants who turn out not to be eligible.

Senator CARR—When I look through this, I see a significant 11 per cent drop from 2003-04 in the number of grant recipients who presumably received money to 2004-05. That was the year in which the changes occurred.

Ms Ward—That is correct.

Senator CARR—So they were obviously highly successful changes, were they not? They reduced the number of applicants by 11 per cent?

Ms Ward—That year, with the scheme changes, through a policy decision of the government, the scheme was more closely targeted to small business, as we discussed—from \$50 million down to \$30 million—and to more inexperienced exporters through several other measures. Also, yes, in aggregate numbers, you saw a drop in the applications. However, if you extracted out those scheme changes, the underlying growth rate continued to be upwards.

Senator CARR—I see.

Ms Ward—You cannot tell that from these figures.

Senator CARR—No, you cannot. I might be forgiven for seeing it differently, because these figures tell me that the number of applicants that received grants dropped from 3,699 to 3,277, or an 11.4 per cent drop. Is that right? The value of applications dropped 21 per cent, and the value of grant payments dropped by 13 per cent. The expenditure overall dropped by 12.8 per cent. Why were the changes necessary?

Ms Ward—The government at the time made a policy decision, as I just mentioned, to target the scheme more closely towards smaller businesses, hence the change from \$50 million to \$30 million, and to less experienced exporters. So there were some changes made. For example, the maximum number of grants a recipient can now receive is seven. It was previously eight. There used to be provisions that an applicant, having received eight grants, could then move into what was referred to as new markets, and that provision was taken out of the scheme. These changes targeted the scheme more to inexperienced exporters rather than those who had already quite a large access to the scheme payments.

Senator CARR—As I said, I am new down here, and I am obviously having difficulty understanding why it is that a scheme that I understand is aimed at helping people export, to assist companies to commence or sustain export activity by reimbursing eligible export promotion expenses, would see that it actually helps fewer people. How could that be regarded as a policy success?

Ms Ward—If you are asking a policy question, it perhaps is not appropriate for me to answer. I can only again—

Senator CARR—There was an evaluation of the program. What was the role of the evaluation?

Ms Ward—In the last review of the scheme, which was done in 2005, an evaluation was done, including by an independent consultancy firm. The details of that are laid out in the review report, which was published by Austrade.

Senator CARR—So the review found that these were good changes because they actually helped fewer people. Is that right?

Ms Ward—The review report was not specifically on the scheme changes. The review report was on the scheme as a whole.

Senator CARR—We were not able to establish in this review that it was good to help fewer people? Was that one of the findings of the review?

Ms Ward—The scheme report—and I have not read it for sometime; it is several years old now—concluded that the scheme was successful at assisting smaller and inexperienced exporters, and that was in fact the results coming out of the research done. The scheme was most beneficial to smaller firms. It was smaller firms that reacted most to the provision of or the ability to apply for funds to increase their export promotion, which is the policy aim of the scheme.

Senator CARR—It is my understanding that our export performance actually declined during this period. So our general performance is declining. I would say to you, given the figures here, that there would be a prima facie case that we are actually helping fewer people export, and maybe there is a connection between the two events? Would that be a reasonable conclusion to draw?

Ms Ward—As I said, the scheme, as a policy decision, is targeted at small and emerging. Therefore, its success should be judged I think not by export revenue but by its success in helping companies actually move into exporting and growing to be sustainable. That is what I recall the researchers concluded.

Senator CARR—That is fair enough. I am just having trouble reconciling that proposition with the fact that you are actually helping fewer people. That is what this appears to be; fewer companies appear to be receiving assistance under this scheme?

CHAIR—They do have to apply. You cannot—

Senator CARR—They did apply; that is the point. They did apply.

CHAIR—And they have to meet the criteria.

Senator CARR—Have you had a look at that table?

CHAIR—Yes, you have to apply and meet the criteria. It is as simple as that.

Senator CARR—And the criteria changed. It is available to fewer people. I am just wondering whether the evaluation picked this up.

CHAIR—It does not sound like it did.

Senator CARR—No.

CHAIR—It was probably for good reason, because the scheme is working pretty well.

Senator CARR—It is working brilliantly. So who makes the decision to actually allocate moneys to a particular firm?

Ms Ward—The scheme rules are set out in an act that is agreed by the parliament. There are quite extensive eligibility rules in that act of parliament that are applied by Austrade administering the scheme. If an applicant meets those rules, then an applicant is eligible for a grant. There is no discretion about whether the grant is paid or not.

Senator CARR—There is no discretion at all?

Ms Ward—It is not a discretionary scheme. It is a scheme set by rules in an act of parliament.

Senator CARR—That is fair enough. Can you help me with a particular grant applicant from a company by the name of Firepower? Do you have your file there on that?

Ms Ward—What would you like to know?

Senator CARR—How much money, by way of export market development grant, was paid to Firepower?

Ms Ward—There is an EMDG recipient by the name of TPS Firepower Pty Ltd, which has received four grants over the years between 2002-03 and 2005-06. Those grants were paid for expenditure that the company made in the previous financial years, so in our language we refer to those as grant year, which would have been one year earlier. The four grants totalled \$394,009.

Senator CARR—There were four grants. What was the size of each grant?

Ms Ward—These are all on the public record, because they are tabled in parliament each year. The first grant was for \$105,979. The second grant was \$109,348. The third grant was for \$150,000. The fourth grant was for \$28,682.

Senator CARR—Are you able to tell me the dates on which these grants were paid?

Ms Ward—No, I do not have that information. I would have to consider whether it is appropriate to actually provide that information. That is the company's information. I can tell you the financial years in which the grants were provided.

Senator CARR—That will do for a start.

Ms Ward—The first financial year was 2002-03. The second was 2003-04. The third was 2004-05. The fourth was in 2005-06.

Senator CARR—Do you have information on the last grant, the date on which in 2005-06 that was paid?

Ms Ward—No, I do not. Under the Austrade act there are four things I can tell you in detail about the commercial arrangements of any applicant. One is the name of the applicant, which I have just said. The second is the address, and I do not know if I have it with me, although I probably do. The third is the industry. The fourth is the amount of the grant. I can tell you now that I do not have the dates of those grants. That is not one of the pieces of information I can provide.

Senator CARR—That is fair enough. What does Firepower manufacture?

Mr McCormick—Can I just say that Ms Ward has been looking at the grants that were paid to that company. There is an application process: people put in their applications. They are assessed against eligibility criteria, but in fact questions about what the company produces are probably more appropriately directed to the company itself.

Senator CARR—Why did you pay the grant?

Mr McCormick—Because they were assessed as meeting the eligibility criteria.

Senator CARR—It has been put to me that they do not manufacture in Australia. Is that right?

Mr McCormick—What we can do is go through the things that we assess, the claims—and of course different companies make different claims for different activities for different amounts. We can go through and tell you the sorts of things that we take into account when we assess a claim against the eligibility criteria. That could be helpful in addressing this as well.

Senator CARR—What would be helpful is to know what they got the money for.

Ms Ward—Under the rules of the scheme, there are three very clear eligibility requirements that Austrade checks. The company or applicant must be an eligible business under the rules of the scheme. It must be seeking to export an eligible product. It must incur an eligible expense in promoting the export of that product. All of those things were intensively audited by Austrade in the case of the applicant to whom you are referring. The company was found eligible for those grant payments which we have already provided to you.

Senator CARR—What does it export?

Ms Ward—In the five-year period over which we were doing the audits of these grant applications, the company is an Australian company, it was carrying on business in Australia and it was exporting fuel fluid and additive products.

Senator CARR—You say that it is an Australian listed company?

Ms Ward—That is correct. For a company to be eligible for an EMDG grant, it must be an Australian company with an ACN. It must also have an ABN.

Senator CARR—Do you have those numbers with you?

Senator FERGUSON—Ms Ward has said the things that they are allowed to divulge, and I do not think that giving ABN and ACN numbers is part of their bailiwick. I think that question is totally out of order.

Senator CARR—What I am referring to here are press reports that state that this is not an Australian company.

Ms Ward—The company to which we have paid EMDG grants is certainly an Australian company. It would not have been eligible for grants under the scheme if it were not. That is one of the things we quite clearly check.

CHAIR—How do you do that?

Ms Ward—By checking the ACN information.

CHAIR—So you reconcile the number with the register?

Ms Ward—That is correct. As part of our audit scrutiny, often with mega companies, including this one, we visit the company's premises. We do a detailed review of business records, including financial accounting, banking records and other supporting documentation. We use ASIC searches and ABN searches. All of these things were done for this company.

Senator CARR—What is the name of the company you checked?

Ms Ward—The company for which we have paid grants is called TPS Firepower Pty Ltd. You would find it in the tabling documents.

Senator CARR—Were the fuel fluids and additives that it exported manufactured in Australia?

Ms Ward—Quite clearly from the business records that we saw, including invoices and shipping documents et cetera they were sourced from Australian fluid suppliers. In fact, that is another eligibility requirement of the act. There are Australian origin rules within the act. So one of the things we have to check is that they are in fact sourced within Australia.

Senator CARR—With respect to the reference to Firepower being a British Virgin Island registered company, that is the holding company that controls the Australian subsidiary, is it?

Ms Ward—The company we paid the grants to, as I have said, is clearly an Australian company. I cannot comment on what may have been written in the media.

Senator CARR—So you are not aware of any association with a company known as Firepower Holdings Group Ltd?

Ms Ward—I cannot comment on that.

Mr McCormick—We have been explaining the process. It is a very transparent and rigorous process where we assess applications as they come in. That is what we have been

doing, and that is what we have done in this case here. I think that is all the sorts of issues that we can actually address for you.

Senator CARR—So it does not matter that TPS Firepower Pty Ltd is in fact a wholly owned subsidiary of a company registered in the Virgin Islands?

Senator FERGUSON—Mr Chair, I just do not know where Senator Carr is going, but a company that is registered in the Virgin Islands will not apply to Austrade for an EMDG grant. They only deal with Australian companies. It is not a concern of Austrade as to whether or not the parent company is based somewhere else, because the parent company did not ask for the grant. I think it is out of order to ask officials at the table to pass comment on another company that did not apply for a grant through Austrade.

CHAIR—It may be more productive to ask: what are the criteria and indicia of an Australian company, and were they met in this instance?

Senator CARR—I think we have established that the department is claiming that it did meet that criteria. I am interested to know what is the relationship between this company that received the grant and the company known as Firepower Holdings Group Ltd?

Senator FERGUSON—Why should that be a concern to Austrade?

CHAIR—I do not think that is relevant at all to estimates or to Austrade. The beneficial owner of an Australian company may come from Brazil. The bottom line is the company complied with the criteria. It is an Australian company and, if it met the criteria and all of the surrounding analysis, it was entitled to the grant.

Senator CARR—That is ACN 095092149; is that right?

Mr McCormick—We would have to go back and check that but, as we have already said, there are limits under our legislation about the amount and type of information we can make publicly available.

Senator CARR—Can you tell me if that is the same company?

Senator FERGUSON—I do not think that is one of the four criteria.

Senator CARR—What—that we have the right company? You do not think that is not one of the criteria?

Senator FERGUSON—It is not in the criteria to give out either the ACN or ABN.

Ms Ward—I need to repeat what I said earlier. The very clear eligibility rule, and one that we always clearly check, is that it is an Australian company, that it has an ABN and that it is carrying on business in Australia. These are all quite clear eligibility rules about the business, and these things have been checked.

CHAIR—Can you tell us if you visited the premises in this instance?

Ms Ward—Yes. Before grant payments there were checks to the premises on three of those grant payments. The first three were all following visits to the premises. If you like, I can tell you some of the checks that were made in general terms?

Senator CARR—Thank you.

Ms Ward—Obviously, I cannot give you commercial-in-confidence information.

Senator CARR—I think that is important.

Ms Ward—As I said, it is an Australian corporation with an ABN carrying on business in Australia and supported by extensive business records that we looked at. It was assessed as exporting an eligible product, which I have described, which was sourced from Australian fluid suppliers. We cited confirmation of product samples of the fluid products that had been given away to prospective buyers. They were product samples. We audited its supplier and purchase invoices, which substantiated the Australian content of the fuel additives; as I have already explained, Australian origin is an eligibility requirement. We confirmed the principal status or ownership of the product, which again is a rule of the scheme. The applicant must have principal status as the owner of the product that they are promoting for export. We confirmed that through sales invoices, shipping documents, bills of lading and financial statements. For EMDG eligibility the good must physically exist, which it did, and it must be available for export sale, which it was. All of these things were checked. Thirdly, having checked that the business is eligible and that the product is eligible, we then have to check that the expenses incurred were eligible, because that is what partial reimbursement is being paid for. We audited full supporting and third-party records, which confirmed the payment of eligible promotion services, including travel agency invoices, credit card statements, bank statements, trip reports, email correspondence agreements, supplier invoices et cetera. Financial statements were looked at which confirmed that these expenses had been acquitted during the year, which again is an eligibility requirement. All of these things are quite standard audit practice for Austrade before a grant is paid.

Senator CARR—Are you able to tell me how the company is structured?

Ms Ward—That is not something I can comment on. It is not part of the information that is related to the grant eligibility that I can describe.

Senator CARR—How much did it export in any year of the grants?

Ms Ward—Again, that is something that is commercial information and is not one of the four things that is spelled out that I can provide to you. As I did say in passing, shipping documents and export sales were audited, but I cannot tell you those figures. You would have to ask the company about that. It is commercial information.

CHAIR—In an application, does the applicant have to disclose the gross export dollar figure that it is currently earning? I do not want the figure.

Ms Ward—Yes. There is a schedule on the application form which asks for export earnings.

CHAIR—Does the director of the applicant have to certify that those numbers are true and correct?

Ms Ward—Yes.

CHAIR—Is it a sworn statement or simply a certification?

Ms Ward—A ‘certification’, I am told by my colleagues, is the right term.

CHAIR—Is there any current investigation as to the veracity of those four applications?

Mr McCormick—There is no investigation. Obviously there were some newspaper articles. We reviewed the processes that we undertook and we found nothing to suggest that there was anything inappropriate about the grant applications or the grant payments that Austrade made on the basis of those applications.

Senator CARR—Who did the review?

Ms Ward—Three senior officers within Austrade have looked at the quite extensive file and extensive supporting documentation. I am one of those three. The other two are more experienced than I am. Very experienced grant and senior grant auditors have looked at the file and it is extensively documented. In fact, in some years—which is quite common practice as you saw personally—there have been adjustments to the amounts claimed because of some amounts that were assessed as not being eligible payments.

Senator CARR—That is not an unusual process in all grants programs?

Ms Ward—That is correct.

Senator CARR—Do you do checks on the history of applicants for these grants before you accept the applications for payment?

Ms Ward—We do the checks on those aspects that are relevant to the eligibility criteria for the EMDG scheme.

Senator CARR—So there was no question about the principals of the company having any difficulty with their company history? They were not bankrupts or anything of that sort, were they?

Ms Ward—Another eligibility requirement is that, at the time of payment, the recipient is not insolvent, so that is checked.

Senator CARR—What other checks were undertaken in relation to the credentials of the company?

Ms Ward—To repeat what I have said before, all of those checks that I have already summarised that are relevant to the payment of the grant.

Senator CARR—Is there any process during the period of the grant to check the performance of the company? Is there any ongoing monitoring that the claims made in the application are met?

Mr McCormick—Do not forget that these are reimbursement claims for money that has already been expended by the company previously.

Senator CARR—Is there a statute of limitations upon which you can go back and say the claims have been made and that money should be refunded?

Ms Ward—The only grounds that we would have for any recipient to go back and take action for repayment would be if we were able to establish a fraudulent application through false and misleading information. That does occur on occasion. We have an active anti-fraud component in the administration of this program.

Senator CARR—It is pretty rare that that occurs, isn't it? How many have you had in the last five years?

Ms Ward—I cannot give you information on the last five years but I can probably look it up. Since 1996 some 27 persons have been prosecuted for offences against the scheme. We have a special investigation unit that works on special investigations for fraudulent claims. They work with the Federal Police and, when it goes through to prosecution, with the Commonwealth Director of Public Prosecutions.

Senator CARR—And of the 27 that were prosecuted, were any convicted?

Ms Ward—If you want information of those 27, I would have to take that on notice. I do not have all of those details with me.

Mr McCormick—But the answer is, yes, there were.

Senator CARR—I will take the rest on notice as to the nature of those convictions. With regard to Firepower, you have indicated it has received considerable public attention that went to a number of matters which, as you have indicated, have been subject to review within the department. So I am sure you will be able to answer these points that have been raised. You say that three officers have undertaken the review—yourself and two others. What level were the other two?

Ms Ward—In Austrade classification levels, I am referred to as Austrade performance level 7 which, in Public Service terms, is an SES band 2. I think that is what it is called. The second person, who is the national manager of the operations unit of the scheme, which is where all of the audit program started, is an APL6, which is the equivalent of an SES band 1. The third person is what we call in Austrade an APL4, which is the equivalent of EO2, so my colleagues tell me.

Senator CARR—So, quite senior officers?

Ms Ward—That is correct.

Senator CARR—I might just go through some of the claims that have been made. Firstly, who actually approved the four Firepower grants?

Ms Ward—I cannot give you names. In fact, all four applications were audited by a different grant auditor. We have strong internal controls in our program, and wherever possible we always have a different auditor audit from one year to another. So all four were audited by a different auditor over that period, in each year, and this is another internal control. In each of the first three years a second person approved the grant. Only in the last year was it both audited and approved by the same auditor, and that was a senior person, because of the risk profile modelling that we use. In the fourth year, it was not necessary to be approved by a second person because this had already been done for the three previous years.

Senator CARR—Is the person who did the original grant approval still with Austrade?

Mr McCormick—We are not aware of the answer. We do not know the answer to that.

Senator CARR—Will you take that on notice?

Ms Ward—Over that time, the staff in that particular office have been stable except for the state manager, who did change about two years ago. Again, I would have to tell you those details. That would be the only change in that period. Each year there would have been a different person approving to the auditor. That state manager was no doubt one of those

people in that period, and that state manager has since gone to do other things, so is no longer with Austrade.

Senator CARR—The fact is that it is more than likely that the person who approved the grant, given the stability of the staff, is still there?

Ms Ward—I think from memory, in the first year, the approval officer may have been the state manager in that year. I would have to take that on notice and give you the details.

Senator CARR—Thank you.

Mr McCormick—Just to clarify, do you want to know whether the person who made the decision in the first year is still employed by Austrade?

Senator CARR—The decision maker, yes. I want to know whether the person who did the reviews in subsequent years is still there. That is obviously not the same person, is it?

Ms Ward—As I said, the four grants were audited by four different people in the office. Three of those people are still there; the position of the fourth one, who was the state manager, has since changed.

Senator CARR—In the review process, when you look at the claims made by the company about the products that it is going to export, if it does not meet its own performance criteria, is there any means by which subsequent years' grants can be adjusted?

Ms Ward—To clarify again, which my colleague has just pointed out, this is a reimbursement program on expenditure. So it is not on performance—

Senator CARR—It has no performance criteria in terms of exports?

Ms Ward—It has eligibility requirements, which are quite extensive and are set out in the act of parliament. But they all revolve around eligibility over those—

Senator CARR—Spending, not performance, in terms of actual sales; is that right?

Ms Ward—That is correct.

Senator CARR—In terms of this miracle fuel cell pill that is said to be a product that is exported, it is reported in the *Sydney Morning Herald* that the independent tests that the company were going to be performed have not been performed and will not be performed. Would that affect your assessment of its performance?

Ms Ward—As I did say earlier, the product for which EMDG grant payments have been made were fluid products-additives.

Senator CARR—Yes, a pill. That is the idea, is it not? It is in a tank. Is that the idea?

Ms Ward—They were fluid products sourced from Australian fluid suppliers.

Senator CARR—I see. So are these claims in the paper by the principals of the company describing the product wrong?

Mr McCormick—I am sorry, this is where we get into a bit of difficulty. There is a trial by media of a company, and you are asking us to get involved in that trial by media when I do not think that is something that we should be getting involved with. What we can do is tell you how we dealt with the applications for grants under the EMDG scheme, and the steps

they had to go through to be assessed for reimbursement. That is what we have been trying to do: to tell you about all of those eligibility criteria. The company is eligible, the product is eligible and the expenditure on export promotion is eligible. These are all set out in legislation. It is a very transparent and quite rigorous scheme. If the question to us is: do you believe you have done something wrong?, our answer is: no. We have had a look and we cannot see anything inappropriate about the way we have dealt with applications from that company. Unless somebody gives us some information that forces us to say there was some issue that was not brought up in the application processes, then I think we are at a loss to actually say much more about that.

Senator CARR—I am trying to understand why it is that the company has been given the grants, and trying to reconcile what is on the public record with the way in which you administer the scheme. You are telling me that it is not actually a performance based scheme, so it is probably irrelevant. Is that it?

CHAIR—With respect, you are not trying to reconcile the public record, you are trying to reconcile newspaper reports.

Senator CARR—That is a public record.

Senator Coonan—It is not a record; it is an allegation. It is a claim.

Senator CARR—Are any of the principals working for Firepower former employees of Austrade?

Mr McCormick—Any of the principals?

Senator CARR—Yes.

Mr McCormick—What I can say, because it is not clear what positions former Austrade employees necessarily hold in those companies, is that there are some former Austrade employees who we understand work for the Firepower company.

Senator CARR—It is reported in the press that Mr Finnin was a deputy consul general and Austrade's regional director in Europe, Middle East and Africa when Firepower was selected by Austrade to be one of the 10 rising global businesses in 2004. Is it correct that Mr Finnin now works for Firepower, as does Gregory Klumov, a former Austrade senior trade commissioner in Moscow? While at Austrade, Mr Klumov was involved in Australia Week in Moscow; Firepower was the chief sponsor of last June's show. Is that correct?

Mr McCormick—You have asked a series of questions there. I will just ask one of my colleagues, Michael Crawford, to come forward, if you want to get into some of those questions in more detail.

Senator CARR—Thank you—if you could help me with that.

Mr McCormick—We will help you as far as we can.

Senator CARR—I was seeking to establish whether there are any former Austrade employees who are now working with Firepower.

Mr Crawford—As my colleague indicated, we are aware that a number of former employees work for Firepower.

Senator CARR—Was it the case that in 2004 Firepower was selected by the European office of Austrade to be one of the 10 rising global businesses?

Mr Crawford—I think that was some liberal reporting by the journalist, as I understand it.

Senator CARR—It was some what?

Mr Crawford—I think there was some liberal interpretation in their article. Each member of the Austrade executive, particularly regional directors, are required by the CEO to identify clients that they have sort of a fairly hands-on relationship with. The idea is to keep the regional directors in touch with Australian businesses. Generally the regional directors chose three or four of those companies to work with. In the case of Europe and the Middle East, the then regional director, John Finnin, chose a number of companies, one of which was Firepower. But it is not accurate to say that Austrade chose it as one of the top 10 companies. We do not use such parlance.

Senator CARR—The term one of the top ‘rising global businesses’ was not a term or an expression used by Austrade?

Mr Crawford—Certainly not that I am aware of.

Senator CARR—What you can confirm, though, is that Mr Finnin was at the time coordinator of the program in the European office of Austrade?

Mr Crawford—Mr Finnin was the regional director for Europe, the Middle East and Africa. As part of that position he was also the deputy consul general at the Frankfurt post. The consul general would have been the senior trade commissioner as Austrade runs that consulate.

Senator CARR—Yes, he was deputy consul general. The report I am reading from asserts that this is a very significant development as it gives the company access to foreign governments at government-to-government level, and an extensive network of multinational corporations with whom Austrade has an existing relationship. It is purporting that that is a quote from Austrade.

Mr Crawford—Which report are you referring to?

Senator CARR—I am referring to the report that appeared in the *Sydney Morning Herald* on 10 January this year.

Mr Crawford—The only comment I would make is that Austrade, obviously, with its extensive international network, experienced staff, both A based and locally engaged, does have very well-established contacts and networks in the countries that we operate in. Those contacts and networks and market intelligence are available to all Australian companies who seek the assistance.

Senator FERGUSON—Without those contacts you could not give any assistance.

Mr Crawford—No. Obviously in some countries the government imprimatur, the fact that Austrade is a government agency, is also beneficial.

Senator CARR—Mr Finnin resigned from the Australian Public Service and took a position with Firepower. When was that? Are you able to tell me that?

Mr Crawford—I cannot tell you when he took a position with Firepower. I can tell you that he resigned on 25 May 2006, and his date of termination-last day of employment was 19 July 2006.

Senator CARR—He may well have been with Firepower prior to that date?

Mr Crawford—No, because he was working up until that point in time. His resignation was advised, but he was still within the employ—

Senator CARR—His conditions of employment would have precluded him from working for Firepower prior to that date, would they?

Mr Crawford—Absolutely, because he was still an employee of the Public Service with the trade commission.

Senator FERGUSON—Can I just clarify something. This gentleman that Senator Carr is asking you questions about was working for Austrade while the first three grants were made in 2003, 2004 and 2005. In fact, the only grant that was made to this company in the latter year was the one of \$28,000 when he may or may not have been a senior principal in the company. All of the earlier grants were made while this gentleman was working with Austrade.

Mr Crawford—I cannot recall what date Mr. Finnin joined Austrade.

Senator FERGUSON—You said he resigned on 26 May 2006, which was after the first three grants had been made to Firepower. Is that a fact?

Ms Ward—That is correct. In any case—

Senator FERGUSON—I am just wondering what the connection is. I cannot understand where Senator Carr is coming from.

Ms Ward—Not only is there none, there could be none, because it is not relevant to the eligibility criteria under which we assess these applications.

Senator CARR—Mr Klumov was the trade commissioner in Moscow. Is that correct?

Mr Crawford—Senior trade commissioner in Moscow, yes. He was responsible for the Russian CIS.

Senator CARR—When did he have that appointment?

Mr Crawford—When did he begin?

Senator CARR—Yes.

Mr Crawford—I would have to take that on notice. I would say some time in 2002-03. I will need to clarify that.

Senator CARR—Is he still with Austrade?

Mr Crawford—No, he has resigned from Austrade.

Senator CARR—When did he resign?

Mr Crawford—He emailed his resignation letter to the acting regional director at the time and to Mr Finnin on 20 June 2006. His last day of employment was 31 July 2006.

Senator CARR—Who did he email it to—Mr Finnin?

Mr Crawford—Yes, and Mr Deady. Mr Deady went up to take on the role of acting regional director for—

Senator CARR—Mr Finnin was still in that position as of—

Mr Crawford—As I advised, his last day of employment was 19 July 2006.

Senator CARR—This was emailed to him on 20 July?

Mr Crawford—20 June.

Senator CARR—Is it the case that Mr Klumov is also now working with Firepower?

Mr Crawford—As far as we are aware, yes.

Senator CARR—One presumes that Mr Klumov's contract of employment would have precluded him from joining Firepower prior to 31 June 2006. Is that correct?

Mr Crawford—31 July. That is correct.

Senator CARR—Neither of these individuals, according to your review, participated or had anything to do with the grants being awarded to Firepower over the period that we have discussed, from 2002-03.

Ms Ward—To be very clear about this, only specialised EMDG auditing staff, who are employed in a quite separate unit within Australia—the EMDG Unit of which I am the general manager—are ever involved in the assessment of EMDG applications. That is always the case, and it certainly was the case for the recipient you are referring to.

Senator CARR—Mr Finnin is not just an employee of Firepower, is he? He is the chief executive.

Mr Crawford—You would need to check that with the Firepower group of companies.

Senator CARR—You are not aware that he is the chief executive?

Mr Crawford—Chief executive of one part of it.

Senator CARR—Sorry?

Mr Crawford—Of one part of the Firepower organisation.

Senator CARR—One company?

Mr Crawford—No, I cannot clarify whether it is the company or both, but CEO of a particular part of the operation, as far as we understand. You would really need to clarify that with the company itself.

Senator CARR—I am just trying to get this clear in my mind. He resigned from Austrade in June and became chief executive of Firepower presumably some time after June.

Mr Crawford—Certainly after 19 July when his resignation came into effect. His last day of work was 19 July.

Senator CARR—His resignation was submitted in June?

Mr Crawford—No, his resignation was submitted on 25 May 2006. His last day of employment was 19 July 2006.

Senator CARR—He gave almost two months notice.

Mr Crawford—Yes.

Senator CARR—There was a report in the *Canberra Times* of 12 January 2007 titled ‘No special treatment Firepower: fuel boss speaks up’.

Mr Crawford—I do not think I have the particular article, but I am aware of the theme.

Senator CARR—Mr Finnin is described here as the chief executive. I presume that is correct. He claims that Firepower had given Austrade more money in sponsorship—almost \$500,000. Is that the case?

Mr Crawford—No, that is not case.

Senator FERGUSON—Don’t believe everything you read, Senator Carr.

Senator CARR—That is the assertion that is in the newspaper. I am trying to establish: has Austrade received any money from Firepower?

Mr Crawford—Yes, Austrade has.

Senator CARR—How much?

Mr Crawford—Austrade has received sponsorship funds from Firepower as a major sponsor of Australia Week in Moscow, and the major sponsorship package was \$200,000.

Senator CARR—When was that major sponsor—

Mr Crawford—Just to ensure I have answered your question fully, you asked about funds received in sponsorship.

Senator CARR—Yes.

Mr Crawford—Firepower has also been charged client service fees, under our client service policy, for detailed services provided to them—normal client services.

Senator CARR—Are you able to tell me how much that is?

Mr Crawford—No, I am not allowed to; it is considered commercial-in-confidence.

Senator CARR—In terms of the moneys that were paid for the sponsorship in Moscow, what was the date of that payment?

Mr Crawford—I will just clarify for you. Firepower has been a sponsor on two occasions with Australia Week in Moscow. In the first year—I think it was 2005—their sponsorship was in the order of \$80,000. As I said to you, last year they were a major sponsor, at a value of \$200,000.

Senator CARR—So it is \$280,000 in total?

Mr Crawford—That is correct.

Senator CARR—That is 2006. What was the date of Australia Week? Which particular week is it?

Mr Crawford—I was asking myself that question. I think it is June.

Ms Ward—May.

Mr Crawford—May.

Senator CARR—In both years?

Mr Harcourt—May Day.

Senator CARR—That is a very good day; I am sure May Day in Moscow would be quite entertaining. Mr Klumov would have organised that sponsorship, would he not?

Mr Crawford—As I understand it, Mr Klumov had primary carriage of organising the promotional program Australia Week in Moscow. He would have been involved in organising that, yes, but not solely. He would have been supported by other staff at the post, I suspect.

Senator CARR—Are you aware of what Mr Klumov now does for Firepower?

Mr Crawford—No, I am not aware. In fact, I am aware that most of my colleagues are unaware.

Senator CARR—That was not subject to your review, was it, Ms Ward?

Ms Ward—It is irrelevant to the EMDG applications, which is the only thing that was looked at, from my point of view.

Senator CARR—I just want to clarify one question. Ms Ward, you said that there are no performance measures in terms of the assessment for this program of the company's actual exports; is that right?

Ms Ward—Under the scheme, until amended in June of last year, there were export earnings criteria taken into account in the formula for calculating the grant payment from the third grant onwards. For the first two grants this did not apply; for the third grant onwards it did. So there is a formula calculation which could mean that the grant payable might be reduced as a result of export earnings.

Senator CARR—That is the case from the third grant, the \$150,000 grant made in 2004-05?

Ms Ward—For any applicant that calculation came into play in the grant payment from year 3 onwards.

Senator CARR—So for the first two years you do not have to increase your exports to continue receiving assistance?

Ms Ward—That is correct. Export earnings were not taken into account at all for any applicant in the first two years.

Senator CARR—But now they are?

Ms Ward—No, from year 3 on they were. It is one of the changes that were made in the legislation in June 2006. Moving forward, they will not be taken into account.

Senator CARR—Is that why Firepower's grant is now only \$28,000 in the fourth year?

Ms Ward—Again, I cannot go into commercial-in-confidence information about how we calculated the grant, but certainly the export earnings would have been taken into account in the payment that was made in that year. What you can tell by the fact there was a payment is

that there were export earnings because there had to be some export earnings to be taken into account in that formula.

Senator CARR—Some? In terms of the formula, how does that work—'some' export earnings'? How do you calculate whether the export earnings are actually significant? Is it a dollar? Is it \$2? What is it? How much is measured?

Ms Ward—Under the rules which apply to applications lodged before 1 July 2007, from the third grant onwards applicants were—or are, because it still applies in the applications we are assessing this year—subject to a formula that takes into account their export earnings, so that the general grant formula is 50 per cent of total eligible expenses less the first \$15,000 of eligible expenses, which comes off. That is the threshold expenditure, which is not reimbursed. After that, the formula takes into account the relevant percentage of export earnings depending on how many grants have been received. The relevant percentage to be applied for the third grant was 40 per cent; for the fourth grant, 20 per cent; for the fifth grant, 10 per cent; for the sixth grant, 7.5 per cent; and for the seventh and final grant, five per cent. That would put a cap on the total grant that could be paid under those rules that applied. This is all set out in all of our publications relevant to the time.

Senator CARR—Is this the same Firepower that is now sponsoring the Sydney Kings? Is that the same company?

Mr McCormick—Clearly there is some relationship between the two. On the specific companies, we could not answer that question. We are not privy to the details of who sponsors—

Senator FERGUSON—I am not sure that question is relevant to us.

Senator CARR—I just want to know. Is it the same company that is also sponsoring the Rabbitohs?

Senator FERGUSON—You ought to go and ask them.

Senator CARR—I just want to know whether there are any public moneys going toward the sponsorship of the Rabbitohs.

CHAIR—How are they going to know that?

Senator CARR—If the company is being subsidised for this program, I am wondering how much of it ends up with the Rabbitohs.

CHAIR—Once you repay what they have spent you cannot control what activities they go into.

Mr McCormick—It is not a subsidy; we have already spelt that out. It is a reimbursement of expenditure already made by the company—partial reimbursement, not total.

CHAIR—I am not sure Senator Carr understands the way the system works.

Senator CARR—I think I understand how the system works. Going back to the sponsorship of the May Day Australia Week in Moscow—the \$280,000—how many other sponsors were there in that year, May 2006?

Mr Crawford—I can give you some information for last year's Australia Week in Moscow. The major sponsors were Firepower and BHP Billiton. The government sponsors were the Queensland government and the government of Moscow and Moscow region.

Senator CARR—So it is a council.

Mr Crawford—The industry sponsors were Rusal, a Russian firm; Emirates; Sistema; Australian Rural Exports Pty Ltd; the Centre for Investment Projects and Programs, which was a Russian organisation. The event partners were the Russian Academy of Business and Development, the Foster's Group and Direct Connections LLC.

Senator CARR—Did they all put in \$200,000?

Mr Crawford—No. As I said, the major sponsors, BHB Billiton and Firepower, both contributed \$200,000.

Senator CARR—How much did the others contribute?

Mr Crawford—I cannot give you those figures off the top of my head. Some of it was in kind.

Senator CARR—In kind?

Mr Crawford—Yes, the provision of hall space, for example, by the government of Moscow.

Senator CARR—How do you get selected as a sponsor?

Mr Crawford—My understanding is that a large number of companies were approached.

Senator CARR—So Austrade approaches the companies?

Mr Crawford—Yes.

Senator CARR—They do not volunteer?

Mr Harcourt—'Peter the Great' was there, too—the Queensland Premier, Peter Beattie, from the Queensland government.

Mr Crawford—I think you would find that—

Senator CARR—Just to have sight of that statue of 'Peter the Great', yes.

Senator Coonan—Give him time.

Senator CARR—Sorry?

Mr Crawford—I was just saying that obviously companies that have an interest in the Russian market might be interested, and others that have had historical dealings with Austrade and its promotional programs might also have an interest.

Senator CARR—What does Firepower sell in Moscow?

Mr Crawford—What does it sell in Moscow?

Senator CARR—Yes. Is that part of its export market?

Mr Crawford—I do not think I am at liberty to disclose what its export markets are.

Senator CARR—I am just wondering: was that part of its export market for its fuel pills?

Mr Crawford—You would have to ask Firepower that.

CHAIR—Doesn't it follow that if they are prepared to pay \$200,000 for a promotional expo or whatever it was in Moscow that they would have some commercial relevance to Moscow?

Mr Crawford—It might have some commercial relevance; that is what we are trying to establish. What is the commercial relevance?

CHAIR—Otherwise you would wonder why—

Senator CARR—Absolutely you would wonder.

Senator FERGUSON—Mr Chair, I think that Senator Carr ought to go and have morning tea with Firepower and all of his questions would be answered immediately. Mr Chair, I wonder if I might just have a couple of questions following on from Senator Carr's. I had never heard of Firepower until tonight. I do not read the *Sydney Morning Herald* or the *Canberra Times*, quite frankly, especially in January. Senator Carr is more enthusiastic about it than I am.

Senator CARR—That is probably why you are so uninformed.

Senator FERGUSON—You have nothing else to do, Senator Carr. Can I say that, having listened to the questioning and the fact that this company has received export market development grants over a period of four years, I would have thought it highlights it as one of Austrade's successes. The whole purpose of the scheme is to get Australian companies involved in exports overseas and to give them a chance. The fact that they have become so successful that they can then put \$200,000 back in sponsorship to an Austrade fair in Moscow I think is a sign of the success of Austrade's ventures into export and development grants, not a criticism. The fact that you have lost two of your very good people to Austrade probably indicates even more so how successful they are at having established themselves in the export market. I am just surprised at Senator Carr's line of questioning, which would question the success of the company. The fact that two of your officials now work for that company to me only highlights the success of Austrade's EMDGs, and is not a criticism of the processes.

CHAIR—Was the \$200,000 in cash?

Mr Crawford—Sorry?

CHAIR—Was the \$200,000 in cash?

Mr Crawford—My understanding is that the bulk of it was in cash. I would have to clarify that, but essentially, yes.

Senator FERGUSON—When you say 'cash', you mean as opposed to in kind?

CHAIR—I do not mean notes. Did they pay a fee to be the sponsor to Austrade in the nature of a cheque or did Austrade incur expenses that were subsequently rendered to them which they have paid, or how did the sponsorship system work? Do we know?

Mr Crawford—I cannot tell you by what mechanism the funds were transferred to Austrade, but it would have been in line with internal accounting protocols and the like. Yes, essentially it was a—

CHAIR—On a commercial basis, they applied to be a sponsor. The entry price was \$200,000 and they wrote a cheque?

Mr Crawford—Colloquially speaking, yes.

Mr McCormick—Clearly, there is an agreement between sponsors and the organisers.

CHAIR—There is a contract that you would run the fair and they would be a sponsor and be displayed prominently in part of the promotional stuff for the fair, that is the quid pro quo and off it went?

Mr McCormick—That is correct. I think there were 12 sponsors or partners with different roles and relationships.

Senator CARR—The difference being, of course, that the person doing the approaching ends up working for them within a short period?

Senator FERGUSON—Nothing wrong with that.

Senator CARR—Nothing wrong with that?

Senator FERGUSON—Not at all. It is a successful company.

Senator CARR—The person who selected them in 2004 as a major company ends up as their chief executive officer? Nothing wrong with that either, is there, I suppose?

Mr McCormick—I think you have to distinguish between if something was wrong or something is just life. What we can say to you is that we have no power to prevent our employees resigning from our job and getting another job. What we do have in place are a whole range of policies that say you are not allowed to work for somebody else while you are working for us and that you are not allowed to have a conflict of interest. We have conflict of interest policies in place there, and we have no reason to believe that there were any conflicts of interest on these occasions.

Senator CARR—Mr McCormick, you say you have no reason to believe that, and you have just done a review, but you indicated that you did not examine those issues. Are you now telling me that those issues of potential conflicts of interest were examined?

Mr McCormick—I did not say that we did not examine those interests. Of course we would have a look. If somebody suggested something was wrong, we would say, 'Was there something wrong?' and we would have a look and say, 'We don't believe there is anything wrong.' We have no evidence to suggest that there were any conflicts of interest at play in this case.

Senator CARR—That is fair enough. You have no evidence that there is a conflict of interest, but you have not reviewed that question, which is my point to you; is that the case?

Mr Crawford—I think we should clarify a couple of things. Senior officials in Austrade are required to sign at the commencement of their employment a conflict of interest declaration. On leaving Austrade, and in fact the APS, former employees are still subject to some fairly stringent legislative requirements. The Australian Trade Commission Act, section 94, prevents former staff from divulging information concerning the affairs of a person. Criminal penalties apply. Section 70(2) of the Crimes Act applies, as does section 142.2 of the Criminal Code, abuse of public office. People, even though they have left the APS, are still

subject to these constraints. But Austrade does not track where people go once they leave Austrade necessarily.

Senator CARR—Is it common for senior officers to have direct commercial dealings with companies and then end up as chief executives immediately upon their resignation from their Austrade positions? Is that a common practice?

Mr Crawford—I would not be able to comment whether it is common or not, but what I would say is that it is not unusual, nor is it inappropriate, to have a flow of senior people, and people at all levels, between the private and public sector. It is a healthy thing.

Mr McCormick—There are examples in Austrade where CEOs of companies have come into Austrade to work. There is an interchange.

Senator CARR—Mr McCormick, you are the most senior officer here in this division. Would you regard Firepower as an export success?

Mr McCormick—I have no reason—

Senator FERGUSON—Mr Chair, a senator is not allowed to ask an official for his opinion. You can ask for facts, but you are not allowed to ask for an opinion. It is just simply not allowed under standing orders. You cannot ask the witness—

Senator CARR—Does Austrade have any way of assessing whether or not Firepower has been an export success?

Mr McCormick—We are aware that it has achieved outcomes in a number of markets. We are not able to divulge the markets or any of those outcomes.

Senator CARR—What does ‘outcome’ mean?

Mr Crawford—Either export sales—

Senator CARR—They have sold a pill in Moscow. Is that what you mean by an outcome?

Mr Crawford—With all due respect, you need to look beyond the media reports. It is more than just a pill. As Ms Ward pointed out to you, the EMDG grants, for example, have no nothing to do with the pill that gets referred to in the paper.

Senator CARR—I want to know what your measure of success is. You have told me that the grants are not assessed against export performance. How do you assess the success of the company?

Mr McCormick—It is not for us to assess.

Senator CARR—There is no means of assessing performance in regard to their exports?

Mr Crawford—No, but Austrade itself—and I am sure my colleagues down the table can talk to you about this—has in place quite significant and rigorous measurement processes and performance indicators for the contribution it makes to helping Australian companies succeed.

Senator FERGUSON—It is also true that some companies that receive export market development grants fail in the long run. Not everybody succeeds.

Senator CARR—You are the one who brought up the question of what a tremendous success this company was.

Senator FERGUSON—I said this was it—

Senator CARR—I am just wondering what the assessment was based upon?

Senator FERGUSON—It is a success story.

Senator CARR—You said it was a success story.

Senator FERGUSON—Otherwise they would not be putting \$200,000 into Moscow.

Senator CARR—I wanted to hear whether or not Austrade have a means of objectively establishing that claim that you have made. I was trying to help out the government here. I am always doing that, you know. I spend a lot of time on that.

Senator FERGUSON—You have an obsession with Moscow, Senator Carr, that is your problem.

Senator CARR—Moscow keeps coming up here. I am just wondering how it is that officers ended up working for the company. I do not think that is an unreasonable proposition.

Senator FERGUSON—I can understand an Austrade official wanting to work for such a company.

CHAIR—These officers cannot comment on how or why someone is working for the company. All they can comment about is what they know within the company occurred as matters of fact. This scheme defrays the cost of expenditure already incurred so that performance could not be the criteria on that basis. Performance, long-term viability or any of those issues are not relevant.

Senator CARR—Ms Ward, under this program is it possible for an individual company to actually fail to grow, or to contract its exports, and still receive moneys?

Ms Ward—I know I am repeating myself, but the eligibility criteria are set out in an act of parliament. I explained that that act, until it was amended in June 2006, did take export earnings into account in the calculation of the grant from the third grant onwards, so in terms of your question it is not necessarily the case that a company will be growing in exports through the period of the program. Under that formula the amount of grant paid, according to those percentages that I read out, would cap the amount of grant paid. To repeat what I said earlier, the scheme has been very much targeted at small businesses and emerging exporters. It is a scheme aimed at encouraging small and emerging exporters to move into export.

Senator CARR—And it now takes into account export earnings; is that the case?

Ms Ward—It takes into account export earnings in the calculation of the grant up until applications are finalised for this year, which is under the legislation until amended in June 2006.

Senator CARR—And will it take into account export earnings in future years?

Ms Ward—No, that will not be taken into account in terms of the calculation of the grant, no.

Senator CARR—So there is no measure of success in terms of export performance with regard to earnings under this scheme?

CHAIR—How can it? It is a crystal ball question you are asking there. It is a defrayment of cost by small business developing markets. They come along and they get money paid back to them for what they have actually physically spent. That is a simple system. I would love to have a crystal ball.

Mr McCormick—Companies are very diverse. Some companies take a long time to develop markets and do not start earning for quite a long time. Some do it very quickly. This is a scheme that provides flexibility for companies.

Senator CARR—I am surprised. I would have thought an Export Market Development Grant program might be interested in export development's processes. I would have thought that would be fairly logical.

CHAIR—I do not think it would be. Giving money to commercial enterprises to go and spend it has probably got problems.

Senator CARR—Can I move on to program 1.3? Are the officers here for 1.3?

Mr McCormick—We have got officers here for everything.

Senator CARR—That is what we like to see. This is the US free trade agreement. It has been two years since the free trade agreement came into effect in January 2005. What has happened to the trade deficit with the United States since the free trade agreement came into effect?

Mr Harcourt—Since the FTA between Australia and the United States has come into being, merchandise exports to the US increased by 9 per cent. It is about \$10.1 billion last calendar year. Merchandise imports were \$24.3 billion last year. The balance of merchandise trade is a deficit of \$14.2 billion. When you look at numbers of exporters going to the United States, there are currently—the last time we did the calculation—9,253 exporters of goods to the United States. It is the second largest market, second to New Zealand, which is 17,394. In addition, the proportion of small businesses that have gone to the United States has risen in the past two years, according to some work we did between Austrade and Sensis.

Senator CARR—The merchandise trade deficit to the United States has increased by what, 30 per cent?

Mr Harcourt—Over what time period?

Senator CARR—Over the last two years. Is that right?

Mr Harcourt—Austrade principally looks at exporter numbers, because our job is to get more exporters into the market, although the ABS is constantly re-providing good methodology, so we can measure the number of exporters. Before the FTA came in there were around 7,300 exporters going to America. Now there are about 9,253. We tend to concentrate on our client numbers.

Senator CARR—I understand that, but a lot of other people concentrate on the dollars, and as I understand it the deficit has increased from \$11 billion to \$14 billion. Is that true?

Mr Harcourt—If you look at goods in the 2005 calendar year, the deficit would be \$12.1 billion and then \$14.1 billion, so it is a 17 per cent increase. If you look at total goods and services together, it would be \$13.8 billion to \$16.1 billion, which is a similar proportion in

terms of increase. There are a couple of issues that concern the composition of trade. One is the very strong demand we have got in Asia, particularly from China and India. The ASEAN economies, and now India of course, have done quite well, and Japan has bounced back in terms of the macroeconomic data. There has been some diversion away from the United States to Asia because of the growth in demand there. In manufacturing, which is of interest to you I understand, there was an issue with the withdrawal of Mitsubishi Magna on the US market affecting vehicle exports, however the recent announcement on Holdens is promising in that regard. In addition, petroleum exports actually fell over 2006 because a greater proportion went to East Asia, so part of the effect is that you may get an effect on exports in one market but it grows in another market, particularly with the resources boom.

Senator CARR—So you are saying there is some trade diversion in that arrangement. I understood that the reason we did this US free trade agreement was to actually increase opportunities for Australia, and what I see in these figures is that the deficit has increased by 30 per cent. So the United States has done quite well out of this arrangement; it has done considerably better than Australia.

Mr Harcourt—With respect, I do not think you do free trade agreements as a footy scoreboard on exports and imports. I do not think you do them for that reason. They are principally to integrate the two economies and get growth in both economies; they try to get productivity gains and improvements in living standards overall in both. In addition, most trade economists will tell you they take more than one or two years to see developments. I understand that when the closer economic relationship was signed between Australia and New Zealand it took quite some time to see those benefits flow through. Our task is to get potential businesses into export, more clients in overseas markets and more exporters. If you look at the data on the proportion of SMEs now exporting and going into different markets, according to that criteria, it has been helpful. In addition, Austrade has to work pretty hard to get trade into the news. It is not as sexy as some other topics, and when you look at—

Senator CARR—We will try and do our best!

Mr Harcourt—You are doing your best at the moment.

Senator CARR—What I think you could do is start explaining to Australians why it is that Australia's exports to the US have grown by three per cent while imports from the United States have increased by an average of nine per cent. That would be an interesting point to start the public discussion on, wouldn't it?

Senator FERGUSON—I must say, with respect, it is not the job of Austrade to explain it to Australians.

Senator CARR—Mr Harcourt raised the question that it is not getting in the news.

Senator FERGUSON—But it is not the job of Austrade.

Mr Harcourt—Senator Carr, what I was going to say when I finished my sentence was that, in terms of getting more interest from potential clients in different markets, talking about different free trade agreements is actually reasonably helpful in terms of public awareness and the benefits that come. For instance, since the Australian economy has opened up the average

wages paid to workers is higher amongst exporters, as is health and safety, so it has been good in terms of employment and in wages and conditions.

Senator CARR—What is Austrade doing to increase Australia's access to the United States market?

Ms Bennett—In particular, in preparation for the AUSFTA, Australia was given some additional funding and that enabled us to put 23 new export advisers into the US and seven in Australia. Amongst the things that has enabled us to do has been to assist 600 additional clients. We supported around \$280 million in additional international business. There is approximately an 80 per cent increase in the number of exporters that we have assisted into the US market and approximately a 50 per cent increase in the dollar value of the clients we have assisted in that market. We run a variety of promotion programs and sort of directly assist with trying to help Australian companies meet up with American customers.

Senator CARR—What success have Australian manufacturers and Australian service providers had to getting access to the US government procurement.

Ms Bennett—As you are aware, under the trade agreement there are a number of terms and conditions that enable, for instance, Australian companies to bid directly for procurements, waiving of some penalty prices and offering access to various government procurement bodies. So there are a variety of things that were enabled by the free trade agreement. Austrade has set up a five-person selling to government team, with four staff in Washington and one in Colorado Springs. Since the time of the free trade agreement we have been doing a significant amount of activity. For example, since November 2006, the team has helped Australian businesses achieve over 40 export deals in this market and—

Senator CARR—That is government procurement.

Ms Bennett—That is government procurement.

Senator CARR—What was the value of the contracts?

Ms Bennett—Those particular contracts are around about \$110 million. That was up to November 2006. So essentially in the first—

Senator CARR—In the first year.

Ms Bennett—Yes.

Senator CARR—What were the fields in which these procurement contracts were secured?

Ms Bennett—I can only give you some examples here. For example, fields were homeland security, mail contamination products and some software for education and training into government. If you wish us to get you more, we can.

Senator CARR—Thank you, if you could. I would just like to know where the \$110 million came from. How does that compare with the previous year?

Ms Bennett—I do not have that figure with me. I would have to take that on notice.

Mr McCormick—You mean in particular on government procurement?

Senator CARR—Yes. Has there been an improvement in the access to the United States government procurement program?

Ms Bennett—There has been an improvement. I just do not have the comparable figure.

Senator CARR—What is the size of the US government procurement program?

Ms Bennett—It was estimated to be in the order of \$25 billion in 2004.

Senator CARR—In fact, it is probably larger than that now.

Ms Bennett—That is particularly through the GSA schedules. In general, it is around about a \$US200 billion federal government procurement market.

Senator CARR—Sorry, 200?

Ms Bennett—That is the biggest figure we can give you, and through the GSA schedules it is about \$25 billion.

Senator CARR—Does that include state governments and local governments? It is bigger than that again, isn't it?

Ms Bennett—The \$200 billion is the federal government. Then there around 31 US states; I do not have the figures as to what that would offer.

Senator CARR—I take it that since 2004 the US government has spent a lot more money on government activities with the war in Iraq and various other activities, so that the figure would have grown substantially beyond that \$200 billion, I would have thought.

Ms Bennett—One would imagine.

Senator CARR—They are probably spending that a day these days. So \$110 million a year is not a very large percentage of that, is it?

Ms Bennett—No. That is a proportion that the Austrade clients achieved in the period from the January to November. As you can imagine, government procurement contracts tend to take quite a while to negotiate.

CHAIR—You are only talking about Austrade clients, you are not talking about other—

Ms Bennett—I am speaking of Austrade clients, that is right, not Australian exporters.

Senator CARR—And they may have nothing to do with the free trade agreement, given that they take some time to develop and given it is the first year of its operation?

Ms Bennett—Indeed, but Austrade started work before 1 January—

Senator CARR—No, I am just trying to get an effect of the free trade agreement in its first two years of operation. If we look at it from the other end, have we got any indication of what the US companies' access to the Australian procurement program has produced?

Mr McCormick—I think that is something you would have to take up with the Department of Finance.

Senator CARR—You do not have any information on that?

Ms Bennett—We do not.

Senator CARR—Has that five-person team you spoke of been diverted from any other programs, such as Asia?

Ms Bennett—No, that was—

Senator CARR—Additional personnel, was it?

Ms Bennett—No, those were additional through government funding in the 2004 election policies supporting Australian exporters, which gave Austrade \$3 million a year in each of 2005-06 and 2006-07.

Senator CARR—How do you go about increasing Australian companies' access to the US procurement program?

Ms Bennett—Amongst other things that we would do, we for instance ran specific workshops. We brought back some of the members of the team. We ran workshops in Melbourne, Canberra and Sydney in February 2007, engaging with two of the US government procurement specialists to conduct training workshops for companies that were targeting the US market. We also run awareness-raising programs generally of the AUSFTA opportunities. So we would be running a variety of awareness-raising promotion and training events for clients and Australian companies that are interested in the market. Then we would be working through with them into the market to try and secure opportunities.

Senator CARR—Do the 9,300 firms that export to the United States and use your services pay a fee for that?

Ms Bennett—Some may be, if there are particularly tailored services over and above the standard services we provide.

Senator CARR—So what is the revenue for Austrade in terms of the United States?

Ms Bennett—I do not have that figure.

Senator CARR—What sort of fees do you charge?

Ms Bennett—Our standard fee is \$190 an hour for a certain range of services that are tailored specifically to a client's unique requirements as opposed to just part of Austrade's general suite of services that are available to all Australian clients.

Senator CARR—You only have five people working in the United States at the moment?

Ms Bennett—No. There are five people in the government procurement team.

Senator CARR—What is the total component?

Ms Bennett—We have 64 full-time equivalent staff in the US.

Senator CARR—Whereabouts are they located?

Ms Bennett—They would be in a variety of locations, including Atlanta, Austin, Boston, Charlotte, Chicago, Colorado Springs, Denver, Fresno, Honolulu, Kansas City, Las Vegas, Los Angeles, Miami, New York, Phoenix, San Francisco, San Diego, Seattle and Washington DC.

CHAIR—Thank you, Mr McCormick, and to all your officers for coming for a visit up to Canberra—those that have flown in. It is good that we were able to ask some questions this time.

Proceedings suspended from 9.28 pm to 9.40 p.m.

CHAIR—I call the committee to order. We will continue additional estimates with output 1.1.5, Bilateral, regional and multi-lateral trade negotiations; and output 1.1.6, Trade development/policy coordination and Asia-Pacific Economic Cooperation.

Senator CARR—Can you assist me with an understanding of the United States, Thai and Singaporean free trade agreements? Given that all three of them have come into place now, might we be able to get some assessment of the progress that is being made with those?

Mr Chester—One of my colleagues looks after the Singapore and Thai FTAs. But perhaps Mr Luck can begin with the USFTA.

Senator CARR—My cursory reading of the information suggests to me that in all three countries Australia's trade has worsened since these agreements have come into effect. Is that true?

Mr Luck—To look at performance there are a number of measures. I understand the balance of trade in goods and services with the US has widened in the last couple of years. But if you look at other measures of performance, exports have increased and trade in services has increased broader. It is than the trade in goods and services. You have had an enormous increase in opportunities for investment in government procurement in the US and so on. It is a very broad and comprehensive agreement. Our view is that to measure its effectiveness you need to take a number of measures into account. A simple look at the balance of trade in goods and services does not get you very far. There are a number of explanations as to why that balance has increased, which need to be taken into account. Again, it would be quite difficult and perhaps even misleading to tie those two directly to the existence of the FTA.

Senator CARR—Misleading, you say. The trade deficit has widened and you are saying that is misleading.

Mr Luck—As a simple measure of the impact of the FTA on trade performance I think that does not get you very far. It is part of the story, of course.

Senator CARR—It has deteriorated by 17 per cent. Are you saying that that is misleading?

Mr Luck—It is not misleading as a statistic that measures the way the trade deficit has changed for goods and services in the last 12 months or at least in the calendar year 2006 on preliminary figures over 2005.

Senator CARR—And over two years by 30 per cent; do you think that is misleading?

Mr Luck—It is one measure of an aspect of performance. But you need to take into account the fact that in other ways performance can be shown to be very good in terms of the increase in exports. Exports actually increased nine per cent in 2006—merchandise exports—compared with 2005. That was a stronger performance, I believe, than the preceding years, where they had been a bit flat.

Senator CARR—But, Mr Luck, is it also true that United States exports to Australia increased at a greater rate?

Mr Luck—That is true for goods and services, yes.

Senator CARR—How would you measure their performance? Are they doing better than us? Would that be a fair call?

Mr Luck—I think they would be pleased with that, but the overall volume of trade between us has also grown very strongly and that is only on goods and services. There are explanations, I think, for why the exports have not been as strong as they might have been in the last two years, including trade diversion and decisions by companies not to export motor vehicles. If you look at the imports, a large component of those is actually capital goods, which goes into improving the efficiency and the productive capacity in our own economy. Aggregate figures get you part of the way, but I think you need to look very carefully into the details.

Senator CARR—Mr Luck, you will refresh my memory. I am new here tonight, so you will be able to help me out with this. Senator Cook used to do the job I am doing now. He would probably do a considerably better job than I could do, but I will just have to work on my performance over time. I recall, Mr Luck, that when he was running that inquiry he cited a study that the government commissioned, if I recall rightly, that predicted Australia's exports to the United States would grow by \$3 billion per annum. That is right, is it not?

Mr Luck—You have a better memory than I do on that.

Senator CARR—And that it would grow by \$500 million over two years. It would have seemed that the actual performance as distinct from the modelling that was undertaken to try to persuade everyone what a great idea all of this was does not seem to be measuring up with actual performance.

Mr Wells—I wonder if I could make a few comments on some of the reasons behind Australia's trade performance with the United States that might be of assistance. Firstly, I think it is worth remembering—

Senator CARR—I just want to be clear that that was the situation that was projected. That was what the modelling said, was it not? And is it correct, as I have asserted, that the growth, rather than being \$3 billion per annum, has been only half a billion over two years or \$0.25 billion per annum. Is that right?

Mr Wells—I do not have the figures with me, but when you look at feasibility studies and economic modelling for what might happen after the conclusion of an FTA, it is important to bear in mind that you are talking about projections based on certain circumstances. Those circumstances are valid at the time. But in the case of the United States, however, as you would recall, the American economy did slow down with the end of the high-tech boom and with the September 11 attacks, and it was further disrupted by Hurricane Katrina. I think it would be unreasonable to expect any economic modeller to be able to predict those events.

Another factor that is worth bearing in mind is the nature of the recovery that did follow that downturn. That was largely driven by the US housing boom. When you look at the nature of Australia's exports to the United States, predominantly services and agricultural products

and some elaborately transformed manufactures, they are less likely to be affected by that sort of economic recovery than, say, other products. I think it always pays when you look at what happens after an FTA to look at the nature of the economy to which you are exporting. I suppose the other point to bear in mind about FTAs is, as you would know very well, that ultimately free trade agreements create opportunities for Australian business. That is all. Business will take advantage of those opportunities according to where it sees profits. On some occasions it might decide to focus on the domestic market instead of taking advantage of, say, tariff reductions that we win in a free trade agreement. Modelling is very useful as an indication of what you might be able to gain from market opening in a free trade agreement on the basis of the circumstances existing when the modelling was done. But it is only that: an indication.

Senator CARR—Best guess at the time.

Mr Wells—It is an indication done conscientiously, but nobody, as I have tried to indicate, could realistically hope to predict some of the real-world events that actually affect trade performance.

Senator CARR—What we can say now with absolute certainty is that our trade performance has not measured up anywhere near the claims being made in the modelling done before the United States free trade agreement was signed.

Mr Wells—With respect, what you cannot say with certainty is that it would not have been much worse without the FTA.

Senator CARR—What we can say also, though, is that we are importing from the United States an increase of nine per cent whereas our annual growth in exports to the United States is only three per cent.

Mr Wells—Those are the figures.

Senator CARR—So the beneficiary of the United States free trade agreement has been the United States?

Mr Wells—I would dispute that. For a start, I think it is very dangerous to fall into the assumption that imports are bad. As Mr Luck has said, we need those capital imports to fuel our own exports; we cannot export without them.

Senator CARR—Mr Wells, you would have to say that our trade promotion to the United States is not doing very well.

Mr Wells—I think our trade promotion has been very active and I think it is focused on particular gains that we achieved in the United States free trade agreement, particularly the access we now have to the government procurement market in the United States. I know that Austrade has been very focused on trying to help Australian firms take advantages of openings that did not exist before.

Senator CARR—We have heard something about that—the \$110 million-worth of contracts. We have not heard how much the United States has gained out of Australian governments' procurements, have we?

Mr Wells—The United States has always had access to the terms granted under Australia's government procurement regime.

Senator CARR—A few defence purchases would soon clean up \$110 million, would it not?

Mr Wells—The nature of the defence industries in the two countries is rather different.

Senator CARR—We have trouble getting access to the United States defence industry, do we not? They have no trouble getting access to ours?

Senator FERGUSON—They had that before we had a free trade agreement.

Senator CARR—I am just saying that it would appear that the advantages the United States had prior to this agreement have now been accentuated. Given they have \$460 billion to spend each year and we have \$20 billion, I would have thought we were happy to entertain them.

Senator Coonan—Disproportionate.

Senator CARR—It certainly is disproportionate. And the trade figures indicate that it is disproportionate.

Senator Coonan—Yes, but there is a reason for that.

Senator CARR—You would agree that the merchandise trade deficit has increased by 30 per cent? Would you agree with that, Mr Luck—if my assessment is correct—over the last two years?

Mr Luck—Over two years, yes, approximately.

Senator FERGUSON—Mr Luck, is it possible to test whether any of that 30 per cent difference is due to the free trade agreement or is it impossible to assess that, when you think of procurements that we would have purchased whether or not we had a free trade agreement in place?

Mr Luck—I might need some help from our statistical people, but realistically it is the first two years of operation. We have seen a trend upwards on exports of both goods and services. There are many factors in that. One thing I did not mention earlier was the exchange rate. The exchange rate for the last couple of years has had a much higher value on the Australian dollar than for the preceding four years. Whether you could establish a causal connection within two years of operation of the agreement, it is difficult to say but there are some very encouraging signs.

Senator CARR—What are the largest Australian imports from the United States?

Mr Luck—The biggest ones are in the categories of aircraft and parts, motor vehicles for transporting goods—sorry that is not the largest—civil engineering equipment, measuring equipment, computers, motor vehicle engines, medicaments and telecommunications equipment. Aircraft and parts in that tally is by far the biggest one.

Senator CARR—Can you give me a table which outlines that by volume and amount? How would you normally measure it?

Mr Brown—I cannot give you the details on volumes in front of me. In fact, it is very difficult to get meaningful volume statistics by country in terms of imports, but we do have the values information. The aircraft and parts imports exceeded \$2 billion in 2006. In fact, it was \$2.017 billion. Motor vehicles for transporting goods—trucks and the like—were \$971 million. Civil engineering equipment imports were \$929 million. These three leading classes of imports were very important capital goods for the driving of the Australian economy and a very important component of investment here. Measuring and controlling instruments, which also are very important to industry, amounted to \$897 million, and computers, \$895 million. I could go on, but I think you get the drift.

Senator CARR—Telecommunications?

Mr Brown—Telecommunications equipment amounted to \$722 million.

Senator CARR—A lot of that used to be made here, did it not?

Mr Brown—I imagine that there has been a change in the product mix, but I certainly cannot confirm that for you.

Mr Chester—Would you like us to move on to Thailand and Singapore now?

Senator CARR—No, I just want to be clear about this. What was the cost of negotiating this trade agreement? Do you have a cost on that?

Mr Chester—No, we do not have details of costs.

Senator CARR—Singapore.

Mr Grigson—Singapore is an unusual FTA in some ways, because at the time of signing Singapore was essentially a free port for us. Only two products were affected by tariff or excises; they were beer and stout. Therefore, SAFTA tended to focus on services. Australian services exports to Singapore grew nine per cent last year.

The merchandise trade with Singapore is heavily affected by gold and petroleum imports and exports, which tend to affect the figures. We have looked at the number of Australian companies interested in Singapore following the FTA being signed. We were hoping it would have some form of promotional effect. It seems that the number of Australian companies exporting to Singapore in 2005-06 was 450, and about 140 of those were companies exporting for the first time.

Senator CARR—In dollar terms how has the trade deficit moved?

Mr Grigson—For Singapore in the 2004-05 financial year it was \$3.9 billion; for 2005-06 it was \$6.3 billion. Both were substantially affected by gold and petroleum, which were not affected by—

Senator CARR—That is a very substantial deterioration, is it not?

Mr Grigson—Yes. Neither of those products, of course, is affected by SAFTA.

Senator CARR—What is the percentage deterioration; do you have a figure on that?

Mr Grigson—I do not have that. I would have to work it out for you.

Senator CARR—It has gone from \$3 billion to \$6 billion, has it? That is what you said?

Mr Grigson—\$3.9 billion to \$6.3 billion.

Senator CARR—That is another success story for us?

Mr Grigson—It is, because services—

Mr Chester—If I could interrupt, I think it is very dishonest to try and draw the linkages between—

Senator CARR—Dishonest?

Mr Chester—Yes. To try and draw the linkages between—

Senator CARR—I see. This is going to be a good evening.

Mr Chester—the Singapore free trade agreement and our trade performance over those two years. As Mr Grigson has explained, the trade performance has been considerably affected by petroleum and gold imports, which were not covered by the SAFTA.

Senator CARR—What is happening with Thailand?

Mr Grigson—With Thailand, again, there are a number of success stories. In terms of products affected by TAFTA and Australian exports to Thailand: iron and steel up 95 per cent in 2006; copper up 47.5 per cent in 2006; pharmaceuticals up 16.3 per cent in 2006; and auto parts up 23 per cent.

Senator CARR—What is the aggregate? Is there a trade deficit or a surplus there?

Mr Grigson—There is a deficit there. It is \$1.15 billion.

Senator CARR—What was it before?

Mr Grigson—That is a financial year figure 2005-06. The previous financial year was \$302 million. Again, those figures were affected by gold and petroleum, neither of which was covered by TAFTA.

Senator CARR—Did you anticipate these changes when the agreements were signed?

Mr Grigson—We hoped for some growth in the products that were covered by TAFTA. Gold and petroleum are notoriously difficult to predict.

Senator CARR—So you did not predict them? Is this a surprise to you?

Mr Grigson—If I could predict the movement in gold and petroleum prices I would not be sitting here.

Senator CARR—I want to turn to China. Which officers are responsible for China?

Mr Chester—Mr Wells.

Senator CARR—Can you give me an update on how the negotiations are going with the Chinese with respect to the China free trade agreement?

Mr Wells—The negotiations are proceeding at a very deliberate pace, which is a reflection of the complexity of the issues for both sides.

Senator CARR—By 'deliberate', do you mean as far as the Australian government is concerned or is it a deliberate pace as determined by the Chinese government?

Mr Wells—No, I am using deliberate in the sense of slow. The negotiations are moving slowly because on both sides there are complex and difficult issues. I could go into those in more detail if you wanted.

Senator CARR—I intend to do that.

Mr Wells—Where do you want me to start?

Senator CARR—Can I start with the timetable itself?

Mr Wells—There is no timetable.

Senator CARR—There is none at all.

Mr Wells—No. There was a proposal from the Chinese Premier when he was in Australia in April last year to the Prime Minister that the two sides should aim to achieve what Premier Wen Jiabao described as breakthroughs on major issues within a two-year period, laying, he went on to say, the foundation for an eventual agreement. That is a clumsy circumlocution, but it is what the premier said. The Prime Minister's response to that was that Australia would of course work constructively with China to achieve whatever goals China set forward, but the Prime Minister did say very clearly that the quality of an outcome was more important than any time frame, and by 'quality' he also included the need to deal appropriately with sensitivities that exist on both sides.

Senator CARR—What are the sensitivities on the Chinese side?

Mr Wells—The Chinese say that they are sensitive about some areas of manufacturing intellectual property rights. They say that they are extremely sensitive about investment and services and agriculture. I am simply saying what the Chinese have said. If you accept Chinese statements at face value, they are in fact sensitive about most areas of the negotiations.

Senator CARR—It would appear that way, yes. And on the Australian side?

Mr Wells—The government is concerned that sections of the manufacturing industry that enjoy higher than average tariff protection are not unnecessarily exposed to increasingly competitive Chinese manufacturing industries.

Senator CARR—Are you able to specify which areas that you consider to be exposed in that way?

Mr Wells—There are two sectors of manufacturing that enjoy higher than average tariff protection, and those are the passenger motor vehicles sector and the textiles, clothing and footwear sector.

Senator CARR—Both of whom employ considerable numbers of Australians.

Mr Wells—Yes, they do employ a considerable number of Australians. Other industries employ a larger number of Australians and those industries could well benefit from the outcomes of the China free trade agreement. As I said, the Prime Minister has said publicly on several occasions that it will be very important for Australia's sensitivities to be safeguarded in the negotiations.

Senator CARR—Is it the case that Australia is putting forward proposals for accelerated reductions in tariffs in automobiles and textiles?

Mr Wells—No.

Senator CARR—And that has not been put on the table?

Mr Wells—No, it has not.

Senator CARR—What are the areas that you consider are likely to see particular benefits out of this arrangement?

Mr Wells—We are obviously trying to remove some of the barriers that exist in China to our exports. Our assumption is that if we can remove those barriers Australian industries will benefit. Those barriers exist in a range of areas, including agriculture, where Chinese tariffs are still relatively high.

Senator CARR—Agriculture?

Mr Wells—There are in particular certain commodities that are subject to tariff rate quotas. Those are wool, wheat, cotton, sugar and rice.

Senator CARR—I want to be clear about this because I am going to go through the list that you say are going to benefit. You said that they employ more people than manufacturing or are you referring to segments of manufacturing?

Mr Wells—No, I said that there are other industries that employed even more people than the TCF and PMV industries.

Senator CARR—That is true—those sectors. There would be more people employed in textiles and automobiles than wool.

Mr Wells—There is a range of Australian industries, including the Australian services sector, which accounts for something like 75 per cent of total employment in Australia, which believe that they will benefit from a high-quality outcome to the China-Australia free trade agreement negotiations.

Senator CARR—Let me just deal with agriculture. It is half the size of manufacturing—would that be right?

Mr Wells—Yes, and it contributes 20 per cent of our exports—roughly the value of our manufacturing exports.

Senator CARR—But any growth in agriculture at the expense of manufacturing will not necessarily be a net gain for this country, will it?

Mr Wells—With respect, I did not use the words ‘at the expense of’, and I have explained that the Prime Minister and other ministers have said on several occasions that one of the aims of our negotiations is to deal appropriately with our sensitivities. I have also said that the government has not made an offer to China to accelerate the tariff reductions that have already been agreed as part of the TCF and PMV industry plans.

Senator CARR—You would understand that using the somewhat gentle word ‘sensitivities’ is somewhat of an understatement in manufacturing.

Mr Wells—Sensitivity is a word we use in trade negotiations to indicate those areas where we need to safeguard our interests.

Senator CARR—I understand the purpose of it. Let us deal with the Chinese sensitivity in regard to services because you think that is the area in which there would be maximum benefit.

Mr Wells—I said it was the area of largest employment in Australia. Certainly, many Australian services industries believe strongly that they stand to benefit substantially from a good outcome to the FTA negotiations. That is industry's own assessment of the benefits it stands to gain.

Senator CARR—If the Chinese agree.

Mr Wells—Yes.

Senator CARR—What are the prospects of that occurring?

Mr Wells—I cannot guess what the outcome of the negotiations will be. But I can say that it is a very sensitive area for the Chinese. That is what the Chinese tell us. It is also an area of considerable prospective gains for Australia, so it is clearly going to be a very difficult aspect of what is in general a very difficult negotiation.

Senator CARR—I will take you back to the manufacturing question: are you saying that the tariffs for TCF and autos are not on the table?

Mr Wells—I said that the government had not proposed and does not intend to propose an acceleration of the already mandated tariff cuts in those industries.

Senator CARR—So are you anticipating that this agreement would lead to reductions beyond those already proposed from 2015 in those industries?

Mr Wells—I am certainly not anticipating that. As a negotiator, my job is to try and get everything that I can for Australia at the least possible price.

Senator CARR—You would regard that as a price, would you?

Mr Wells—For the government, yes. The government has its own settings in place. That includes tariffs. In an ideal world, which sadly I do not think will eventuate, we would get everything we wanted from the Chinese without having to make any changes. That is how the negotiations begin. Where they end is another question. It is like any other negotiation; you try to get everything you can from the other side without giving away anything yourself.

Senator CARR—Yes. I am sure that is how the Chinese see it as well. With regard to these three sectors we have spoken of this evening—agriculture, manufacturing and services—which is the area of greatest potential for agreement?

Mr Wells—The greatest potential for agreement?

Senator CARR—Yes, between the Australian side and the Chinese side.

Mr Wells—It is just impossible to say. It is far too early in the negotiations. All of those areas are difficult for one or both of the partners for different reasons. We will have to explore, as the negotiations proceed, what basis there is for compromise so that both parties gain overall from the negotiations. Again, I can only repeat what the Prime Minister has said

to his Chinese colleagues: unless both sides do benefit substantially from the negotiations, they are not going to agree. There will not be anything in it for them.

Senator CARR—How many rounds have there been?

Mr Wells—There have been seven rounds so far. The eighth round is due to take place on 26 March.

Senator CARR—In the seven rounds would you describe the progress as slow?

Mr Wells—Progress has been slow. The issues are very difficult and very complex. It is not in the interests of either side to rush. As you yourself have described, Senator, you are talking about very serious issues for both countries.

Senator CARR—The Chinese have developed a reputation amongst all the major exporters as being the toughest of negotiators. Would that be a fair claim?

Senator Coonan—How can he make a ‘judgement’?

Mr Wells—I don’t—

Senator FERGUSON—He’s asking for an opinion.

Mr Wells—No, I don’t regard the Chinese as—

Senator CARR—From your experience in this field, are they regarded as tough negotiators?

Mr Wells—I do not regard the Chinese as being tougher negotiators than anybody else when you are talking about vital national interests. Everybody is going to be tough when it comes to that sort of thing.

Senator CARR—Would you consider them to be well informed?

Senator FERGUSON—Chair, you cannot just ask for opinions all the time. You can ask questions on matters of fact, if you like.

Mr Wells—Perhaps as background what I can do is describe to you the fact that there are many people in China itself who believe very strongly that China was disadvantaged as a result of its accession to the World Trade Organisation. I happen not to believe that and I think most people would also not believe it. They would regard it as being in China’s own interests. But, when you talk about the Chinese being some sort of supernegotiators—that is not necessarily how the Chinese see themselves. They think that their own negotiating team, in some areas, let them down when China joined the WTO. All I am saying is that it is very much a question of perception.

Senator CARR—How many people does the department have working on this trade agreement?

Mr Wells—On the negotiating team, usually there are between 12 and 15 officers from DFAT. There will usually be about as many from other agencies. It depends on what issues are being discussed at which negotiating round.

Senator CARR—From your observations, how many do the Chinese have working on this?

Mr Wells—It depends partly on whether the rounds are in China or Australia, but they will usually have as many, if not more, than we do.

Senator CARR—It has been put to me that concerns have been expressed to them concerning meaningful market access. Would that be a major issue?

Mr Wells—Sorry, Senator; did you say—

Senator Coonan—What is the question, please, Senator Carr?

Senator CARR—Have we put to the Chinese concerns relating to meaningful market access?

Mr Wells—Yes, indeed. That is at the heart of the negotiations. Excuse me for the explanation, but in most trade negotiations you can roughly divide up subjects into what you call market access, which is where you try and deal with tariffs or restrictions on services, and then the whole range of other issues, such as intellectual property rights and legal issues. The market access issues, the tariffs and service restrictions, are very much at the heart of the negotiations. It was only in the last negotiating round that we were able to begin the market access part of the negotiations with the Chinese.

Senator CARR—The 12 to 15 officers that we have working on this particular project—would that be the sorts of numbers that we had on the FTA with the United States?

Mr Wells—The United States FTA was conducted in a very short time frame.

Senator CARR—It certainly was.

Mr Wells—I recollect that we usually had about 17 to 18 DFAT officers attending USFTA negotiating rounds—again, usually with as many from other agencies.

Senator CARR—And, with regard to the Singaporean and Thai agreements, did we have about the same numbers?

Mr Wells—I would need to go back and look at the figures. It depends partly on the pace of the negotiations. The Singapore negotiations were quite protracted because they had to be stopped at one stage. I cannot recall how many officers were involved.

Mr Chester—It was probably a similar number, I would think.

Senator CARR—Yes. The question of intellectual property—the Chinese are raising that as a major concern for them?

Mr Wells—No, we are raising it as a major concern for us, including on the part, if I could say, of the Australian manufacturing industry, which has expressed concerns that it is impeded from exporting to China because of poor Chinese observance of intellectual property rights regulations.

Senator CARR—What of other border issues? Are you raising questions regarding non-tariff barriers in terms of access to the Chinese market?

Mr Wells—Yes. As part of our market access negotiations we have begun to submit what we expect will be a long series of very specific requests to the Chinese on issues such as standards, taxation—I would need to go back and look at the list.

Senator CARR—It is not just the clothing and textile sector that have expressed concerns about the proposal to have a Chinese free trade agreement, is it? It is also wooden furniture; is that true?

Mr Wells—I would need to go back and look at the submissions. Most of the concerns about the FTA, but not all of them, certainly come from the manufacturing sector. We have heard some concerns, however, from the agriculture sector, particularly from the vegetable producers. Within the manufacturing sector, the industries that are most concerned are the TCF and PMV industries, but there are others that have also expressed concern. I think, however, it is worth remembering that outside of PMV and TCF we are talking about a maximum rate of tariff protection of five per cent.

Senator CARR—It is not just a question of tariffs, though, is it?

Mr Wells—In terms of Chinese access to Australia—no, it is not just a question of tariffs. If you are talking, for instance, about trade in agriculture items such as vegetables, clearly, there are sanitary and phytosanitary standards issues; the tariff is not necessarily the major issue.

Senator CARR—That is right.

Mr Wells—But for manufactured goods I think it really is only the tariff.

Senator CARR—No, it has been put to me that the major issue is in fact the currency.

Mr Wells—Some Australian manufacturers argue that they are disadvantaged by what they regard as the false value of the Chinese currency, yes. They say that the Chinese deliberately keep the value of the currency low.

Senator CARR—You are saying ‘some’ manufacturers. I would have thought most would argue that.

Mr Wells—I would need to go back and look at the submission. Certainly, a lot of the manufacturers with whom we speak—and we do try to stay in touch with many of them—have expressed this concern.

Senator CARR—China is actually a net exporter of food, is it not? The People’s Republic of China is actually a net exporter of food?

Mr Wells—I think it is. I would need to check.

Senator CARR—I put it to you that it is. Is that widely understood in Australia?

Senator FERGUSON—How on earth would he know that?

Mr Wells—I could not answer that question.

Senator CARR—Have pear, lychee, longan, apple and peach producers expressed any concerns?

Mr Wells—Some of them have expressed concern. I think the apple growers have. I am not sure about pears. Again, it depends very much on the particular fruit. In some cases there is the possibility of counterseasonal trade flows—that is, we produce at one time of the year and the Chinese produce it at the other—so you might be able to do something that is mutually beneficial. That is not the case for all fruits, however. I would need to go back and

look at the particular proposals we have received from the various fruit growers. On the whole, the fruit growers are less sensitive about the FTA than the vegetable producers.

Senator CARR—Have you undertaken any studies of the cultural and social impacts of any proposed agreement?

Mr Wells—No, I am not entirely clear what you mean by ‘the cultural and social impacts’. For a start, we do not have an outcome yet, so we do not know what the results would be.

Senator CARR—Have you done no modelling on any proposed agreement?

Mr Wells—We did joint economic modelling with the Chinese during our feasibility study of what might be the results of the agreement. That modelling, as I said earlier about the USFTA, is interesting as an indication of the scope for gains, but it certainly was not perfect. It had to leave out certain things because it was too difficult to include them in the modelling. That is particularly true in the services sector, which as I have said is one of the areas where Australian industry believes that the gains could be greatest. So even that modelling—although I would argue that it is useful because it gives you an idea of the dimensions of what might be in the agreement—is not a definitive guide as to what might happen by any means.

Senator CARR—You say there is no timetable for negotiations?

Mr Wells—On the Australian side there is no timetable. We have been very careful not to articulate a timetable.

Senator CARR—Does that mean there is a point at which Australia is willing to walk away from any negotiations?

Mr Wells—I think that is something you would have to put to the ministers.

Senator Coonan—That is a hypothetical. Mr Chairman, with respect, how does that conceivably arise out of additional matters out of the portfolio additional estimates statements? I would ask Senator Carr to identify which line item he is referring to with this line of inquiry.

CHAIR—Minister, I think you are entirely correct. Not only does it not arise; it is obviously prejudicial to our negotiating position. Senator, I think you need to drive around that.

Senator CARR—I just wanted to know if, given that there is no time line, there is a point at which the question of market access, for instance, will be a deal breaker.

CHAIR—I do not think you can ask these questions when we are in negotiations. I think it is prejudicial to the national interest—and foolish.

Mr Wells—Perhaps I can usefully remind the senator again of some things the Prime Minister has said. The Prime Minister has pointed out that, although a good high-quality FTA would doubtless be very beneficial for Australia, he has reminded people on numerous occasions that we already have a very strongly growing trade relationship. He said we do not have to have an FTA at any price. A good FTA could be worth having as long as it meets the criteria that the Prime Minister has set out, including dealing with our sensitivities. I think that is probably about as far as one could usefully go at this early stage of the negotiations.

Senator CARR—When you say ‘early stages’, we are looking at a two-year period?

Mr Wells—We are looking at a Chinese proposal made somewhat less than 12 months ago to deal with the major issues in a two-year period. That is a Chinese proposal. On the Australian side we will be negotiating for our interests. As the Prime Minister has clearly said, the crucial issue is not the time frame; it is the quality of the outcomes, including dealing with some of the sensitivities that you have mentioned.

Senator CARR—What items will be discussed in March?

Mr Wells—Everything will be. It is the way these negotiations—

Senator CARR—Everything will or nothing will, by the sounds of it.

Mr Wells—No, everything will be discussed. At the moment we have about 25 to 30 chapters of the free trade agreement done in draft form. Over a week of negotiations we will be discussing each of those chapters. The experts in that area will go through the chapters, and then we will also be discussing market access in goods—that is to say the tariffs issues that we have talked about—and we will also be continuing the very laborious process of market access discussions on services.

Senator CARR—For these services we speak of, where are the negotiations up to in regard to the Chinese demands for unskilled workers to come to Australia?

Mr Wells—The Chinese have not yet demanded that unskilled workers have access to Australia. They have asked that we look at some of our short-term entry arrangements and they have also put down a list of areas of skills where they would like to see greater access to Australia. As far as we can work out at the moment—and we need to discuss this more with the Chinese—most of those areas are already covered by the existing Australian temporary entry regime.

Senator CARR—That is the 457 visa?

Mr Wells—The Chinese are interested in 456 and 457.

Senator CARR—And they would like a relaxation on those?

Senator Coonan—Mr Chairman, this is hypothetical. It does not arise out of the additional estimates statements and the officer should not be asked to give a running commentary on negotiations that are sensitive, as he said, that are not concluded, and that have yet to take place.

CHAIR—That is entirely correct.

Senator CARR—No, they have taken place. That is the point. I am asking the officer: have the Chinese—

Senator Coonan—You are talking about some forthcoming discussions.

Senator CARR—No, that was a previous question. You ought to follow this.

Senator Coonan—I am following it very closely.

Senator CARR—You would find that this process goes a lot quicker if you do follow it instead of trying to run political interference.

Senator Coonan—Senator Carr, this does not arise out of portfolio additional estimates statements and you know it doesn't. It does not follow any particular line item.

Senator CARR—These questions are perfectly legitimate.

Senator FERGUSON—No, they are not.

Senator Coonan—It does not follow any line item.

Senator CARR—They are perfectly legitimate questions. I have been asking questions all night about trade agreements.

Senator Coonan—The officer does not have to answer a question about the currency of negotiations.

Senator CARR—I have asked the officer where the negotiations are up to in regard to the Chinese demands for unskilled workers to come to Australia.

Senator Coonan—He does not have to answer that.

Senator CARR—He has answered in part that question. I am now following that up.

Senator Coonan—He does not have to answer that question.

Senator CARR—He already has.

Senator Coonan—No, he has not. And he does not have to answer it.

Senator CARR—Are you directing him not to answer it?

Senator Coonan—These are negotiations. They are not concluded agreements.

Mr Wells—I am genuinely uncomfortable, because your questions are taking me into the precise detail of China's requests to Australia. I am trying to be as helpful as I can. We do have an understanding with the Chinese that these negotiations are conducted on a confidential basis between governments. We often receive inquiries, including from the Australian side, about the precise detail of what is being offered or requested by the other side. We are often reluctant to get into that detail simply because again at this very early stage of the negotiations what is on the table is so far away from what is likely to be the outcome that it is very difficult to see any useful purpose being served in going into the detail.

Senator CARR—I am not wanting to prejudice your discussion. I am just interested to know what the scope of this proposal is. If it goes to the issue of increasing unskilled labour, I think we are entitled to know that that is on the table.

Mr Wells—We have told the Chinese that as negotiators we have no mandate from the Australian government to talk about the access of unskilled Chinese labour to Australia, and we have said that very clearly. We have also said to the Chinese, which they know, that as far as we know no free trade agreement covers access of unskilled labour from one country to another.

Senator CARR—That is what I am putting to you. This is an unusual area in which to discuss trade agreements, particularly in regard to trade in people.

Senator Coonan—Senator Carr, that is not a permissible way to put a question.

CHAIR—I think he has answered your question very clearly: no mandate to discuss this issue.

[10.32 pm]

Senator CARR—Are the officers here for 2.3?

CHAIR—Which is 2.3?

Senator CARR—I am particularly interested in the Australia-New Zealand rules of origin—ANZCERTA. I understand that recently Australia and New Zealand have changed the method of determining origin of products under the ANZCERTA arrangements. What is the nature of those changes?

Mr Ritchie—The nature of the changes is that there is a change from rules of origin which are based on local area content to a change of tariff classification system, which is a system that has been adopted in the Australia-US FTA and other FTAs. It is a procedurally easier system, which reduces the cost of compliance on business.

Senator CARR—Were companies adversely affected by the change?

Mr Ritchie—There was a company called Albright and Wilson that made its views known—that it would be adversely affected—after the agreement with New Zealand had been reached, and after an extensive period of consultation of over 12 months had been undertaken in 2005, from memory, including with the industry association of which that company was a member.

Senator CARR—What industry did Albright and Wilson operate in?

Mr Ritchie—They are in the detergent industry.

Senator CARR—I see. I understand that they work out of Yarraville in Victoria?

Mr Ritchie—Yes, that is correct.

Senator CARR—They export, what, \$7 million worth of chemicals to New Zealand?

Mr Ritchie—In the order of that. I do not have that figure.

Senator CARR—Then Unilever exports finished detergents back to Australia?

Mr Ritchie—That is correct.

Senator CARR—So it is a chemical manufacturer?

Mr Ritchie—Yes.

Senator CARR—As I understand it, they were not made aware that changes were taking place; they only became aware when another company that had previously imported their product informed them that they would not be renewing their contract. It has been put to me that Albright and Wilson became aware that the change in rules of origin would allow their client to buy dumped product from China instead. Are you aware of that complaint?

Mr Ritchie—I am aware of that complaint. I think the Australian Customs Service is looking at the complaint of dumping. But there was a process of consultation which, as I have mentioned, extended over a period of a year. The industry association distributed a questionnaire to all of its members. There were advertisements placed in Australian newspapers in the course of that year and on the DFAT website.

Senator CARR—I see. But obviously the company did not see those advertisements?

Mr Ritchie—Or receive the questionnaire.

Senator CARR—Did they get a questionnaire?

Mr Ritchie—The industry association sent questionnaires to all of its members, as I understand it. If I am misleading you in that, I will revert to you.

Senator CARR—I am sure they will tell you. If you are saying they received the questionnaire—

Mr Ritchie—I do not know what they received. I know what the industry sent out.

Senator CARR—Is it the case that there were transitional arrangements made for automotive parts and for TCF, men's apparel in particular?

Mr Ritchie—That is correct. There were a number of transitional arrangements made during the course of the negotiations, which were difficult. There were sensitive areas involved on both sides.

Senator CARR—Why were there transitional arrangements made for automotives and men's apparel but not for the chemical industry?

Mr Ritchie—Because the company did not alert DFAT to its concerns.

Senator CARR—So you did not know there was a problem?

Mr Ritchie—No.

Senator CARR—Do you think there was a problem with your consultation process in that you were left uninformed?

Mr Ritchie—The consultation process was exhaustive.

Senator CARR—Obviously it missed this firm.

Mr Ritchie—It did not go to every firm. It went to industry associations, and we tried energetically to diffuse the information through newspapers.

Senator CARR—Are there any other changes being proposed with regard to the rules of origin under these various trade agreements?

Ms Richards—How do you mean?

Senator CARR—Is this the only one where we are seeing changes to the rules of origin principles under a bilateral?

Mr Ritchie—I do not know. This is the one that I am associated with.

Senator CARR—The only one you are responsible for?

Mr Wells—In general—

Senator CARR—I can see we are going to get on very well.

Mr Wells—In general in our current FTA negotiations we are seeking to make the same sort of change that Mr Ritchie has described—what we call the change of tariff classification approach. Perhaps the one that is most advanced, I think, is the negotiation with ASEAN. Mr Mugliston could describe that.

Senator CARR—Have I understood you correctly? It is all trade agreements?

Mr Wells—As Mr Ritchie has said, Australian industry has in some cases very fervently indicated to us that it prefers the change of tariff classification approach for determining origin. In I think all of the FTAs under negotiation we are seeking to negotiate that approach to determining origin. Industry regards it as more transparent, as Mr Ritchie has said, and certainly as less inequitable and much better able to cope with the fluctuations of value.

Senator CARR—I see. Mr Wells, do you think the consultation process will be any more effective than the one with the New Zealand agreement, given the experience of the Yarraville firm Albright and Wilson?

Senator Coonan—Excuse me, Mr Chairman—you cannot ask him what he thinks. That is not an appropriate question for an officer.

Senator CARR—I will ask you this: has the department changed its consultation process, given the failure of this particular operation in Yarraville?

Senator FERGUSON—What, with one company?

Senator CARR—I will put it another way. The minister has invited me to put it in these terms, and that is what I am doing.

Senator Coonan—I have invited you to put a permissible question, not to ask officers what they think.

Senator CARR—If you want to be a smart Alec, we will stay here quite a while.

Senator Coonan—I am afraid you will not, Senator Carr. You will be here 20 minutes at the max.

Senator CARR—Then we will stay here for 20 minutes at the max, if that is your attitude.

CHAIR—We always do.

Senator Coonan—Twenty minutes, we will be here. You cannot come in here and ask impermissible questions. You might get away with it in other committees. You will not get away with it here.

Senator CARR—Minister, you and I are obviously going to have to spend a lot more time together, if that is your attitude. Minister, if you think you can bully people you have come to the wrong place.

Senator FERGUSON—I think you're the last one to talk about bullying, Senator Carr!

Senator Coonan—Senator Carr, I am afraid you are going to lose, because I am getting up, and you are getting up, in 20 minutes. Now use your time well and ask permissible questions.

Senator CARR—And we'll have some months to go, don't worry!

Senator Coonan—Don't ask officers what they think. You should know better.

Senator CARR—Are there any proposals to change the consultation process following the experience involving Albright and Wilson?

Senator FERGUSON—You should have asked that in the first place.

Mr Wells—When our FTA negotiations get to the stage of actually determining the rules for origin on specific commodities, we will have in place a very thorough process of consultation. At the moment some of our free trade agreements are talking about the issue on a more conceptual basis; others are more advanced.

Mr Mugliston—The whole issue of rules of origin is not a new issue. It has been the subject of very detailed consideration and consultation with Australian industry, most notably during the course of the FTA negotiations with the United States of America. That really was, if you like, the trigger that resulted in our move to this change in tariff classification approach to the determination of rules of origin. In light of that experience and ongoing consultation with Australian industry, there was this movement afoot to then address the issue under the ANZCERTA agreement, which Mr Ritchie has outlined. Then, with effect from 1 January this year, we have the rules of origin as per the CTC with some transitional arrangements in place. We do consult across all the various FTA negotiations. My task force is responsible for the ASEAN-Australia-New Zealand FTA negotiations as well as the Malaysia-Australia FTA negotiation.

Rules of origin are a very key element of each FTA, and we have a team of people in our FTA unit that actually spend a lot of their time working on rules of origin and consulting with Australian industry. The objective here is to achieve coherence and a consistent approach to the determination of rules of origin under the various FTAs. Let's take SAFTA as an example. That is not CTC. In ASEAN-Australia-New Zealand FTA negotiations we are trying to work with ASEAN to get them to accept the move to this CTC approach and methodology, and we are working very closely with industry on that already.

Senator CARR—What were the representations made by Albright and Wilson to the department on this matter?

Mr Ritchie—There were representations to the Joint Standing Committee on Treaties, as I recall. I have a time line here. That was the avenue the company took, I believe.

Senator CARR—So there were none directly to the department?

Mr Ritchie—I do not know. I am reading the time line now. There may have been. Can I get back to you?

Senator CARR—Yes. In terms of the claims made by the company, the decisions will cost them 65 jobs at their Yarraville plant. Have you had an opportunity to assess that claim?

Mr Ritchie—I have not, no.

Senator CARR—Has the department?

Mr Ritchie—I do not think we have looked at it, I have to say, because I understand that the contract was actually terminated by Unilever in July of last year with Albright and Wilson.

Senator CARR—So you are asserting that it is not a response to these changes?

Mr Ritchie—I do not know why Unilever has terminated the contract.

Senator CARR—The company has made assertions that they terminated the contract as a result of these changes. Are you questioning that claim?

Mr Ritchie—I do not know the motivation of the company.

Senator CARR—Is it the case that there are other companies out there adversely affected by these arrangements?

Mr Ritchie—Not that have come to our attention, I do not think. I repeat what I said earlier, and what my colleagues have said, that there is a general predisposition in industry to welcome the changes because of the lower compliance regimes that they involve.

Senator CARR—Has the department undertaken any further work to establish whether or not there are more companies adversely affected by these changes?

Mr Ritchie—I think we would have heard it by now. It is extremely well known that there is—

Senator CARR—So you are relying on complaints coming to you; you are not taking any action?

Mr Ritchie—We have done the consultation process—I mentioned that—throughout the year 2005.

Senator CARR—As far as you are concerned, there is no need to change the consultation processes following this experience?

Mr Ritchie—The consultation process was exhaustive. The industry group to which this company belongs actually contacted the company via newsletter and said the Australian government is considering changing its approach to this issue.

Senator CARR—So the department relied upon its access to the industry association?

Mr Ritchie—Which then has access to the companies.

Senator CARR—I just want to know what the process was. That is how you did it?

Mr Ritchie—That is how it occurred in this case. I cannot speak more generally.

Senator CARR—So there is no intention to change that process with regard to further changes in terms of the rules of origin?

Mr Wells—In general, DFAT does work very closely with industry associations in trade negotiations, particularly in sectors such as plastics and chemicals. TCF is another good example where you can have a very large number of small companies. It is unrealistic to expect the department to contact every company individually. Industry associations have in place effective mechanisms for contacting all of their members. They are used to doing this. We have found that they work quite well. But it is a lot of work for the industry associations. Where we are aware of specific companies that could be affected by changes under discussion we will contact those companies.

Senator CARR—The transitional arrangements will last for five years; is that correct?

Mr Ritchie—That is correct. Could I just add something. You asked me whether the company had contacted DFAT. It did contact DFAT on 1 June 2006. It met DFAT on 14 July. Then it lodged its submission with JSCOT on 17 July.

Senator CARR—Whereabouts was the 14 July meeting?

Mr Ritchie—I think in Canberra—it does not say here. Yes, it was in Canberra.

Senator CARR—Did they meet with senior officers. What was the nature of the meeting?

Mr Ritchie—With the OTN FTA unit and the section in my own division that deals with New Zealand.

Senator CARR—Who is handling the dumping inquiry?

Mr Ritchie—Customs.

Senator CARR—It is not through this division at all?

Mr Ritchie—No.

Senator CARR—In terms of these consultations you undertake, do you operate through the association or do you have your own contact list beyond the association?

Mr Wells—As I said, we do work very closely with industry associations and they have their own databases of members whom they contact. It depends very much on the issue under negotiation. But, as I said, when we are aware of particular companies that will have an interest we will contact them. In the case of rules of origin, we will also work very closely with the Department of Industry, Tourism and Resources, which can conduct its own program of consultations. There is an extensive consultative mechanism in place for negotiations. I am talking here particularly about rules of origin, because that is the subject that you have raised.

Senator CARR—Yes, thank you very much. That concludes my questions.

CHAIR—There being no further questions, I thank you, Mr Chester, and all the officers. I thank the minister and the committee secretariat. This has been a hectic two days. Thank you very much, ladies and gentlemen.

Committee adjourned at 10.50 pm