



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION  
COMMITTEE

ESTIMATES

**(Additional Estimates)**

THURSDAY, 19 FEBRUARY 2004

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE****FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE****Thursday, 19 February 2004**

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

**Senators in attendance:** Senators Bartlett, Mark Bishop, Conroy, Faulkner, Ferguson, Hogg, Humphries, Sandy Macdonald, Payne, Robert Ray and Stott-Despoja

**Committee met at 9.02 a.m.**

**FOREIGN AFFAIRS AND TRADE PORTFOLIO****In Attendance**

Senator Minchin, Minister for Finance and Administration

Senator Ian Macdonald, Minister for Fisheries, Forestry and Conservation

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

Mr Doug Chester, Deputy Secretary

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

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

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

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

Mr Bruce Miller, Assistant Secretary, North Asia Branch

Mr David Holly, Assistant Secretary, China FTA Study Task Force

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

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

**1.1.3—Americas and Europe**

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

**1.1.4—South Pacific, the Middle East and Africa**

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

Mr John Quinn, Assistant Secretary, Iraq Task Force

**1.1.5—Bilateral, regional and multi-lateral trade negotiations**

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

Mr Stephen Deady, Special Negotiator—Free Trade Agreements

Mr Justin Brown, First Assistant Secretary, Asia Trade Taskforce

**1.1.6—Trade development/policy coordination and APEC**

Mr Ralph Hillman, First Assistant Secretary, Trade Development Division

Mr Justin Brown, First Assistant Secretary, Asia Trade Taskforce

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

Mr Phil Sparkes

Mr Allan McKinnon, Special Negotiator, Trade

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

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

Mr Chris Moraitis, Senior Legal Adviser

Mr Christopher Langman, Ambassador for the Environment

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

Mr David Stuart, First Assistant Secretary, International Security Division

Mr Les Luck, Ambassador for Counter-Terrorism

Mr Andrew Leask, Assistant Secretary, Australian Safeguards and Non-Proliferation Office

**Output 1.2—Secure government communications and security of overseas missions.**

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

**Output 1.3—International services to other agencies in Australia and overseas (including parliament, state representatives, business and other organisations).****1.3.1—Parliament in Australia****1.3.2—Services to attached agencies****1.3.3—Services to business****1.3.4—Services to state governments and other agencies overseas and in Australia.**

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

Mr Ralph Hillman, First Assistant Secretary, Trade Development Division

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

Ms Glenda Gauci, Executive Director, Aichi Expo Unit

**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**

Ms Louise Hand, Chief of Protocol, Assistant Secretary, Protocol Branch Centre.

**Output 2.1—Consular and passport services****2.1.1—Consular services****2.1.2—Passport services.**

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

Mr Bob Nash, Assistant Secretary, Passports Branch

**Output 3.1—Public information services and public diplomacy.****3.1.1—Public information and media services on Australia's foreign and trade policy****3.1.2—Projecting a positive image of Australia internationally****3.1.3—Freedom of information and archival research and clearance.**

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

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

Mr Peter Davin, Executive Director, Overseas Property Office

**Enabling services**

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

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

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

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

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

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

**1.1—Awareness raising**

**1.2—Government advice and coordination**

**1.3—Services and opportunities**

**1.4—Inward investment and attraction services**

**1.5—Austrade administered grants.**

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

**2.1—Consular, passport and immigration services.**

Ms Margaret Lyons, Corporate Services Director

Mr Lindsay Collins, Acting General Manager, Export Finance Assistance Program

Mr Tim Harcourt, Senior Economist

**CHAIR**—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I welcome back Senator Nick Minchin, the Minister for Finance and Administration, representing the Minister for Foreign Affairs and the Minister for Trade. I welcome Deputy Secretary Doug Chester and officers from the Department of Foreign Affairs and Trade. The committee has before it particulars of proposed additional expenditure for services for the year ending 30 June 2004, documents A and B, and the portfolio additional statements for the Department of Foreign Affairs and Trade. The committee will now consider the estimates for the Department of Foreign Affairs and Trade, beginning with the portfolio overview. We will then move to outputs and enabling services. From approximately 3.30 p.m. to 6.00 p.m. this afternoon, the committee will examine trade output 1.1.5, Bilateral, regional and multi-lateral trade negotiations, with particular reference to the US free trade agreement. After the dinner break this evening, the committee will take evidence from Austrade. Tomorrow morning the committee will examine Foreign Affairs and Trade output 1.1.6, Trade development/policy coordination and APEC. Also, the committee has resolved that it will meet during the sitting week beginning 1 March to conclude its examination of trade output 1.1.5, dealing with the US free trade agreement.

When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions. The questions will be forwarded to the department for an answer. The committee has resolved that the deadline for the provision of answers to questions taken on notice at these hearings is Thursday, 1 April 2004. For today's hearing, the committee will adjourn for lunch between 12.30 and 1.30 p.m. and for dinner between approximately 6.30 p.m. and 7.30 p.m. We will take tea breaks at approximately 11.00 a.m.,

3.30 p.m. and 9.00 p.m., or as required. Minister, do you or Mr Chester have an opening statement?

**Senator Minchin**—I just note that Senator Hill would normally represent the Minister for Foreign Affairs, but, unavoidably, he cannot be here today. I give his apologies and note that I will be here until midday; then another minister will replace me.

**Mr Chester**—I would like to advise the committee that we have tabled a corrigendum to our portfolio additional estimates statement. The corrigendum is to correct two formatting errors and two typographical errors that we have discovered in the document as it was tabled. The two formatting errors are relatively minor problems with tables on pages 26 and 44. The typographical errors are on page 28, dealing with staffing numbers in the department. The table on that page is correct, but the explanation below has two errors in numbers. Thank you.

[9.06 a.m.]

**CHAIR**—We turn to questions on the portfolio overview.

**Senator ROBERT RAY**—I want to follow through some questions I asked PM&C. Unfortunately, it is known that the joint intelligence committee report on WMDs and related matters is with ministers and agencies. Has the Department of Foreign Affairs and Trade itself been given a copy of that report?

**Mr Chester**—Yes.

**Senator ROBERT RAY**—When was it given a copy of the report?

**Mr Chester**—Around 19 or 20 January. It went to the minister's office on the 19th and we got it either later that day or early the following day.

**Senator ROBERT RAY**—So the minister—or the minister's office—has sent a copy to the department?

**Mr Chester**—That is correct.

**Senator ROBERT RAY**—Was that the copy that was to be relayed to ASIS?

**Mr Chester**—No, it was not.

**Senator ROBERT RAY**—It was a separate copy?

**Mr Chester**—That is right.

**Senator ROBERT RAY**—Have any copies been made of that copy?

**Mr Chester**—The copy that came into the department, yes. Copies of that have been made.

**Senator ROBERT RAY**—How many copies?

**Mr Chester**—Six. It was sent to the department for the department to provide advice to the minister in the terms of the letter that covered the draft—

**Senator ROBERT RAY**—Let us go to that. The advice to the minister can only be limited to the statutory requirements as to whether the report has offended against two broad sections of the act—is that right?

**Mr Chester**—That is correct.



**Senator ROBERT RAY**—So you do not do any other advice in terms of how a minister should respond? You do not do any analysis or synopsis of the report?

**Mr Chester**—That is correct.

**Senator ROBERT RAY**—You have not done a synopsis of the report?

**Mr Chester**—No, we have not.

**Senator ROBERT RAY**—Why not?

**Mr Chester**—Because there was no need to. The minister had a copy of the report. I assume he read it, if he wanted to.

**Senator ROBERT RAY**—Was a copy of Mr Jull's letter sent with the report?

**Mr Chester**—Yes, it was.

**Senator ROBERT RAY**—You will recall that the second last paragraph said that the use of it to some extent was to be as restricted as possible. Do you think you met that requirement?

**Mr Chester**—I think in the letter that we got it is in the third last paragraph.

**Senator ROBERT RAY**—Sorry; I do not have it in front of me.

**Mr Chester**—It says that. Yes, we are confident that we have abided by the terms of that paragraph.

**Senator ROBERT RAY**—I am just wondering why it was necessary to make six copies. You would understand that at least two or three aspects of this report, it is claimed, have been alluded to in the press. I only say 'claimed'; I am not going to say whether it is correct or not.

**Mr Chester**—Is the question: why did we make six?

**Senator ROBERT RAY**—Yes, why did you make six copies of it?

**Mr Chester**—The report went to two areas of the department that had the competence to provide that advice to the minister.

**Senator ROBERT RAY**—Can you be satisfied that no-one in the department has leaked any section of this report?

**Mr Chester**—Reasonably confident. Those who had the report have been asked that question.

**Senator ROBERT RAY**—It is very commendable that you have asked. I congratulate you on that. I do not have any suspicions that it came from your department but I thought we should at least put it on the record that you have asked and are satisfied with the response.

**Mr Chester**—Yes.

**Senator ROBERT RAY**—That raises the question of document handling. Are you satisfied with, or have you done any review of, document handling within the Department of Foreign Affairs and Trade following the unauthorised disclosure of a top-secret AUSTEO code-worded ONA document on 23 June by Mr Andrew Bolt of the Melbourne *Herald Sun*? Has that caused you to do any review of your own document handling procedures?

**Mr Chester**—As a department we are always mindful and careful of how we handle documents. Whether there has been a formal review or not I do not think I could say. The handling of the parliamentary joint committee document was done very carefully. The copies were monitored and who had control of those was noted at all times.

**Senator ROBERT RAY**—We heard evidence the other night that ONA have changed their document handling procedures from a return and burn approach to just a return approach. Has that been working effectively? You must get ONA documents quite consistently.

**Mr Chester**—As a recipient of those documents I notice no difference, because I get a document and return it. All I need to do now is formally sign off on it.

**Mr Stuart**—Subsequent to the changes introduced by ONA we did make some changes to the way we handle ONA material, essentially to put on that material something that would allow us to track it more quickly and more readily.

**Senator ROBERT RAY**—After the unauthorised disclosure of the particular report which people refer to in shorthand as ‘the Wilkie report’, which is a very poor description in one sense, were you able to track all copies of that report that had gone to Department of Foreign Affairs and Trade and account for them?

**Mr Stuart**—Yes. I recall that the report had been distributed around Christmas time—

**Senator ROBERT RAY**—17 December.

**Mr Stuart**—and then in June we were advised about the issue. We of course had procedures in place before this recent change that allowed us to chase up overdue sensitive material. Essentially it is issued in black bags—I think this was discussed at length at previous estimates, so perhaps I will not go over all that unless you wish me to. The area of the department that was responsible for the distribution was satisfied that all copies were returned on the basis of the procedures it had in place then. We do hold one copy for our filing system—and that is for our filing system—but we are otherwise satisfied that copies were returned.

**Senator ROBERT RAY**—What was the last occasion when the document that we are talking about was issued to anyone in the Department of Foreign Affairs and Trade? When was the last recorded incoming to your department of the document that was generally issued about 17 December?

**Mr Stuart**—I may have that information with me and I could try to track it down during this session. I may have to take it on notice but I will do what I can to help.

**Senator ROBERT RAY**—Sure. I think the evidence from ONA also gives you a clean bill of health. They only found one missing document, for which there was probably a good explanation. Minister Minchin, do we know when was the last time Mr Downer’s office asked for a copy of this document? Was it in the week prior to the Bolt article?

**Senator Minchin**—I have no idea. I do not know if anybody else does.

**Senator ROBERT RAY**—Can you make inquiries?

**Senator Minchin**—We can follow that question up and see if we can obtain an answer for you.

**Senator ROBERT RAY**—We have been talking about unauthorised disclosure. We had a number of discussions in the past about the unauthorised disclosure of a conversation between Minister Downer and the New Zealand High Commissioner. I think we have previously quoted the secretary of the department as saying he is going to catch this criminal. How are we going on catching the criminal?

**Mr Chester**—The AFP have concluded their investigation into that leak.

**Senator FAULKNER**—Can you tell us when that investigation was completed.

**Mr Chester**—We were informed in early December that they had concluded their investigation.

**Senator FAULKNER**—Are you able to indicate to the committee what you were informed by the AFP?

**Mr Chester**—We were informed that, after reviewing all the information gathered during the investigation, there was insufficient direct admissible evidence for the matter to proceed to a criminal prosecution.

**Senator FAULKNER**—I see.

**Senator ROBERT RAY**—Is that the end of the matter?

**Mr Chester**—I suspect it is, yes.

**Senator FAULKNER**—That means, to use the secretary's words, that the criminal is still alive?

**Senator ROBERT RAY**—The criminal does not need a postal vote next federal election—is that what you are telling us?

**Mr Chester**—I am sorry; I missed your question, Senator Faulkner.

**Senator FAULKNER**—The perpetrator, the person responsible, described by the secretary—your secretary, Mr Chester—as a criminal, is a criminal still at large. That person has not been identified.

**Mr Chester**—That is correct.

**Senator FAULKNER**—What have been the costs of this investigation that have been borne by your department, Mr Chester—not the AFP investigation but matters associated with it?

**Mr Chester**—I would have to take that on notice; I do not have any details on the time we spent in the department on this leak investigation. I would think most of the costs would have been those of the AFP. The issue was referred to the AFP to investigate.

**Senator FAULKNER**—One of your officers was suspended on full pay, you told us. That was the status at the last hearing. How many officers currently in your department are suspended on full pay?

**Mr Chester**—Three.

**Senator ROBERT RAY**—What is the length of time of those suspensions? I do not need their names, at this stage. Let us call them case 1, case 2 and case 3.

**Mr Chester**—One has been suspended for one year—minus one day, I think; it is one year tomorrow.

**Senator FAULKNER**—Are you having a birthday cake tomorrow when the anniversary comes around?

**Mr Chester**—No, Senator. Another officer has been denied access to the department for a period longer than that. I do not have the date with me. Mr Tighe may know.

**Mr Tighe**—I do not have the precise date but I believe it is approximately two years.

**Senator ROBERT RAY**—At what level are those two cases and approximate salaries, so we can work out how much—

**Mr Chester**—The first one is roughly \$65,000 to \$70,000 a year; the second one is probably somewhat less than that—maybe \$50,000 to \$55,000 a year.

**Senator FAULKNER**—Then there is case 3.

**Mr Chester**—Case 3 is probably around six months but I do not have the exact time.

**Senator FAULKNER**—What is the salary level there?

**Mr Chester**—Probably around \$65,000 a year.

**Senator ROBERT RAY**—That is about \$210,000 so far. How does that affect their superannuation?

**Mr Chester**—Their superannuation?

**Senator ROBERT RAY**—It just keeps on?

**Mr Chester**—It does not affect it; they are suspended on pay.

**Senator HOGG**—So there is another 16 per cent, or whatever they get, on top of that?

**Mr Chester**—Sorry, that is just the salary cost. There are the normal on-costs.

**Senator ROBERT RAY**—I think what we are trying to establish here is that, if you suspend someone on full pay, there would be less—what is the word—on-costs or other costs associated with that person than for someone who was totally active in the department. But I am trying to work out what the residual on-costs would be. Are there any other allowances that they would receive in this time?

**Mr Chester**—No, they would obviously have the employee's contribution to superannuation paid and they would accrue normal leave entitlements.

**Senator ROBERT RAY**—So if you suspended someone for a year on full pay, they would then be entitled to how many weeks leave—after that suspension?

**Mr Chester**—Twenty-two days.

**Senator ROBERT RAY**—I assume none of them apply for leave while you have them suspended on full pay?

**Mr Chester**—I think it is correct to assume that.

**Senator ROBERT RAY**—So case 2 has accrued 44 days leave, if case 2 ever reappears as an active officer?

**Mr Chester**—That is correct.

**Senator ROBERT RAY**—And it goes towards long service leave as well?

**Mr Chester**—Correct.

**Senator ROBERT RAY**—To go back: we asked about the conversation between the minister, the New Zealand High Commissioner and the Federal Police. I heard what you said but that is code for ‘they have not caught anyone’ to the point where they can prosecute. Can we refresh our memory—how many leakers have been caught by the department in the last seven years? How many cases have been referred to the AFP and how many have been caught? That is caught to the point only of charges being laid—we will not go to whether there was a court conviction or anything down the track.

**Mr Tighe**—I am not aware of any prosecution via the department. There may have been others via other agencies, but to my knowledge there have not been any in the department. It might be worth noting, though, that I would not necessarily judge the value of these investigations simply on whether or not they result in a prosecution.

**Senator ROBERT RAY**—Do not presume that I am. I am asking questions just to get answers. I understand the fact that if you launch an investigation, it may inhibit the next leaker—of course we understand that. The other part of the question was: how many leaks investigations have there been in the last seven years?

**Mr Tighe**—I would have to check. In the last two years we have had one investigation which we then formally referred to the AFP, and there were a number of other what I would call ‘examinations’ of possible alleged leaks, which we concluded were not unauthorised disclosures.

**Senator ROBERT RAY**—The methodology in your department differs from other departments. You usually check it all out yourself before it goes to the Federal Police, which I must commend you for because it saves police resources. However, I think the Prime Minister’s department refer anything to the Federal Police at the drop of a hat. They have a similar record to you: they have never caught anyone other than a ministerial staffer whom they could not prosecute. So you do your own investigation first?

**Mr Tighe**—It depends on the circumstances. If it is a DFAT originated document with a fairly DFAT specific circulation, I think it makes sense for us to look into it fairly carefully ourselves. If it is a document from another agency that has gone around a larger number of people, and DFAT is only a relatively small proportion of that, then we are not in a position to do a very powerful investigation. The approach we adopt to that is to cooperate with the AFP or whatever investigation gets launched.

**Mr Chester**—I make the point that it would be wrong to draw a connection between leaks and leak investigations and the suspension of these three officers.

**Senator ROBERT RAY**—I have not. I have left them and gone back to where I started. If you want to link it, you can, but I do not want—

**Mr Chester**—No, I do not, but I had the sense that with the way the discussion was going people may draw that link, which would be wrong.

**Senator ROBERT RAY**—What we are involved in here, Mr Chester, is an inquisitorial interchange. There will be times when we get a little more adversarial and draw conclusions, in which case we will draw Senator Minchin into the conversation.

**Senator FAULKNER**—The name of one of the suspended officers from the Department of Foreign Affairs and Trade has previously been identified at this committee—or at least one. You can confirm that, Mr Chester?

**Mr Chester**—That is correct.

**Senator FAULKNER**—I am not aware of the other two names having ever been mentioned to this committee. Would that be right? I cannot recall that, but then I do not claim to have an absolutely exhaustive knowledge of these things and I am pleased to say I have not always been in attendance.

**Mr Chester**—That is correct.

**Senator FAULKNER**—So the one name that has been mentioned previously in relation to suspension from the department is Mr Smith's. Is that right?

**Mr Chester**—That is correct.

**Senator FAULKNER**—I am going to slash outside the off-stump here. From previous evidence I suspect it is Mr Smith who is having the birthday celebration tomorrow in terms of the suspension. Would that be right?

**Mr Chester**—That is correct. I think Mr Smith was suspended on 20 February last year.

**Senator FAULKNER**—So the anniversary is tomorrow?

**Mr Chester**—Yes.

**Senator ROBERT RAY**—I will ask for some more details of that in a moment. I want to raise a side issue with regard to Mr Smith. You have set up the Kennedy investigation according to Public Service regulations and guidance, and directions were issued, I assume to Mr Smith. Were the directions to Mr Smith as to how he should behave issued by you?

**Mr Chester**—That is correct.

**Senator ROBERT RAY**—Is it possible to outline those to the committee?

**Mr Chester**—At the request of Dr Kennedy, the department issued directions to a number of APS employees asking them not to discuss the issue until such time as Dr Kennedy had finished his investigation.

**Senator FAULKNER**—What is the category of these APS employees? I do not necessarily at this stage wish to know their names. We may.

**Mr Chester**—What do you mean by category?

**Senator FAULKNER**—Why were there particular employees so directed? What particular roles they were fulfilling?

**Mr Chester**—The APS employees that were given directions were identified by Dr Kennedy.

**Senator FAULKNER**—As interested parties or what? Had he sought to hear their views?

**Mr Chester**—He saw them as APS employees who could assist in his investigation.

**Senator ROBERT RAY**—How many of them were there? You issued the instruction yourself?

**Mr Chester**—I issued the direction as the delegate—that is right. I believe there were 10 initially and then a further two—12 in total.

**Senator ROBERT RAY**—Is it possible to table a sample copy of the instruction?

**Senator FAULKNER**—First of all, was the instruction identical, apart from the individual's name, in each case?

**Mr Chester**—Yes, it was.

**Senator ROBERT RAY**—Is it possible to table for the committee that instruction, taking the name of the person concerned off it? We are not going to ask you for the 10 plus two.

**Mr Chester**—I do not have a copy with me but I am quite happy to black out the relevant names and provide you with a copy.

**Senator ROBERT RAY**—I just think the committee might like it as a document.

**Mr Chester**—I am happy to provide you with a copy.

**Senator ROBERT RAY**—I will be asking you questions about it later in any event. I just think it would be useful if the committee had it as a document. Of these 12 people, is only one of them under suspension?

**Mr Chester**—That is correct.

**Senator ROBERT RAY**—And the other 11 are all currently being employed and paid for by the department of foreign affairs?

**Mr Chester**—No. One is on leave without pay from the department.

**Senator ROBERT RAY**—Do you know where that person works?

**Mr Chester**—They are an employee under MOPS.

**Senator ROBERT RAY**—Are they under part III or part IV of the MOPS Act?

**Mr Chester**—I am sorry; I do not know the distinction.

**Senator ROBERT RAY**—I will draw you the distinction, but we have got a minister at the table, right next to you, who used to administer this. If I can short-circuit it, part III would generally be staff of office holders—opposition members and ministers; part IV are what we call electorate staff.

**Mr Chester**—Part III.

**Senator ROBERT RAY**—So you yourself have signed off a direction to someone working under the MOPS Act?

**Mr Chester**—That is correct.

**Senator FAULKNER**—Did you seek legal advice before you sent that particular piece of correspondence?

**Mr Chester**—Yes, we did.

**Senator ROBERT RAY**—From whom?

**Mr Chester**—From the Government Solicitor.

**Senator FAULKNER**—Specifically addressing the issue of the appropriateness or otherwise of such an instruction going to a staff member employed under part III of the MOPS Act?

**Mr Chester**—Yes.

**Senator ROBERT RAY**—So now we are in a position where a federal department can direct—by implication; we will forget about this case—any ministerial staff member who is seconded or employed under the MOPS Act but still on leave without pay from their home department. Is that what you are really telling us is going to happen?

**Mr Chester**—That was the advice we were given.

**Senator ROBERT RAY**—I challenge that legal position, but I will leave that aside for the moment. I am asking about the commonsense of this position—and forget about opposition, now, or Speakers and Presidents. We now could have ourselves in the position where a department could issue instructions to a MOPS employee who was working for a minister. In other words, the minister at the table may on occasions have seconded staff, paid under the MOPS Act part III, from the department of finance and they could in fact direct that person how to behave. I find that incredible.

**Mr Chester**—That was the advice we got, Senator. The advice was that the direction, insofar as it went, was a reasonable direction.

**Senator ROBERT RAY**—You are misunderstanding the question, so I will repeat it. Leaving the legal aspects of that aside, I am talking about the comity of government; I am talking about the relationship between departments and ministers here. I think you forgo the right to issue directions to a ministerial staffer for as long as they work under the MOPS Act. I find it incredible that you would seek to do so. The other 11 I can understand. But as a matter of Public Service policy I find that incredible. I do not think you have thought it through. One of the directions, was it not, was not to discuss matters with anyone other than Dr Kennedy or legal advisers? That is true, isn't it?

**Mr Chester**—That is correct.

**Senator ROBERT RAY**—Even though there is a qualifier in your instructions—which you had no right to make about parliamentary privilege, by the way—you are not seriously saying that, say, one of the staff of the minister at the table—I am sorry to use him again as an example—cannot discuss matters with him because you have sent a direction in that case. You cannot be arguing that.

**Senator Minchin**—Senator, I am not sure that Mr Chester can reasonably be expected to comment on the generality of the proposition you are putting. He can only deal with the circumstance that he had to deal with and the action that he took in the particular circumstance. It is reasonable for you to draw the wider conclusions about what that means, but I do not know that you can expect Mr Chester to comment here on the wider implications that you are seeking to draw out.



**Senator ROBERT RAY**—I am just saying that I think the wider implications of the action of the department of foreign affairs have not been thought through. It might be fine, Minister, to do this to an opposition staffer. But doing it to a ministerial staffer, because it has got exactly the same consistency, has much more serious ramifications: you are directing a MOPS staffer not to discuss matters, effectively, with their employer. This is a massive intrusion into parliamentary privilege. I do not think it has been thought through. It is one thing to get legal advice off the Australian Government Solicitor—let us face it; every second letter they send out, as you know, is on a better view, and you get the second opinion. So that does not satisfy me. But I think that should have been thought through because it has a very serious consequence for you and every government minister, let alone the way it falls at the moment on opposition staff being employed under part III of the act. That is why I am concerned. I also would not mind seeing this department getting a second legal opinion on this aspect because I think it is highly dubious. There is no implication of malevolence here at all. I just think it is a wrong public policy.

**Senator Minchin**—I think you have raised a wider issue that I certainly take some interest in myself, but I am not sure that you can reasonably pursue Mr Chester on those wider implications. It is reasonable for you to pursue him in the particular circumstance. As I have said, I do take careful note of what you are saying about the wider issue.

**Mr Chester**—We did ask the question three times of the Government Solicitor. When I was first asked to sign these directions I must admit I had similar thoughts to you and asked myself, ‘Is this appropriate?’ I asked that the advice be checked. As I think you are aware, a little bit later there was a discussion about the accuracy of that advice and other experts in the Government Solicitor’s office looked at this original advice and reaffirmed it as being a reasonable direction to give to somebody on MOPS.

**Senator FAULKNER**—Who asked you to sign the direction?

**Mr Chester**—Dr Kennedy asked the department to issue the directions.

**Senator ROBERT RAY**—I know refusal always hurts but is it possible for you to table those legal opinions, in the interest of this wider discussion and consideration that we want to do?

**Mr Chester**—I will need to take advice on that.

**Senator ROBERT RAY**—That was a nice way of letting me down, thank you. In your signed off instruction—I never pretended I did not have a copy, by the way, when I asked you to table it—

**Mr Chester**—I knew you had a copy, Senator.

**Senator FAULKNER**—How did you know that?

**Mr Chester**—How did I know that?

**Senator ROBERT RAY**—You could have inferred it from a previous question. That is what we pay you for.

**Mr Chester**—I knew because the senator has shown interest in this issue over the last little while.

**Senator ROBERT RAY**—That is good; you are on the ball.

**Senator FAULKNER**—I might indicate that I asked a question of a certain MOPS staffer, obviously, who is the 12th person, in relation to certain matters. The staffer indicated to me that he could not answer that question. I asked why. He explained the circumstances. I asked him to provide me with a copy of the letter. I am saying this just so that you know I have a copy of the letter and I have given a copy to Senator Ray. It happened very recently, though, Mr Chester, about an hour and a half ago.

**Senator ROBERT RAY**—I want to follow up one thing in the letter, which you do not have in front of you.

**Senator FAULKNER**—I just make that point even though the letter was dated 13 November 2003.

**Senator ROBERT RAY**—You say ‘this direction does not intend to prevent you from disclosing information as required or authorised’ and then you go on to say ‘in such a way as to constitute a breach of the privilege or immunities or a contempt of the house of parliament or members of the committee’. It is not up to you to interpret that, is it? How can you give a direction that purports to represent what someone can do in terms of parliamentary privilege?

**Mr Chester**—I might ask our senior legal adviser to come and answer these questions.

**Mr Moraitis**—Could you repeat what you read from that letter. We do not have a copy of it; we are seeking one.

**Senator ROBERT RAY**—We had a dialogue with you in at least June last year. I have to say, and I will only say it once, I have always found it very hard to hear—

**Mr Moraitis**—I will try to speak up, Senator.

**Senator ROBERT RAY**—Think you are addressing the MCG instead of only us humble people here. I am wondering, in this direction, why the reference was made to parliamentary privilege when you have absolutely no say in interpreting or otherwise what constitutes parliamentary privilege.

**Mr Moraitis**—My recollection was that a form of that direction was prepared by our solicitors to ensure that we did not impinge on any forms of parliamentary privilege.

**Senator ROBERT RAY**—But it is like one of those signs, ‘We are not responsible for you slipping on the wet tiles,’ put up by the management at every hotel pool in the world: it has absolutely no legal effect and nor does this. It is not for you to say where the boundaries of parliamentary privilege are.

**Mr Moraitis**—I do not consider that to be seeking to set boundaries; it was basically trying to maintain the integrity of privilege and to have a very specific direction directed towards APS employees.

**Senator ROBERT RAY**—In other words, if the MOPS staffer decided to talk to their employer about this, that would be okay, because parliamentary privilege would surely cover that?

**Mr Moraitis**—I would need to take advice on that from our solicitor.

**Senator ROBERT RAY**—So you did not get advice on that aspect of it? A MOPS staffer is directed and you did not ask the question whether that MOPS staffer could discuss these issues with their employer?

**Mr Moraitis**—I would have to check that point.

**Senator ROBERT RAY**—Again, Minister, you can see the implications here

**Senator Minchin**—I do.

**Senator ROBERT RAY**—It goes beyond just this one particular case. You can go back to a certain maritime incident and the protection of staff from parliamentary inquiry. They could have been subject under those circumstances to all sorts of directions from the Public Service to appear before Public Service inquiries whilst they worked for, say, you. We will just get back to when you sought legal advice. I think Mr Chester said it may have had three iterations. I do not want to hold you to that, but I think you might have said you went back three times.

**Mr Chester**—That is correct.

**Senator ROBERT RAY**—When did you go back the first, second and third time?

**Mr Moraitis**—It certainly would have been well before the issue of the directions. Advice was sought on this issue. I recall subsequent to the issue of the directions there was, as Mr Chester alluded to, some discussion of this and we sought further confirmation within AGS from other specialists about the legitimacy of this direction. That would have been subsequent to early November.

**Senator FAULKNER**—Who drafted the direction?

**Mr Moraitis**—My recollection is that it would have been our solicitors—AGS.

**Senator FAULKNER**—Did you approve the draft?

**Mr Moraitis**—Yes, we would have viewed those drafts.

**Senator FAULKNER**—Either you did or you did not.

**Mr Moraitis**—Yes, we would have.

**Senator FAULKNER**—The buck stops with you in relation to these matters in the department—obviously subject to the deputy secretary and secretary.

**Mr Moraitis**—Sure, that is right. I would look at the direction, but in something as technical and detailed as this I would defer to the specialist judgment of our solicitors about the appropriate form of language.

**Senator ROBERT RAY**—When you went back the second and third time, was it specifically on the issue not of the overall legality of the directions but of whether a direction could be given to a MOPS staffer?

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

**Senator ROBERT RAY**—What was the basis for that legal view—that the person was still an employee of the Department of Foreign Affairs and Trade and still a public servant in that sense?

**Mr Moraitis**—In general terms, that would be the basic principle: MOPS staffers who are on secondment under MOPS from an agency are still APS employees.

**Senator ROBERT RAY**—You say ‘secondment’ but they are not really on secondment.

**Mr Moraitis**—When they are working on MOPS, they are still employees of the Australian Public Service.

**Senator ROBERT RAY**—Let us get it clear. It is not secondment, because secondment would basically mean they were working there but you would still be paying them—all their pay and all their entitlements.

**Mr Moraitis**—It was a loose term.

**Senator ROBERT RAY**—Can I ask you this question, because this may work in your favour in this regard: if I am working for the Department of Foreign Affairs and Trade and I take leave without pay and then I get employed under the MOP(S) Act—it is very common at the moment—who pays my superannuation contribution? Is it the department or is it under the MOP(S) Act?

**Mr Chester**—It is my understanding that, under the MOP(S) Act, it would be paid by the Department of Finance and Administration.

**Senator ROBERT RAY**—I see. I would have thought that would define who they are employed by—not by the department.

**Mr Chester**—Yes, they are on leave without pay from the department. They formally seek leave without pay to go and work under the MOP(S) Act.

**Senator ROBERT RAY**—But all their benefits basically come under the MOP(S) Act?

**Mr Chester**—For that period of their employment under the MOP(S) Act, yes.

**Senator ROBERT RAY**—So the seeking of legal advice for the second and third time was simply on this MOP(S) Act aspect or was it across-the-board reinforcing?

**Mr Chester**—Can I just clarify something. As I said earlier, the checking or the original advice was done as a result of my questioning whether we were sure this was an appropriate way to go. My understanding is that the legal area of the department went back to the Government Solicitor for them to be in a position to confirm that it was appropriate. I think the words they used were that it was ‘a reasonable direction to give’, that it was reasonable to ask somebody who was employed under MOPS not to discuss this issue. The direction did not go as far as directing the MOPS employee to attend an interview or do other things; it was only a means of assisting Dr Kennedy in his investigations so that there was not a lot of discussion amongst potential witnesses. The direction was really aimed at trying to keep that investigation somewhat pure.

**Senator ROBERT RAY**—So there would be nothing in this direction, given the boundaries of parliamentary privilege, for the MOPS staffer, in fact, to discuss it with members of parliament, would there? This would not have an overriding power to prevent that.

**Mr Chester**—I am not a lawyer, but I suspect you may be right there.

**Senator ROBERT RAY**—So it is not your fault that the employee was reluctant to discuss the matter with Senator Faulkner; it is just a misunderstanding of whom he can discuss the matter with. I think he can certainly discuss it with his own boss and with other members of parliament.

**Mr Chester**—As I said, I am not a lawyer; I do not know.

**Senator ROBERT RAY**—It does not mean that he will. What happens if the order is not complied with? This goes across the board, not just to a MOPS staffer, although I think that is a distinct case. What happens if someone transgresses the direction you have given?

**Mr Chester**—It would depend upon the circumstances, but I think the point you are getting at is what action may be taken. I guess the code of conduct comes into play as a potential issue that would need to be looked at.

**Senator ROBERT RAY**—That is like looking into one of those mirrors that reflects in another mirror; it would never end.

**Mr Chester**—Yes, I can see that.

**Senator ROBERT RAY**—We will not pursue that too far then. Would there be even less of a case, though, if someone were on leave without pay but had obligations—you see, this is the whole point: they have obligations under the MOP(S) Act as to what they may do—that might run counter to your direction?

**Mr Chester**—Possibly, but I will ask Mr Moraitis to answer that.

**Mr Moraitis**—Possibly, Senator. If the direction was to a MOPS employee, an APS employee or a departmental employee having any doubts about the scope of how they should perform or behave in terms of those directions, I think it would be quite reasonable and we would be open to being called up and asked, ‘What can we do and what can’t we do?’ We would seek to clarify that as best we could.

**Senator ROBERT RAY**—All right. Let us move on. Mr Chester, I think you said that there would be no compulsion for a MOPS employee to appear before an inquiry. When you say that there is no compulsion, are there any adverse consequences of not doing so in terms of a future career or making a file or anything else?

**Mr Chester**—What I said was that the direction did not compel any of the 12 people to attend an interview or the inquiry with Dr Kennedy.

**Senator ROBERT RAY**—Thank you for that, because that does say that it is across the board. Are there any consequences? There is not a notation on the file that they refused to cooperate et cetera?

**Mr Chester**—I do not know, Senator. I think it would be fair to say that Dr Kennedy may well draw conclusions—

**Senator ROBERT RAY**—In his report he might. I understand that.

**Mr Chester**—In his report, yes. I should re-emphasize that there is quite a distance between the management of the department and Dr Kennedy in this process.

**Senator ROBERT RAY**—One would hope so.

**Mr Chester**—It is very difficult for us to talk about what he is doing and how he is doing it; he is doing it his way.

**Senator FAULKNER**—Yes, but this is an initiative that you have taken as a result of a recommendation from Dr Kennedy.

**Mr Chester**—A request from Dr Kennedy.

**Senator FAULKNER**—A request from Dr Kennedy.

**Mr Chester**—That is correct.

**Senator FAULKNER**—In relation to the specific instance, as an officeholder of the Commonwealth and as the shadow minister representing the shadow minister for foreign affairs in the Senate, when I received the response I did from the MOPS staffer I asked that staffer to provide me with a copy of the instruction. He did—I insisted on it. I hope there will not be a witch-hunt as a result of that document being provided. You could assure me, of course, Mr Chester, that you consider it appropriate for the staffer to provide me with a copy of your instruction?

**Mr Chester**—I see no reason why he would be prevented from doing that.

**Senator FAULKNER**—I just want to make sure, given the way this department works. I want it clearly on the record that you think that is appropriate. I certainly do and I assume you would; but we know how this department works, so I want to get it clear. It is marked ‘Legal in confidence’, whatever that means.

**Mr Chester**—I think I have answered the question. I see nothing wrong with his handing a copy of that to you.

**Senator FAULKNER**—Where is Dr Kennedy’s investigation and report up to?

**Mr Chester**—He is in the process of interviewing the 12 people whom he had identified as being relevant to his investigation.

**Senator FAULKNER**—Can you tell me the relationship between Dr Kennedy’s investigation and the police investigation in terms of timing? Obviously they are very separate matters, but did Dr Kennedy await the conclusion of those police inquiries?

**Mr Chester**—No, he did not.

**Senator FAULKNER**—How long has Dr Kennedy now been on this task?

**Mr Chester**—He was appointed on 16 May.

**Senator FAULKNER**—What are the current costs the department has borne in relation to Dr Kennedy’s investigations?

**Mr Chester**—The total costs?

**Senator FAULKNER**—Yes.

**Mr Chester**—I am not sure I can break it down to differentiate between the costs since Dr Kennedy started and the total costs.

**Senator FAULKNER**—What figures do you have available that you could share with us?

**Mr Chester**—We have spent around \$165,000 on legal advice, around \$24,500 for Dr Kennedy and around \$41,000 on legal and court costs.

**Senator ROBERT RAY**—Would it be fair to add the \$65,000 salary on leave without pay?

**Mr Chester**—Yes. That brings it up to around \$300,000 in total. That covers the period from around 20 February last year through to around now.

**Senator ROBERT RAY**—But it does not take into account the hours of staff time that the department has put into this. I know that is not an additional cost but it is a diversion of time that you can amortise.

**Mr Chester**—I think we discussed this at the last hearing.

**Senator ROBERT RAY**—Not the last one; the one before last. I was not here last time.

**Mr Chester**—But I think we did talk about costs in November. It is around \$25,000 for staff costs, given that most of this has been handled since May quite independently by Dr Kennedy.

**Senator ROBERT RAY**—This does not take into account the costs the Federal Police have incurred in their inquiries.

**Mr Chester**—I think we are heading down the wrong alley here. These are distinct issues and I think it is very wrong to seek to draw a connection between this code of conduct investigation and the police investigation on the leak of the record of conversation. They are not the same issue.

**Senator ROBERT RAY**—I can see the distinction but I think one was related to the other at one stage. They only became disconnected when the code of conduct inquiry person was not found to be connected with the other matter.

**Mr Chester**—People may look at this differently but as far as I am concerned the only point of connection is that we are perhaps talking about the same person.

**Senator FAULKNER**—Yes, the same person, the same timing of investigation and so on.

**Mr Chester**—I would probably characterise it as a coincidence of events.

**Senator FAULKNER**—I doubt that anyone else would; I really do. I think that is just preposterous but you can go on believing that, Mr Chester.

**Mr Chester**—I am happy to defend that view.

**Senator ROBERT RAY**—The preposterousness is because you are trying to be fair to someone but everyone knows that the two things were linked at one stage.

**Senator FAULKNER**—Have you had an indication—given these huge costs of now at least \$300,000—of when Dr Kennedy's investigations are going to be concluded and his report provided to the department?

**Mr Chester**—The only advice I have had is that Dr Kennedy expects to finish his interviews in the next two to three weeks—by mid-March.

**Senator FAULKNER**—Is Dr Kennedy on an hourly rate?

**Mr Chester**—That is my understanding, yes.

**Mr Moraitis**—That is correct.

**Senator FAULKNER**—You can be a bit more specific than \$300,000. Isn't it considerably more than that already? Isn't it over \$320,000?

**Mr Chester**—I would have said it was around \$320,000, taking into account staff costs.

**Senator FAULKNER**—Around \$320,000?

**Mr Chester**—Yes.

**Senator ROBERT RAY**—Have you paid legal costs for the APS employee who is on suspension?

**Mr Chester**—Yes we have, and they are included in those figures.

**Senator ROBERT RAY**—In the overall legal cost?

**Mr Chester**—Yes.

**Senator FAULKNER**—Have any requests been made to Dr Kennedy about concluding his investigations?

**Mr Chester**—We have asked Dr Kennedy to proceed as quickly as possible with his investigation but, as I said at the last hearings, there were quite a number of complex legal issues that Dr Kennedy had to deal with including some challenges to some of the material that he would look at. They took some time to work their way through. Once he had decided who he would interview—I guess in late October—and the directions were issued, he proposed to move in December- January to do those interviews. However, he was asked to delay his process for four weeks. So there was a loss of valuable time to conclude this as quickly as possible. Since that four-week delay expired he has moved fairly quickly with his interviews.

**Senator ROBERT RAY**—I think you gave certain evidence early on that police reported on the Mr Downer/High Commissioner matter they were investigating—in early December, did you say?

**Mr Chester**—That is right.

**Senator ROBERT RAY**—Did you immediately inform the people who were under suspicion of that result?

**Mr Chester**—I believe they were informed at some stage; I do not know when.

**Senator FAULKNER**—By the department?

**Mr Chester**—I believe the department informed them.

**Senator ROBERT RAY**—Was that by Mr John Richardson?

**Mr Tighe**—Yes, the department advised them—

**Senator ROBERT RAY**—When?

**Mr Tighe**—after we sought the approval of the AFP to do so and again ran it through the solicitors. With Christmas in the middle, it was early February by the time we did it.



**Senator ROBERT RAY**—About two months afterwards?

**Mr Tighe**—About that, yes.

**Senator FAULKNER**—That is just to keep people swinging for a couple months.

**Mr Tighe**—No, it was simply to ensure that we were following the right course of action.

**Senator FAULKNER**—People were kept swinging for two months after the police had indicated to the department what the outcome of their investigations was.

**Mr Tighe**—The people would not have known that the police had made that finding—

**Senator FAULKNER**—No. That is the point.

**Mr Tighe**—so I do not know that they were kept swinging. We were simply seeking to establish—

**Senator FAULKNER**—I do not think it is very pleasant to be in a position of being under investigation by the police. If the police conclude their investigation, if they finalise it, and the people are not told for a couple of months, that seems to me very poor practice. It would not be deliberate, would it?

**Mr Tighe**—I do not know that we actually had any obligation to inform anyone. Indeed, that was one of the reasons there was a delay in doing it, because we needed to see whether it was the correct thing to do. I do not know that there was a previous example of us having done that. As I say, this happened over the Christmas period, which resulted in some delay, and by the time we sought the advice and received the comments from the authorities involved we went ahead and did it in early February.

**Senator FAULKNER**—I find it hard to believe it could take two months to establish that informing them was the right course of action. I think it is just the way the department has done business on this sorry matter from day one. So who cares, have your Christmas holidays and all this sort of thing, and the poor suckers who were under a cloud find out a couple of months later they are off the hook.

**Senator ROBERT RAY**—I am not very familiar with this, so Mr Moraitis could probably help us. In the Bennett Federal Court case on criminal administrative investigations, I think the judge found that regulation 7(13) of the Public Service Regulations 1998 was unconstitutional. Does this have any relevance to this particular inquiry?

**Mr Moraitis**—No, is the short answer.

**Senator ROBERT RAY**—You have looked at it?

**Mr Moraitis**—I have taken advice on that from AGS. In fact, as you know, this is a big case and I think it has been looked at by many agencies.

**Senator ROBERT RAY**—You flatter me by saying ‘as you know’. I do not know much about it at all. That is why I am asking you.

**Mr Moraitis**—The Bennett case came out just before Christmas and there was a question whether it would be appealed, but even before that we were obviously conscious of that case. I read the case and sought advice from AGS about the implications of that. It was clear from

that that it has no relevance to this case. We also sought regarding the implications of the case for other matters regarding the department.

**Senator FAULKNER**—What part of the department did Mr Smith work in?

**Mr Chester**—He worked in one of the trade divisions of the department.

**Senator ROBERT RAY**—Was he replaced for the period of suspension by others so that it would not be shorthanded?

**Mr Chester**—I do not believe his position was backfilled by someone. Others took up the work or work was moved around within the branch.

**Senator FAULKNER**—You mentioned other suspensions on full pay in the department. Are these also subject to code of conduct inquiries?

**Mr Chester**—No. I am sorry, let me rethink that. One certainly is not. The second one—

**Senator FAULKNER**—One has been identified as a two-year suspension on pay, another, a six-month suspension.

**Mr Chester**—The six-month one could potentially be a code of conduct issue. It is an issue that is being dealt with by the police at this stage. There are court orders that prevent us from disclosing too much about the case or the identity, including where the person works.

**Senator FAULKNER**—So that deals with the individual involved in the case for six months?

**Mr Chester**—That is right.

**Mr Moraitis**—Senator, may I clarify that. There is a suppression order from the courts, so we cannot talk about that.

**Senator ROBERT RAY**—Let me say two things about that: we will not transgress it and it has no power in this room, even on you—but we will not go over it.

**Senator FAULKNER**—That is the second of the three cases. You have indicated to us that the third one involves a suspension on full pay that has been in place for approximately two years.

**Mr Chester**—I will get Mr Tighe to talk about that. It is worth making the point that the department does not suspend people lightly. It is not something that we look forward to doing. We only do it when there are serious issues at stake.

**Senator FAULKNER**—I will be making judgments about that at a later stage.

**Mr Chester**—I thought it would be useful to pass on our judgment.

**Senator FAULKNER**—We know what your view is, Mr Chester, and we know what the secretary's view is in relation to this. So far it has been a fiasco in relation to one case—Mr Smith's—an absolute fiasco. You spend \$300,000 on this witch-hunt against this particular officer of the department, and no doubt you will spend as much money as you think it might take. But, anyway, that is one fiasco; I am interested in this third case.

**Mr Tighe**—Because of the privacy considerations in this one, we are not in a position to give very much in the way of detail. It also involves a security issue. It is a matter that has

been subject to legal proceedings which are not going to be made public, as we understand it. I think that is probably as much as I can say.

**Senator FAULKNER**—But there are no code of conduct inquiry or issues in relation to this third case?

**Mr Tighe**—No.

**Senator ROBERT RAY**—Why has it taken two years to get this far—without us going into the areas that you do not want to go into? It is legitimate for us to ask why someone has been paid two years pay for doing no work and why you cannot resolve it.

**Mr Tighe**—There are delays in the legal processes.

**Senator FAULKNER**—How much have you spent on that case, given it was \$300,000 on the Trent Smith investigation? What have you spent on these other two cases?

**Mr Chester**—On the six-month case, nothing other than the salary cost—

**Senator ROBERT RAY**—What about the suppression order on that? Didn't that involve some representation?

**Mr Chester**—It is a police criminal matter, not a departmental issue.

**Senator ROBERT RAY**—So there were costs but they were not attributed to you?

**Mr Chester**—That is right. We are not dealing with this issue at this point in time. It is out of our hands.

**Senator FAULKNER**—And the other case?

**Mr Chester**—In the other case the departmental expenses would again focus on the salary costs. The department is not dealing directly with that issue either.

**Senator ROBERT RAY**—So you are saying that there are no other costs?

**Mr Chester**—That is right.

**Senator ROBERT RAY**—So you have not sought legal opinions on it for involvement in court cases or anything to do with it?

**Mr Chester**—We are not involved in court cases.

**Mr Tighe**—We are not a party to the court case.

**Senator ROBERT RAY**—Minister, I doubt you will want to address this issue but we have drawn the contrast here of a case that has gone on for a year and that in the initial stages decisions had to be vacated—tell me where I am wrong here, Mr Chester—and done all over again. There have been court cases and police investigations. In the end, there is a special commission, if you like, investigating one possible breach, as I understand it, of the Public Service code of conduct. This middle-ranking officer has had all this brought to bear on him.

How do you think that stands up with the fact that the head of DIO is merely being counselled, having been accused of commenting on security matters to a reporter, albeit with caveats on that? Can you see the contrast? This has been all dealt with in two days, and there was just a counselling exercise. Everyone was under suspicion for three days or whatever it was for leaking this, and this poor sap—whom I have never met, by the way, whom I do not

know and whom I do not represent here—has had all this massive weight and suspicion pressed down on him and has had the whole apparatus come down. The example that that is going to set to the rest of the Public Service is that if you are a head of an agency you get treated differently to a middle-level person well down the food chain.

**Senator FAULKNER**—If you run foul of senior officers in DFAT you are out for the count. They will get you; it does not matter how much it costs or how long it takes. Just roll on with the witch-hunt.

**Senator Minchin**—That is a rhetorical and, frankly, partisan observation on your part, which you are free to make but which I do not think it is necessarily appropriate for the officers to respond to.

**Senator ROBERT RAY**—No, it was to you, not to the officers.

**Senator Minchin**—They certainly do not need to respond. I am not sure that I need to either. As I say, it was a rhetorical observation on your part. I am not familiar enough with all these circumstances but it is proper for DFAT to take very seriously the deliberate leaking of confidential matters. From what I know, the department has acted properly in pursuing that. I only heard this morning of the other circumstance. I heard Mr Smith say in relation to the DIO officer that he is satisfied that it was inadvertent and was not a deliberate and premeditated leaking of confidential information. That is why he is being counselled. On the face of it and from the evidence there is a difference, but you are of course free to deny that.

**Senator ROBERT RAY**—I just hope, Minister, that if the Federal Police catch the person who leaked the top-secret ONA AUSTEO code-worded document, he will be treated far more severely than Mr Smith. But, guess what? I am pretty certain who did it and we know nothing will be done. This is just a bad example. That is all on that issue.

**Senator FAULKNER**—We will await your next instalment.

[10.12 a.m.]

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

**Senator STOTT DESPOJA**—My questions are in relation to China and Australia. I am not sure to whom they are best addressed. Could you give the committee a brief description of the way the Australia-China human rights dialogue is progressing, please?

**Mr McLean**—The human rights dialogue with China is a well established one. The seventh round of that dialogue was held in Beijing in July-August of last year. It was held at the level of deputy minister of foreign affairs on their side and the deputy secretary on our side, but it included on our side a number of representatives including the President of HREOC, Hon. John von Doussa, and representatives of AusAID and the Attorney-General's Department. Parliamentarians were in fact invited to attend but were unavailable on this occasion.

We raised our concerns about a number of human rights issues including treatment of dissidents, religious freedom, the situation in Xinjiang and Tibet, Falun Gong, the death

penalty, re-education through labour, and torture. Essentially we believe that the dialogue has now matured to a point where no subjects are off-limits. There have been relatively useful and productive discussions in the course of this dialogue, particularly the most recent one.

**Senator STOTT DESPOJA**—What form of communication does that regular dialogue take? How frequently is that taking place?

**Mr McLean**—The formal dialogue process is an annual affair. Apart from that, the embassy in Beijing is directed from time to time by the department to raise particular issues with the Chinese government.

**Senator STOTT DESPOJA**—I am glad to hear that any subject is allowed for discussion. Can you elaborate on one of the responses you made in relation to Falun Gong practitioners—in particular, what representations or what discussion occurred in relation to the torture or imprisonment of Falun Gong prisoners. What form of representation have we made?

**Mr McLean**—We have raised a number of such cases with the Chinese, both in the context of this seventh round of dialogue and in the middle of last year. We provided a list of a number of cases to the Chinese government in August 2003. There were more than 10 cases involving Falun Gong members. I have a note suggesting that, of those cases we have raised, the majority have now been released. It is encouraging that we have had that response. Separately we have raised with China a number of other related issues in the Falun Gong context.

**Senator STOTT DESPOJA**—It is quite encouraging; I think everyone would agree with that. I am wondering, though, about the exact response of the Chinese government to those representations made by Australia. You mentioned the broader issues—you mentioned dissidents and Tibet. Perhaps you could elaborate for the committee on those issues in relation to the Chinese government's response.

**Mr McLean**—I have only a limited brief here. I was not at that particular dialogue myself, so I have to rely on a prepared brief here. I do not have anything further on the issues that I mentioned before in respect of Falun Gong, other than concern about detention of Falun Gong practitioners. We make the point quite clearly to China that we have no view on the beliefs or practices of Falun Gong. We consider that China's ban on Falun Gong and treatment of its supporters breach fundamental international human rights standards. We make that point and we have conveyed it to the Chinese on a number of occasions. We also have concerns, which we have raised with China on a number of occasions, about relatives of Australian citizens who are in China and have been detained for practising Falun Gong.

**Senator STOTT DESPOJA**—Indeed, and there has been some progress on those issues. I acknowledge that. Due to the limitations of the brief or the fact that you only have a general overview, I might put some questions on notice. The substance of those is that I would like more specific information about the issues raised—the exact substance of the issues raised, particularly in relation to Falun Gong practitioners but also in relation to the other issues to which you referred. Any information that could be made available to the committee would be appreciated, including some more specific information about the Chinese government's response to those issues raised by Australia. If I could treat that as a question on notice on which there is more information forthcoming, that would be appreciated.

**Mr McLean**—All right.

**Senator STOTT DESPOJA**—I would like to ask now about the dialogue established between the Dalai Lama and China back in September 2002. Are you able to update us on the progress of that particular dialogue?

**Mr McLean**—The dialogue has not been directly with the Dalai Lama himself.

**Senator STOTT DESPOJA**—With representatives of the Dalai Lama then.

**Mr McLean**—Again I do not have a detailed brief on that, I am sorry, but it is a dialogue that we are keen to encourage. There have not been clear signs of outcomes from the dialogue at this stage but if the dialogue continues then that is certainly much better than none at all. One would hope that it does get to a point where there is something which will cool down this particular issue—which is obviously sometimes highly politicised.

**Senator STOTT DESPOJA**—Are you in a position to answer questions about specific cases that the Australian government would either be aware of or have made representations to the Chinese government about, particularly in relation to Tibet? I am wondering if our government is aware of the allegations that were made by Tibetan monk Nyima Dragpa Khako, who has been imprisoned in China since 2002. He died after being quite brutally beaten, as I understand it. I am wondering if our government is aware of that specific case and wondering if we have raised that issue or done anything on that particular case.

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

**Senator STOTT DESPOJA**—I have a couple of other cases, but I am not sure if I should put them on notice by reading them out now—

**Mr McLean**—If I can answer them, I will. Otherwise perhaps you should put them on notice.

**Senator STOTT DESPOJA**—The other one is Tenzin Deleg Rinpoche.

**Mr McLean**—I can answer that one. The government has made representations on Tenzin Deleg Rinpoche to the Chinese authorities on several occasions—including after his detention, after his sentencing, during the human rights dialogue in August last year and most recently in December last year. We will continue to make representations as necessary on this case. Past practice shows that suspended death sentences are usually not carried out in practice.

**Senator STOTT DESPOJA**—What has been the response of the Chinese government to those representations?

**Mr McLean**—I have no information on the response but I can say, in general terms, that in the course of this dialogue the Chinese are now ready enough to accept us raising individual cases of concern and over time, not necessarily on the spot, will provide a response to us of some nature at least—sometimes quite satisfactory, as I mentioned before in respect of the Falun Gong cases.

**Senator STOTT DESPOJA**—Thank you. If you will take those other questions on notice in relation to China, that would be appreciated.

**Senator FAULKNER**—Could you advise me please when the most recent delegation travelled to North Korea?

**Mr McLean**—Yes, I led a delegation there from 31 January to 3 February this year.

**Senator FAULKNER**—That is the most recent one?

**Mr McLean**—Yes, that is right.

**Senator FAULKNER**—Can you indicate to me who were the members of that delegation?

**Mr McLean**—I led the delegation and took with me the Director, Korea Section, Ms Hardy. We also had a director from ASNO, Mr Leslie, and two people from our embassy in Beijing.

**Senator FAULKNER**—Can you very briefly indicate to the committee, please, Mr McLean, what the purpose of the delegation was on this occasion?

**Mr McLean**—On this occasion it was to further follow up the concern that Australia has with the ongoing lack of resolution of North Korea's nuclear program. We made those concerns very clear to the North Korean government. In particular, we strongly recommended that they take the opportunity at a very early date to resume participation in the six-party process, because we consider that that is the best context in which to address this nuclear issue and to achieve a comprehensive resolution of it all.

**Senator FAULKNER**—How would you assess outcomes?

**Mr McLean**—While we were there we were informed that North Korea had been in touch with the United States to advise it that it would rejoin the second round of the negotiations, and there was a public announcement to that effect on 3 February by the North Korean government, backed up by the Chinese government who are the hosts of it. The next round of talks will be on 25 February, so that was important. It was important also for North Korea to hear from a country outside this six-party process but nonetheless one that is very much concerned about the issues because of our regional position, because of our non-proliferation credentials and because we have a bilateral relationship with North Korea which involves an ambassador here and a relationship communication that happens through there, which is rather more than what a lot of other countries are in a position to have. So we were able to use that channel to put a clear view to the North Korean government about our concerns and, at the same time, to reflect broad international consensus on this issue to the extent that that is not known by the North Koreans.

**Senator FAULKNER**—Are you able to give us a brief departmental assessment of what you think the likelihood is of progress being made at the scheduled six-party process talks?

**Mr McLean**—Yes. We have to be realistic about how much progress is likely to be made in this next round of talks. There has been six months between the previous round in August and the round that is about to commence. The negotiation of the nuclear issue with North Korea is fraught with history which dates back to the early nineties. The process of reaching an agreed framework with the United States took a couple of years in its own right, and it is impossible to put a time frame on this, obviously, because it is only beginning. One would have to assume that there will be quite a long, stretched out set of negotiations. That said, I think all the parties, including the United States and even to some extent North Korea, seem

to be ready to—be a bit more flexible is probably too strong a term—at least consider solutions to this very complex and vexed issue.

The issues principally involve the extent to which North Korea can commit to a full and verifiable dismantlement of its nuclear program. That includes not just nuclear weapons but peaceful uses of nuclear energy because of its potential for dual use in terms of a weapons program later on. That is the principal interest of the five parties that are there with North Korea. North Korea is seeking a security guarantee from the United States. It is also hoping to obtain significant energy and economic assistance from anyone who is prepared to give it.

**Senator FAULKNER**—Thank you, Mr McLean. I will come back with some further questions in your subprogram, but I understand Senator Ferguson would like to go back to general questions. As you know how cooperative we always are, Minister, maybe it is better to do that now.

**Senator FERGUSON**—I am sorry; I had to go to another meeting for 20 minutes. I have a couple of questions, and I think they should probably be directed to you, Mr Chester. Has the department received any requests for FOI information in relation to Richard Butler?

**Mr Chester**—Yes, the department has.

**Senator FERGUSON**—Can you tell us who has made these requests—for instance, the Tasmanian government?

**Senator ROBERT RAY**—On a point of order, Chair. I am as interested as anyone is, but you cannot ask an officer at the table who put in an FOI request.

**Senator Minchin**—You can ask.

**Senator FERGUSON**—I can ask.

**Senator Minchin**—It is up to the officer to decide how he wants to respond. You ask lots of questions.

**Senator ROBERT RAY**—No, not at all.

**Senator Minchin**—You said that he cannot ask; he can ask.

**Senator ROBERT RAY**—He should not ask.

**ACTING CHAIR (Senator Payne)**—I am sure the officer will indicate appropriately in his response.

**Senator ROBERT RAY**—We are quite happy with that, if we get an answer, because then we can ask a lot of questions.

**ACTING CHAIR**—I am sure you would be, Senator Ray.

**Senator ROBERT RAY**—Minister, this is not a partisan intervention by us at all.

**Senator Minchin**—I am just saying that it is a matter of procedure.

**Senator ROBERT RAY**—We are going on the principle, not on the individual, in this case. Officers are not allowed statutorily to say who has put in an FOI request.



**ACTING CHAIR**—Senator Ray, I am sure Mr Chester will answer the question within his capacity, perhaps as you have indicated, perhaps as the minister as indicated, but why don't we let Mr Chester do that?

**Mr Chester**—Senator, yes, there have been FOI requests.

**Senator FERGUSON**—Are you able to tell us what the department's response has been to those requests?

**Mr Chester**—I think it is fair to say—without getting into the detail of the request—that, because of the nature of the request, the department has consulted closely with Mr Butler and his legal representatives on the potential release of documents.

**Senator FERGUSON**—Is there a time frame for responding to these FOI requests?

**Mr Chester**—Yes, there are statutory time frames that the department has to follow. My understanding is that, normally, we have 30 days to respond to a request. But we can extend that period, and in this case we have extended the period to respond because the material involves personal information and to also give Mr Butler time to make representations to the department. So that response period was extended by us. Since that period Mr Butler, through his legal representatives, has asked for an internal review of a departmental decision to release certain documents. That review period is proceeding at present.

**Senator FERGUSON**—So the normal time frame is 30 days. For how long do you anticipate this time frame to be extended?

**Mr Chester**—We are now in the process of undertaking the review that Mr Butler has asked for—that is, an internal review of whether we will release those documents. I believe we have another 30 days, or something like that, in which to do it. I will just check my timing. In early January Mr Butler's legal representatives asked that we undertake an internal review of a decision to release documents. Again on 9 February Mr Butler's legal representatives lodged several submissions concerning a decision to release certain documents. I believe we have around 30 days—I need to check that—to undertake that internal review.

**Senator FERGUSON**—It should be completed in 30 days?

**Mr Chester**—The internal departmental procedures for that review should finish shortly. With all these issues there are other avenues that can be pursued by Mr Butler.

**Senator FERGUSON**—You are saying that the FOI request may not even be responded to at the end of that period?

**Mr Chester**—The department, through its internal review, will make a decision on whether to release the documents. That decision could be challenged, as all administrative decisions can be challenged.

**Senator FERGUSON**—Has the foreign minister's office sought at any stage to access any of these files?

**Mr Chester**—No, not to my knowledge. I think it is fair to say that the minister can have access to the documents but he has not sought access.

**Senator FERGUSON**—Thank you.

**Senator ROBERT RAY**—Who is the FOI officer dealing with this case?

**Ms Williams**—The original decision maker was the acting assistant secretary of Staffing Branch.

**Senator ROBERT RAY**—Who is that?

**Ms Williams**—The acting assistant secretary at the time of the decision was Bill Huber.

**Senator ROBERT RAY**—What limitations are there on the FOI officer transmitting details up and down the department of any decision they are about to make? They are totally independent, aren't they? They make the decision independent of you, Mr Chester, for instance. You cannot interfere at all in this, can you?

**Mr Chester**—That is correct. The decision maker makes the decision on the release of documents.

**Senator ROBERT RAY**—You are fairly well informed on all this. How are you so well informed on this?

**Mr Chester**—I am informed on the process because I have oversight of the management division of the department.

**Senator ROBERT RAY**—The FOI officer lets you know all these details?

**Mr Chester**—That is correct.

**Senator ROBERT RAY**—You can confirm, can you not, that—

**Mr Chester**—I am aware in general terms of the timing and where each process is up to but not the documents that are being considered.

**Senator ROBERT RAY**—Not necessarily at this forum but generally you are prohibited from revealing who has applied for a freedom of information request?

**Mr Chester**—I think so. I cannot be sure.

**Senator ROBERT RAY**—Really? You do not know that?

**Mr Chester**—No, I do not.

**Senator ROBERT RAY**—Does as anyone here know that?

**Senator FAULKNER**—But you did know you were going to be asked questions about this?

**Mr Chester**—We have come prepared for many questions.

[10.39 a.m.]

**ACTING CHAIR**—If there are no further general questions we will return to output 1.1.1.

**Senator FAULKNER**—I have a question about the request from Hong Kong to Australia for the extradition of Mr David Hendy and Carl Voigt to face trial—

**Senator ROBERT RAY**—Hang on. Wait for Mr McLean.

**Mr McLean**—I wonder if I could get the question again, please.

**Senator FAULKNER**—I was asking about the extradition requests in relation to Mr David Hendy and Mr Carl Voigt to face trial in connection with illegal activity in the Hong Kong residential construction industry. Has this matter come to the attention of the department and to your division in particular?

**Mr McLean**—Yes, it has.

**Senator FAULKNER**—Are you aware of the status of these requests?

**Mr McLean**—In a general way. The matter is principally one that is handled by the Attorney-General's Department.

**Senator FAULKNER**—Sure. Are you aware that the requests were refused by the justice minister last year?

**Mr McLean**—Yes.

**Senator FAULKNER**—In these sorts of circumstances, is DFAT apprised of the reasons that such requests are refused?

**Mr McLean**—Not necessarily.

**Senator FAULKNER**—Were you in this case?

**Mr McLean**—I do not think I have a particular brief on that question, but the fact is that this is very much an issue that is handled by that department and that minister rather than ours.

**Senator FAULKNER**—Yes, I accept, of course, that the lead agency in this is the Attorney-General's Department and that the responsible minister is the justice minister. I completely accept that. But if a diplomatic cable is sent in relation to these sorts of matters, there is a role, isn't there, for your department?

**Mr McLean**—Clearly, because we manage the consulate general in Hong Kong and the broader relationship, our department takes an interest in this issue. That is correct.

**Senator FAULKNER**—Was a diplomatic cable sent from Australia to Hong Kong, advising Hong Kong authorities of the decision of the justice minister?

**Mr McLean**—I am not sure if there was a diplomatic cable as such, but certainly the Hong Kong government was officially advised that the request for extradition was declined.

**Senator FAULKNER**—How do you think that official advice was communicated?

**Mr McLean**—As I say, I am not precisely sure. It could have been by cable; it could have been by fax; it could have been by telephone.

**Senator FAULKNER**—I am trying to establish how it occurred. I want to know whether DFAT was involved, in relation to this matter, in sending a diplomatic cable to Hong Kong.

**Mr McLean**—The diplomatic cable would have been sent by the department concerned, namely the Attorney-General's Department. It would have been copied to DFAT.

**Senator FAULKNER**—Can you tell me that. Can you tell me whether the process that you have just outlined—a cable sent by the Attorney-General's Department and copied to DFAT—occurred?

**Mr McLean**—I do not have information on that to confirm that particular point.

**Senator FAULKNER**—When do you think we might be able to establish that?

**Mr McLean**—I can take that on notice.

**Senator ROBERT RAY**—The problem with taking it on notice is that there may be follow-up questions. I think Senator Faulkner is hinting that maybe you could find that information and we could readdress it later in the day.

**Mr McLean**—We can certainly do that. But all I can say is that the advice that I have here is that this decision was taken by the minister for justice, that that decision was made under a broad discretion provided by section 22(2) of the Extradition Act and that the minister declined to divulge the reasons.

**Senator FAULKNER**—Yes.

**Mr McLean**—To the Hong Kong government.

**Senator FAULKNER**—I would like to ask further questions on this matter. Is there another officer who can assist me with this, one who might have more knowledge?

**Mr McLean**—That is possibly so, but, as I say, it is really an issue that is marginal to DFAT in the sense that it was initially handled by the Attorney-General's Department.

**Senator FAULKNER**—I accept that, but it is your marginal role that I want to explore.

**Mr McLean**—As far as we are concerned, our role in this—because we run the consulates general and the overall relationship—is that we clearly will be the channel, if that is what the Hong Kong government wishes to use to convey its opinions to us or vice versa, from the Australian government to the Hong Kong government. But, apart from that essentially mechanical role, our concerns at the DFAT level are about the relationship as a whole. We enjoy a close cooperative relationship across the board with Hong Kong, including on the legal side.

**Senator FAULKNER**—I think there might have been a reasonable amount of cable traffic on this. To save time, Chair, it might be appropriate if Mr McLean could get some copies of that and we might come back to those cables a little later on today. Would that suit the committee? I think it might save some time.

**ACTING CHAIR (Senator Payne)**—Anything that saves time is suitable for the committee. Mr McLean, is that possible?

**Mr McLean**—I am happy to get people to check out whether there have been any cables, and if so I will bring them. But as to whether they can be provided I do not know.

**Senator ROBERT RAY**—You were not asked that. You certainly were not asked that they be provided. We might, and refusal will again hurt, but we never asked that.

**Mr McLean**—I think Senator Faulkner was—

**Senator ROBERT RAY**—No, he said to bring them to refresh his memory and to be aware of it. Do not anticipate the next question. That is terrible.

**ACTING CHAIR**—You are just trying to save time, Senator Ray! Senator Faulkner, are you continuing?

**Senator FAULKNER**—Mr McLean, please could you check cable traffic on this matter. I am not suggesting that it is just one diplomatic cable; in fact, I would be hinting that there might be more than one. You might be able to obtain copies of those and refresh your memory on the role of your department in relation to these matters. We might just address it a little later on. I do not think it is going to take a huge amount of time, but I would appreciate it if we could do that.

**Mr McLean**—We will try our best.

**Senator FAULKNER**—That leaves me with a great deal of confidence. Thank you very much. Madam Acting Chair, in relation to 1.1.1, I do not think I have any more questions. My next questions are in output 1.1.4.

**ACTING CHAIR**—Senator Stott Despoja has questions in 1.1.2.

**Senator FAULKNER**—I will pass the ball to her and watch her score a dazzling try.

[10.48 a.m.]

**Senator STOTT DESPOJA**—I am so glad we have a football analogy in this.

**Senator Minchin**—She is from South Australia, Senator Faulkner; it is a goal.

**Senator FAULKNER**—We all have our crosses to bear.

**Senator STOTT DESPOJA**—Would it be helpful to indicate the areas that I am interested in?

**Senator FAULKNER**—Is your questioning likely to go through to at least the 11 o'clock break?

**Senator STOTT DESPOJA**—Yes. The areas that I am interested in—I probably will not get to all of them between now and 11 o'clock—are Indonesia and Burma. That is probably enough to keep us going. Mr Paterson, can you begin by confirming for the committee if it is indeed the case that Australia's ambassador to Burma actually presented his credentials to the Burmese regime on 8 August last year.

**Mr Paterson**—I do not have the precise date with me but I can confirm that the Australian ambassador did present credentials to the SPDC regime around that time. If you want precise confirmation we can easily get that for you.

**Senator STOTT DESPOJA**—I would like precise confirmation because there are a number of reports that, firstly, that was indeed the case but, secondly, that this has resulted in some international embarrassment. I am not sure if the government is aware of one statement that was issued by Dr Myint Cho, the Director of the Members of Parliament Union, which actually decided that this was a diplomatic blunder of the first order and said that we lacked sensitivity to the ongoing suffering of the people of Burma because 8 August represented the 15th anniversary of the brutal crackdown on the Burmese people. I am just wondering if that date was indeed the date that credentials were presented and why that date was chosen. Does the government acknowledge that that might be a sensitive issue and potentially embarrassing for Australia on an international basis?

**Mr Paterson**—I do not have the precise dates to hand, as I mentioned. I would simply say that we do not usually have choice, in almost any country, as to when our ambassadors

present credentials. Those dates are usually decided by the host government, and we simply have to do it. We could make ourselves unavailable for a particular credentials ceremony, but in a place like Burma it may well be many months until a further ceremony would be scheduled and we have ongoing business to transact in that time. We do not want lame-duck ambassadors in place.

**Senator STOTT DESPOJA**—I understand that point. I would be curious to know if the Australian government or the ambassador was aware of the significance of that date and, regardless of whether or not we had a choice in relation to the presentation of those credentials, if the Australian government has either acknowledged the sensitivity of that date or apologised for what can be construed as a blunder on the international stage.

**Mr Paterson**—On the latter two points, as to whether we have acknowledged it or apologised, I think the answer is no.

**Senator STOTT DESPOJA**—How recently has the Australian government reviewed its policy of constructive engagement with Burma?

**Mr Paterson**—We do not characterise our policy as one of constructive engagement. As with our relations with all other countries, our approach is grounded in a fairly hard-headed assessment of national interests. We deal with the Burmese government where it is in our interest to do so. I would have to say the relationship is a limited one, but in areas where we have programs to assist vulnerable groups we continue cooperation and, of course, where our interests in combating the drug trade are involved we also do so.

**Senator STOTT DESPOJA**—With regard to this hard-headed approach or, as some people refer to it, the policy of constructive re-engagement, can you give us some examples of the success of that? You mentioned areas where we may be involved in working with Burma. I am just wondering if you have examples of success, particularly given that a lot of people would suggest that there has not been a great deal of progress in recent years.

**Mr Paterson**—I will just go back and say that some may characterise it as a policy of constructive engagement; the Australian government does not. It is as I have just outlined it to you. We do have a development assistance program with Burma focused on the most vulnerable groups, and that is something that you might wish to pursue further with AusAID. We have some humanitarian assistance projects, the details of which I do not have in front of me. We also continue to participate in regional aid activities which include Burma, for instance on people trafficking and HIV-AIDS. Our human rights initiative, which we had in place for a period, is currently under suspension. We do not propose to reconsider that, pending the release of Aung San Suu Kyi and a demonstration that the SPDC government are committed to implementing the so-called road map.

**Senator STOTT DESPOJA**—The Australian government is obviously aware of criticisms that have been made by Aung San Suu Kyi in relation to the government's involvement with Burma. She has singled us out for specific criticism. What is our government's response to her particular concerns and criticisms in relation to our involvement?

**Mr Paterson**—I do not think the government has articulated a particular response. The government makes decisions based on a range of factors. We would certainly listen to what she had to say but we would take into account that most of our activities are directed at either

specific national interests, like combating the narcotics trade, or helping the most vulnerable sections of Burmese society; so we believe they are utterly defensible.

**Senator STOTT DESPOJA**—Are we still involved in funding the human rights training program for public servants?

**Mr Paterson**—No. As I mentioned to you, that program is currently under suspension.

**Senator STOTT DESPOJA**—It is finished. What will determine whether or not we re-engage in that particular program?

**Mr Paterson**—I think I made it clear that it is suspended pending the release of Aung San Suu Kyi and a demonstration of the SPDC commitment to implementing the road map. If those two preconditions were met, I guess we would reconsider and put a recommendation to the minister.

**Senator STOTT DESPOJA**—Some of the questions that I am interested in in relation to Indonesia relate to sovereignty. I preface my questions by acknowledging the government's position in relation to the recognition of Indonesian sovereignty. I know that we have discussed some of these issues before. What is the government view these days on the 1969 Act of Free Choice in relation to West Papua—how is that perceived now by the Australian government? Are we willing to acknowledge some of the deficiencies in relation to that referendum?

**Mr Paterson**—Existing government policy is currently not under review on that issue.

**Senator STOTT DESPOJA**—Do we acknowledge that there were limitations on the process in 1969—the fact that it was a process that was supposed to provide West Papuans with a free and independent choice and vote and that there were limitations on that process?

**Mr Paterson**—The government's position is that we are committed, as is the Indonesian government, to the existing territorial integrity of Indonesia within its existing borders.

**Senator STOTT DESPOJA**—I accept the current position of the government. I am just wondering if it is an appropriate time in Australian history to review the role of Australia in that particular debate. For example, does the government now acknowledge that in 1969 Australian officials actually boarded a plane at Port Moresby and forcibly removed the two West Papuan officials who were travelling to New York to meet with United Nations officials? Have we acknowledged that that may have taken place or did take place?

**Mr Paterson**—Not to my knowledge; I could explore that. The government has no current plans to review policy towards Papua.

**Senator STOTT DESPOJA**—In that case I might ask you to take on notice a couple of questions, specifically the last question I asked you. I am wondering if the Australian government acknowledges that that took place. I am wondering not only if there is now recognition that that intervention took place but also if the government could explain why and how that was justified. Of course, that depends on an acknowledgment that it took place and that Australia was involved. Does the government have a position in relation to the Act of Free Choice and whether or not it is inconsistent with a number of conventions but specifically with article 21 of the Universal Declaration on Human Rights?

**Mr Paterson**—I will take your earlier two questions on notice. On your subsequent question, I think that is an issue at international law. I may need to seek the assistance of the department's international legal adviser and he in turn may well need to take that on notice too. We would have to see whether he is briefed to speak to that today.

**Senator STOTT DESPOJA**—I would appreciate that. I do acknowledge your point that there are no plans to review Australia's current policy. Perhaps you could give us an update in relation to security in West Papua. What is the Australian government's assessment of security in that region?

**Mr Paterson**—We have noted that tensions have increased in Papua since the Indonesian government announced that it would divide Papua into three administrative provinces by implementing its law No. 45 of 1999. The attempted declaration of Central Irian Jaya province on 23 August last year resulted in violent clashes between some hundreds of pro- and anti-division Papuans. Following that, the coordinating minister for political and security affairs, Bambang Yudhoyono, announced that the Indonesian government would reconsider any further division of Papua but this would not affect the newly established province of West Irian Jaya. The situation has been stable since then. I think it is fair to say that the Australian government remains concerned by the situation in Papua and the possibility that the division of the province will prevent full implementation of special autonomy. We, as I said, strongly support Indonesia's territorial integrity and we believe that special autonomy represents the best option for realising the aspirations of Papuans within a united Indonesia and ensuring longer term stability. We have urged, and continue where appropriate to urge, the Indonesian government to implement fully special autonomy and to do it as speedily as possible.

**Senator STOTT DESPOJA**—I am aware that the joint committee is involved in an inquiry into Australia's relationship with Indonesia and that the department has been helpful already in responding to some of the queries I have. I have one more question on the issue of West Papua before we break. What threat, if any, would there be to Australia if civil unrest or civil warfare were to break out in West Papua, in addition to the violence that is already occurring?

**Mr Paterson**—Instability in any area that is geographically close to Australia would obviously be of concern to us, whether it was in the Indonesian province of Papua or elsewhere in our immediate region. These can obviously have flow-on effects. They can lead to displacement of people, exodus of people, difficult humanitarian situations et cetera. I am not suggesting that that is likely at all but, of course, we would be concerned by those issues as we traditionally have been in this country.

**Senator STOTT DESPOJA**—We are reviewing the security implications and obviously the government is aware of them and is keeping an eye out?

**Mr Paterson**—The government keeps those sorts of issues under constant review. There is no specific review.

**Senator STOTT DESPOJA**—Thank you.

**Proceedings suspended from 11.03 a.m. to 11.21 a.m.**



**ACTING CHAIR**—We will reconvene the committee. Senator Stott Despoja has indicated that she has some more questions in output 1.1.2. I do not believe there are any questions in output 1.1.3 at this stage but I stand to be corrected by senators. If there are no questions in output 1.1.3, we will go straight through to output 1.1.4.

**Senator STOTT DESPOJA**—Mr Paterson, could you tell us what communications, if any, there have been between Australia and Indonesia regarding the situation in Aceh?

**Mr Paterson**—I think it is fair to say that we are doing all that we can to encourage a peaceful solution in Aceh. The government is continuing to convey our position to Indonesian ministers that only a negotiated settlement based on special autonomy—the same principle, of course, applying to Papua—within the united Indonesia will lead to a sustainable resolution of the conflict. We make that point to the Indonesians through our embassy but also through regular ministerial contact between Mr Downer and the Indonesian foreign minister and of course between other ministers as appropriate.

**Senator STOTT DESPOJA**—When was the most recent communication of that position from Australia to the Indonesians?

**Mr Paterson**—The issue was discussed briefly in meetings between Mr Downer and Foreign Minister Wirayuda in Bali about two weeks ago at the time of the Bali ministerial counterterrorism meeting.

**Senator STOTT DESPOJA**—Do we have an independent assessment of the security situation in Aceh?

**Mr Paterson**—I can say something about that. We have information on it from a variety of sources but, for the most part, our people in the embassy in Jakarta are unable to travel there because of the security situation, so our direct experience is limited. That is not to say that they do not ever go there but we have to limit the extent to which we can travel there and get approval from the Indonesian authorities to travel there. As you probably know, the Indonesian government decided late last year, in early November, to extend the state of the military emergency for a further six months. Since the current campaign by the Indonesian armed forces began on 19 May, the Indonesian military itself reports that more than 1,300 members of GAM, the Aceh independence movement, have been killed and some 2,000 or so have been arrested or surrendered. In that time they have also reported that about 66 members of the security forces and more than 300 civilians have been killed while not specifying who was responsible for the civilian deaths. We understand about 30,000 Acehnese may have been displaced by the conflict. It is quite a high-intensity campaign and it is ongoing.

**Senator STOTT DESPOJA**—What about the specific issue of the expulsion of human rights organisations and media representatives? Have we made any specific representations or expressed concern about those issues to the Indonesian government?

**Mr Paterson**—To state a principle, we believe a free flow of information and humanitarian assistance is an important part of democracy, and Indonesia of course is very much a democratic country these days. But at the same time governments have a duty of care so far as the safety of civilians in a conflict zone is concerned. The government has consistently encouraged Indonesia to ensure humanitarian access to Aceh. As we understand it, I think most UN organisations and the ICRC now have access to the province. DFAT's travel

advisory warns Australians to avoid all travel to Aceh. Those who may be there are advised to leave because we consider the situation unsafe.

**Senator STOTT DESPOJA**—I am wondering if our government has examined the potential for civil unrest or security threats during the Indonesian elections that are coming up shortly.

**Mr Paterson**—The government are monitoring very closely the situation in the lead-up to the elections, and we keep that under review, as we do in Indonesia, on a full-time basis. Clearly the security situation is one we monitor every day of the year, not one we monitor simply in relation to the elections. There is always the risk of violence breaking out, but I think it is also fair to say ‘so far so good’. Although the preparations for the elections are falling a little bit behind schedule, the process is pretty well on track.

**Senator STOTT DESPOJA**—We have provided assistance to the Indonesian government for the upcoming elections.

**Mr Paterson**—That is correct. AusAID has committed \$15 million in support for the elections, focusing on training, voter education and election monitoring activities. That includes \$2.9 million to the Australian Electoral Commission to assist the Indonesian electoral planning authorities. As you are probably aware, Indonesia also invited international observers for the 5 April elections.

**Senator STOTT DESPOJA**—I have just a couple of questions on the Timor Sea treaty. Mr Patterson, are you the best person to deal with that?

**Mr Paterson**—Our international legal adviser will take those questions.

**Senator STOTT DESPOJA**—I was just wondering why Australia has agreed to only two meetings with East Timor for the purposes of negotiating the seabed boundary.

**Mr Moraitis**—You mean six-monthly meetings?

**Senator STOTT DESPOJA**—Yes.

**Mr Moraitis**—In our view, given the nature of the negotiations, which are for permanent—and I underline ‘permanent’—boundary delineations, it is quite reasonable and normal in those circumstances to have meetings of that frequency.

**Senator STOTT DESPOJA**—Can you tell me what correspondence we have received from the East Timorese government, particularly from Dr Alkatiri, in relation to this issue? Is that something that you can elaborate on for the committee?

**Mr Moraitis**—These are ongoing negotiations, and these letters form part of that process. I would rather not discuss bilateral discussions to do with delineations.

**Senator STOTT DESPOJA**—Can you confirm that Dr Alkatiri wrote to our Prime Minister last year requesting a suspension of oil production specifically from the Laminaria-Corallina oilfield?

**Mr Moraitis**—I can confirm that Prime Minister Alkatiri has written to the Prime Minister of Australia, yes.

**Senator STOTT DESPOJA**—Was that the request that Dr Alkatiri made?

**Mr Moraitis**—There were several issues touched on in that letter, but I will not go into the details of that letter.

**Senator STOTT DESPOJA**—So you cannot confirm that? You suggest you cannot go into the detail, but you cannot confirm that?

**Mr Moraitis**—I cannot go into the detail and I would rather not confirm, because that goes into the detail either way. These are ongoing bilateral negotiations and therefore we would rather conduct them in confidence.

**Senator STOTT DESPOJA**—I understand that. I am just going to try and find out as much as I can from that particular piece of correspondence. I am wondering if you can elaborate, then, on the government's response to that piece of correspondence and the issues contained therein, whether or not you refer to the specific issue I referred to beforehand. What was the government's response to that particular letter?

**Mr Moraitis**—Again, given that this is a bilateral negotiation involving exchanges of views, obviously revealing the details of the response would get into the details of the discussions and we would prefer not to.

**Senator STOTT DESPOJA**—Okay. If there is any further information that you are able to provide I am sure you will make that available to me.

**Mr Moraitis**—Of course.

**Senator STOTT DESPOJA**—Is it Australia's position that no new exploration licences should be issued until the seabed boundaries have been determined? Is that an official stance?

**Mr Moraitis**—That is an issue that you really need to refer to the Department of Industry, Tourism and Resources, which handles issues such as acreage release.

**Senator STOTT DESPOJA**—But you are not aware of whether or not that might be the case or whether that might be our stated position?

**Mr Moraitis**—Our position is to defend vigorously our views on negotiations and sovereignty without revealing the specifics of any exchanges or correspondence. That is as generic as I can be, I am sorry.

**Senator STOTT DESPOJA**—Has Australia granted any new exploration licences since entering into the Timor Sea treaty with East Timor?

**Mr Moraitis**—I would have to take that on notice. I would have to check with my colleagues from that department.

**Senator STOTT DESPOJA**—Are you suggesting that I refer some of my questions to the department of—

**Mr Moraitis**—No. I can take them on notice and I will get back to you when I consult with them.

**Senator STOTT DESPOJA**—Thank you for that. I will leave it there.

**ACTING CHAIR**—Does that complete your questions for 1.1.2, Senator Stott Despoja?

**Senator STOTT DESPOJA**—Yes, I have definitely been out-legalled there. I will wait and hear what further information—

**Mr Moraitis**—It is just the nature of diplomatic exchanges rather than any legal issues.

**Senator STOTT DESPOJA**—I understand that, and you have been very diplomatic too.

[11.31 a.m.]

**ACTING CHAIR**—Thank you, Mr Moraitis. I understand there are no questions in 1.1.3. In that case, we will move to 1.1.4. Senator Faulkner indicated that he had some questions.

**Senator FAULKNER**—How are we placed in relation to the issue that remains held over from 1.1.2?

**Mr Chester**—Mr McLean is still trying to come up with the answer to that.

**Senator FAULKNER**—I appreciate that, thank you.

**ACTING CHAIR**—Let us go on with 1.1.4.

**Senator FAULKNER**—Could someone please advise me of the dates of the foreign minister's visit to Israel earlier this year?

**ACTING CHAIR**—Are the officers for 1.1.4 here? I had flagged earlier that I did not think we had questions in 1.1.3 and that we would go straight to this area.

**Mr Chester**—The dates were 21 and 22 January.

**Senator FAULKNER**—Mr Chester, what was the purpose of the trip?

**Mr Chester**—If you do not mind I will wait for Mr Wells, the head of that division, to get his papers.

**ACTING CHAIR**—Where is Mr Wells?

**Mr Chester**—He is on his way.

**ACTING CHAIR**—Senator Faulkner, Mr Wells can assist you with that question if you would like to repeat it.

**Senator FAULKNER**—What was the purpose of Mr Downer's trip to Israel on 26 and 27 January this year?

**Mr Wells**—The purpose of Mr Downer's visit was to continue high-level exchange with the Israeli leadership on a range of issues on the bilateral relationship and on Middle Eastern security matters. To the best of my knowledge no specific issue drove the visit.

**Senator FAULKNER**—I see. Did the department monitor the media reaction to Mr Downer's visit to Israel?

**Mr Wells**—The media reaction in Israel or in Australia?

**Senator FAULKNER**—Well, both.

**Mr Wells**—Yes.

**Senator FAULKNER**—I assumed it would. I am pleased to hear that. I was very worried. You would be aware then, because of your media monitoring in Israel, that the Israeli press has focused on a particular comment allegedly made by the Minister for Foreign Affairs on Israeli radio that Israeli citizens should emigrate to Australia. You would be aware of that?

**Mr Wells**—I am aware of that comment.

**Senator FAULKNER**—Is it an accurate portrayal of what the minister said?

**Mr Wells**—I think that what the minister said was probably taken out of context. To the best of my knowledge the minister commented, in the context of Australia's global non-discriminatory immigration policy, that Israeli citizens could of course apply to migrate to Australia. I am not aware that his comments were in any sense put in such a way as to encourage Israelis to seek to migrate to Australia.

**Senator FAULKNER**—You can confirm it for me, but the quote that I have is this:

We encourage Israelis to come to Australia, to visit or immigrate. If Israelis want to immigrate to Australia, they are very welcome. We welcome Israelis, especially young ones, who want to take that step.

Can you confirm that they were Mr Downer's precise words?

**Mr Wells**—I would have to get back to you on that. I will certainly seek to ascertain that those were Mr Downer's words.

**Senator FAULKNER**—You would know, wouldn't you? There has been a bit of interest in these comments, hasn't there?

**Mr Wells**—There has.

**Senator FAULKNER**—It has certainly sparked a bit of a reaction.

**Mr Wells**—Yes, but since I do not have Mr Downer's words in front of me I will need to check and get back to you.

**Senator FAULKNER**—I find it incredible that you do not have the words but I, a mere humble senator in opposition, can quote Mr Downer precisely.

**Mr Wells**—I will check that those were the words Mr Downer used.

**Senator FAULKNER**—Check it, but take it from me that I have got it right. Can you inform the committee what the reaction was amongst the public of Israel to these comments?

**Mr Wells**—I cannot comment on the reaction of the public in Israel but, as you have said, there was media comment in Israel.

**Senator FAULKNER**—There was comment by members of the Knesset, wasn't there?

**Mr Wells**—I understand that one of the press stories included a number of quotes from Israeli politicians who were critical of the minister's alleged comments.

**Senator FAULKNER**—Could you share some of those quotations from the members of the Knesset with the committee? I would be interested in those.

**Mr Wells**—Not immediately. I would need to go back and get the exact comments that were attributed to the Israeli politicians in the media.

**Senator FAULKNER**—Fortunately I have been able to do that. It is lucky that on this unusual occasion, for the first time ever, I seem to be one jump ahead. Comments by the Likud MK Ehud Yatom on what Mr Downer said were reported by the *Australian Jewish News* on 6 February. You would monitor the *Australian Jewish News*, wouldn't you?

**Mr Wells**—I imagine we would.

**Senator FAULKNER**—This is what he said:

The idea is just outrageous. The Zionist youth must remain in Israel.

Can you confirm that that is an accurate quotation?

**Mr Wells**—I would need to do that. I will certainly try to do so.

**Senator FAULKNER**—What about the National Union MK, Yuri Shtern, who said, again reported in *Australian Jewish News* on 6 February:

Attracting another country's citizens is unacceptable between democratic countries.

Can you confirm that that comment was made by that particular member of the Knesset?

**Mr Wells**—I will seek to do so.

**Senator FAULKNER**—How many immigration or emigration agents operate in Israel? You would know that, of course, with your responsibilities.

**Mr Wells**—Eventually I will, but for the moment I will take it on notice.

**Senator FAULKNER**—I do not seem to be doing very well here, but I will keep batting on. You would surely know in DFAT how many immigration or emigration agents deal with Australian immigration applications, wouldn't you?

**Mr Wells**—I will try and obtain that figure for you.

**Senator FAULKNER**—You do not know that either?

**Mr Wells**—Not immediately.

**Senator FAULKNER**—I am striking out badly. But you would know, surely, how many immigration queries the embassy over there receives every month.

**Mr Wells**—I will try to obtain that information for you.

**Mr Chester**—Perhaps, to save you asking more questions on this, I should say that we as a department do not deal with immigration issues at the embassy. Getting those figures and the handling of those cases will be done by the department of immigration and their staff in the embassy.

**Senator FAULKNER**—Thank you for that helpful intervention. Are you aware of what happened to the pattern of immigration inquiries at the embassy after Minister Downer's comments?

**Mr Chester**—No, I am not.

**Senator FAULKNER**—Well, let me ask Mr Wells, who may know. Can you help me with that, Mr Wells?

**Mr Wells**—Not immediately, but I will make inquiries and get that information.

**Senator FAULKNER**—Do we know how many inquiries were received by emigration or immigration agents following the foreign minister's comments?

**Mr Wells**—No, I do not. I will take that on notice if you want that information.

**Senator FAULKNER**—I am very surprised about this. There was a lot of public comment about these sorts of issues. If you cannot help me with any of those other important matters,

which surprises me, can you help me on this: can you tell me what the policy of successive Israeli governments has been about Israelis emigrating from Israel to other countries? You would surely know that.

**Mr Wells**—Obviously, the Israeli government—most Israeli governments, I imagine—are very sensitive about emigration from Israel, given that historically, as you would know, Israel has pursued an extremely active policy of attracting immigration. But perhaps I could simply repeat that Mr Downer’s comments were simply that Israelis could apply to migrate to Australia and that Australia seeks to make all visitors and migrants welcome.

**Senator FAULKNER**—I know what Mr Downer’s comments were, even if officials at the table do not know what they were. I have read them very accurately into the *Hansard*. Mr Chester’s point is well made—that these are immigration issues. That is, of course, true. But I am sure that these sorts of issues are discussed at your weekly meetings and reported back to Canberra. I would be very surprised, wouldn’t you, Mr Chester, if this did not come to the relevant desk officer’s attention and the attention of staff in the embassy? You know that as well as I do, don’t you?

**Mr Chester**—If it is as you say, yes, I would expect that that would be the case.

**Senator FAULKNER**—You would also know if there was a formal reaction by the Israeli government to Mr Downer’s comments.

**Mr Chester**—The relevant area of the department would know that, yes.

**Mr Wells**—Senator, I am aware that the Israeli Ministry of Foreign Affairs did issue a statement denying media claims that it—that is to say, the Israeli foreign ministry—had criticised Mr Downer’s comments.

**Senator FAULKNER**—What was the formal reaction of the Israeli government to Mr Downer’s comments?

**Mr Wells**—As I said, the Israeli Ministry of Foreign Affairs issued a statement denying media claims that the Israeli ministry had criticised Mr Downer’s comments.

**Senator FAULKNER**—There were media reports, weren’t there, where Israeli foreign ministry personnel were quoted as saying that Mr Downer’s comments were politically incorrect. That is true, isn’t it? There were those media comments.

**Mr Wells**—I understand that there were media claims which were subsequently denied by the Israeli foreign affairs ministry.

**Senator FAULKNER**—Weren’t foreign affairs officials in Israel also quoted as saying that these were inappropriate comments for a visiting foreign minister to make?

**Mr Wells**—I do not have those alleged comments in front of me. I can check. But, again, I repeat: you asked what the formal response of the Israeli government was, and as far as I am aware the formal response of the Israeli government was to deny that the comments reported in the media constituted a statement by the Israeli foreign ministry.

**Senator FAULKNER**—In the reporting from embassies, do you log immigration or emigration inquiries? Is that part of the broad reporting back to the department?

**Mr Wells**—I am not aware that the department obtains such data on a regular basis. As Mr Chester has said, that is for the Department of Immigration and Multicultural and Indigenous Affairs.

**Senator FAULKNER**—I am just asking whether you log it. You have taken a lot of questions on notice, Mr Wells. When do you think you are likely to be able to respond to those?

**Mr Wells**—I would need to check that I have a complete list from you, but I think we would have to address every single one of the questions you have put to me to the Department of Immigration and Multicultural and Indigenous Affairs, which is the department with prime carriage of those issues.

**Senator FAULKNER**—So Mr Downer blows up in Israel and the attitude of the Department of Foreign Affairs and Trade is to duckshove the knock-on consequences?

**Mr Wells**—No, Senator.

**Senator Minchin**—Senator Faulkner, that is not a fair proposition to put to the department.

**Senator FAULKNER**—What do you think about it, Senator Minchin?

**Senator Minchin**—I do not think that, and I do not think that is an appropriate proposition to put to the department.

**Senator FAULKNER**—What do you think?

**Senator Minchin**—I am representing Senator Hill here. This is the first I have heard of this. I think you are seeking to politicise to the extreme the statements made by Minister Downer in Israel, which any reasonable person would accept as being reasonable statements of the friendly relations between Australia and Israel and of the friendly support that Australia provides to Israel. You are seeking to take them completely out of context and play politics with them. The officer has already said that the Israeli government did not criticise those remarks. I think you are going up a dead end, but if you want to waste time with that—

**Senator FAULKNER**—You have not been following the play on this at all, have you?

**Senator Minchin**—There is not much play to follow, Senator. You are wasting everybody's time.

**Senator FAULKNER**—You are not aware of what is going on, but thanks for your intervention. I do not think anything will undo the damage of Mr Downer's comments in Israel. The truth is that Mr Downer offended a large section of the Israeli political establishment, didn't he?

**ACTING CHAIR**—Are you directing that to the minister, Senator Faulkner?

**Senator Minchin**—That is just a rhetorical statement.

**Senator FAULKNER**—No, it is not. It is a question.

**Senator Minchin**—If that is your assertion, feel free to assert it. We will deny it.

**Senator FAULKNER**—It is not an assertion; it is a question.

**Senator Minchin**—You stated it as a matter of truth. I reject that.



**Senator FAULKNER**—You reject it do you? On what basis?

**Senator Minchin**—On the evidence that I have heard today.

**Senator FAULKNER**—You really do not have a clue what is going on. I am not critical of the officials for adopting the Shergold convention, that is what I describe the pattern in estimates committees of—

**Senator Minchin**—This is silly. I know Mr Downer and he is one of the strongest supporters of Israel in any Australian government, so it is silly to say—

**Senator FAULKNER**—What are we talking about now? I am saying officials taking questions on notice—

**Senator Minchin**—It is a silly line that Mr Downer has upset relations with Israel; it is just silly. You are wasting everybody's time.

**Senator FAULKNER**—As I said, Minister, I appreciate these questions being taken on notice. I now call it the Dr Shergold convention, which is something that is being promoted as a new approach to—

**Senator Minchin**—Did you give the officers notice that you wanted to ask a whole series of questions about Mr Downer's business in Israel?

**Senator FAULKNER**—It is not my habit, nor is it other senators' habit—

**Senator Minchin**—If you do not give them any advance notice, it is not unreasonable for them to take the questions on notice.

**Senator FAULKNER**—nor to my knowledge has it ever been a coalition senator's habits, in opposition, to normally flag a whole range of very important areas that are being canvassed.

**Senator Minchin**—You cannot object to them taking those sorts of detailed questions on notice.

**Senator FAULKNER**—Frankly I think it is a pretty poor effort, given that you have a situation where Likud Party members, Labour Party members and Democratic Party members were all incensed by Minister Downer's comments, and all criticised them. That is a cross-section of Israeli political opinion and a bipartisan view. If you do not know about it, so be it. Just go back to whatever magazine you happen to be reading.

**Senator Minchin**—You are wasting so much time on your partisan pursuit of that issue.

**ACTING CHAIR**—In relation to the questions that you have asked that pertain to immigration, Senator Faulkner, the officer has taken those on notice. Do we have any further questions in this area?

**Senator FAULKNER**—Yes, I do have further questions in this area, but not on that particular matter. I do not know whether any other senators do.

**ACTING CHAIR**—Certainly Senator Bartlett has questions on output 1.1.4 but I do not believe that they relate to the Middle East issues.

**Senator FAULKNER**—I have some further questions on 1.1.4 but I am happy to cede the call to Senator Bartlett.

**Senator BARTLETT**—I want to ask questions to do with the Pacific, firstly in relation to Nauru. The other day, the immigration department said that DFAT is leading the ongoing negotiations with the Nauru government regarding the latest update of the agreement with that government initiated when asylum seekers were first taken to Nauru to be detained. Could you give me the background of where the latest stage of that agreement is at? My understanding is that the last formalised agreement expired at the end of last June and there was an exchange of letters to keep it going in the interim while the next agreement was negotiated. Firstly, could I get a confirmation that my understanding is correct in relation to that and, secondly, what stage are those next negotiations at?

**Mr Wells**—Yes, your understanding about the current MOU is correct. A delegation of officials will be travelling to Nauru next week to begin negotiations with the Nauruan government on the successor MOU.

**Senator BARTLETT**—It is not like rewriting the whole thing from scratch is it? The general focus of those documents is a prioritisation of the allocation of resources in the current financial year—is that correct?

**Mr Wells**—That is certainly one aspect of it, yes.

**Senator BARTLETT**—What other aspects does it have to it?

**Mr Wells**—In addition to providing development assistance to Nauru, of course we also expect Nauru to undertake economic and governance reforms. That is part of the development cooperation program. When you have AusAID before you, they can answer that question in more detail.

**Senator BARTLETT**—Do they relate simply to financial years? It is to do with the prioritisation of resources—there is no expectation of significant modification to the existing arrangements in terms of detention and anything else, is there?

**Mr Wells**—That is something that would have to be addressed in the negotiations. Obviously the amount of development cooperation assistance and where that development cooperation assistance goes is going to be determined by the outcome of the negotiations between Australia and Nauru.

**Senator BARTLETT**—Is this current negotiation for an agreement to go for 12 months, or is that up in the air as well?

**Mr Wells**—That could also be part of the negotiations, yes.

**Senator BARTLETT**—Are you able to give us any insight into the progress of governance reforms in Nauru?

**Mr Wells**—I hope we will be able to do so as a result of the negotiations. That is certainly one of the issues that officials will be taking up with Nauru next week.

**Senator BARTLETT**—There was an incident that arose when I was on Nauru about three or four weeks ago. In raising this with DIMIA, they indicated that, inasmuch as it was being pursued, it was through DFAT. The hotel where the consul general's office is located—and I think staff actually live there along with DIMIA officials and all of the staff at the camp, many of whom are Australian—is the Menen Hotel, which I think has been operating at close to full

occupancy as a consequence for a couple of years. One of the staff there was killed in an accident on a fire escape a few weeks back. It was suggested to me that that incident triggered some concerns about the broader adequacy of the conditions there. Has that incident generated any formal action from the government in terms of safety concerns?

**Mr Wells**—Yes, certain things have happened since then, bearing in mind, of course, that it is a privately run hotel and obviously the Australian government cannot be expected to renovate that hotel to ensure that it complies with Australian OH&S standards. Nevertheless, our consul general did ask that laminated notices to residents about the dangers of the balustrades and the railings be placed in the hotel, and that has been done. In addition, a local contractor, I understand, has been asked to provide a quote for the replacement of the timber balustrades with aluminium, and the fire exit where the accident to which you have referred has now been cordoned off.

**Senator BARTLETT**—Have any other concerns about safety been raised? I appreciate what you are saying about it being a privately run hotel, but I expect probably 95 per cent of their income comes in one shape or form from the Australian taxpayer.

**Mr Wells**—I am not aware of other specific concerns having been raised, but, as I have said, a series of things has been done at the instigation of the consul-general.

**Senator BARTLETT**—Also in relation to Nauru, some media coverage around December and January alleged certain statements of the minister. I wanted to check firstly what Minister Downer's actual statements were. The reporting was such that it was perceived by some Nauruans that the minister had floated the idea of giving automatic citizenship to all Nauruan residents. Was that the statement the minister made, was he floating an idea or was it a misinterpretation?

**Mr Wells**—From memory, the minister was floating a series of hypothetical options to address the long-term problems of Nauru—nothing more than that.

**Senator BARTLETT**—What was the context of the comments? Was it a formal meeting, a forum or something like that?

**Mr Wells**—No, I do not think it was in that context at all.

**Senator BARTLETT**—Was it an interview with a journalist or something?

**Mr Wells**—I think it was an interview with a journalist. From memory, the minister was talking about a range of South Pacific issues. In fact, it occurred while the minister was travelling in the South Pacific.

**Senator BARTLETT**—Is there any specific active consideration being given to concepts such as that, in relation to Nauru or any other South Pacific island, and links with Australia—either citizenship or some special status?

**Mr Wells**—As you would appreciate, officials are constantly working on programs for how we can advance our interest in most South Pacific countries. Nauru is no exception to that. Officials are working on various options with regard to Nauru, but I think you would have to describe that as longer-term policy planning, the sort of thing that we would routinely do.

**Senator BARTLETT**—It is not a specific proposal that is being pursued at a government to government level at the moment?

**Mr Wells**—No, certainly not.

**Senator BARTLETT**—I have a question about Niue—and it might be one more specifically for AusAID—in relation to the recent damage done by the cyclone or hurricane. Some initial aid or emergency assistance was provided by Australia. Can you give me any information on whether there is any ongoing help or whether any further help is expected to be provided?

**Mr Wells**—From memory, there is some continuing assistance, but I would also suggest that AusAID would be better placed to answer that question. I am not aware of the details.

**ACTING CHAIR**—That addresses Senator Bartlett's questions in 1.1.4. We will go back to you, Senator Faulkner.

**Senator FAULKNER**—I have some questions in relation to PNG and, if it would please the committee, I would be happy to place those on notice. I am not sure that this is also the right program for me to ask whether the department received the DIO's intelligence assessments in the period prior to the conflict in Iraq. Mr Chester, you might help me here, because I know how expert you are on these matters, as to whether I am better to ask that under 1.1.4 or 1.1.8. I will follow your guidance on that.

**Mr Chester**—Senator, 1.1.8 is the appropriate one.

[12.03 p.m.]

**CHAIR**—As there are no questions on 1.1.5, Bilateral, regional and multilateral trade negotiations, or on 1.1.6, Trade development/policy coordination and APEC, we move now to 1.1.7, International organisations, legal and environment.

**Senator STOTT DESPOJA**—I have some questions on the International Criminal Court. The former Attorney-General and the Minister for Foreign Affairs have both publicly stated that our government has received a request from the United States regarding entry into an article 98 agreement pursuant to the Rome statute. Can you confirm that a request of that nature has been made by America and if we have received the request in Australia?

**Mr Moraitis**—I can confirm that the United States government did approach the Australian government to consider negotiating agreements in terms of article 98(2) of the ICC.

**Senator STOTT DESPOJA**—How did they approach us? In what form was that request received? Was it through correspondence—

**Mr Moraitis**—Based on my reading of the history, my recollection is that it was through diplomatic channels—through the embassy in Canberra.

**Senator STOTT DESPOJA**—Diplomatic channels—does that mean a phone conversation, a meeting, a cable—

**Mr Moraitis**—I think it would have been a meeting.

**Senator STOTT DESPOJA**—Could you check that? I am curious to know.

**Mr Moraitis**—I am pretty sure it was a meeting but I cannot recall the details.

**Senator STOTT DESPOJA**—Are there any documents pertaining to this meeting? I am wondering if any terms of agreement have been suggested or set out in those discussions.

**Mr Moraitis**—There have been discussions that did touch upon elements of a 98(2) agreement, but I am not at liberty to disclose details of any terms because obviously it concerns negotiations in progress. I hate to use that excuse but—

**Senator STOTT DESPOJA**—I know we have been there; I understand.

**Mr Moraitis**—We are there again. I can confirm that there was discussion through a process of a meeting about two years ago.

**Senator STOTT DESPOJA**—Given what you have just said, is it possible to provide the committee with any written information about that particular meeting or any discussion since?

**Mr Moraitis**—No, it is not. They are confidential discussions between governments.

**Senator STOTT DESPOJA**—I understand. Can you perhaps give me an idea of the government's initial response to that request?

**Mr Moraitis**—As both the ministers you referred to have stated publicly, the Australian government has indicated that it is considering the US proposal for such an agreement. We understand US concerns—their underlying motivations to pursue such agreements with countries including Australia—and I think we have made it clear through the ministers' statements you referred to that we will look at it sympathetically but will also take into account our obligations as states parties to the ICC and any other legal obligations we may have, whether they are multilateral or bilateral.

**Senator STOTT DESPOJA**—The Minister for Foreign Affairs has said publicly that the government is 'sympathetic' to the US request. Similarly, the former Attorney-General stated that 'in principle Australia has no objection' to such an agreement. Based on what you have just said, is that still the current government position?

**Mr Moraitis**—Pretty much so. We are sympathetic—prepared to look at the proposals and to undertake negotiations—but with the clear understanding that we have obligations as a state party.

**Senator STOTT DESPOJA**—When was the most recent communication regarding the possibility of entering into this agreement?

**Mr Moraitis**—These have been ongoing negotiations including discussions and exchanges through diplomatic channels.

**Senator STOTT DESPOJA**—You cannot give me a specific date as to the most recent?

**Mr Moraitis**—The most recent discussions at senior officials level, including me, would have been mid-December 2003.

**Senator STOTT DESPOJA**—Some of those comments date back some time. One that I got from the *PM* program was in August last year; similarly, there was one from the *Sunday* program in September last year. Given the government's expression of sympathy towards commitment to such an agreement, why haven't we entered into an agreement of this type

before now? Is there a particular reason why it has not come about before now? Are we delaying this process?

**Mr Moraitis**—No, there is no suggestion of delaying the process. As I said, this is an important agreement. Obviously we wish to ensure that all issues are addressed and all our concerns are met. Negotiations of this nature, whether on 98(2) or any other matter, are taken with the utmost seriousness. We negotiate at the pace which is most conducive to achieving mutually satisfactory outcomes.

**Senator STOTT DESPOJA**—I am wondering, then, about the issues that need to be explored so that we do have those outcomes. What are some of the issues that require information or advice?

**Mr Moraitis**—As I said, the overwhelming issue is consistency with our obligations under bilateral agreements or any other multilateral one, but particularly our status as a state party to the ICC. That is a view that would be shared by many states parties.

**Senator STOTT DESPOJA**—What advice have we had? Is the Australian government aware that various legal opinions have indicated or publicised the fact that agreements such as an article 98 agreement may be contrary to the Rome statute—may be illegal? Do we have information or legal opinions on that issue?

**Mr Moraitis**—I and my colleagues have seen, not least on the Internet, opinions that touch on this issue of article 98(2) agreements. Obviously there are 98(2) agreements and there are 98(2) agreements, depending on what the terms of the particular agreement are and whether they are consistent or not with the ICC treaty. There are parties which have entered into 98(2) agreements which are not state parties to the ICC and they have different considerations. I will not dwell on those because I am not privy to their interests as a non-state party. Our focus is on ensuring our obligations as a state party are respected.

**Senator STOTT DESPOJA**—I am wondering what specific legal advice, if any, the Australian government has sought to ensure that we are respecting those obligations. Have you got any information on that?

**Mr Moraitis**—There is a whole-of-government approach to this, and colleagues in the Attorney-General's Department provide us with advice on this.

**Senator STOTT DESPOJA**—Sorry, they have provided advice?

**Mr Moraitis**—In the course of negotiations we would consult on a variety of issues, not least issues relating to treaty interpretation and other things like that.

**Senator STOTT DESPOJA**—So in relation to how this is being dealt with administratively—and you have mentioned a whole-of-government approach and you have mentioned Attorney-General's—can you outline exactly what departments are involved in all of this?

**Mr Moraitis**—Yes, of course. As I said, the Department of Foreign Affairs and Trade, the Attorney-General's Department, the Department of Defence—because it involves the nature of the agreements to do with security issues and the nature of 98(2) agreements per se—and the Department of the Prime Minister and Cabinet, who have an overriding interest in how these negotiations proceed. So it is those four agencies in effect.

**Senator STOTT DESPOJA**—You mentioned Attorney-General's in relation to legal advice being sought. Is there nothing that you can elaborate on now in terms of when advice has been sought and the nature of that advice? Could you undertake to provide the committee with that?

**Mr Moraitis**—I could do that. I can confirm that there is obviously consideration given to all elements of the negotiations. You would imagine in such a situation that, given the nature of the issues that I have outlined, legal issues would be foremost in that.

**Senator STOTT DESPOJA**—I take on board your reference to negotiations being under way and that, clearly, the terms of the agreement are not finalised. I am wondering if a number of departments—DFAT in particular—have made an assessment of the potential impact of entering into such an agreement. I am not talking of the legalities but of the impact, for example, on relations with our near neighbours, particularly in the Asia-Pacific region. Have we looked into an examination of what the impact of such an agreement would be?

**Mr Moraitis**—We obviously keep an eye on what is going on with 98(2) agreements around the world, particularly around the region. There are several countries in the Asia-Pacific region in particular which have entered into 98(2) agreements. From that perspective it is something that is around not only in our region but in other parts of the world, including Africa, Latin America and parts of Central Asia, so it is a worldwide issue.

**Senator STOTT DESPOJA**—What about the implications of entering into an agreement that would allow US nationals immunity from prosecution under the ICC? How does Australia feel about entering into an agreement that allows for that?

**Mr Moraitis**—I may just repeat what I said originally concerning our objectives in undertaking these negotiations. As I said, we are sympathetic. We are looking at this and we are negotiating with the United States on the terms of such an agreement. As I said, it is to do with the overriding importance of consistency with our ICC obligations.

**Senator STOTT DESPOJA**—So does that mean specifically that we have looked at the implications of that particular clause or that particular issue in relation to immunity from prosecution? Is that something that we have been doing?

**Mr Moraitis**—As a state party, we would take account of all considerations—legal, political—and treaty compliance issues.

**Senator STOTT DESPOJA**—Then do you have an assessment at this stage of what the benefits might be, weighing up the benefits against arguable limitations?

**Mr Moraitis**—The negotiations are ongoing. In that context it is really hard to make an assessment of the ultimate lie of the land. As I said before, before we finalise such an agreement we would want to take into account our obligations.

**Senator STOTT DESPOJA**—Given those obligations, again leaving aside the legalities or otherwise, is there not the possibility of a danger that entering into such an agreement might be perceived as being, or could be, contrary to our previous promotion—in fact strong advocacy—of the ICC?

**Mr Moraitis**—I would not say it is a danger per se, but obviously, as I said, in pursuing a 98(2) agreement, whether with the United States in particular or with any other country that

ever seeks one, we would obviously keep foremost in mind our obligations as a state party—and the overriding obligation as a state party to promote and to ensure that the objects and purposes of that treaty are promoted and respected. That is a pretty generic commitment, of both a legal and political nature, to the ICC's integrity.

**Senator STOTT DESPOJA**—I would suggest that perhaps entering into such an agreement might actually undermine our previously strong advocacy of the aims and role of the ICC.

**Mr Moraitis**—As I said, it would depend on the ultimate outcome of the negotiations. But, as we have pointed out, negotiations are still ongoing—very much ongoing.

**Senator STOTT DESPOJA**—I am just wondering, though, about the outcome of those negotiations. Returning to the issue of benefits, the benefits are fairly one-sided here. The benefits would be a strengthening of our US alliance but there would not necessarily be a benefit in terms of how Australia was perceived internationally; indeed it would run contrary to previous advocacy in relation to the ICC. Are the benefits broader than that?

**Mr Moraitis**—The benefits would be based on an analysis of all the relevant benefits and costs of any agreement and the nature of the terms of that agreement. We have mentioned how we have an interest in ensuring that the United States maintains a commitment to international peacekeeping and security. That is an issue. The US alliance aspect is obviously an element. But our commitments as a state party are another element as well. There is a whole variety of factors that need to be weighed up. Frankly, at this stage we are still pursuing negotiations. I cannot discuss the nature of the negotiations, but obviously I can assure you that all those elements are kept at the forefront of our minds.

**Senator STOTT DESPOJA**—Would it be at the forefront of our minds? If we leave it up to the United States when it comes to the prosecuting of US citizens in relation to crimes against humanity, isn't there a risk that the United States might define international law in a way that is different from the rest of the international community in relation to the ICC? Is that a risk that we take by entering into such an agreement?

**Mr Moraitis**—All I can say is that, in terms of looking at the terms of any such agreement we would enter into, ultimately we would wish to ensure that the underlying principles of the ICC were respected, given our obligations as a state party. That encompasses that obligation.

**CHAIR**—Are there further questions on 1.1.7?

**Senator FAULKNER**—Yes, I have questions on that. I want to ask about a Somali born US national named Omar Abdi Mohamed. You might be aware that Mohamed was arrested in the US on 22 January on immigration charges relating to his alleged failure to disclose receiving funds from the Global Relief Foundation, which is a listed terrorist entity suspected of providing financial support to al-Qaeda. First, I want to ask if the department was aware of this particular case.

**Ms Millar**—I am not aware of that case.

**Senator FAULKNER**—In another estimates committee hearing, the department of immigration gave evidence that an inquiry was received from the US Embassy in Canberra about Mohamed more than 12 months ago and that, in response, Australia indicated that,



while a person of that name had entered Australia, the birth dates did not match. Basically DIMIA withdrew some of their evidence about that. I want to know whether the Department of Foreign Affairs and Trade actually had any knowledge of that inquiry from the US Embassy. I thought you would have some knowledge of it.

**Mr Chester**—I think Mr Stuart might be able to help you.

**Mr Stuart**—I think we are generally aware of this case but it is, of course, being handled by our colleagues in ASIO. I believe the Director General of ASIO has made some comments in the last couple of weeks to the fact that he did not have any information that this gentleman was engaged in any activities in Australia relating to terrorist financing. But I think is a matter, as I understand it, which Mr Richardson's organisation and their US counterparts have discussed. I do not know more than that.

**Senator FAULKNER**—Are you able to assist us by telling us when the inquiry was made? You may not be able to.

**Mr Stuart**—No, I do not know.

**Senator FAULKNER**—Are you at least able to tell us which Australian government agency the US Embassy contacted?

**Mr Stuart**—I can only say that ASIO has had the carriage of this. From that, I could deduce that it might have been ASIO—but I do not know.

**Senator FAULKNER**—According to press reports this morning, Mr Stuart, a warrant for Omar Abdi Mohamed's arrest was issued by a court in San Diego on 19 December last year. At that time, Mohamed was in Australia. He entered on 27 September and left on Christmas Day. Are you able to tell the committee if you are aware of contact between US and Australian authorities after the arrest warrant was issued?

**Mr Stuart**—No, I do not have that information.

**Senator FAULKNER**—I want to ask you now about the Global Relief Foundation. Can you confirm that the minister for foreign affairs had it listed as a terrorist entity under the charter of the United Nations regulations on 28 October 2002?

**Mr Stuart**—I am not sure; I have heard of that organisation.

**Senator FAULKNER**—I think you would agree, Mr Chester, this is front and centre. I accept that Mr Stuart is saying that ASIO is the lead agency on these other matters and there may be some peripheral knowledge in the department. I accept that. But I think here we are talking about core business you ought to be able to help me with. So I would like to press this a little with you.

**Mr Chester**—I do not know the answer to the question of whether it was one of the organisations listed by the minister.

**Senator Ian Macdonald**—Perhaps we can take it on notice and see if we can find some information for you, Senator.

**Senator FAULKNER**—These listings are done by the Minister for Foreign Affairs and this is a core business of your department, isn't it?

**Mr Chester**—The listings are done by the Minister for Foreign Affairs.

**Senator FAULKNER**—I am disappointed that we cannot find an official at a Senate estimates committee who can tell us whether a particular organisation was listed by the Minister for Foreign Affairs as a terrorist entity less than six months ago. With respect, I think we have to do a bit better than that. You know how reasonable I am on these things.

**Senator Ian Macdonald**—Your views are noted. We will take it on notice and see if we can help.

**Mr Moraitis**—I have a list here of entities listed under that charter.

**Senator FAULKNER**—Good, thank you. Can you tell me: is the Global Relief Foundation on the list?

**Mr Moraitis**—There are over 490 listings and they also have aliases so I will just check the list.

**Senator FAULKNER**—I have given the date for this one: 28 October 2002. I might have said 2003.

**Mr Moraitis**—I will have to look through the list.

**Senator FAULKNER**—Mr Chester, is this subprogram dealt with in the department? Who deals with these matters?

**Mr Chester**—It is dealt with by this subprogram.

**Senator FAULKNER**—And you maintain a register of these organisations?

**Mr Chester**—That is correct. We will have a consolidated list of them. As you know, it is a very long list.

**Senator FAULKNER**—There are over 400 organisations on the list.

**Mr Chester**—That is right. I think it is a bit much to expect us to memorise all the names on the list—

**Senator FAULKNER**—I am not asking you to memorise it.

**Mr Chester**—or to carry that list around us—that and a lot of other lists.

**Senator FAULKNER**—If it is important enough to have been listed as a terrorist entity, it is important enough for someone to be able to front up and say it has been listed. I do not think it was in the last six months. I have suggested to you that I think it was in the last 18 months. I think it was 28 October 2002.

**Mr Moraitis**—Could you repeat the name of the organisation?

**Senator FAULKNER**—The Global Relief Foundation.

**Mr Chester**—I suspect it will take some time to go through this list.

**Senator FAULKNER**—Over the lunch break, then, could that be confirmed? It is called the Global Relief Foundation. Could I ask you to, over the break, establish for us why that decision was made. Could you tell the committee about the organisation's connection with terrorism. I would like to know if you can indicate whether the department is confident that none of the funds allegedly received by Mohamed from the Global Relief Foundation found

their way into Australia during any of Mohamed's five visits. If you could try and address that issue, also over the break, I would appreciate it. I will not press those other matters, Mr Chester, because I have accepted the view that Mr Stuart has provided to the committee—that ASIO in effect is the lead agency there—so I am not going to trample into those matters. In my view this is a matter that is the core business of this department, and I think it is not unreasonable for me to expect you to be able to provide that response.

**Senator Ian Macdonald**—We will try to do that, bearing in mind that we have a break for lunch and the officers are entitled to a break for lunch, too. They are entitled to eat. But we will see what we can do. It sounds to me, without having a great deal of knowledge in this area, that quite clearly there is some detail in the question that you are asking and perhaps we will have to take it on notice to give you a full, complete and accurate answer.

**Senator FAULKNER**—I will be pressing this matter after the break. If the department of foreign affairs cannot tell us about an organisation they have listed as a terrorist organisation then I think the Australian community is entitled to be very concerned. I accept that you do not know anything about these matters, Minister. I do not expect you to know anything about them. There is no expectation on you at all. But there is an expectation on the department on this. I do not think that is unreasonable. I actually do not think Mr Chester would think it is unreasonable. You have got an hour to work it through. I am absolutely confident that the officers will be able to help.

**Senator Ian Macdonald**—Thank you for your confidence in the department. We all have confidence because it is a very good department with excellent officers. We note your editorialising. What spin you want to put on it is entirely a matter for you; there is nothing we can do. But we will try to get the information if it is readily available. I would urge the officers that if it is something that should be taken on notice and given a full and complete answer then that is what you should do. Do not worry about Senator Faulkner's editorialising; that is for us to deal with, not for you guys.

**Senator FAULKNER**—If the department is not capable of confirming whether an organisation was listed by the department of foreign affairs—

**CHAIR**—Order! Is there a question?

**Senator FAULKNER**—as a terrorist entity less than 18 months ago—

**Senator Ian Macdonald**—Mr Chairman, is there a question in this?

**Senator FAULKNER**—frankly it really is time they gave it away. That is my view.

**CHAIR**—Order! Order!

**Senator FAULKNER**—Of course they can do it. They will do it.

**CHAIR**—Order! This conversation can go no further. We are taking a break now and we will reconvene at 1.30.

**Proceedings suspended from 12.29 p.m. to 1.33 p.m.**

**CHAIR**—Mr McLean, I understand you have an answer to a question that was asked earlier by Senator Faulkner or Senator Ray. We will take that answer now.

**Mr McLean**—I can confirm that there were several cables sent between Canberra and Hong Kong on the matter that you raised. In fact, altogether there were five such cables.

**Senator FAULKNER**—Can you detail those for the benefit of the committee?

**Mr McLean**—There were five cables. The one sent on 17 October conveyed a third person note—which is the formal mode of communication, as you would be aware—to convey a decision by the minister for justice not to surrender Mr Voigt. There was a response on 24 October relaying a request from the Hong Kong government. On 26 November there was a third person note further responding to the Hong Kong government's request in the previous communication. There was a fourth one on 3 December reporting on the details of the discussions that took place as a result of the previous communication. There was a fifth note on 6 January conveying the justice minister's decision not to surrender Mr Hendy. At the Canberra end, all these communications originated from the Attorney-General's Department and they did, of course, use the diplomatic communications network.

**Senator FAULKNER**—What was the request that the Hong Kong government referred to?

**Mr McLean**—They requested the reasons for the decision, and I gave you those before: there were no reasons given.

**Senator FAULKNER**—Can you give me the dates of that cable traffic, please?

**Mr McLean**—The first one was on 17 October.

**Senator FAULKNER**—Just in brief, could you give a description of it and where it was going?

**Mr McLean**—It was conveying the minister for justice's decision not to surrender Mr Voigt. On 24 October there was a response from the Hong Kong government asking for reasons for that decision. On 26 November there was a further response to Hong Kong's request.

**Senator FAULKNER**—So that is Australia to Hong Kong?

**Mr McLean**—That is right. On 3 December there was a further response from Hong Kong. On 6 January—

**Senator FAULKNER**—Just before we leave 3 December, what was Hong Kong's further request?

**Mr McLean**—On 3 December?

**Senator FAULKNER**—Yes.

**Mr McLean**—There was no further request in that.

**Senator FAULKNER**—What was the nature of the communication?

**Mr McLean**—The nature of the communication was that they had heard the response that had been sent in the previous communication on 26 November. That representation, as it were, had been conducted in Hong Kong, and that was the gist of that. The last one, on 6 January, was a further communication conveying the minister for justice's decision not to surrender Mr Hendy. There have been no further communications by—

**Senator FAULKNER**—Only Mr Hendy?

**Mr McLean**—Yes.

**Senator FAULKNER**—Why only Mr Hendy?

**Mr McLean**—Because the minister had already conveyed his decision on 17 October, in the first communication I mentioned, about Mr Voigt. The two are obviously individuals and they are separate cases.

**Senator FAULKNER**—So is that the sum total of the cable traffic?

**Mr McLean**—That is correct.

**Senator FAULKNER**—Did any of that include requests by Hong Kong for information about the two individuals concerned?

**Mr McLean**—As I said, they requested reasons for the decisions that had been taken.

**Senator FAULKNER**—Has the consulate in Hong Kong been following the reaction of Hong Kong government officials to the minister's refusal to extradite these two men?

**Mr McLean**—Yes, they have.

**Senator FAULKNER**—Are you able to briefly outline to the committee what that reaction has been?

**Mr McLean**—I think it would be fair to say that the reaction is that they understand the decision that has been taken by the Australian side. Obviously, there is a certain degree to which they are disappointed, but they understand that and the excellent cooperation between Australia and Hong Kong on legal matters has been reinforced.

**Senator FAULKNER**—And media reaction?

**Mr McLean**—There has been a certain amount of media reaction from the English language press, I understand. I do not have the details of that, other than that it is expressing some interest in how these decisions were taken.

**Senator FAULKNER**—Are you aware of any dissatisfaction being expressed by Hong Kong about the lack of cooperation by Australia in this criminal justice matter?

**Mr McLean**—From the course of the discussions our consulate general has had with the Hong Kong government, it is clear that they understand the right of the Australian government, in this case the Minister for Justice and Customs, to take a decision and they are satisfied that the decision has been taken appropriately and within the spirit of the particular regulations concerning the extradition between the two countries.

**Senator FAULKNER**—What about the statement by Wayne Walsh, the deputy principal government counsel, in the Hong Kong Independent Commission against Corruption that was reported in the *South China Morning Post* on 6 February? He said, 'We are surprised and disappointed by the decision—doubly so now it has happened with both men. We have had some setbacks in the past but this is the first major setback we have encountered since the hand over.' It seems to me to be a pretty serious statement.

**Mr McLean**—I am unable to comment on that. I have not seen the statement. I have heard what you have said but I am not in a position to comment further.

**Senator FAULKNER**—Are you aware whether representatives in the consulate there have sought to meet with Hong Kong officials?

**Mr McLean**—The consulate general staff have regular meetings with Hong Kong officials across the board and clearly the Attorney-General's Department or whatever it is called in Hong Kong is one of those areas. There have been discussions, as I have outlined. They have been reported in the cable traffic from the Hong Kong consulate.

**Senator FAULKNER**—Have there been special discussions designed to try to address this situation?

**Mr McLean**—They have provided the information provided to them by the Attorney-General's Department about the decision. That is essentially all they are able to do, because this is not a matter that they are there for, other than to pass on the decision.

**Senator FAULKNER**—Are you able to give us an assurance that these sorts of public statements that have been made by senior officials—this very damaging press commentary—about the minister's decision in Australia are not going to prejudice Australia's cooperative relationship with Hong Kong on criminal justice matters?

**Mr McLean**—Yes.

**Senator FAULKNER**—How can you give that assurance?

**Mr McLean**—It has been made quite clear during the course of the official discussions that our consulate general has had with the Hong Kong government.

**Senator FAULKNER**—Made clear by Hong Kong officials?

**Mr McLean**—That is correct.

**Senator FAULKNER**—I wonder why so many officials are saying things so differently in the press. It is a strange, inexplicable situation, is it?

**Mr McLean**—I really cannot respond on that.

**Senator FAULKNER**—It is difficult to respond to, isn't it?

**Senator Ian Macdonald**—It is not relevant to the officer.

**Senator FAULKNER**—It is very relevant. Australia is getting an absolute pasting all around the place from named officials who have been quoted in the media because of this, Minister. It seems quite extraordinary that the consulate general is getting a very different view of the world.

**Senator Ian Macdonald**—You have a view—

**Senator FAULKNER**—I have a view.

**Senator Ian Macdonald**—and you have given some commentary, but it is not for this official to comment on your comments or to have an argument with you. It is very difficult for public servants to argue with senators, as you are aware. He has indicated that there has been no response or that the Hong Kong government has said that there is no breakdown in opportunities, and that is really all he can say. It is for you to do your commentary—I would not have thought it was part of the estimates committee to have a commentary on every

occasion, but that is a matter for the chairman—but the officer cannot comment more than he has.

**Senator FAULKNER**—The only person giving a commentary in this particular matter is you.

**Senator Ian Macdonald**—I would think you have been, Senator, so you and I can choose to disagree on that.

**Senator FAULKNER**—Yes, we can.

**Senator Ian Macdonald**—Great. Let us have some questions.

**Senator FAULKNER**—We will try to get to the bottom of why these two particular people—

**Senator Ian Macdonald**—Is that a question to anyone or is it just commentary?

**Senator FAULKNER**—No, it is a response to your comments. You are editorialising from the table.

**Senator Ian Macdonald**—We are not interested in your keeping an eye on it. If you keep an eye on it, that is beaut. I am really happy for you. You keep an eye on it but let us get on with the estimates committee.

**Senator FAULKNER**—You may not be but a lot of people are, including a lot of people in your political party in Western Australia. I am very happy to do the same thing. We will continue to chase it down.

**Senator Ian Macdonald**—Do you have any more questions or can we all go home?

**Senator FAULKNER**—My next question is on 1.1.7.

[1.46 p.m.]

**CHAIR**—We will return to 1.1.7, International organisations, legal and environment.

**Senator FAULKNER**—Have we been able to find out about the Global Relief Foundation?

**Mr Moraitis**—Yes, Senator. I have a consolidated list here and, as you can see, it is quite a large list. The Global Relief Foundation is listed as No. 361.

**Senator FAULKNER**—What was the date of the listing?

**Mr Moraitis**—I understand it was listed on 28 October.

**Senator FAULKNER**—Are you able to say to the committee why that particular entity was listed?

**Mr Moraitis**—Yes, the Security Council, under resolution 1267, listed it. That is to do with al-Qaeda and Taliban related persons, groups or entities and, in those circumstances, all states parties had to list it.

**Senator FAULKNER**—Are you able to tell the committee what the organisation's connection is with terrorism?

**Mr Moraitis**—No, I cannot; I am not familiar with operational matters. I go on the basis of a listing of the Security Council.

**Senator FAULKNER**—On the substantive issue here, are you confident that none of the funds allegedly received by this individual that we have been talking about—Omar Abdi Mohamed—from the Global Relief Foundation found their way into Australia during any of Mohamed's five visits? Are you able to assist the committee at all in relation to that matter?

**Mr Moraitis**—That is not my area. We just list—

**Senator FAULKNER**—Yes, I am aware of that, but do you have any information in relation to that matter?

**Mr Moraitis**—I do not, no.

**Senator FAULKNER**—Does anyone in the department have any information in relation to that matter?

**Mr Chester**—No, we do not. As Mr Moraitis said, it is an operational matter that other agencies would be dealing with.

**Senator FAULKNER**—Which agency is that question best directed to? I think I know the answer to this question but you can confirm it.

**Mr Chester**—I would suspect it is ASIO.

**Senator FAULKNER**—You think it is ASIO?

**Mr Chester**—I believe so, yes.

**Senator FAULKNER**—I will turn to a similar matter about Australia's report to the United Nations committee established under UN Security Council resolution 1267 concerning al-Qaeda and the Taliban. This, I think, is in this department's area of responsibility in this subprogram. Would that be right, Mr Chester?

**Mr Chester**—Yes.

**Senator FAULKNER**—This committee may have many responsibilities but it is certainly tasked—as you would be aware—with monitoring states' progress in the freezing of terrorist assets. That is correct, isn't it?

**Mr Chester**—I believe so.

**Mr Moraitis**—Yes.

**Senator FAULKNER**—In Australia, the Australian government is empowered to freeze terrorist assets by the Charter of the United Nations Act and regulations. That is also the situation but I just wanted to be doubly sure. That is my understanding. Is my understanding correct?

**Mr Moraitis**—That is correct.

**Senator FAULKNER**—Thank you. Are you aware that the chairman of the United Nations committee published a report on 2 December 2003, which stated in paragraph 29 on page 13:



... 11 of the reporting states, which had indicated the presence of Al-Qaeda-related cells in their countries, provided no information that any assets had been frozen.

Are you aware of that report, published on 2 December 2003?

**Senator Ian Macdonald**—Just before the officer answers that question and before we get off the other issue, there was some aspersion cast upon the fact that the department could not, off the tops of their heads, indicate whether that organisation was listed. How many names are on that list that you have?

**Mr Moraitis**—There are 490.

**Senator Ian Macdonald**—The officers have about 300 pages of material with them. The officers have been able to find the particular organisation Senator Faulkner referred to, but to suggest that they should have the knowledge of every single name in their heads is a bit much.

**CHAIR**—Thank you for putting that on the record, Minister.

**Senator FAULKNER**—Thank you for confirming what I said prior to the luncheon break—that is, that any department worth two bob would be able to establish over the period of the one-hour luncheon break whether their minister, in a period of 18 months, had listed such an entity. I agree with you. I told you that they could do it and they have done it. They have delivered. We are in furious agreement on that, but what has that got to do with the questions that are being asked?

**Senator Ian Macdonald**—Absolutely nothing, but I want to put on the record that your aspersion that this is—

**Senator FAULKNER**—Absolutely nothing, so why won't you rule this minister out of order? Rule out of order this minister who is deliberately trying to—

**Senator Ian Macdonald**—Can I get a say some time? Every time I speak Senator Faulkner just talks over everyone—

**Senator FAULKNER**—run interference at the committee. It is the oldest trick in the book.

**Senator Ian Macdonald**—as he is well renowned for doing?

**CHAIR**—Order!

**Senator FAULKNER**—It is your responsibility to deal with him. Now deal with him!

**CHAIR**—Order, Senator Faulkner! I am courteous to you and I expect you to be to me.

**Senator FAULKNER**—I am courteous too—

**CHAIR**—Just wait a second.

**Senator FAULKNER**—but you should not accept a minister behaving in this fashion. We are in the middle of a very important line of questioning in relation to the restriction of terrorist assets in Australia. I know why the minister does not want this questioning to take place, but you must act when this sort of thing occurs.

**CHAIR**—I think he is entitled to respond on behalf of the government and you are entitled to ask your questions.

**Senator FAULKNER**—Of course he is. He is entitled to respond to questions, but no such question was asked.

**CHAIR**—This is the natural to and fro of the committee process and I think we should just move on.

**Senator FAULKNER**—Come off it.

**Senator Ian Macdonald**—Chair, when I am speaking could you please ask members of the committee not to shout me down. They might be able to shout others down who cannot respond to them but I will not have any senator—

**Senator FAULKNER**—You do not know anything—

**Senator Ian Macdonald**—It is happening now!

**Senator FAULKNER**—about these matters. Stop running interference and get on with the task at hand.

**Senator Ian Macdonald**—Chair, can you call the senator to order and at least let me finish without being overridden by Senator Faulkner.

**Senator FAULKNER**—And you ought to call the minister to order and allow the hearing to continue.

**Senator Ian Macdonald**—What I was saying was that that is why the officers said that they would see what they could provide. They were able to provide it and were happy to do that. I wanted to place on record that these officers have been able to do it, but the thought that they could have this in the tops of their heads is simply improbable.

**CHAIR**—Thank you for your advice. The committee notes your comments.

**Senator FAULKNER**—Thank you, Chair. I would like it if you could try to keep control of the committee hearing in future. You know as well as I do that at this committee the expectation is that senators ask questions and witnesses, including ministers at the table, answer them. If we are going to change the way this committee and every other estimates committee has worked since they were established—

**Senator Ian Macdonald**—Do you want us to retire while the committee has a meeting?

**Senator FAULKNER**—Fine. Everyone can do that. It will not assist you. It will not assist the committee. Your responsibility seems to me to be to ensure that that sort of interference does not occur.

**CHAIR**—I really cannot see your problem, Senator Faulkner.

**Senator FAULKNER**—I would like an answer.

**CHAIR**—Please ask your question.

**Senator FAULKNER**—I have asked a question and I am seeking an answer.

**Senator Ian Macdonald**—If you would like us to retire while the committee has a meeting, we are happy to do it. But we do not want to sit here while Senator Faulkner—

**Senator FAULKNER**—I bet you ask me to repeat the question because of the interference. I would just like an answer to my question. It was not directed at Senator

Macdonald. Strangely enough, I do not expect Senator Macdonald to be an expert on these matters. I know he is standing in for other senators.

**Senator Ian Macdonald**—Chair, are there any questions or can we all go home?

**Senator FAULKNER**—I have asked my question. Can I get an answer?

**Senator Ian Macdonald**—Does anyone have an answer to that question?

**Mr Moraitis**—I cannot recall the terms of that report. I would have to take that on notice and check the report.

**Senator FAULKNER**—Mr Moraitis, are you aware that in the same report there is a footnote that indicates the reporting states—these are the 11 reporting states which had indicated the presence of al-Qaeda related cells in their countries—that provided no indication that any assets had been frozen? Are you aware that the footnote in the report indicates—and you can tell me if it is right in Australia's case—that the reporting states are Algeria, Australia, Kuwait, Lebanon, India, the Islamic Republic of Iran, Israel, Jordan, the Russian Federation, Singapore and the Syrian Arab Republic? I do not expect you to know this in relation to the other member states of the United Nations, but I would like to ask officials at the table whether they can confirm that this is the situation in relation to Australia, as reported in this United Nations report.

**Mr Moraitis**—I cannot recall that. I can confirm that Australia submitted a report to the UN Counterterrorism Committee before that period and complied with the terms of its reporting obligations, but as for the details I would need to read that report—

**Senator FAULKNER**—Did that go to the issue of whether the assets of those organisations had been frozen?

**Mr Moraitis**—I would have to confirm that by reading the report.

**Senator FAULKNER**—It is this subprogram in the department that deals with these matters, isn't it? This is your responsibility?

**Mr Moraitis**—We were involved in asset freezing and coordinating reports to the UN involving a variety of agencies.

**Senator FAULKNER**—The question here—and I think it is a very important one—is whether Australia, as one of the reporting states which had indicated the presence of al-Qaeda related cells in their country, has or has not provided information to the United Nations that assets have been frozen. It is a very important issue and Australia has been named by the chairman of this United Nations committee as one of the 11 reporting states that has failed to respond.

**Senator Ian Macdonald**—As I understand it, the officer has said that he does not know without reading the report. I assume he will read the report, take the question on notice and get back to the committee as quickly as possible.

**Senator FAULKNER**—Are you able to help me on this, Mr Moraitis?

**Mr Moraitis**—No. I can read the report to confirm it, but I have not sighted that report.

**Senator FAULKNER**—On 6 November 2003 the department prepared an answer to a question on notice from the then shadow Attorney-General. In answer to that question, the foreign minister indicated that assets had been frozen under this scheme on two occasions. That was the status on 6 November 2003. I understand that the two occasions involved three accounts held by the International Sikh Youth Federation totalling \$2,196.99 and one account held by an entity called Shining Path in Melbourne, which I think has been discussed at this committee previously, as you would be aware, Mr Moraitis. That account was unfrozen after Shining Path actually turned out to be a Melbourne music store. They were the two occasions that have been identified where assets were frozen. The minister has done that. That is correct, isn't it?

**Mr Moraitis**—Yes, I can confirm that there were two entities whose assets were frozen. Can I just clarify that these two entities were not frozen under resolution 1267. There are two resolutions by which the government can freeze assets. One is, as I said, 1267 on al-Qaeda and Taliban related entities and the other is for general terrorist related entities. The first one was one that was considered, and the second one, as you have noted, given the unfortunate naming of the record store, was undone.

**Senator FAULKNER**—Is that information still current? Are there any other organisations that have had their assets frozen?

**Mr Moraitis**—As far as I am aware, there have been no cases where there has been further freezing—according to my understanding.

**Senator FAULKNER**—If there were, I am sure you would know, wouldn't you, Mr Moraitis? The purpose of asking you is that this is your responsibility.

**Mr Moraitis**—I will seek confirmation of that.

**Senator FAULKNER**—I accept your answer, but when you qualify by saying 'as far as I am aware' I always worry about those sorts of things, because I suppose I expect to know.

**Senator Ian Macdonald**—Chair, the officer has given an answer. If he finds that he is not correct, he will no doubt get back to the committee and provide it as a question on notice. He has given the answer to the best of his knowledge. If it turns out not to be correct, he will report back to the committee about the actual situation.

**Senator FAULKNER**—I think it is reasonable for us to expect that the Department of Foreign Affairs and Trade would actually know the names of organisations whose assets have been frozen.

**Senator Ian Macdonald**—That is not a question.

**Senator FAULKNER**—It would be a great worry if that were not the case. Are you able to confirm that it is only those two organisations?

**Mr Moraitis**—That is my understanding.

**Senator FAULKNER**—Thank you. Has there ever been any suggestion that there was any connection between the International Sikh Youth Federation and al-Qaeda? I am not saying there is; I just wondered if there had been any suggestion of that at any stage.

**Mr Moraitis**—I am not aware of any such suggestion. As I said, it is a separate process.

**Senator FAULKNER**—Yes, this is, if you like, a separate head of power.

**Mr Moraitis**—It is non al-Qaeda and Taliban related.

**Senator FAULKNER**—I understand. I just want to be clear on that. It is a separate head of power in relation to the freezing?

**Mr Moraitis**—Yes, it is under a separate resolution.

**Senator FAULKNER**—Thank you. It seems the case then that Australia has not frozen any terrorist assets linked to the Taliban, al-Qaeda or Osama bin Laden. It appears to be a logical consequence. I would like you to confirm that.

**Mr Moraitis**—As distinct from listing those entities—an actual freezing of any such accounts?

**Senator FAULKNER**—Yes, that is right—freezing. I am aware that many entities have been listed—I have had that reinforced ad nauseam by the minister. I am talking here about the freezing of any terrorist assets linked to the Taliban, al-Qaeda or bin Laden. There has been none, has there?

**Mr Moraitis**—None that I am aware of.

**Senator FAULKNER**—Thank you. Is it a responsibility of government to report that situation to the United Nations?

**Mr Moraitis**—As I said, there are periodic reporting obligations under the various resolutions.

**Senator FAULKNER**—Has that information been reported?

**Mr Moraitis**—My understanding is we have reported as appropriate, but I would have to check the specific times of the reports that have been given to the UN committee over the last two years.

**Senator FAULKNER**—But no organisations related to al-Qaeda or bin Laden or the Taliban have had assets frozen—that is the situation. Can you say to me if you know—and you may not—whether Willie Brigitte had a bank account in Australia?

**Mr Chester**—I do not think we would know that.

**Senator Ian Macdonald**—Is it a Foreign Affairs matter or some other matter? An ASIO matter. Okay, then we cannot deal with that.

**Senator FAULKNER**—This is legislation and delegated legislation that is in fact the responsibility of this department. My question, if you can assist me with it, is: did Brigitte have a bank account in Australia? You may not be able to assist me with it.

**Senator Ian Macdonald**—Perhaps I can help. The advice is that inquiries on this case are continuing and any further questions should be put to the Attorney-General. That is the view of this department; that is the attitude they are taking. Perhaps we could move on.

**Senator FAULKNER**—Does the department know?

**Senator Ian Macdonald**—It is not the department's responsibility.

**Senator FAULKNER**—This legislation is the department's responsibility, isn't it, Mr Chester—this delegated legislation.

**Mr Chester**—That is correct.

**Senator FAULKNER**—Could you explain to me, Mr Chester, where is the delineation? This department has responsibility for the legislation and the regulations, I believe. That is true, isn't it?

**Mr Chester**—I believe that is right. I will try and describe the delineation as I understand it. A lot of the input into this decision making, in fact most of the input into this decision making comes from various intelligence and other agencies, and the department's role is more one of not a secretariat—that is probably not the right word—but of that nature.

**Senator FAULKNER**—Who prepared these reports that go to the United Nations from Australia? I would have thought they were prepared in Mr Moraitis's section of the department.

**Mr Moraitis**—Yes, the international organisations division would coordinate the preparation of the reports.

**Senator FAULKNER**—How regular is the reporting?

**Mr Moraitis**—It depends on the resolution, I understand. It is subject to the committee's requirements. We seek to meet their reporting deadlines.

**Senator FAULKNER**—Can you say what the most recent report was or when it was?

**Mr Moraitis**—My recollection is that one was tabled in the third or fourth quarter of last year—towards the end of 2003.

**Senator FAULKNER**—Can you be more precise on this? You are the one who is preparing the reports.

**Mr Moraitis**—I do not have the date. I can confirm the date.

**Senator FAULKNER**—When I ask you questions about the content of these reports, given that these reports are being prepared by you, I cannot imagine who else I can ask these questions of.

**Senator Ian Macdonald**—The officer has indicated he will look it up. He will go to his records and if he can provide an answer he will. That is very reasonable.

**Senator FAULKNER**—What is your responsibility in this, Mr Moraitis—are you just the signing officer, or do they come across your desk for approval? How does it work?

**Mr Moraitis**—They would be prepared in the legal branch, with input from various agencies, and we would consolidate a response to report back to our mission in New York which would deliver it to the committee.

**Senator FAULKNER**—I assume the departmental secretary has the final responsibility for ticking these things off. Is that right? I might be wrong on that.

**Mr Moraitis**—It depends. It could well be senior officers in our area, my colleagues, who would do that, or me if I am available.

**Senator FAULKNER**—That is what I would have thought. I obviously thought you would have a key role in that.

**Mr Moraitis**—Not necessarily. If I am absent one of my colleagues would oversee it.

**Senator FAULKNER**—Sure, if you are absent we would not expect you to be doing it. But let us assume that most of the time you are not absent.

**Mr Moraitis**—Yes. Either I or my colleague, the branch head, would have a look at it, or the FAS of the division would at times when no-one else was around.

**Senator FAULKNER**—So can anyone explain to me what the status is in relation to reporting to the UN on the freezing of terrorist assets? Was the UN, for example, informed about Shining Path and the International Sikh Youth Federation?

**Mr Moraitis**—I would have to look at the reports that have been delivered by us to the UN to confirm whether or not that was the case.

**Senator FAULKNER**—If it was the case in relation to Shining Path in Melbourne, I assume an erratum would have been thought of.

**Mr Moraitis**—That would be appropriate, I think.

**Senator FAULKNER**—Can you tell me if that is the case?

**Mr Moraitis**—We would have to look at the report.

**Senator FAULKNER**—If you could look at the reports that your section has prepared, which you may well have ticked off on, to respond to these questions, I would appreciate it.

**Mr Moraitis**—Yes.

**Senator Ian Macdonald**—We offered to do that five minutes ago, Senator.

**Senator FAULKNER**—I have got no further questions on output 1.1.7

[2.11 p.m.]

**CHAIR**—Senator Faulkner, I understood you put questions on notice for output 1.1.8, Security, nuclear, disarmament and non-proliferation.

**Senator FAULKNER**—I have.

**CHAIR**—Do you have some more to ask now?

**Senator FAULKNER**—I have.

**CHAIR**—Please proceed.

**Senator FAULKNER**—Did the department receive DIO's intelligence assessments in the period prior to the conflict in Iraq?

**Mr Stuart**—The department received some of DIO's reports in that period.

**Senator FAULKNER**—I note that you said 'some'. I appreciate that means you did not receive all of them. Is that the point you are making?

**Mr Stuart**—Yes.

**Senator FAULKNER**—Are you able to explain to the committee the processes—why some would have been received and not others?

**Senator Ian Macdonald**—Perhaps you could explain the whole process of receipt of DIO things in general rather than answering Senator Faulkner's specific question.

**Mr Stuart**—It may be that to get a full answer you would actually have to ask the Department of Defence, as they would have the most thorough knowledge of the criteria they use for the distribution of DIO reports. But I understand that there are products for a general range of clients, which would include the Department of Foreign Affairs and Trade, and then there would be some products done for specific clients, such as the Minister for Defence, which we would not necessarily see.

**Senator FAULKNER**—What is the process for handling DIO reports in DFAT? Do they come to your section or do they go more broadly?

**Mr Stuart**—They come to a part of my division and are circulated in hard copy in secure containers or bags.

**Senator FAULKNER**—You have document handling procedures for these sorts of reports, haven't you?

**Mr Stuart**—We have. Some reports—

**Senator FAULKNER**—Could you quickly outline what they are.

**Mr Stuart**—If I could supplement the previous answer, I was going to say that some reports are also conveyed electronically.

**Senator FAULKNER**—Are all reports or some reports received by the department from DIO also sent separately to the minister's office? Are you able to explain how that relationship works?

**Mr Stuart**—Yes, although again I cannot tell you the criteria that apply for that decision. But yes, some are sent to the minister's office.

**Senator FAULKNER**—But you would know from the address list of such reports, I assume, whether the minister or the minister's office had or had not been sent or received such a report.

**Mr Stuart**—I am not absolutely sure, but I do not think so. I can check that, and I will.

**Senator FAULKNER**—At least certain DIO reports are sent directly to the minister's office. You can confirm that?

**Mr Stuart**—Yes, that is my understanding.

**Senator FAULKNER**—Can you also say to the committee, on another process issue, whether—and I do not go to the substance of briefing materials to ministers—information contained in DIO reports that have gone to the department have been incorporated into briefing material that has gone to the minister from the department? In other words, on occasions do DFAT briefing materials that go to the Minister for Foreign Affairs incorporate material contained within DIO intelligence assessments?



**Mr Stuart**—Mr Quinn from the Iraq Task Force might want to add to this answer, but I would say a large range of material—both intelligence assessments and material from other sources, including public sources; and in particular, on the topic of Iraq, the UN through both the UNSCOM and the UNMOVIC processes—is digested and used in the advice the department prepares.

**Senator FAULKNER**—Are you able to add to that, Mr Quinn? What I think you are saying, Mr Stuart, is that, on occasions, of course that is the situation.

**Senator Ian Macdonald**—I think he said on most occasions.

**Senator FAULKNER**—On most occasions that is the situation.

**Senator Ian Macdonald**—I think it would be on all occasions.

**Senator FAULKNER**—Is the minister right in saying that, Mr Stuart? He has just interpolated there ‘on all occasions’?

**Mr Stuart**—I was making a general comment about formulating policy in this area. There would perhaps be some occasions when we did not actually have an intelligence product from DIO. I would have to become much more specific to give you anything more than that.

**Senator FAULKNER**—I think we have the broad picture. It is not all occasions, but it is obviously—

**Senator Ian Macdonald**—No, most occasions.

**Senator FAULKNER**—Which is where we were. Can you add to that, Mr Quinn?

**Mr Quinn**—Just to confirm that comment, clearly there is quite a range of material from DIO. Some is quite technical and very much related to the ADF; other material relates to broader judgments, and clearly some of those judgments are relevant to briefing we provide to our minister.

**Senator FAULKNER**—So if Minister Downer’s office receives a DIO report, which, we have heard from Mr Stuart, is often the case—and I think everyone would expect that that would be the case—does that bypass the department? In other words, does such a report go directly from DIO to the minister’s office or do such DIO reports go via the department to the minister’s office.

**Senator Ian Macdonald**—Can we just establish whether, if that did happen, you would know?

**Mr Stuart**—I am not sure I would necessarily know. That is why I said before that I would need to check.

**Senator Ian Macdonald**—In that case, I will take that on notice for Mr Downer’s office to respond to.

**Senator FAULKNER**—I want to be clear on this. Are you saying to the committee, Mr Stuart, that you are not certain whether, on occasions, DIO reports go directly to Minister Downer’s office? If that is what you are saying, fine, but I just want to be clear on that.

**Mr Stuart**—Yes.

**Senator Ian Macdonald**—I think you said that you thought there were some that went but that you would not necessarily know which ones they were because if they go straight to Mr Downer's office they would not come through you. I am not putting words in your mouth here, because I have no idea how you work, but that would seem to be logical.

**Mr Stuart**—There are two categories here. One category is that there may be things that go to the minister's office which I am not aware of—that have not gone to me. That is quite possible. Then I would not know that they were there. And the second category is things that I see. In that case, I am not sure; I will need to check whether there is something in the document which tells me whether it has gone to the minister's office.

**Senator FAULKNER**—I know you are checking that latter point. Here I am just talking about the broad protocols that I would have thought the department would know—that is, if a DIO report is to go to Minister Downer, would it go via the department? I thought there may have been a protocol that related to that. I did not expect it to go via the department; I just thought someone would know. Can you help me on that, Mr Quinn?

**Mr Quinn**—I can only speak for the Iraq experience. My understanding would be that a limited amount of material would have gone from DIO to the minister's office, but I do not recall any particular case. As I said, there is a lot of micro material relating to day-to-day developments in that country. My understanding would be that there would be a more limited array and the material would go directly from that organisation to the minister's office. But I cannot recall any specific case.

**Mr Chester**—Senator, I may be misunderstanding what you are trying to get at here or what your question is.

**Senator FAULKNER**—It is just a question as to whether DIO reports go—

**Mr Chester**—My understanding is—

**Senator FAULKNER**—I thought there might be a protocol for document handling in these instances.

**Mr Chester**—My understanding is that the material that the minister's office receives from DIO goes direct from DIO; it does not go through the department. And, quite separately, the material we get comes direct from DIO.

**Senator FAULKNER**—That is what I would have thought.

**Mr Chester**—I think that is your question. That is my understanding of it.

**Senator FAULKNER**—I have asked it about three or four times.

**Mr Chester**—If it is wrong, we will come back and let you know.

**Senator FAULKNER**—But, separately, Mr Stuart is checking on the issue of addressees on reports.

**Mr Chester**—Yes.

**Senator FAULKNER**—That is obviously another matter.

**Mr Chester**—My understanding is that the reports do not have an addressee list on them, but, as you say, Mr Stuart is going to check that.

**Senator FAULKNER**—Is anyone from the department able to say whether assessments for the Minister for Foreign Affairs on the issue of Iraq's possession of weapons of mass destruction conform to the line that was contained within DIO reports.

**Senator Ian Macdonald**—Does anyone understand what the question means or will we ask for clarification?

**Mr Chester**—To put it around the other way, was the question whether Mr Downer's statements were inconsistent with—

**Senator FAULKNER**—I did not ask that question, but if you—

**Mr Chester**—I am just trying to work out what you were asking.

**Senator FAULKNER**—If you care to answer that question, that is fine.

**Senator Ian Macdonald**—The better thing would be for you to clarify it. I did not understand the question. Does anyone understand the question? No. Could you try again. None of us understood it.

**Senator FAULKNER**—You may not have. Mr Chester cared to reinterpret it. I do not mind if Mr Chester answers the question he poses to himself, but I asked—

**Senator Ian Macdonald**—He should not do that. He should clarify what you are asking.

**Senator FAULKNER**—I asked whether the briefs or assessments of the Department of Foreign Affairs and Trade going to the Minister for Foreign Affairs were in conformity—the views were in conformity—with those that were expressed by DIO on Iraq's possession of WMDs. That is how I asked the question.

**Mr Chester**—I misinterpreted it. My apologies.

**Senator FAULKNER**—And fair enough. He was happy to answer a question.

**Senator Ian Macdonald**—Let me have go. What you are asking is: is the assessment that DIO give necessarily the same advice that the department then picks up and gives to Mr Downer? Is that what you are asking?

**Senator FAULKNER**—That was not what I said, but it is not massively dissimilar to what I said. I am happy for that question to be answered. I am happy for Mr Chester's question to be answered. If the information can be provided, I would appreciate it.

**Mr Stuart**—As I said before, on Iraq there were a number of types of material which DFAT used. They included intelligence assessments from DIO and other intelligence bodies. They included other material, including that on the public record, and in particular that from the UN processes.

**Senator FAULKNER**—Mr Chester, you could assure me, I would assume, that DIO assessments would not be downplayed or downgraded or ignored by DFAT officers in advice that goes from the department to the minister. You could give me that assurance, couldn't you?

**Mr Chester**—I believe so. But I think the point that Mr Stuart is making is an important point: there was a vast amount of material that we drew from in providing our briefings to the minister and the vast majority of the material that we drew from was material on the public

record, whether it was UN or non-UN material. I think it is impossible to be able to answer the question of how much of the DIO material or how much of someone else's material was included in that advice that we provided.

**Senator FAULKNER**—With ONA being an agency in another department—in this case the Department of the Prime Minister and Cabinet, DIO being a branch of the Department of Defence—are you able to say whether the process in relation to reports from ONA going to Minister Downer's office follows a similar pattern to the one that you have described for DIO reports?

**Mr Chester**—I think that question about the distribution of reports was asked last time. My understanding is that the ONA reports to Mr Downer's office do not go via the department; they go direct from ONA to the minister's office.

**Senator FAULKNER**—I would have assumed there would be a similar pattern with DIO reports. One assumes that but that does not mean that is necessarily the case.

**Mr Chester**—That is right.

**Senator FAULKNER**—One can never afford to assume anything at these committees, as you know, Mr Chester. If there is the situation of an agency, and let us use the example of DIO, expressing a qualification in a report that is provided to the department—if there is a caveat in material that is contained within a report, which is obviously often the case in these sorts of assessments: there is the information and some have qualifications, some have caveats—is there a DFAT protocol, a protocol within your department, that ensures that such a caveat or qualification remains in place if the DIO material is contained in a report that goes through to the minister?

**Mr Chester**—I am not aware of any protocol or anything as formal as that.

**Senator FAULKNER**—But it makes good sense, doesn't it?

**Mr Chester**—That is the point that I was about to make. This is a very hypothetical question that you are asking. You are really asking about the processes for the provision of policy advice. The only protocol we have is that staff of the department act in a professional way and in doing that they will make judgments about what to include and what not to include and how to draft and what point to make in policy advice.

**Senator FAULKNER**—I am just trying to make an assessment where we have the head of DIO making statements very different from ones that are made, for example, by Minister Downer. You say it is hypothetical, but I think it is important for people to have confidence in work that is being undertaken by this branch within DFAT that, if material is being used from a qualified DIO report, the qualifications remain intact if that material is used in part in the briefing of a minister.

**Senator Ian Macdonald**—There is no question in that. We are here to answer questions. That was a view of Senator Faulkner's and we do not have to comment on his views. If he has a question we can answer it but there was not a question there.

**Senator FAULKNER**—You do not want to answer that question?

**Senator Ian Macdonald**—Are there any other questions, Mr Chairman?

**Senator FAULKNER**—You do not want to answer that question?

**Senator Ian Macdonald**—There was not a question, Senator. That was a comment by you on what you thought would be the process.

**Senator FAULKNER**—I do not think so, at all. I do not think you are following what is going on.

**Senator Ian Macdonald**—Are there any more questions?

**Senator FAULKNER**—Mr Chester, can I be assured, in relation to the issue of Iraq's possession of weapons of mass destruction and the risk of weapons of mass destruction being passed on to terrorists, that any material that came from DIO that contained qualifications or caveats would have had the qualifications or caveats included in the brief to the minister for foreign affairs? Can you give me that assurance?

**Senator Ian Macdonald**—The officer has already indicated that in all cases the departmental people would act professionally. You are now seeking to get from this department advice that they have given to the minister. As you all know that is simply not appropriate. It is inappropriate to ask the officers those questions.

**Senator FAULKNER**—Can I get that assurance from you, Mr Chester?

**Senator Ian Macdonald**—Mr Chester has already answered that in all instances—

**Senator FAULKNER**—So, I cannot get that assurance? That's fine.

**Senator Ian Macdonald**—the department will act professionally.

**Senator FAULKNER**—I cannot get that assurance?

**Senator Ian Macdonald**—You have the assurance that in all cases the department will act professionally. You can put whatever spin or interpretation you want on that but that is the answer of the department.

**Senator FAULKNER**—In the event that I cannot get that assurance, Mr Chairman, I am happy to move on to the next subprogram.

[2.32 p.m.]

**CHAIR**—We now move to output 1.2, Secure government communications and security of overseas missions.

**Senator FAULKNER**—I saw in budget paper No. 2 there were upgrades to certain chanceries and embassies in New Delhi, Paris and Wellington, and there may have been more.

**Mr Chester**—Those questions go to output 4.1, Property management.

**Senator FAULKNER**—I am happy to leave off until then.

**CHAIR**—We will move on to output 1.3, International services to other agencies in Australia and overseas, including parliament, state representatives, business and other organisations.

**Senator FAULKNER**—We haven't got to program 2, have we?

**CHAIR**—We haven't got to program 2, no, not yet. We are now on output 1.4, Services to diplomatic and consular representatives in Australia—at 1.4.1, Services to diplomatic and consular corps and at 1.4.2—

**Senator FAULKNER**—Mr Chairman, I do have a number of questions. I am not sure whether they are at 1.4 or 2.1, but wherever they go I will place them on notice. I do not think it is going to worry Mr Chester whether they are at 1.4 or at 2.1.

**Mr Chester**—I am totally confused as to where we are.

**Senator Ian Macdonald**—I am not. Senator Faulkner is going to put on notice questions relating to 1.4 and 2.1.

**Senator FAULKNER**—Wherever they actually go.

**CHAIR**—Which are the next questions that you have, Senator Faulkner?

**Senator FAULKNER**—I have questions in what I believe is 2.1 and I have questions in what I believe is enabling services. That was until you read out what you read out before. I think the enabling services are the questions to Mr Tighe in relation to the chancellery.

**CHAIR**—You have said two things there: 2.1 is Consular and passport services. Do you have questions about that? I thought you said that you were putting them on notice?

**Senator FAULKNER**—No. I believe I have questions in 2.1.

[2.36 p.m.]

**CHAIR**—We will now move to output 2.1, Consular and passport services.

**Senator FAULKNER**—I want to ask a couple of questions about William Brown. Where does he fit into the picture? You tell me where he fits into the picture and I will ask the questions.

**Mr Chester**—Probably at 2.1.

**Senator FAULKNER**—That is what I thought. I will place some questions on notice in 2.1 and I will just ask a few questions about William Brown in that subprogram. Mr Kemish, I assume that you are aware of the William Brown case. It has received quite a deal of publicity in the newspapers.

**Mr Kemish**—Yes, Senator, I am.

**Senator FAULKNER**—I would have been very surprised if you had not been. The first question is a historical question. You may or may not know this; I suspect you will. What was Brown's position in Jakarta at the embassy on his posting in the 1980s?

**Mr Chester**—He was an officer of the aid agency. I think it was called AIDAB at that time.

**Senator FAULKNER**—Thank you, Mr Chester. Are you able to say why he was returned to Australia?

**Mr Chester**—Yes, I am. He was returned to Australia following a decision by the then management of the department that, because of some negative publicity about his inappropriate behaviour, he should leave the post.

**Senator FAULKNER**—Thank you. Can you confirm that William Brown was investigated in 1986 by the Hunt inquiry for alleged involvement in an organised paedophilia ring within DFAT?

**Mr Chester**—I think you mean 1996 rather than 1986.

**Senator FAULKNER**—Yes, I am sorry.

**Mr Chester**—Was he investigated? The terms of reference of the Hunt—or O’Neil—inquiry were not to investigate individuals but to investigate the behaviour of the Foreign Affairs and Trade portfolio. The investigation of alleged paedophiles was handed to the Australian Federal Police to do.

**Senator FAULKNER**—I used the terminology the ‘Hunt inquiry’. You have corrected me and that is fair enough—

**Mr Chester**—Hunt was appointed first to do the inquiry and then because of some legal issues, as far as I understand, Ms O’Neil was subsequently appointed to do the inquiry.

**Senator FAULKNER**—So if I use the terminology the ‘O’Neil inquiry’ that is—

**Mr Chester**—Yes, that would be fine.

**Senator FAULKNER**—Thank you for that. Are you able to broadly and briefly say what the outcome of the O’Neil inquiry was?

**Mr Chester**—I will just refer to the conclusion. The O’Neil inquiry was set up by our current minister when he became foreign minister. One conclusion to be drawn—I guess there are a number of conclusions—was that there was not a systematic culture of protecting and promoting paedophiles in the department but that some of the administrative procedures in handling allegations of paedophilia were ‘faulty’—the word used by Ms O’Neil.

**Senator FAULKNER**—This material is publicly available, of course?

**Mr Chester**—It is.

**Senator FAULKNER**—In media reports, Mr Chester, the foreign minister said that William Brown had been under Federal Police investigation since 1996. For the benefit of the committee I wondered whether you could confirm that was the case.

**Mr Chester**—AusAID handed the material it had on Mr Brown to the AFP at around that time—maybe in 1995 or 1996. We have subsequently learnt from the evidence that was given in these hearings earlier this week that the AFP may well have been looking at Mr Brown prior to 1996. I think they said 1992 in their testimony.

**Senator FAULKNER**—Are you able to say how long DFAT had known that Brown was resident in Indonesia?

**Mr Chester**—In what sense? He was posted with AIDAB in 1982 or 1984. He ceased to be an employee of AIDAB. He has never been an employee of DFAT—and I should make that point, because it is a point that is missed by a lot of commentators and others in saying that Brown was a DFAT employee. He was not and never was. He left government employment in late 1995, I understand. The department does not track former employees, so I do not know—

**Senator FAULKNER**—You say he left the department in 1995.

**Mr Chester**—He left AusAID in 1995. He was never an employee of the department.

**Senator FAULKNER**—But AusAID is an agency within the portfolio. Is that the distinction we are now drawing? It is a fair enough distinction—

**Mr Chester**—It is a fair enough distinction. Since 1985 the aid agency has had its quite separate corporate management function, whether it is for personnel, budget, FOI or those kinds of things. There is quite a separation between the department and AusAID on those issues.

**Senator FAULKNER**—I read in the *Weekend Australian*—and you probably did too, and I will try to put this very fairly—that a secret police dossier on Australian paedophiles warned the federal government seven years ago—it said 1996 but you make the point that it may have been 1995—that Brown and four other Australian men were ‘suspected of abusing dozens of young boys in Indonesia’. Did you see that article?

**Mr Chester**—I think I did see it, yes.

**Senator FAULKNER**—So are you able to say what awareness the department had, if any, of Brown and these four other Australian men?

**Mr Chester**—Again, you have to remember that Brown was not an employee of the department. He was not a government employee, a public servant. In that context, we had no understanding, nor would one expect us to have an understanding. I can say that around that time in relation to Brown the department was involved in providing assistance to the AFP in their liaison communication with the relevant Indonesian authorities.

**Senator FAULKNER**—To what extent was the department involved in passing Australian government concerns about Brown to Indonesian authorities following the creation of this dossier? Are you able to comment on that?

**Mr Chester**—No, I do not think I can; I do not think I know the answer to that. This was essentially a police matter.

**Senator FAULKNER**—A police dossier, yes.

**Mr Chester**—It was essentially a police issue. Our role was very much to assist the AFP in their liaison with the Indonesian police. You would expect that to be our role—we are not involved in the operational aspects of these things. Brown was no longer an employee.

**Senator FAULKNER**—Does the department have any involvement in checking the travelling arrangements of someone who might be a suspected paedophile, for example? Mr Kemish, you would be able to tell me this.

**Mr Kemish**—First of all, I refer you to the testimony of the Australian Federal Police before an estimates hearing this week. The Australian Federal Police made it very clear in relation to Mr Brown’s travel to Indonesia that, in their words, the file on the matter was closed and there was no evidence that could make a case to prevent travel or the issue of a passport. The only way my area of the department would get involved is if a law enforcement agency brought to us a serious concern—and, of course, that would have to be based on some evidentiary standard—that would alert us to the need to refuse a travel document or take some other action. No such information was ever brought to us.



**Senator FAULKNER**—So you did not have any knowledge of Brown or the other names included in this dossier? Can you confirm that for the committee?

**Mr Chester**—The passport office? Is that what you are talking about?

**Senator FAULKNER**—Yes.

**Mr Chester**—No, not the passport office.

**Senator FAULKNER**—What about more broadly in the portfolio, as you draw the distinction?

**Mr Chester**—As I said, the relevant geographic area of the department was assisting the AFP in its endeavours to work with the Indonesian police in relation to Brown.

**Senator FAULKNER**—Yes, but this dossier was in place in 1996. That is correct, isn't it?

**Mr Chester**—Is this the NCA dossier that you are talking about?

**Senator FAULKNER**—I thought it was police, but I might be wrong—I have only read press reports.

**Mr Chester**—I think there were a number of questions asked last night on a television program where the relevant minister explained the status of the dossier.

**Senator FAULKNER**—I did not see that television report.

**Mr Chester**—The point I am trying to make is that this dossier is not something that DFAT would have or be involved with, just like any other police dossier.

**Senator FAULKNER**—You have got officials working with Indonesian authorities—that is true, isn't it?

**Mr Chester**—We had officials working with the AFP and assisting in some communications with Indonesian authorities; that is correct.

**Senator FAULKNER**—From what time?

**Mr Chester**—In 1996.

**Senator FAULKNER**—And Brown is identified as one of them?

**Mr Chester**—I do not know if he was one of them or the one.

**Senator FAULKNER**—But Brown is identified by those who are undertaking that work—we are clear on that?

**Mr Chester**—Yes.

**Senator FAULKNER**—We have also got a situation where DFAT proceeded to issue Brown with a replacement passport in July 2000, according to press reports. Is that correct, Mr Kemish?

**Mr Kemish**—That is correct. He was issued with a passport on 14 July 2000.

**Senator FAULKNER**—Was the minister informed of that occurrence in these circumstances?

**Mr Chester**—No, and there would be no reason to do so. There was no warrant out for Brown's arrest and there was no alert in the system that would make those issuing the

passport question it. If you extrapolate from what you are saying, I guess the implication is that our passport office should have a list of all alleged criminals in Australia.

**Senator FAULKNER**—I have not actually said that at all. It is not fair to put words into my mouth.

**Senator Ian Macdonald**—It would be a nice change!

**Mr Chester**—I apologise. I thought I would take the opportunity—

**Senator FAULKNER**—I do not really mind. I am not going to lose a nanosecond's sleep if Mr Chester does that. But I was going to ask whether in the case of something as serious as paedophilia there was a passport watch list or an alert list. I was going to ask that. I think you would accept—

**Senator Ian Macdonald**—Let us have the answer.

**Mr Kemish**—I think I can help.

**Senator FAULKNER**—I was going to say, Mr Chester, that you would accept that it is a different issue to that of every criminal in Australia.

**Senator Ian Macdonald**—Mr Chester was trying to be helpful. He was saying that if you extrapolate from what you were saying it gets to this. He was just trying to be helpful.

**Senator FAULKNER**—He always is very helpful.

**Senator Ian Macdonald**—If you do not want to hear from him, Mr Kemish has the answer, I understand.

**Mr Kemish**—I can try to be helpful, too, Senator.

**Senator FAULKNER**—Excellent.

**Mr Kemish**—If I can just try to bring a bit of clarity to the way these systems work, Mr Chester has noted rightly that there was no outstanding Australian arrest warrant for Brown in July 2000. We had no information from law enforcement agencies that would have supported any alternative course of action other than the issue of a passport after the usual identity and citizenship checks. Again I would refer you to the testimony of the Australian Federal Police, who in response to similar questioning noted that at the time, in 2000, 'the file on that particular matter was closed' as far as they were concerned. To quote from the Australian Federal Police:

As a result there were no outstanding warrants in relation to that person, nor were there pending criminal charges. As a result of that, as with any Australian citizen, they are free to come and go as they choose, from and to Australia.

You also mention a secret dossier. For my own part and from the perspective of the Consular and Passports Division, we certainly have no knowledge of such a thing. I am aware of a mooted register of paedophiles which is—again according to the testimony of Commissioner Keelty this week, as I understand it simply from reading his testament—in the process of development.

**Senator FAULKNER**—I appreciate that the Australian Federal Police have given evidence on this matter. I can only ask you in your role in relation to DFAT. Brown was

investigated on a number of occasions. We have heard evidence today that that occurred as far back as 1992. Why has there not been some sort of watch list established? It seems logical, but, if that is not the case, can you explain why Brown's name did not appear on a passport watch list?

**Mr Kemish**—These are issues that go to the heart of questions of justice. Just taking a step back, in an announcement earlier this week the foreign minister announced a revision of the Passports Act. This is relevant to your questioning because it explores some of the issues you are asking about. One of the things we are proposing to do with a revised Passports Act is to explicitly provide for the refusal to issue a passport or the cancellation of a passport on the grounds that an Australian is likely to engage in, is charged with or sentenced for child sex tourism. The new act will also make it clear that it is the responsibility of law enforcement agencies to advise us, as the passport issuing agency, of a person who should be prohibited from travelling.

As I am sure you would understand, in making that intention flesh in a new act, we are going to have to be very careful to come up with a proper evidentiary standard. We simply cannot be in the business of refusing a passport on the basis of an allegation or a suspicion. As I say, the Australian Federal Police has itself said that there was no evidence to prevent an Australian citizen, in this case, leaving or re-entering the country. These are matters for law enforcement agencies and not for the passport office to make up.

**Senator FAULKNER**—I appreciate what you have said about the new act. That is important information. Current subsection 8(1) of the Passports Act gives the minister or certain appointed senior officers a general discretion to cancel passports now, doesn't it?

**Mr Kemish**—It does.

**Senator FAULKNER**—It also, in section 8, lists various specific circumstances in which the minister can exercise his discretion, doesn't it?

**Mr Kemish**—On the basis of information that is made available to him, he does have that discretion. Again, any ministerial discretion on such a matter would have to be based on reasonable grounds. In a weighty matter like this, we can go nowhere else than to a law enforcement agency for advice or evidence. We were certainly not alerted to any such advice, evidence or assessment by any law enforcement agency in this case, so the matter simply did not arise.

**Senator FAULKNER**—Section 8(1B) of the current Passports Act allows the minister to cancel an individual's passport where he:

a) has formed an opinion that a person to whom an Australian passport has been issued is likely to engage in conduct that:

- (i) might prejudice the security of Australia or of a foreign country;
- (ii) might endanger the health or physical safety of other persons, whether in Australia or in a foreign country; or
- (iii) might interfere with the rights and freedoms of other persons, as set out in the International Covenant on Civil and Political Rights, whether in Australia or in a foreign country; and

(b) considers that, in the circumstances, action to prevent that person engaging in that conduct should be taken by way of cancelling that passport ...

**Mr Kemish**—That is correct. That allows for the discretion that you are describing. In order for that discretion to be exercised, the decision maker needs to be informed that there is a basis to use that discretion.

**Senator FAULKNER**—When were you informed? Just remind me of the date again.

**Mr Kemish**—Informed of what?

**Senator FAULKNER**—In relation to Brown. What is the status in relation to Brown's passport now?

**Mr Kemish**—It is held by the Indonesian authorities.

**Senator FAULKNER**—Did the department receive, at any stage, advices in relation to the possible cancellation of Brown's passport? You say you need the advice of agencies and all this sort of thing. Tell me—have you ever received such advices?

**Mr Kemish**—No, never. We have never received such advice. A different set of circumstances applies in a situation where an Australian is arrested overseas and their travel document is confiscated by local authorities.

**Senator FAULKNER**—Do you ever have a situation where a person's passport is revoked in that sort of situation and held by authorities in another country? I assume that it would not be common—or is it?

**Mr Kemish**—If an Australian passport is held by the local authority, what we need to worry about is that another passport is not issued. We have procedures in place where, if an Australian is arrested, one of the first things the relevant consular officer in the relevant mission has to establish is the status of their existing travel document. The requirement is on the consular officer to establish that and report it. That is how we find out—most times—if the travel document has indeed been confiscated by the government concerned. That has to be reported formally; it has to be received at a senior level in the department. A warning is put up in that circumstance on our passport issuing system.

**Senator FAULKNER**—There are significant powers under the act now for the minister to revoke a passport. I appreciate what you have said about the new act but I think you would accept that there are strong powers in the act now, aren't there? We have also got a situation where we know Brown's history now, dating back as far as this department is concerned—or as far as this portfolio is concerned, to get the correct nuance for Mr Chester's benefit; and I accept it—since 1992. Brown is on a police dossier. It seems to me that it is reasonable for me to ask of you why advice was not provided to the foreign minister concerning the possible revocation of Brown's passport prior to January this year.

**Mr Kemish**—First, we know of no secret police dossier beyond the mooted register of paedophiles that I described earlier. Second, I would refer you again to the testimony of the Australian Federal Police.

**Senator FAULKNER**—Does this indicate that communication between agencies is breaking down?

**Mr Kemish**—No, it does not indicate that at all.

**Senator FAULKNER**—On the surface it certainly seems to be the case. It seems quite extraordinary to me.

**Mr Kemish**—Sorry, but I cannot come to that conclusion when I know that the Australian Federal Police themselves have said to another committee that, in this particular case, the matter was closed and there were no outstanding warrants in relation to the person in question, nor were there pending criminal charges. What you have is a situation where the Australian Federal Police are saying that there was not, at that stage, a case. That does not go to communication between the agencies.

**Senator FAULKNER**—Have you internally reviewed the case of William Brown?

**Mr Chester**—In what sense?

**Mr Kemish**—In what sense?

**Senator FAULKNER**—The issues that we have been canvassing for the last 15 minutes: I wondered if there had been any review of this particular case and how these processes have worked. That does not seem to be an unreasonable thing. They do not seem to have worked very well from my perspective. You have a different view. I respect your view. But in the circumstances, given the publicity surrounding this case—it has become quite notorious—I wondered whether anyone had determined that this was worthy of an internal review of procedures to see whether things could have been done any better.

**Mr Kemish**—Can I answer the question this way. We are responsible for a passport issuing system. We will of course work quickly if we are provided with advice from a responsible authority, on the basis of some evidentiary standard, that an Australian citizen should not have the right to hold a passport or to travel outside the country; we will act promptly. That was not, as the AFP has said, because they knew something and did not communicate it. It was because, as the AFP has said, there was no evidence to support such action.

**Senator FAULKNER**—So is there a review?

**Mr Kemish**—Of this case?

**Senator FAULKNER**—Yes.

**Mr Kemish**—No.

**Senator FAULKNER**—Are you satisfied with the way your internal departmental arrangements, including in relation to the issue of Brown's passport, have worked?

**Mr Kemish**—Entirely satisfied.

**Senator FAULKNER**—I think you will find that is a view that is not reflected broadly in the community.

**Senator Ian Macdonald**—Is that a question?

**ACTING CHAIR (Senator Ferguson)**—That is a debate.

**Senator Ian Macdonald**—Yes, that is a debate, not a question.

**ACTING CHAIR**—Could I just follow on Senator Faulkner's question by asking: in the absence of any charges or substantiated allegations of illegal behaviour, it is inappropriate to cancel a passport, isn't it?

**Mr Kemish**—We believe so, yes. That could be an inappropriate use of the ministerial discretion that Senator Faulkner has outlined.

**ACTING CHAIR**—Is it true that although William Brown was withdrawn from his Jakarta post in 1984 he continued to serve in the public sector and that the previous Labor government's practice in issuing passports included issuing two official passports and issuing passports to William Brown on four separate occasions?

**Mr Kemish**—I have got the passport issuing history here somewhere.

**Mr Chester**—I have it in front of me. That is correct.

**ACTING CHAIR**—So in fact you were just following normal procedure with the issuing of passports in the absence of any charges or substantiated allegations?

**Mr Kemish**—We were following established procedure.

**ACTING CHAIR**—Senator Faulkner, do you have any more questions on this output?

**Senator FAULKNER**—No, not on that. We have heard the views of the government on this.

[3.09 p.m.]

**ACTING CHAIR**—We now move to output 4, Property management.

**Senator FAULKNER**—I think you heard my question about the chanceries that were mentioned in Budget Paper No. 2. I wanted to know whether there were security issues in relation to certain chanceries and embassies. I think it is New Delhi, Paris and Wellington, but there may be others.

**Mr Davin**—The projects that you outlined do not have a direct security element to them. In the case of New Delhi, it is a replacement of an aged and inefficient chancery building and some other improvements to a compound. In respect of Wellington, it is a pretty standard midlife upgrade of the building there. Paris is a standard upgrade or refurbishment of the residential apartment block.

**Senator FAULKNER**—Washington?

**Mr Davin**—Washington is a substantial refurbishment of the ambassador's residence.

**Senator FAULKNER**—I appreciate that information. Can you tell me what stage these are up to?

**Mr Davin**—The New Delhi project has been considered by the parliamentary public works committee and has been approved by parliament. We expect construction to commence on site in March-April this year. It is a very substantial project. We expect that it will run for some three years. In respect of Paris, the contracts have been finalised, and work started there in January this year.

**Senator FAULKNER**—When will that be completed? Do you know?

**Mr Davin**—There is an 18-month cycle of work expected for that project. It is moving progressively through the apartments in the block. It is not all happening at once.

**Senator FAULKNER**—Wellington?

**Mr Davin**—We expect to bring that project before the parliamentary public works committee in about August this year. That is the planning at this stage. Once we have that approval, we will move on to commence the project.

**Senator FAULKNER**—Washington?

**Mr Davin**—We have made substantial progress with planning and with precontract work. To some extent, the commencement of that project will be dependent on the change of ambassadors. We would not intend to commence that until the changeover.

**Senator FAULKNER**—Is that not planned this year, realistically? I do not know when the changeover is intended to occur.

**Mr Davin**—Quite frankly, we are not aware—

**Mr Chester**—We do not know when the changeover is either.

**Senator FAULKNER**—I thought you might have some inside knowledge, Mr Chester. You usually do.

**Mr Davin**—We are taking it as far as we can in terms of planning and project development. It is ready to roll.

**Senator FAULKNER**—So it is at least a year away, it would be fair to say?

**Mr Davin**—Well—

**Senator FAULKNER**—Given the process issues.

**Mr Davin**—That is correct.

**Senator FAULKNER**—Before work would commence.

**Mr Davin**—That is right, yes.

**Senator FAULKNER**—And it would be fair to say, wouldn't it, that work could commence, at the earliest, early next year or something like that? Would that be realistic?

**Mr Davin**—We will be prepared to commence work on that. Within the next three to six months, we will have all of the preparatory work done and contractors organised. Then it will just be a matter where, once a date is determined for the turnaround of ambassadors, we will move in and take over that residence.

**Senator FAULKNER**—Are there any others?

**Mr Davin**—Other projects?

**Senator FAULKNER**—Yes.

**Mr Davin**—They are the ones that were mentioned in the budget papers. We have a very substantial program of embassy refurbishments and relocations running across the whole overseas estate, but the ones you have identified are the substantial ones.

**Senator FAULKNER**—Can you disaggregate the costs for those four for me, on notice.

**Mr Davin**—Certainly.

**Senator FAULKNER**—And would you mind taking on notice some more detail about the other projects. I would be interested in costs and the time frame of the work—at this stage what time frame you are looking at for the work to commence and finish.

**Mr Davin**—This is particularly chanceries? Is there a particular cost element or cut-off point?

**Senator FAULKNER**—I am just interested in these chanceries and embassies.

**Mr Davin**—We will come back to you with that on notice. We can readily do that.

**Senator FAULKNER**—For my extensive overseas travel—that is a joke!

**Mr Davin**—We can readily do that.

**Senator FAULKNER**—Thank you, I would appreciate that. I know everybody has been waiting for Senator Conroy, so here he goes.

**ACTING CHAIR**—I would just like to ask Mr Davin a question in relation to the new embassy in Delhi. Does that involve the building of a temporary building in the corner of the compound?

**Mr Davin**—Yes, it does. We will be building a temporary chancellery in the compound where we will move people in from the existing chancellery. We will then demolish the old chancellery and construct a new one on that site. For the next 2½ years, people will probably be in that temporary site.

**ACTING CHAIR**—Are you still using the old deputy high commissioner's residence for immigration purposes?

**Mr Davin**—Yes, we are. That will be part of the temporary chancellery construction.

**Senator FAULKNER**—I would like to indicate that, in the interests of time, there are some other questions across a few programs—not that many—that I will put on notice to assist the committee.

**ACTING CHAIR**—I think the decision was made that questions on notice should be in by close of business tomorrow.

**Senator FAULKNER**—I was not aware of that decision, but that is not a problem.

**ACTING CHAIR**—I thank the officials for their attendance.

[3.17 p.m.]

**ACTING CHAIR**—I welcome Mr Deady and the other officials from the trade area of the department. We now move to output 1.1.6, Trade development/policy coordination and APEC.

**Senator CONROY**—Welcome back, Mr Deady.

**Mr Deady**—Thank you.

**Senator CONROY**—I hope you have had enough time to recover from frostbite, and all of those other bites that may have been taken out of you.

**Mr Deady**—It was not the best weather over there, I have to say.



**ACTING CHAIR**—This is only the prelim, Mr Deady—I would not worry too much about it!

**Senator Ian Macdonald**—Before we start, can we find out if Senator Conroy is for or against the free trade agreement.

**ACTING CHAIR**—I think the questions are meant to come from this side so we will let Senator Conroy ask them.

**Senator CONROY**—Unlike you, I am actually prepared to wait until I have read it.

**Senator Ian Macdonald**—So you do not have a view at the moment.

**Senator CONROY**—Mr Deady, how would you describe the outcome of the FTA negotiations?

**Mr Deady**—I think the outcome is a very strong one for Australia. The package that was negotiated and settled finally on 7 February represents an agreement with one-third of the world's economy and 300 million of the richest consumers in the world. It delivers substantial benefits for all sectors of the Australian economy. There are certainly disappointing aspects of the agricultural outcome, but there are certainly very substantial pluses for the agricultural sector too. I think the manufacturing industry in Australia is unequivocally a substantial winner from these negotiations. Government procurement was an area that we fought for very hard in the negotiations. I think there we got a very substantial outcome that removes the discrimination that Australia faced in the US market in selling to the US federal government, and also to a number of state governments.

On the services and investment side, again we have had a very substantial outcome there—an outcome that goes well beyond the commitments the United States was prepared to deliver in the WTO with its GATS commitments—a rule of law and nondiscrimination against Australian service providers and investors. That represents a significant improvement for Australian service providers and investors. Already the direct investment by Australia in the United States is larger than the direct investment by the United States in this country. So the disciplines, the commitments and the rules of nondiscrimination that will apply to Australian investors in the United States cannot be underestimated.

Across the range of issues, whether or not it be telecommunications, this is a very substantial agreement. As I have said many times, it covers 23 different chapters, all sectors of the economy, competition policy, telecommunications, intellectual property—all of these areas are very substantial outcomes. As the minister pointed out in Washington, it is only the third agreement that we can identify between two developed economies. Australia and New Zealand was probably the first, then Canada and the United States and now the United States and Australia. So you have two developed economies—in Australia's case, a very diverse economy that has negotiated improved access and binding commitments with the United States that are of substantial value, as I said, right across all sectors of the economy.

**Senator CONROY**—When will the text be available so that we can all work out exactly what is in the deal? I understand Mr Vaile said yesterday that it will be available on the Internet next week.

**Mr Deady**—We are working very hard. I spoke to Ralph Ives, the lead US negotiator, on the Monday afternoon after we had finished the negotiations to talk about that very issue. At the press conference that Mr Vaile and Ambassador Zoellick gave on the Sunday morning in Washington, they talked about us working towards having it done by the end of February. It still would be subject to some further legal clarification and consistency once it is put up publicly. But we are making good progress on that. There are a lot of exchanges going on each day between us and the US, and we are in pretty good shape to meet that timeline and have this out by the end of next week or very early the week after.

**Senator CONROY**—That would be a great outcome—making it available less than a month after it was agreed, particularly as we have not seen the Thai FTA document yet, and that was signed in October.

**Mr Deady**—As to the agreement itself, the legal text will run to something like 400 pages. The annexes will probably run to 500 or 600 pages, so you are looking at a 1,000-page document. It is a very substantial outcome if we can get that done in that sort of time frame. It is a two-way street—

**Senator CONROY**—Are you getting any sleep?

**Mr Deady**—I should say that we have a great team that has worked right through this, and I am very grateful for all the effort that that team—both DFAT colleagues and officials from other agencies—have put in, and that effort is continuing.

**Senator CONROY**—With regard to the text that is being released—and I think you mentioned appendices, so obviously they would be released with it—what about the side letters pertaining to the deal? Will they be released also?

**Mr Deady**—Yes, all side letters are an integral part of the agreement, and they will be released at the same time. All the annexes, the tariff schedules, the rules of origin and identification of the specific rules of origin line by line will also be released at the same time.

**Senator CONROY**—We will have the rules of origin up—

**Mr Deady**—That is my expectation, yes.

**ACTING CHAIR**—We will be able to cancel your committee, Senator Conroy!

**Senator CONROY**—It is very impressive. We will need those side letters, in particular, to work out exactly what the text means. That is what side letters do. They are there to ensure there is no confusion between the respective parties.

**Mr Deady**—The side letters are interesting in that the text of the agreement is 99.9 per cent reciprocal obligations on both the parties—Australia and the United States. The side letters represent some additional commitments that one side may be giving—a unilateral commitment, if you like—and that cuts both ways. There are some side letters that Australia is committing to and, equally, there are some side letters that the Americans have agreed to provide to us. But they are an integral part of the agreement. They are not really an explanation but a further elaboration of some of those commitments but, as I say, often in the sense that they apply to one party or the other. An example is in the area of the Pharmaceutical Benefits Scheme. There is an annexe to the goods chapter which will describe the commitments that both countries are entering into in relation to pharmaceuticals, and then

there is a side letter which has some specific commitments that Australia is making in relation to the PBS. That is the sort of example that gives an indication of what these things represent.

**Senator CONROY**—There is one side letter, in particular, that I am interested in. The DFAT fact sheet refers to two side letters in relation to the telecommunications provisions of the deal. It says that the second letter outlines the government's policy in relation to government ownership of Telstra. Does the side letter commit the current or any future Australian governments to the sale of Telstra?

**Mr Deady**—No. There is no binding obligation in the side letter. It represents merely a statement of the government's policy in relation to the privatisation of the final 50.1 per cent of Telstra.

**Senator CONROY**—What is the legal status of that letter, or a side letter in general?

**Mr Deady**—It is an integral part of the agreement but it does not contain any binding commitment. It merely describes the government's policy in relation to the privatisation of Telstra.

**Senator CONROY**—No future government will be bound by that letter?

**Mr Deady**—No.

**Senator CONROY**—I am very relieved to hear that. Where is the text at this time? Who has it? Is there an 'it'?

**Mr Deady**—Yes, there certainly is an 'it'. When we came out of Washington, the lead negotiators signed off essentially on the text as agreed on 7 February, and that is the text as it stands. You would appreciate, Senator, that some of the most contentious issues, the most sensitive issues, were dealt with right at the end. They were dealt with very late at night. There was language there, and language was agreed at the table, but some of that had to be put into legal form and some of that is still going on. There are some very small examples of that. Again, as I mentioned, it is 400 pages of tight legal text. The lead negotiators are going through that text now just checking for grammatical errors and consistencies, and making sure that cross-references to various chapters all line up. That is the initial legal vetting, if you like, that we are going through. Our lead negotiators are looking at the text. The Americans are sending through messages such as, 'This is the version we left the table with; is it consistent with the version you left with?' That is the sort of process that is going on. If there are any differences of substance between the two versions then it is the version that was agreed at the table and that will go forward into the formal legal scrubbing process.

What will go up on the Internet at, let us say, the beginning of the week after next, hopefully, will be a draft, and it will have a caveat on it saying that this is still subject to legal review for consistency and clarification. That is the process. It is certainly unusual for Australia to do that with a treaty. As I am sure you know, normally these treaties are not made public until they are signed. That is the tradition of our approach. In the United States, because of the requirements of the Trade Promotion Authority, there is a 90-day period during which the US Congress looks at it and is consulted on the agreement. From the United States point of view they look to get these texts up as quickly as possible. We have certainly agreed that that is appropriate in these circumstances and we will do the same. There will be an

agreed version that goes up. It is very close to the final text but subject to these legal drafting changes.

**Senator CONROY**—From my recollection of previous discussions there were working groups off on all 23 different chapters almost—perhaps there were not 23 working groups but there were lots and lots of people closeted in rooms. Presumably they were not all in one room.

**Mr Deady**—No.

**Senator CONROY**—They were all off in different meeting rooms, possibly not all even in the same building.

**Senator Ian Macdonald**—Boy, the standard of questioning in this committee is—

**Senator CONROY**—Oh, it is red hot.

**Senator Ian Macdonald**—What colour were these rooms they were in?

**Senator CONROY**—They were possibly not even in the same building.

**Mr Deady**—As you say, Senator, there were a number of these negotiating groups meeting at the same time. Most of them were in the USTR building itself. There is also an annexe attached to the USTR building. There were some people there, there were some in the department of commerce and there were some in White House conference rooms. At any one time there were six or seven of these negotiating groups going at once.

**Senator CONROY**—What was it that was physically signed at that press conference? I do not want you to feel that you were the only person getting no sleep during that period; I was up at four in the morning on that Monday morning Australian time waiting for the deal to be announced.

**Senator PAYNE**—That is way too much information.

**ACTING CHAIR**—You are often up at 4 o'clock in the morning, Steven.

**Senator CONROY**—I am normally still up; I was saying that I got up. What was it that was actually signed? I saw the press conference and I was wondering what they were actually signing. It looked like a bit of cardboard with a nice colour print on the front. I am just trying to find out what it was. What was the prop that was being used?

**Mr Deady**—Nothing was physically signed. I do not think there was any suggestion—

**Senator CONROY**—I thought they were leaning over signing something.

**Mr Deady**—Senator, I am not aware of that.

**Senator CONROY**—It was a bit of a mock-up, was it?

**Mr Chester**—It was old footage, I believe, that was shown on the television. It was a card that was presented on Australia Day.

**Mr Deady**—Thank you. I did not see it.

**Senator CONROY**—I was confused about how they could have been signing a document that did not exist. It was poetic licence by the TV station. There was no formal signing of anything in Washington where you were?

**Mr Deady**—No, Senator.

**Senator CONROY**—I was a bit worried about that. I thought we had signed our life away without actually having a document underneath the piece of cardboard. I am most reassured. Thank you, Mr Chester.

**ACTING CHAIR**—Thank you, Minister, for your contribution. The committee will take a short break.

**Proceedings suspended from 3.30 p.m. to 3.45 p.m.**

**CHAIR**—I understand that Senator Campbell is coming, but I think we can proceed without him.

**Senator CONROY**—You mentioned side letters just a moment ago, Mr Deady. Will the proposed changes to the PBS—the improvements to transparency and patent issues—be contained in the body of the text or in side letters?

**Mr Deady**—The specific commitments from Australia in relation to the transparency aspects of the PBAC will be in a side letter.

**Senator CONROY**—So, again, they are not binding?

**Mr Deady**—No, they are binding. You asked me earlier about the Telstra side letter.

**Senator CONROY**—That is not binding?

**Mr Deady**—That is non-binding because the nature of the commitment there is non-binding; it is merely a restatement of government policy. Certainly some of the side letters contain binding commitments. The PBS side letter is a commitment from Australia to the United States that there will be enhanced transparency in relation to aspects of the PBAC.

**Senator CONROY**—So some side letters do have a binding legal commitment?

**Mr Deady**—Yes.

**Senator CONROY**—I would like to come back to the issue of agriculture. You said on numerous occasions during the negotiating period that you were looking for a truly comprehensive and big market access deal on agriculture. Earlier you described the outcome as ‘disappointing’ in agriculture. Does that match up to your original objective there?

**Mr Deady**—The government had very high ambition in relation to agriculture as part of the negotiations—and that was pressed extremely hard with the United States right through the process. Certainly the statements I made and the statements the minister made right through the process were aimed at maintaining maximum pressure on the United States side for us to achieve the biggest possible deal we could on agriculture. We maintained that right to the end of the negotiations. I think there is a very good package on agriculture as part of this deal.

**Senator CONROY**—I thought you described it as disappointing earlier?

**Mr Deady**—There are aspects of it that are clearly disappointing—and the government and the minister have made that clear. We are very disappointed that sugar was excluded from the deal on agriculture.

**Senator CONROY**—So you would not call it a big market access deal?

**Mr Deady**—I think you do still need to look at the overall scope of the deal that we have talked about. Sixty-six per cent of the tariff lines on agricultural products will be eliminated. They will go to zero on day one of the entry into force of the agreement. A further nine per cent, I believe it is, of tariff lines will go within four years to zero. So 75 per cent of the tariff lines in the agricultural sector will be zero for Australia into the US market. That is big, and there are certainly sectors of Australian agriculture that have done very well out of the deal—for example, the horticultural industry and the lamb industry. Most of the lamb tariffs go to zero on day one; one or two have a four-year phase-out. That is a good outcome.

There are significant gains for the dairy industry in improved access, and significant gains for beef. We were looking for a very big deal on agriculture and we do not back away from that. That was the negotiating position we took in and prosecuted right through. But I think you have to look at the package that came out at the end as part of the overall outcome. There are certainly aspects of the agriculture deal that are disappointing. The government has made that clear, and I certainly restate that. But, on balance, in agriculture there are still some very big gains for Australia. We have not had that sort of market access improvement for Australian agriculture since the end of the Uruguay Round.

**Senator CONROY**—But you do not believe you could describe it as truly comprehensive and a big market access deal?

**Mr Deady**—In terms of comprehensiveness, if comprehensiveness means absolutely all products, then the outcome—in terms of sugar, what we maintain there is our current access. There is no increase in access for sugar. Across all other parts of agriculture, though, there are improvements in access for Australian exports into the United States market. In beef there is a big outcome—there is a down payment—and there is continuing growth.

**Senator CONROY**—It is an 18-year phase-in, Mr Deady.

**Mr Deady**—It is an 18-year phase-in but I think that something that might have been lost—

**Senator CONROY**—Not one extra cow alive today will make it onto a barbecue.

**Mr Deady**—I do not agree with that. I am not sure of the life cycle—

**Senator FERGUSON**—They cannot fill the quota now.

**Mr Deady**—The cattle cycle, they tell me, is seven years. But I think we should be clear that there is enhanced access for beef possibly in year 2 and certainly in year 3, so it is not that we have to wait 18 years before we see improved access for the beef industry. Also, I should mention that there is currently a US\$4.4c a kilo tariff on our existing WTO access to the US market, 378,000 tonnes. That goes to zero on the date of entry into force, so that is roughly \$US16 million in Australian cattlemen's pockets rather than in the US Treasury's. There are gains there right from the start, and those should not be overlooked.

**Senator CONROY**—So were we bluffing when we said we wanted a truly comprehensive and big market access deal?

**Mr Deady**—No, we were not bluffing. Very clearly that was the government's intention in our negotiating objectives outlined by the statements that the minister put out way back in January last year, before we started the negotiations. As you would understand, that is very

clearly the sort of negotiating position we should be putting to the United States and should continue to put, including right to the very end of the negotiations.

**Senator CONROY**—So we were bluffing.

**Mr Deady**—We were about building a very big package. In any negotiations, I think it is fair to say, you are very unlikely to achieve all of your objectives as fully as you articulated them going into the process. That is not to diminish the outcome we did achieve in agriculture alone, albeit with those disappointing aspects, but across the overall outcome—the overall package that was negotiated—that is a very substantial outcome for Australia.

**Senator CONROY**—So if we were not bluffing why weren't we prepared to walk away?

**Senator FERGUSON**—We were negotiating, not bluffing.

**Mr Deady**—It is about negotiating right through the process, throughout the almost 12 months that we went through this process of outlining for the Americans and making it very clear to them the sort of big deal that we wanted from this package. I think that is a negotiating position that you would certainly take into any negotiations, and that is what we did.

**Senator CONROY**—But you said we were not bluffing. We would have meant it if we were not bluffing.

**Mr Deady**—We were not bluffing; we wanted a big outcome for agriculture

**Senator CONROY**—And we did not get one. Even you have described it as a disappointing agricultural outcome.

**Mr Deady**—As I certainly described it, there were aspects of it that were disappointing. The sugar outcome is disappointing, and the government has made that clear—I clearly restate that here. But I think you have to look at the overall agriculture package, to be fair, as to what was the final outcome that we achieved. We certainly achieved significant improvements in Australian access for Australian agriculture, aside from sugar. The agriculture part was a key part of the deal, and right through the process we made it very clear—the government made it very clear—that that had to be a very big part of the package. It is a big part of the package, but the overall package also has to be something that the government takes a view of, and it is that overall package that at the end of the day the government takes a decision on for the outcome of the deal.

**Senator CONROY**—Mr Anderson said that it would be 'un-Australian' to sign a deal without sugar. Do you feel un-Australian today?

**Senator FERGUSON**—Mr Chairman, can I suggest that you are allowed only to ask questions related to estimates and that to ask an official to give an opinion—

**Senator CONROY**—I withdraw the question to Mr Deady.

**Senator FERGUSON**—on what a member of parliament or a minister has said is out of order.

**Senator CONROY**—I did not do that. I asked how he felt. I did not ask him for an opinion. I asked how he felt.

**Senator FERGUSON**—But he does not have to give an opinion.

**Senator CONROY**—I have said that I withdraw the question.

**Senator FERGUSON**—Okay, but he does not have to give opinions on things.

**Senator CONROY**—The NFF do not seem to be overly excited about the agricultural outcome.

**Senator FERGUSON**—Yes they are.

**Senator CONROY**—That is funny, because I will read you Mr Corish's letter, which he has to keep publishing because you keep—

**Senator FERGUSON**—You should speak to some of the guys on the ground.

**Senator CONROY**—I will just quote from the NFF president's letter, but you can keep verballing him all over town, which is why he has to keep putting out the same letter over and over again, Senator Ferguson. The NFF do not consider it to be a big outcome or a comprehensive one.

**Mr Deady**—I cannot recall precisely what Peter Corish said in that letter, but I think what the NFF does acknowledge is that there are substantial gains for Australian agriculture in important areas as a result of these negotiations: improved access for the Australian beef industry, improved access for dairy and the elimination of tariffs. It restores the competitive position of much of Australian agriculture in the US market, given that a number of other countries already enjoyed tariff free entry into the United States for many of these products. For our wine industry, for example, there is an 11-year phase-out of the tariffs on wine. Wine is one of the fastest-growing Australian exports into that market. We have restored the competitive position relative to Chile as part of this deal.

**Senator CONROY**—We talked many times previously about the baskets. There were three baskets of zero years, five years and 10 years, with the aside that there could be one that was beyond 10. So maybe there were four baskets, if you want to look at it in that sense. It seems that more things ended up in that basket of beyond 10 years. Wine, which you just mentioned, ended up in the basket outside 10 years. Did they always have all these items in the beyond 10 years phase-in basket?

**Mr Deady**—I might ask my colleague Allan McKinnon, who was in fact the lead negotiator on agriculture, to answer some of these detailed questions. They had a number of baskets, as we have talked about before. They in fact had four baskets, if you like: the immediate elimination of tariffs; basket B, which was around the five-year reductions; basket C, which was 10 years; and basket D, which they had there for—

**Senator CONROY**—But basket D was meant to contain only a couple of items.

**Mr Deady**—Basket D had a number of items. There are some tariff products that were included in basket D. There was also what they called a basket D TRQ, where the big dairy, beef and sugar—

**Senator CONROY**—Sugar was not in any of these baskets, from the sound of it.

**Mr Deady**—Sugar was in basket D.



**Senator CONROY**—It was in basket F, wasn't it?

**Mr Deady**—It was in the basket D TRQ.

**Senator CONROY**—How did it end up out of the basket D TRQ? If it was on the table, how did it end up off the table?

**Mr Deady**—We pressed hard for sugar right through the process.

**Senator CONROY**—If you go back and look at it, the fact was that they clearly were not bluffing and they were prepared to walk away if they could not keep sugar off the table. Zoellick said early on that it was off the table. He repeated consistently over the last six months that it was off the table. Why was it in any basket?

**Mr Deady**—The initial offers from the United States contained that number of baskets. Basket D was unspecified. That is how they described it to us when they gave us these offers. But sugar was included in that offer. It certainly was not specified how they were going to handle it.

**Senator CONROY**—When did they take it off the table?

**Mr Deady**—We pressed sugar right to the end of the negotiations. We never took it off the table.

**Senator CONROY**—Excuse my ignorance. This is probably just my lack of understanding, but if it is on the table in a basket then that does not mean 'no sugar'. When did the words 'no change in sugar' appear? They made an offer and suddenly—

**Mr Deady**—The offer on this basket D TRQ was an unspecified commitment from the United States. That was the nature of the offer that they initially put to us. It was unspecified precisely how they would handle it. You are right that Ambassador Zoellick said that he made it clear to the government how difficult it was to deal with sugar. That was a position that he put. Equally, Australia put the positions that you have outlined, that I have mentioned and that the minister has mentioned: we were looking for a comprehensive deal that included sugar. That is the position that we took into the negotiations.

**Senator CONROY**—Perhaps you can help me out. I have never been in any negotiation like this, although I have been in lots of others.

**Senator FERGUSON**—Did you always get what you wanted, Senator Conroy, when you were negotiating pay increases?

**Senator CONROY**—I did better than this, I will tell you.

**Senator FERGUSON**—I bet you did not.

**Senator CONROY**—What sort of offer is an unspecified offer? Is it a blank piece of paper? Is it an attachment saying 'Basket D, blank'?

**Mr Deady**—Allan McKinnon might want to offer a comment.

**Mr McKinnon**—Your confusion can be explained away when I recount that when the US explained what sugar was doing in basket D they said it was an offer of the status quo. That is how they actually put it to us: 'The offer on sugar is the status quo.' So the basket D ones, as

Mr Deady explained, were not specified for any of the tariff rate quotas. Each of them was a negotiation *sui generis* and when sugar came up they said, 'Our offer is the status quo.'

**Senator CONROY**—Did they say that for all the items in that basket at the beginning?

**Mr McKinnon**—No, they did not.

**Senator CONROY**—Did they say that any of them were status quo, zero change, at the beginning?

**Mr McKinnon**—No, they did not. The nature of the negotiations were that they were always prepared to provide us with more details on tariff rate quotas relating to beef, dairy and some of the lesser ones such as tobacco. Sugar was always one that was reserved and we just waited and waited and kept on pressing and saying that sugar, too, had to be included in the final offer from the United States side.

**Senator CONROY**—So at no stage, from day 1, did they ever indicate that there was an offer of movement?

**Mr McKinnon**—At no stage did they ever indicate that there was any offer. The only offer that they articulated was the status quo.

**Senator CONROY**—What was our request on sugar?

**Mr McKinnon**—Our request, originally, was for 250,000 tonnes of sugar.

**Senator CONROY**—How many have we got now?

**Mr McKinnon**—I think we have 87,000 tonnes of sugar into the US market. That request was developed, of course, in close consultation with the industry.

**Senator CONROY**—I appreciate that. The DFAT fact sheet says that 66 per cent of agricultural tariffs go to zero immediately, with a further nine per cent to zero in four years. Last time at senate estimates you advised that, according to article 24 of the GATT, free means zero. So this is not free trade, is it?

**Mr Deady**—Article 24 of the GATT talks about substantially all trade being covered by free trade agreements and it calls for the elimination of all barriers on substantially all trade. That is the legal requirement of an FTA. I think that the deal we have with the United States very easily meets that criteria. We have well over 95 per cent of Australia's exports to the United States—

**Senator CONROY**—I am talking about agriculture at the moment. Only 75 per cent of agricultural products end up tariff and quota free.

**Mr Deady**—That is after four years but then there are further phase-outs of a whole lot of them.

**Senator CONROY**—But beef does not end up free.

**Mr Deady**—The above quota tariff on beef does end up free. The dairy—

**Senator CONROY**—Except for the clause on price.

**Mr Deady**—The safeguard.

**Senator CONROY**—‘Safeguard’ is a very generous term for it. You cannot really describe it as free trade when you have a safeguard that is as severe as this one. It is not like normal safeguards. It is not like the safeguard where if you get a surge you are allowed to snap back. It is much more pernicious than that. I think you would have to concede that.

**Mr McKinnon**—I would like to offer an opinion on that. I do not concede that. When we looked at the safeguard triggers—they are complex—we saw that it would have only triggered a safeguard duty perhaps a couple of times over the last 11 years, when we ran it against a historical price trend.

**Senator CONROY**—I thought that the industry had said that it would have happened six times in the last couple of years?

**Mr McKinnon**—A trigger might have been activated six times but in terms of a duty being imposed when a trigger was activated, that was quite a different story. The reason is that our trade to the United States is highly price responsive and historically we have found that our exports to the United States dipped quite sharply when prices in that market dip. So the history of the trade has been, for example, that just prior to the end of the Uruguay Round we had a tariff rate quote amounting to 300,000 tonnes. We added the extra 70,000-or-so tonnes at that time but our export to the market fell and dipped quite sharply towards 200,000 tonnes in the mid-nineties. That was all in response to price. So, as prices were low in the market a trigger would have activated but it would not have impacted on our trade because we had taken our product out and it was placed into other markets. The safeguard duty cannot be placed on the trade which is flowing within the quotas. So there is a trigger relatively frequently but application of a safeguard duty relatively infrequently.

I think a lot will depend on the way we handle our trade. The likelihood, we believe, is that the safeguard application would actually be very light in reality, if applied at all. The further point I should emphasise is that the United States itself recognised in our discussions that manufacturing beef such as we supplied was likely to be in short supply in the US market but there were very important companies such as McDonalds which were petitioning for an increase in our tariff rate quota. So the safeguard has a clause which says that the United States does not have to apply it. That was a proposal from their side in recognition of the fact that there may be a case when the trigger activates and we could conceivably be still in that market because prices are still high enough, but the US does not want to strangle the trade. There are a number of factors which combine—

**Senator CONROY**—So why did they put it there? It does sound very complicated you have to admit.

**Mr McKinnon**—All safeguards are complicated. They have different groups within their agricultural sector and some are opposed to any sort of import. The beef industry as a whole is perhaps the most pro-trade lobby that they have, but there is a breakaway group up north which is against any imports and I think they are trying to accommodate the concerns of each industry sector. Certainly the processors within the United States do not want the manufacturing beef trade to be limited in any way.

**Senator CONROY**—This safeguard is more pernicious than the Japanese snap-back which caused so many problems for our beef industry last year.

**Mr McKinnon**—I do not agree, Senator, in the sense that the Japanese snap-back is automatically activated and a duty imposed automatically regardless of any other factor. Whereas in this case there is every possibility that other factors, including the way we manage our trade and the different requirements of processes within that market, will lead the United States to not impose a safeguard even if a trigger were activated and even if a safeguard duty could be applied to our trade—that is, even if we were trading over and above the WTO quota, which is large, and the preferential quota, which has a significant increment on the WTO quota.

**Senator CONROY**—It is not possible to argue that this is free trade in agriculture. There is only 75 per cent in four years and then—

**Senator FERGUSON**—That is in your view.

**Senator CONROY**—beef has still got the safeguard and dairy has still not got proper and free access—it is not free trade in agriculture. Even the National Farmers Federation have said that it is not a free trade deal, it is just a preferential trade deal. Under the GATT definition, which we discussed at length last time, it does not qualify in agriculture as free trade, does it?

**Mr Deady**—I do not agree with that. I think that it does qualify as meeting the requirements of GATT, article 24.

**Senator CONROY**—I am talking about in agriculture—

**Mr Deady**—Including in agriculture. It talks about substantial trade and the tariffs—

**Senator CONROY**—You will be able to negotiate for Japan soon with lines like that!

**Mr Deady**—Senator, the only exclusions are sugar, where we have 87,000 tonnes—and I think that is worth roughly about \$40 million of trade into the US market—and dairy where we have an ongoing tariff quota arrangement. For the rest of agriculture the tariffs go over transition periods—admittedly, as long as 18 years in some cases—to zero. So I think that does qualify on any basis as consistent with article 24.

**Senator CONROY**—So Peter Corish does not have a clue what he is talking about when he says that it is not a free trade deal?

**Mr Deady**—Senator, if you are talking about all Australian agriculture going to zero, as was certainly our very strong objective in the negotiations and what we pressed for, no it is not. When we talk about the mass effects of it being disappointing then we are back to that position. Yes, it does not include sugar and dairy is a continuation of tariff quota processes. But, apart from those two products, it is fully comprehensive in dealing with agriculture.

**Mr McKinnon**—The other way of looking at it, if you are considering its suitability against article 24, is that all tariffs but for sugar and dairy go to zero and, even for dairy—although there is a tariff rate quota arrangement as Mr Deady says—at the end of the period those tariff rate quotas continue to grow. At the end of the 20-year period we have a review clause in there indicating a willingness on the part of the US to reconsider all the trading arrangements following that time and we hope at that time to have demonstrated that the extra access that we have got into the US market has not caused any disruption to their markets, but

that the trade continues to grow. The United States argument, when we said we would prefer a much clearer outcome where free trade—

**Senator CONROY**—Yes, but that is what a trade deal delivers—growth and access. There is a difference between that and a free trade deal.

**Mr McKinnon**—The access does continue to grow. I think the argument is that at some stage, if the tariff rate quotas grow large enough, they are not actually impacting upon the trade at all—although in dairy, I admit, it would take a fair while before that happened.

**Senator CONROY**—I am a bit confused about the language so I am hoping that you can clear this up. The fact sheet says 66 per cent and a further nine per cent in four years. Why don't you go on to say that it is 99 per cent at the end of the agreement? Why isn't there a qualification about the other 25 per cent? Accepting sugar—but I do not agree with your beef and dairy argument—is that the further 25 per cent that is the difference? Are there other products?

**Mr Deady**—There are other tariff only products that have longer phase-ins than four years.

**Senator CONROY**—But what I am saying is that, when the deal is fully implemented, 99.9 per cent of products are free. I am trying to understand why we have focused only on the 75 per cent in four years. That might be just a political issue but I am trying to understand why it is not advertised that it is 99.9 per cent free at the end of the deal.

**Mr McKinnon**—The simple reason is that to be able to say it is a very significant proportion of trade immediately or within four years is something that is of great interest to our producers who have an interest in that market. To say that it is all tariffs but two in 18 years does not give them as much of a sense of how much immediate access there is. We want to clearly illustrate that, for a fair part of the United States tariff of roughly 2,000 lines, either straightaway or within a short crop cycle for most vegetables or agricultural products, you have got free access. Yes, there are other things in the 18-year basket and, by and large, if I could characterise those very broadly, there are a range of horticultural products, processed fruits and derivatives—

**Senator CONROY**—Could we get a list of those are that in the 18-year basket. But if you can do it quickly and there are only a few, then fine.

**Mr McKinnon**—There is a number and it is part of the text that we are clearing up—making sure that we agree on which baskets things belong in. So yes, that list will be available.

**Senator CONROY**—Earlier than the full text or just with the full text?

**Mr McKinnon**—I would not anticipate it being available than earlier than next week with the full text.

**Senator CONROY**—In your view—and let's not get into an argument about dairy and beef—other than dairy, beef and sugar, what other products will never get to zero?

**Mr McKinnon**—There are no other products that will never get to zero; 18 years is the longest time frame and then they are zero.

**Senator CONROY**—Sugar aside.

**Mr McKinnon**—Sugar aside, yes.

**Senator CONROY**—Dairy doesn't.

**Mr McKinnon**—Dairy does not get to a zero tariff, no.

**Mr Deady**—But all other agricultural products, as Mr McKinnon has said, do get to zero.

**Senator CONROY**—Putting aside the argument about the safeguard clause for beef, are there any other safeguard clauses for other products that we should be aware of?

**Mr McKinnon**—I was just going to say for the sake of completeness that I should mention that there are a number of price based safeguards for some of the horticultural products. This list is relatively small—I think it is 30 or so—and they are in areas like canned fruits and some odd little things like onions which are dried, and garlic. They are not, by and large, on any of our large areas of trade with United States and in many of these areas there has been absolutely no trade to the United States. In fact, United States exports these products to us. The link is that in their trade promotion authority legislation there are some requirements to, in free trade agreements, look after certain products, so there is a list of price based safeguards. That safeguard, even if we were able to export dried garlic, is not an onerous one. It basically says 'on a shipment by shipment basis, if you undercut the market by a certain percentage then the tariff returns by a proportion of the preferential gap towards the MFN'.

**Senator CONROY**—Is there an onerous safeguard? Before you were saying that the beef safeguard was not.

**Mr McKinnon**—The beef safeguard in its application will not be onerous. The beef one is constructed for beef. This one is much of a standard sort of safeguard. By that I mean, for example, that the bands of prices below which you undercut the US reference price are taken from the WTO safeguard arrangements, so they are fairly standard arrangements in this regard.

**Senator CONROY**—The Japanese beef safeguard kicks in after a fall of 17 per cent and this kicks in at six per cent.

**Mr McKinnon**—The Japanese beef safeguard has no regard for a guaranteed volume into the market, as you would recognise.

**Senator CONROY**—I appreciate that point, but in terms of when it kicks in there is quite a difference between six per cent and 17 per cent.

**Mr McKinnon**—There may be a difference, but I do not compare this safeguard with the Japanese snap-back arrangement.

**Mr Deady**—I think it is also true that the safeguards, apart from the beef safeguard that we have talked about, are for the transition periods only. I am not sure of the phase-ins in the case of some of these products, but they only last as long as the transition period lasts. They are not a permanent feature, whereas the beef one is ongoing.

**Senator CONROY**—And dairy?

**Mr Deady**—Because of the tariff quota system there is no need for one; there is no safeguard in relation to dairy.

**Senator CONROY**—I would like to go through some individual items. There has been a lot of commentary on them, but I am not completely confident that I understand all of the details with all of them. I want to start with the ones we have been talking about. Could you take me through what the arrangements will be for the increase in beef quota—the quota increases per year out to year 18?

**Mr McKinnon**—I will go through them all, unless you have a specific interest. The first point to note about the new arrangements that would be obtained under an FTA is that the within quota duty of US\$4.4c a kilo would be eliminated immediately. The value of this is of the order of \$A16 million to \$A20 million immediately. The over quota duty is going to be phased out. That phase-out does not begin—

**Senator CONROY**—until the BSE problems are—

**Mr McKinnon**—No, this is a slightly separate thing. I will come to the BSE related issue. I am only talking about the over quota duty here. The phase-out of that duty which forms the tariff rate quota walls begins in year 9, so in years 9 to 13 one-third of the tariff is cut. That is approximately 1.76 per cent a year that is cut off the tariff. In years 14 to 18 the tariff declines by the residual two-thirds per cent, an amount of 3.52 per cent a year. The effect is a back loaded tariff cut down towards a zero tariff. So, for the first half you have no tariff cut; you only have the TRQ growth.

It is in the TRQ where there is the explicit link to the issue of BSE, because the quota allocation begins in either the calendar year following US beef exports reaching 2003 levels or no later than in year 3. So in year 1 there is zero in either case; in year 2, an additional 15,000 tonnes if, of course, the United States has reached its 2003 export levels; in year 3, an additional 20,000 tonnes over our current access; in year 4 there is 20,000; in years 5 and 6 there is 25,000; in years 7 and 8 there is 30,000; in years 9 and 10 there is 35,000; in years 11 and 12 there is 40,000; in years 13 and 14 there is 45,000; in year 15 there is 50,000; in year 16 there is 55,000; in year 17 there is 60,000; and, finally, in year 18 we reach the full increment of 70,000 tonnes of preferential TRQ.

There are some other important items to note. We have talked about the safeguard, so I will not touch on that again. Product coverage relates to manufacturing type beef. That is one issue that we are still talking with our US colleagues about.

**Senator CONROY**—I will come back to the type of beef.

**Mr McKinnon**—An important element is that the tariff rate quota administration would be through the United States Customs recognition of Australian export certificates. We have a side letter where we commit ourselves to work cooperatively in Codex and OIE on BSE standards. That is something which we are already doing with the United States. And then there are the post-transitional safeguard issues that I talked about. The other thing to highlight for your attention is that, in addition to the post-transitional safeguard, there is a transitional safeguard. That transitional safeguard is triggered if beef imports in the United States from Australia exceed the TRQ level by 10 per cent, in which case the duty snaps back from whatever is the preferential rate at that time, recalling that it was back-loaded, to 75 per cent of the difference between MFN and preferential. So it comes back there.

**Senator CONROY**—Which lucky person gets to sit there with the calculator keeping track of all of this? Will you be looking after it?

**Mr McKinnon**—I think we can do all that with computers these days, so it will be okay.

**Senator CONROY**—So does the department look after that or the industry?

**Mr McKinnon**—My colleagues in the Department of Agriculture, Fisheries and Forestry will be administering the export certificates.

**Senator CONROY**—It certainly sounds as though it is freed up.

**Mr McKinnon**—I think it is a lot better than it was.

**Senator CONROY**—And the quota still applies at the end of the 18 years.

**Mr McKinnon**—The quota will still apply because, although you are nominally at a zero tariff, in the instance where there could be a safeguard duty apply it could not apply to any of the amounts for either the WTO quota or the preferential quota. Sending beef with a certificate will ensure that it cannot be affected by a safeguard duty. The quota will still exist—

**Senator CONROY**—I am looking for Senator Ferguson, one of our well-known farmers, being encouraged into growing some cows. Should he rush out and get into the cow growing market?

**Mr McKinnon**—I cannot account for Senator Ferguson's business decisions.

**Senator FERGUSON**—Cow growing market? Is that one of Mr Latham's new terms?

**Senator CONROY**—I am being facetious. You do not have to worry.

**Mr McKinnon**—I think the outlook for beef farmers will be better by reason of this agreement.

**Senator CONROY**—I want to talk about the type of meat cuts, which you briefly alluded to before. On this one, I absolutely defer to my National Party and farming colleagues down at the other end.

**Senator FERGUSON**—Defer to Senator Macdonald. He knows more about cows than you do.

**Senator CONROY**—I have no doubt about that whatsoever. He does not know as much about bull as you but he certainly knows more about cows. What type of meat cuts will be in the increased quota?

**Mr McKinnon**—That is one of the things that we are currently discussing with our counterparts in USTR. The product coverage is limited to manufacturing type beef. That sounds simple, but we have to pin that down by some definition against the tariff classifications or in some other way that is workable and simple.

**Senator CONROY**—You are an agricultural expert; help me out. What are we talking about?

**Mr McKinnon**—What we are talking about in manufacturing type beef is—

**Senator CONROY**—Is that sausage?



**Mr McKinnon**—It is much better than sausage. It is very lean trimmings off our cattle when they are slaughtered for other purposes. Our cattle, being grass fed, have very low fat levels, so you get a beef offcut which, when ground, has a fat content as low as—

**Senator CONROY**—So it is ground beef?

**Mr McKinnon**—It will be ground when it gets there. It is not ground as it goes there. It could be frozen in blocks. The very important point is that it is very low fat, and that is where the demand for this beef is so strong in the United States as they want to head towards a lower-fat processed meat.

**Senator CONROY**—It is not hamburger meat?

**Mr McKinnon**—It would be used in hamburgers. In fact, as I mentioned to you earlier—

**Senator CONROY**—So we are talking hamburger meat?

**Mr McKinnon**—We are talking about meat that will be, by and large, minced up into hamburgers. The way we describe it is that, at the moment, four out of every 100 hamburger patties in the United States comes from Australian beef.

**Senator CONROY**—And we are going to have five?

**Mr McKinnon**—That is what we were aiming for.

**Senator CONROY**—But we did not get there.

**Mr McKinnon**—We did not quite get that. The important thing to recognise is that this beef by itself is valuable but it is much more valuable when mixed with the United States beef offcuts which, because they are grain fed, have high levels of fat. They cannot be used for anything else, basically, besides the soap industry. But when they can be mixed together with our very low-fat beef trimmings they make a very valuable mixture which is used in US hamburger patties.

**Senator CONROY**—At this stage we have identified hamburger meat to go overseas. Is that the full 70,000 tonnes?

**Mr McKinnon**—That is the full 70,000 tonnes. I think it is worth pointing out that we export—

**Senator CONROY**—Would that be defined as high quality? As you know, I am not an expert.

**Mr McKinnon**—It is not defined as high quality. But I should say that this deal is structured so that we can grow our high-quality beef exports to the United States, were we able to compete in that market. At the moment we have a growing trade of chilled beef into the US market—that is, cuts which are more for the plate rather than for processing. That trade, out of the current quota of about 378,000 tonnes, amounts to about 30,000 tonnes, but it is growing. All of that WTO quota is unaffected by what we are negotiating here. So all of that WTO quota of 378,000 tonnes could be filled by chilled beef, were we to want to export that much chilled beef to the United States market. What we have ensured is that, by our ability to manage the trade with export certificates, we will be able to have chilled beef available to interested purchasers in the United States throughout the whole year.

**Senator CONROY**—So we have got an agreement to export an extra 70,000 tonnes of hamburger meat.

**Mr McKinnon**—Of manufacturing beef.

**Senator CONROY**—Which will go into hamburgers.

**Mr McKinnon**—I think most of it will go into hamburgers. Some of it could go into other processed meats, but most of it will go into hamburgers.

**Senator CONROY**—I asked about sausages earlier and there was great laughter down the other end, but what about in sausage meat?

**Mr McKinnon**—Basically hamburger meat—I think that is a fair characterisation of it.

**Senator CONROY**—But not sausage.

**Mr McKinnon**—I do not know every end use of it but it is basically hamburger meat.

**Senator CONROY**—What is our total beef quota?

**Mr McKinnon**—378,214 tonnes.

**Senator CONROY**—That is at the end or at the beginning?

**Mr McKinnon**—That is now.

**Senator CONROY**—Within that, about 30,000 tonnes is chilled, I think you described it.

**Mr McKinnon**—Chilled.

**Senator CONROY**—I guess if we stuck the hamburger meat into the increase we could then increase the chilled beef, from the way you have described it. You could squeeze it up, if you can follow that analogy.

**Mr McKinnon**—There are the constraints upon what we can send within that 378,000-tonne WTO quota. We can send high-quality grain-fed beef, we can send chilled beef, we can send anything.

**Senator CONROY**—But the increase that we have negotiated is only the hamburger meat?

**Mr McKinnon**—The increase we have negotiate it is limited to manufacturing beef, that is right. But, as I say, it is important to note that we have structured the arrangements so that we can make sure that chilled beef or whatever sort of beef we want to have delivered into the United States is available throughout the 12 months of the year.

**Senator CONROY**—You mentioned you were still trying to resolve something. Can you explain what it is that is unresolved?

**Mr McKinnon**—Exactly what is unresolved is how you define manufacturing beef. The United States has orally given us fairly complex descriptions of how you would carve out certain parts of their tariff to equate to manufacturing beef. We would prefer something much simpler, just saying ‘frozen beef’, for example. We want to make it as simple as possible. We are just discussing what definition would allow us to achieve that.

**Senator CONROY**—It is a fairly important point.

**Mr McKinnon**—That is typical of the sort of details that are being fixed up in the scrub. It is not particularly important of itself. It is important, but it is just one of many. It is not one where they are seeking to take particular advantage of us. It is just how technically you achieve something that is manufacturing beef.

**Senator CONROY**—And this comes down to which part of the cow you chop it from.

**Mr McKinnon**—It comes down partly to which part of the cow you chop it from but also to how you send it there, higher-quality cuts of meat generally not been frozen, which deteriorates the equality somewhat, but being sent chilled.

**Senator CONROY**—We mentioned the safeguard. Some reports, as I think I mentioned, have indicated the safeguard would have kicked in for six out of the 10 years from 1990 to 2000. You did not find that?

**Mr McKinnon**—I drew the distinction between a safeguard trigger being activated and the possibility of a duty being applied. The very important point—just to remind you, Senator—was that historically—

**Senator CONROY**—I remember that part. How many times do you think the trigger will be triggered in the next, say, three years?

**Mr McKinnon**—It is pure speculation. We think that beef prices in the United States are likely to firm. I think that it will trigger less often than it has historically.

**Senator CONROY**—What is the penalty that applies? I think you mentioned it earlier. It goes back to some average over—

**Mr McKinnon**—This safeguard that we are talking about now is the post-transition safeguard. At that time the tariff will be zero. The duty that would apply, if it applied, would be 65 per cent of the most favoured nation tariff. I guess it is also important to emphasise that even if a safeguard duty were imposed we would still have preferential access relative to those countries that did not have a preferential agreement with the United States. It is also worth reminding you that it could not apply to any of the beef inside either of our TRQs—the very large WTO one or the preferential one.

**Senator CONROY**—So, of our existing 378,000 tonnes, we have 30,000 tonnes of chilled beef of high quality. I presume that means high value as well.

**Mr McKinnon**—It is higher valued; that is right.

**Senator CONROY**—So you get a better return.

**Mr McKinnon**—You get a better return.

**Senator CONROY**—And we can substitute the 70,000 extra tonnes of hamburger meat from inside the existing 378,000 and in reality increase to 70,000 tonnes of chilled beef and not have a problem?

**Mr McKinnon**—I understand what you are driving at. I do not think it is right to talk about substituting between the two quotas but I think it is fair to say that we can send 378,000 tonnes of chilled beef. That is absolutely unconstrained by anything.

**Senator CONROY**—Now I want you to run me through dairy.

**Senator FERGUSON**—You are a bit of a primary producer, Senator Conroy.

**Senator CONROY**—I may know as much as you or Sandy by the end of this process if I am lucky, and I will be better for it.

**Mr McKinnon**—I am afraid dairy is a little more complex.

**Senator CONROY**—A little more complex than that one!

**Mr McKinnon**—Basically there are a range of quota constrained products which were the objects of this negotiation. Where they are not constrained by quota—casein and things like that—they are going to zero. I will give you the categories of the quota constrained products. It is also important to note that in all of these we did not have an initial quota allocation under the WTO. In some of them we have no current access; in some of them we have access. I will read the categories, our WTO quota base, the initial free trade agreement amount and the growth. One other important point to note before I start on these different categories and what the quota amounts are growing by is that the within-quota tariff, where we do have existing access, drops to zero. This is worth some millions of dollars to our dairy industry straightaway. I cannot quantify the exact amount; it is much more complex than the beef example. One product category is a multipart category: milk, cream and ice-cream. We have no access and we will move to 7.5 million litres of access.

**Senator CONROY**—Milk, cream—

**Mr McKinnon**—And ice-cream. It could go, say, as frozen cream, as ice-cream or as milk if that trade was possible.

**Senator CONROY**—It is zero at the moment?

**Mr McKinnon**—We have zero access at the moment and we would move to 7.5 million litres. That would grow—

**Senator CONROY**—Somebody has described that as one ice-cream per farmer here in Australia. Is that a large amount in terms of the amount of—

**Mr McKinnon**—I am not sure what their ice-cream consumption habits are. I am not even sure that it works out to be one per farmer. I could not offer a view on that.

**Senator CONROY**—I think the suggestion that they were perhaps getting to with that analogy was that it was a relatively trivial amount.

**Mr McKinnon**—It is significant in the sense that it would enable the establishment of trade in, say, premium ice-cream into the United States by companies in Australia that would want to do that. That is the only comment I would make about it. It continues to grow at six per cent.

As I go through these figures, I just highlight that some grow at six per cent, some grow at three per cent, some grow at four per cent; it is an average of five per cent. The ones that grow at six per cent are the ones that our industry identified as priorities. We have higher growth rates against those ones.

For ‘condensed milk,’ we have a current WTO allocation of 92 metric tonnes, an initial FTA amount of 3,000 metric tonnes and a growth rate of six per cent. For ‘Butter and butterfat’, we have no access, an FTA amount of 1,500 metric tonnes and a growth rate of

three per cent. We have a range of skim milk powder for which our current access is 600 metric tonnes, the initial FTA quota is another 100 metric tonnes and the growth rate is three per cent. For the category of ‘whole milk powders, blended milk powders and feeds’ we have a small quota of 57 metric tonnes—these are all WTO quotas—our initial free trade agreement quota is 4,000 metric tonnes and the growth rate is four per cent. For the category of ‘other dairy’, which is a sort of catch-all category of blended dairy products and new dairy products, we have a WTO quota of 3,016 metric tonnes, an initial FTA amount of 1,500 metric tonnes and growth of six per cent. For ‘cheddar’—

**Senator CONROY**—That is separate from ‘other dairy’, is it?

**Mr McKinnon**—Yes, it is. ‘Other dairy’ is a catch-all category in the tariff. For ‘cheddar’, 2,450 metric tonnes is our current WTO quota. We have an additional 750 metric tonnes, growing at three per cent. There are about another six of these.

**Senator CONROY**—That is fine.

**Mr McKinnon**—For ‘American cheese’, we have 1,000 metric tonne as the WTO quota.

**Senator CONROY**—What is American cheese?

**Mr McKinnon**—I think it is a bright yellow, sliced, Coon-looking cheese. Those who have lived in the United States might be able to offer a more technical explanation.

**Senator CONROY**—I do not know that I have ever nibbled it.

**Mr McKinnon**—It prominently appears on cheeseburgers. The WTO quota is 1,000 metric tonnes and we have an additional 500 tonnes in our FTA quota. That also grows at three per cent. For ‘Swiss cheese’, we have a WTO quota of 500 metric tonnes, we receive an FTA quota of 500 metric tonnes—

**Senator CONROY**—That is extra—so it is doubled?

**Mr McKinnon**—Yes, it has doubled. That grows at five per cent. For ‘European type’—just think of those as brie or anything else—zero is our current access and we have 2,000 metric tonnes growing at five per cent. For the category of ‘NSPF’, which is ‘not specifically provided for’ elsewhere in the tariff—again, it is another catch-all category, but one of particular interest to our industry—we have a current WTO quota of 3,050 metric tonnes.

**Senator CONROY**—What is actually in there, just out of interest?

**Mr McKinnon**—Typically speaking, I do not think they are what you would see as a retail product. They are sort of blended dairy formulations that are used as inputs into other end-use products. I would not like to test my knowledge any more than that on that one. Our WTO quota is 3,050 metric tonnes; we have an extra 3,500 metric tonnes as part of the FTA, growing thereafter at five per cent. There is a category ‘low-fat NSPF’—the not specified elsewhere category. We have no quota for that and we got no FTA quota. We did not want any quota—we do not really produce it in Australia.

Then there is a Goya cheese, which is a hybrid because it is a tariff only line. We are eliminating the tariff on that in 18 years. We have current imports into the United States. We are not sure of the exact figure; we believe it is between 1,200 tonnes and 2,000 tonnes. Our

own industry was not able to provide more clarity than that. We have an initial FTA allocation of 2,500 tonnes growing at five per cent.

**Senator CONROY**—Is that an extra 2,500 tonnes?

**Mr McKinnon**—That is an extra 2,500 tonnes. The effect of that tariff rate quota is to remove the tariff immediately. So although it is an 18-year phase out, if we were able to ship more than 2,500 tonnes, as a tariff only line, the tariff is gone after 18 years. And for the current trade we lose the tariff straight away. This is something that our industry asked us to craft.

**Senator CONROY**—No pun intended?

**Mr McKinnon**—No, no pun intended at all. There are two more points I would like to make to you. The first point is that we have the right to manage the quota. That is a very important point because it enables us to obtain the quota rents; so that is more valuable. The second point is that again the United States has given us a commitment to review these market access provisions. Those growth rates continue throughout what is called loosely a transition period of 20 years, but they continue beyond that too. They continue into perpetuity but we have sought a review beginning at year 20 to talk about how the market is evolving. Basically, we will be intending to continue to push for better access at that time.

**Senator CONROY**—Thank you for all of that. Could you help me to put that into an overall context? As you know there have been some claims that there are \$2 billion or \$4 billion of benefit to the economy. That sounds very impressive to a layperson because it is a big number, but in terms of its size compared to the rest of the economy it is actually a minuscule amount—0.001 or 0.002 per cent or something like that. Have you done calculations about what sort of percentage increase those outcomes are compared to the existing amount of exports? To put it as unkindly as those dairy farmers who were critical are putting it, it is one extra ice-cream. I would not want it in ice-cream terms, but is it a 50 per cent increase in our total exports for say, milk, cream and ice-cream or is it only a one per cent increase? The volumes sound very impressive because if you go from zero to 7.5 million litres that sounds like a lot to me but that may be only one extra tanker. I do not know how many litres there are in a tanker. Have you done a calculation like that so I can put it in perspective?

**Mr McKinnon**—I do not have a calculation of the value of that extract as against Australia's total exports at this time but I can say—

**Senator CONROY**—I am talking about exports currently in that same product.

**Mr McKinnon**—I do not have that calculation with me and I do not know that it has even been done. It would not be too difficult to do. We have calculated the value of that extra access against what we currently ship to the United States. That extra access is worth \$US41 million; that is roughly 150 per cent more than our current access.

**Senator CONROY**—That sounds like a big number and it may be a huge number. It could be a big outcome. I am just trying to get it into perspective.

**Mr McKinnon**—I can put it into some perspective for you, Senator. As I said, it increases our current exports to the United States market by about 150 per cent—that is immediately—

and it grows thereafter by five per cent a year. I think, of the roughly \$2 billion worth of exports we send to the world, only about five per cent currently go to the United States.

**Senator CONROY**—So it is coming off a very low base. The 150 per cent figure sounds huge but it is coming off a very low base of our total exports to these countries.

**Mr McKinnon**—Yes, that is right; it is a very tightly quota constrained market, and that means that the premium rents on the quotas are quite important. That is why I emphasised the point that we had the right to administer the quota. So we will capture those quotas.

**Senator CONROY**—Does the government or the dairy industry get that?

**Mr McKinnon**—The government will have to have a role in administering it, but it will be the dairy industry that captures the value of that rent very directly. Again, I keep on making the point that these are the ones that are constrained by quota. There is a very significant trade in tariff only lines. They do not face particularly high tariffs, and those tariffs—such as they are—will go to zero over 18 years.

**Senator CONROY**—Some of those are very small tariffs, though, aren't they?

**Mr McKinnon**—They are very small—0.1 per cent in figures.

**Senator CONROY**—Minuscule.

**Mr McKinnon**—That is right, but I make the point that we are talking only about a subsidy of our trade to the United States. When I say that this will increase the volume of our trade under the quota constrained categories by 150 per cent, I am talking only about this subsidy.

**Senator CONROY**—But given that we started off with zeros in some places—very small and minuscule amounts—150 per cent sounds incredibly impressive. I am just trying to put it into context so that people have a context to keep within. Thank you very much for that; it is very helpful. The DFAT fact sheet says that Australia will get immediate zero tariff treatment for horticultural products such as oranges, mangoes, mandarins, strawberries, tomatoes, cut flowers and fresh macadamias—and we have heard a lot about fresh macadamias in the last week. Does immediate zero tariff treatment mean immediate market access?

**Mr McKinnon**—Yes, Senator. I should say that for some of those products there may be a requirement to negotiate a sanitary and phytosanitary protocol.

**Senator CONROY**—My very next question is: which of those products are still subject to quarantine restrictions?

**Mr McKinnon**—One prominent example in the market access outcome that we have achieved would be avocados, where we have an additional 4,000 tonnes growing at an increment of 400 tonnes per year and then going to zero tariff after 18 years. Even the increment of 400 tonnes per year is, I understand, equal to our total exports of avocados each year. So that is a significant outcome. But we do not have a protocol with the United States.

**Senator CONROY**—But there is a seasonality issue as well as a quarantine issue.

**Mr McKinnon**—There is a seasonality issue but we achieved quotas in both sides of the year. It is 1,500 tonnes in one side and 2,500 tonnes in the second half of the year. We were taking advice on the seasonality issues from the horticultural industry representatives who

were in Washington, so we have real quota access. We do have to negotiate the sanitary and phytosanitary protocol.

**Senator CONROY**—So no protocol means no export?

**Mr McKinnon**—No protocol means no exports.

**Senator CONROY**—So which products are subject to these quarantine restrictions still? I listed oranges, mangoes, mandarins, strawberries, tomatoes, cut flowers, flesh macadamias and avocados. Which of these lines are still subject—and I am sure the chair is very interested in this.

**CHAIR**—I love avocados.

**Mr McKinnon**—What I can say is that many of our exports in this category where we have achieved better access do not have any problems. A protocol that allows trade to flow is already in place. Oranges would fall into that category, as would macadamias, flowers—a whole range of them. But across the 2000 tariff line I am also sure that there would be products where we would be opening up export opportunities where we—

**Senator CONROY**—Stone fruit is one that I think has been kicked around.

**Mr McKinnon**—Stone fruit, conceivably—I do not know. There is a question when you negotiate a tariff cut of what industry supply capability is, and that will determine the sort of work that is done on—

**Senator CONROY**—Avocado would be a stone fruit—right?

**Mr McKinnon**—Yes. I do not know how they categorise it, but it does have a stone in the middle of it.

**Senator CONROY**—It has a stone in the middle of it. Even I have discovered that.

**Mr McKinnon**—As a general comment, we negotiated with our US colleagues about which baskets things fell into. Although we had success in moving things from basket D through to C to B to A, I said that that list would be available to you. As our guide for our priorities in negotiations, we took what the industry priorities were. These were coordinated through the horticultural market access committee. They took into account access conditions obtained at the present, and I am making a judgment about the possibilities of obtaining protocols for issues such as, say, avocados.

**Senator CONROY**—I am sure they are optimistic, but could I get from you a list of the products which require some sort of protocol—to borrow your phrase—before they can leave our shore and land over there?

**Mr McKinnon**—It is the responsibility of Biosecurity Australia to negotiate those protocols. I can also say that across 2,000 tariff lines you would come up with an enormous number of things that you would not have a protocol for where but there would be absolutely no trade interest from industry.

**Senator CONROY**—I am just trying to find out which ones we do want to export that we cannot get because we do not have a protocol.



**Mr McKinnon**—I think it would be a more discrete and useful list if we could look at things where we did want to export but there was no current protocol. We could certainly look at industry's complete list of priorities. We did consult with industry fairly closely and as comprehensively as we could in advance of negotiating. We will compare that list against industry's complete list of priorities for the negotiation.

**Senator CONROY**—What about mangoes? They have a pip in the middle of them—a big one.

**Mr McKinnon**—Yes, they do have a pip.

**Senator CONROY**—They would be constrained? We do not know if we can send a mango out of the country yet.

**Mr McKinnon**—I am not sure whether we currently have access for mangoes into the United States in terms of having a protocol negotiated.

**Senator CONROY**—The Australian Horticultural Exporters Association has said that poorly informed industry groups are claiming gains and advantage for our horticultural industry that simply do not exist in the US. Are you aware of their claim?

**Mr McKinnon**—I am not aware of that claim. I can tell you that horticultural industries were represented by the Horticulture Market Access Committee in Washington. They had two representatives there. They were—

**Senator CONROY**—Have you heard of the Australian Horticultural Exporters Association? I was not familiar with them until this week.

**Mr McKinnon**—I cannot comment on that sort of report. I have heard of them.

**Senator CONROY**—I am just asking whether you are familiar with them.

**Mr McKinnon**—Yes.

**Senator Ian Campbell**—Perhaps Senator Conroy could table the document so that we know what he is referring to. That would make it easier for us.

**Senator CONROY**—I am not sure I have it. I will see if I can get it. I am happy to table it; I just do not have it physically here.

**Senator Ian Campbell**—It just makes it easier for us to respond.

**Senator CONROY**—Are they considered to be the major umbrella group in the industry?

**Mr McKinnon**—I would not care to characterise them one way or another. I can say that we went to groups that represented industries—for example, the macadamia group and as many different industries as we could identify. We had the horticultural representatives there to provide us with an overview and we negotiated on the basis of the priorities that were indicated to us by industry. I think that was a reasonable way to go ahead considering how many different products fall under the overall horticultural umbrella.

**Senator CONROY**—I mentioned mangoes before. I am hoping that we can clarify that we cannot export any mangoes as well. Can we come back to particularly the stone fruit and those products which are still restricted?

**Mr McKinnon**—Certainly.

**Senator CONROY**—Strawberries have pips. They would not be a stone fruit, would they? Are pips counted?

**Mr McKinnon**—I do not know, but I do not think that it is pip free or pip in that counts for sanitary and phytosanitary protocol purposes. I am sure it is part of the consideration.

**Senator CONROY**—Can we just clarify the arrangements for avocados? What are the arrangements for avocados in terms of seasonality and market access?

**Mr McKinnon**—The arrangements for avocados are as follows. The current tariff is 11.2c a kilogram. We have a split tariff rate quota or two tariff rate quotas, whichever way you care to look at it. We have 1,500 metric tonnes which can come in in the period 1 February to 15 September and 2,500 metric tonnes that can enter in the period 16 September to 31 January. So the whole year is covered. Both of those TRQs start in year 2. Both grow at 10 per cent per annum. Tariffs are eliminated over 18 years. Again, the Horticulture Market Access Committee has advised us—this is in Washington rather than subsequently—that the Australian avocado season is June to September and, if we take into account the 28-day shipping and handling period, that would mean that Australian avocados would be available for marketing in the United States from July to October, their estimation then being that this would enable Australian producers to take full advantage of both TRQ periods.

**Senator CONROY**—It would be fair to say that we cannot export avocados whenever we want.

**Mr McKinnon**—Their advice is that we will be able to take account of both of those periods—

**Senator CONROY**—There are two defined periods in which we can export.

**Mr McKinnon**—The periods together account for the whole year, and we are going to be able to take account of both of those so we will be able to export throughout the year.

**Senator CONROY**—Okay. Are there any other products with this seasonality clause? Are avocados the only one where we have this seasonality issue?

**Mr McKinnon**—Avocados are the only one where we have that seasonality issue.

**Senator CONROY**—Are there any other issues like that?

**Mr McKinnon**—I am scouring my memory. There were a lot of details talked about but I cannot recall any other one. This one was quite prominent because of that angle. I am confident that there are none. If I have made a mistake I will come back to you very quickly and repair that mistake.

**Senator CONROY**—Is this the first time Australia has agreed to a seasonality arrangement in an FTA?

**Mr McKinnon**—I might defer to my colleague who looks after FTAs. I would not even hazard a guess, the detail in each FTA being so specific to the market access negotiations. I will take it on notice unless my colleague would like to offer a comment.

**Senator CONROY**—It sounds unique.

**Mr Deady**—I could not speak for the Thai FTA—

**Senator CONROY**—No-one can. It is not on the web site yet.

**Mr Deady**—Seasonal tariffs are certainly not unique. Seasonal tariffs are a factor of the WTO and they are a factor of a number of countries' tariff schedules, so they are not unique in that regard.

**Senator CONROY**—How long do you anticipate these protocols on quarantine will take? Is that like, 'How long is a piece of string?'

**Mr McKinnon**—I could not speculate, because that is not my area of expertise. I think we are already awake to the requirement, and the processes will be starting. It will go as quickly—

**Senator CONROY**—It will take a long time. Look at Australia; we have taken a couple of years to go through. We have just announced bananas and apples and something else today.

**Mr McKinnon**—I cannot see that as a criticism of the market access arrangements, for the simple reason that—

**Senator CONROY**—That is providing they come up with the 'yes' answer; if they come up with the 'no' answer you have delivered a big quota increase in something we cannot land on their shore.

**Mr McKinnon**—That is a fair point. With our pest and disease status I am very optimistic about that outcome. Without knowing the details of avocado pests and diseases—

**Senator CONROY**—We have a real problem with stone fruit, then.

**Mr McKinnon**—All I can say is that our industry had not requested, to my knowledge, the initiation of negotiations for a protocol for access to the United States market prior to the negotiated outcome here. It is only the market access that we have here that leads to this question of having to have a protocol.

**Senator CONROY**—I want to ask about the implications of all these arrangements that we have signed up to.

**Senator Ian Campbell**—To be helpful, Mr Chairman, we could seek the information for the senator from the relevant agency. Clearly, this is the sort of information that would need to come up before the select committee. The quicker we get the answer, the better.

**Senator CONROY**—We will get to the bottom of it.

**Senator Ian Campbell**—The senator is obviously trying to look at all of the reasons why the FTA will not work; the better the information we get to show him that it might work, the better it might be for the government's chances of getting the package through the Senate. We will try to be as helpful as we can.

**Senator CONROY**—I always anticipate that that is how you are operating, Senator Campbell. Given all these things that we have agreed to in this particular FTA, what are the implications for our negotiating position on agriculture in the Doha Round?

**Mr Gosper**—The first point I would make is that the agreement that has been negotiated is fully consistent, we expect, with all the WTO rules relating to regional trade arrangements and

FTAs, that is, with all the requirements set out under article XXIV of the GATT agreement, the General Agreement on Tariffs and Trade.

**Senator CONROY**—So if Japan says, ‘No sugar equals no rice,’ you will say that that is consistent and we will do that deal?

**Mr Gosper**—The requirements under article XXIV are twofold, as I think you probably know because I think we had this discussion last time. Firstly, they should cover substantially all the trade between the parties negotiating the agreement. And they should not raise barriers to other parties in the trading system. This agreement indeed does meet all those requirements. There is an ongoing debate within the WTO of course as to how you define ‘substantially all trade’, and that has been going on for many years—decades.

**Senator CONROY**—We have just changed sides though.

**Mr Gosper**—No, we did not change sides at all. In fact Australia has always had the strictest definition of how one defines ‘substantially all trade’. That definition—

**Senator CONROY**—We have always said that it should not include sugar?

**Mr Gosper**—No, Senator. We have always had amongst the strictest definition of how ‘substantially all trade’ should be defined, and this agreement is perfectly consistent with that definition. There is an ongoing debate, as I said, about how one should define ‘substantially all trade’. We have taken the position that a definition should be such that no particular sector could possibly be excluded from the agreement—so agriculture could not be excluded from the agreement. But all parties, I think, understand that such agreements need to cover a proportion of trade or tariff lines. This agreement, we expect, will have a proportion of tariff lines covered which is extremely high by the standard of FTAs, well above the FTAs that have been negotiated by some other parties—well above 95 per cent, for instance. So that would be fully consistent with article XXIV—

**Senator CONROY**—You need a bit of a cold shower there, Mr Gosper. Mr Vaile is on the public record as stating that this is the smallest and slowest offer that has been accepted by any country in an FTA with United States.

**Mr Gosper**—I am not aware of that reference or whether it was referring to a particular part of the negotiation, but this agreement is, without—

**Senator CONROY**—It was about agriculture.

**Mr Gosper**—question, fully consistent with article XXIV. It will cover substantially all trade on the strictest definition.

**Senator CONROY**—That was not the point I was making. I was suggesting that you were talking it up a bit there, and even Mr Vaile is not trying to pretend it is the best thing since sliced bread and better than other outcomes in terms of agriculture. Even he has conceded that. Mr Vaile has accepted that it is the slowest and smallest.

**Mr Gosper**—Maybe these are two different questions but I am certainly saying that it is fully consistent with the WTO disciplines. As Mr Deady has already said of course, it is not as complete as we would have liked, and the government has been very clear about that.

**Senator CONROY**—Some unkind wits have suggested to me that we could offer a similar arrangement to Japan and just scratch out ‘sugar’ and write ‘rice’—and Japan would sign this. Have you any view? This could really speed things up.

**Mr Gosper**—That would be very speculative, Senator. I do not have any view on that.

**Senator CONROY**—The question I asked you—and I appreciate the answer you have given but it was not actually to the question I asked—was about the implications for our negotiating position, not whether it was consistent with the WTO. I am talking about our negotiating position with the Japans and the Europes of this world when we ask them for free access to their markets. Do you think this agreement has any impact on our negotiating position?

**Mr Gosper**—I think that the position we have arrived at in this negotiation is fully consistent with our overall negotiating position as well as with the WTO rules. As Mr Deady and Mr McKinnon have outlined, it does result in substantial improvements in market access to the United States. Of course the WTO negotiation is not just about market access. In fact it is about a range of disciplines that cover market access, domestic support and export subsidies. In the Doha Round, for instance, we have a commitment by all members as part of the Doha mandate to make improvements in all those areas—the elimination of export subsidies, substantial reductions in domestic support and substantial improvement, not complete liberalisation, in market access. So this agreement is perfectly consistent with a mandate.

**Senator CONROY**—So: no impact. Have you talked to any other embassies around the world? Is that part of your job?

**Mr Gosper**—I have not been talking to any other embassies around the world.

**Senator CONROY**—Are you receiving any intelligence from our embassies about what other countries think about this?

**Mr Gosper**—I have seen some references to comment made in the press about the agreement, mostly focusing, of course, on the regrettable failure of the US to provide any additional access on sugar. But I have not seen any particular official comment beyond that, aside from a number of comments from New Zealand ministers.

**Senator CONROY**—I thought our long-held negotiating position on a trade deal was that agriculture should be treated on the same basis as trade in other goods.

**Mr Gosper**—Indeed we are looking through the multilateral negotiations and through other negotiations to remove some of the special privileges applied to agriculture.

**Senator CONROY**—So we have been arguing that everything should be treated the same. Do you think there is an issue of credibility with our position? Is our credibility in any way affected? You are comfortable?

**Mr Gosper**—It should not be. Frankly, this is a negotiation about market access and it has resulted in improvements. I think experience over recent years with the multilateral negotiations shows very much how hard it is to negotiate any improvements to market access through the multilateral system at the moment. I think most people understand, of course, that

as a bilateral agreement this does not address some of the fundamental issues relating to domestic subsidies and export subsidies.

**Senator CONROY**—Japan and the EU have argued for years that agriculture is essentially a special product, that it has a range of roles beyond merely the production of food, and therefore it should be treated differently to manufactured goods. Isn't that their position?

**Mr Gosper**—Indeed that is their position.

**Senator CONROY**—We have just agreed with the US that sugar falls into that category.

**Mr Gosper**—We have not negotiated any additional access for sugar, but we have negotiated improvements to market access for other agricultural products.

**Senator CONROY**—Are you aware of any reaction from Japan and the EU to the deal? I have heard a few whispers.

**Mr Gosper**—I heard rumours of reports from the Europeans, but nothing official or formal.

**Senator CONROY**—What does your intelligence gathering tell you?

**Mr Gosper**—As I said before, there has been a bit of press comment about the fact that the US did not agree to any reform of sugar. That is seen as confirming, I think—

**Senator CONROY**—But nothing about Australia's position by accepting that proposition?

**Mr Gosper**—I have not seen anything along those lines, no.

**Senator CONROY**—No-one anywhere in the world in our embassies has picked up a word about what people think of Australia's position?

**Mr Gosper**—I have seen a number of reports commenting on the deal and on the exclusion of sugar but, no, I have not seen anything specific on that. I am not saying it does not exist. I just have not seen it myself.

**Senator CONROY**—Japan have consistently said 'no rice' in any discussions with anybody, from what I can work out. We have now signed up to a Japan style position—substitute sugar for rice.

**Mr Gosper**—I do not see how we have signed up to a Japan style position.

**Senator CONROY**—Their rice is a special product. Sugar is a special product, and we have agreed it is.

**Mr Gosper**—We have not agreed that sugar is a special product. We have access for 87,000 tonnes. We were not able to increase that in this negotiation.

**Senator CONROY**—Do we get any rice into Japan at the moment?

**Mr Gosper**—Yes, we do.

**Senator CONROY**—They do not want to give us any more, because they say it is a special product.

**Mr Gosper**—They do not want to give us any more. Japan considers that a number of products are special.

**Senator CONROY**—So it is only if it is one that it does not undermine our credibility.

**Mr Gosper**—I do not follow the question.

**Mr Deady**—Can I just make one point here. When you talk about the slowest and smallest deal—

**Senator CONROY**—No, I do not. Mr Vaile has.

**Mr Deady**—I am not sure, as I have not seen that actual quote, but what we have here and what we have to recognise is that we are a very efficient and a very diverse agriculture producer and we have negotiated a market access deal with the United States, as we have been talking about, that covers the whole raft of agriculture apart from one product. That is the size of the deal that we have negotiated, and I do not think that should be overlooked. We will have duty-free access on this raft of agricultural products, apart from one, as a result of this deal with the United States. That is a very big outcome.

**Senator CONROY**—I can only point to Mr Vaile's comments; I am quoting Mr Vaile off page 3 or 4 of the *Sydney Morning Herald*.

**Mr Deady**—By any stretch that is a very big deal on agriculture. It is not to say that—

**Senator CONROY**—Now he has gone from it being 'disappointing' to it being 'a big deal'.

**Mr Deady**—I said we were disappointed with aspects of the deal on sugar. But you cannot overlook—and I think the figures that Mr McKinnon has been giving you about the increase in access on beef, the increases we have got on dairy and the outcomes that we have got on these tariff-only products show this—the fact that this is a substantial outcome for Australian agriculture and that that is part of the overall package. This gets to the point that Mr Gosper has been making: you have to look at the overall package that has been negotiated on agriculture. On that basis, it is a substantial outcome for Australian agricultural industries.

**Senator CONROY**—Mr Vaile also said he and the government had oversold the deal.

**Senator Ian Campbell**—Mr Chairman, I do not think that is a question. That is a statement.

**Senator CONROY**—It is a quote. I just think Mr Deady is veering dangerously to the—

**Senator Ian Campbell**—Senator Conroy has been seeking to verbal the trade minister.

**Senator CONROY**—I was not verballing him.

**Senator Ian Campbell**—Now he is seeking to verbal bureaucrats. He is seeking to denigrate a deal which is demonstrably in the best interests of a whole range of businesses around Australia—agricultural producers and manufacturers. We believe it is in the national interest. We in the government are very proud of it. We are very proud of the officials who have negotiated it and who have spent hundreds, if not thousands, of hours over recent months negotiating in Washington, Canberra and Honolulu on the outcome. Labor's short-term populist political interest is served by trying to denigrate the deal and tear it down and seek to minimalise it. It is a fun game for people like Senator Conroy and other troglodytes to play but it does not advance Australia's national interest or this committee's considerations.

**Senator CONROY**—Was that a question or an answer to a question?

**Senator Ian Campbell**—You did not ask a question. We are very happy for you to ask a question rather than just verballing ministers and officials. Ask a question with a question mark at the end of it.

**Senator CONROY**—Thank you for your advice.

**Senator Ian Campbell**—Your problem, Senator Conroy, is that if you keep repeating a mantra long enough you will believe your own bullshit. No-one else will believe it though.

**Senator CONROY**—Did we get a tariff quota for that product? We have certainly got free trade in political BS.

**CHAIR**—I need a little bit of guidance as to whether that can go into *Hansard*. I think it should be withdrawn, Minister.

**Senator Ian Campbell**—I think we need to ask Senator Conroy to ask a question and stop making statements.

**CHAIR**—I am sure the point has been taken, Senator Campbell.

**Senator Ian Campbell**—Just substitute ‘bulldust’.

**Senator CONROY**—Anyway it is accepted by Mr Vaile and he has stated that it is the smallest and slowest deal offered by the US in terms of outcomes in any FTA.

**Senator Ian Campbell**—That is not a question, Mr Chairman. The senator needs to ask a question.

**Senator CONROY**—Do you agree with that, Mr Deady? Do you agree with the minister?

**Senator Ian Campbell**—Mr Chairman, I think the senator should table the statement in which he alleges Minister Vaile made that statement. I do not think we should be responding or asking officers to respond to a Labor Party senator’s version of what he says Mr Vaile said. It is entirely hypothetical.

**Senator PAYNE**—I think the minister is making a good point, Chair, insofar as Senator Conroy has a context all of his own—which I do not really want to venture into, frankly—

**Senator Ian Campbell**—It is called the Doug Cameron concept.

**Senator PAYNE**—It is a context all of his own to which the rest of us are not privy, most particularly the officers.

**Senator CONROY**—I cannot help it if you do not read the papers.

**Senator PAYNE**—Selective quoting of the minister from both unreliable and reliable sources—depending on where you are taking it from, and we are not even sure about that—is hardly going to assist effective questioning and answering in estimates, as you well know.

**CHAIR**—The point is taken. You cannot ask officials for opinions.

**Senator CONROY**—Well—

**Senator PAYNE**—What part of it do you disagree with, Senator Conroy? Are you going to disagree on your selective contextualisation?



**Senator CONROY**—I can ask them if they agree with the minister.

**CHAIR**—You cannot really ask them for an opinion.

**Senator PAYNE**—Senator Conroy, you are contextualising it selectively the way you want to. You are not providing the documents to the officers. You are expecting the officers to understand immediately your world of context, and let me tell you: I am hoping they do not understand your world of context.

**Senator CONROY**—Marise, Marise, getting all tetchy. Mr Deady, do you believe, on your experience and understanding of the other deals—CAFTA and NAFTA and all the rest—that our outcome is bigger and faster than those outcomes?

**Mr Deady**—The point I am trying to make here is that you have to look at the overall package that has been negotiated in this context. If you look at the breadth of Australian agriculture, the efficiency of Australian agriculture and the sorts of commodities that we produce that are covered by this agreement, then that certainly has to be taken into account in assessing the package. Let us look at Chile. Yes, there is a 12-year phase-out for Chile. There are faster phase-outs for beef. The fact is that Chile is an importer of beef. The US exports beef to Chile. The reason there is a phase-out at all on beef is because Chile wanted it as part of that agreement. To use a cliché, I think you have to compare apples with apples. The point is that this is a very broad deal on agriculture because it is dealing with a developed country that is one of the world's most efficient producers of agriculture right across the board. It is in that context that I think you have to look at the overall package.

**Senator CONROY**—I am trying to chase up the transcript of the interview for you. I am sure, despite Senator Payne's fevered attempts to claim that I am taking him out of context, that it is an answer to a direct question. He is directly asked by a journalist whether this is the case, and he says, 'Yes, that's a fact'.

**Senator Ian Campbell**—I think we have answered this question.

**Senator CONROY**—I get the DFAT clippings and I am sure you must too.

**Senator Ian Campbell**—The senator is taking the debate up a dry gully, Mr Chairman; he should try to go back into another creek bed.

**Senator CONROY**—I am sure you have seen the DFAT press clippings. I appreciate that you may not have. Hopefully you have had a few days off and maybe you did put your feet up and let it all go by, Mr Deady, but I think that it did get a fair bit of prominence last week, despite Senator Payne's and Senator Ian Campbell's embarrassment by it. It is a fact, agreed to by Mr Vaile, that it is the slowest and smallest offer signed up to by any country that the US has done an FTA with.

**Senator Ian Campbell**—Mr Chairman, I think we are just going over and over this. Senator Conroy has obviously run out of questions. I suspect we should move on to the next part of the portfolio or to another portfolio altogether.

**Senator PAYNE**—Either that or explain the difference between strawberries and mangoes.

**Senator CONROY**—I will leave that to you, because you have made such a valuable contribution so far.

**CHAIR**—Senator Conroy, I think you should move on. You cannot ask the officials to give an opinion on this. You can ask them all sorts of things, but an opinion is something they do not have to give.

**Senator CONROY**—I accept your ruling, Chair.

**CHAIR**—Thank you.

**Senator Ian Campbell**—I think we will have to ask Senator Conroy's advisers to speed up the questions a little. Obviously the emails are a bit slow or the bandwidth has narrowed.

**Senator CONROY**—You have made a particular request about tabling a transcript and I am just seeking to comply.

**Senator Ian Campbell**—That is good, but we have been 20 minutes on a line of inane questioning. Why don't you ask a serious question?

**Senator CONROY**—Thank you for your opinion, as always, Senator Campbell.

**Senator Ian Campbell**—If this is what the poor old select committee is going to have to put up with, I feel very sorry for the people who are going to have to put up with this pathetic, puerile, juvenile line of questioning about the FTA.

**Senator CONROY**—Has he finished?

**Senator Ian Campbell**—I am filling in time. I am worried that the people who are monitoring this committee will think that their sound is down because you are sitting there delving through your emails trying to find the next question.

**Senator CONROY**—Call him to order at any point, Chair. Feel free to jump in any time you like.

**CHAIR**—Order, Minister!

**Senator Ian Campbell**—Can I just make a plea to Senator Conroy's staff to please hurry up and give him the next question.

**CHAIR**—Order!

**Senator CONROY**—Thank you, Chair. Mr Gosper, do you believe there are any implications for our leadership of the Cairns Group?

**Mr Gosper**—No, I do not believe there should be. Many of the 17 Cairns Group members themselves have negotiated FTAs. In fact, I believe all of them are negotiating FTAs—

**Senator CONROY**—They got better deals; that is the problem.

**Mr Gosper**—many of them with the US, of course. I do not know that any of them are better than the ones we have negotiated. I would have to look at that.

**Senator CONROY**—Mr Vaile said that they are.

**Senator Ian Campbell**—Mr Chairman, can we allow the witnesses to complete their answers before Senator Conroy rudely interrupts them? It is something I have noticed in the short time I have been here.

**Senator CONROY**—Chair, you are being lectured to by the minister.

**Senator Ian Campbell**—Chair, I am making a point of order. When the witnesses are seeking to answer the questions, I have noticed that Senator Conroy comes in over the top if he does not like the answer and interrupts, which not only is incredibly rude but also does not allow this process of accountability to work. If you ask a question of a senior officer of this department about the FTA, you should allow them to conclude their answer not only out of basic courtesy to the person but also, importantly for the parliament, to allow the answer to get on the record.

**CHAIR**—Thank you, Minister. I will ask you to take note of those comments, Senator Conroy.

**Senator CONROY**—I cannot remember the last time I took any notice of Senator Campbell's comments. I have to say, I do not plan on starting now. But I accept your admonishments.

**CHAIR**—Let us not waste time, Senator Conroy. I know you have a lot of questions. You are being very cooperative.

**Senator CONROY**—The officials are not being very cooperative.

**CHAIR**—No, you are being cooperative.

**Mr Gosper**—Other Cairns Group members understand how difficult it is to negotiate market access in such agreements and in the multilateral round. Also, the negotiations that we were involved in in the Doha Round go much wider than market access across domestic export, and export subsidies as well.

**Senator CONROY**—Have any of those other Cairns Group members you are referring to that have negotiated a US FTA not got access in sugar?

**Mr Gosper**—I would have to check that. I understand, for instance, that the CAFTA countries, the central American countries, which include a couple of Cairns Group members, negotiated an agreement recently which is yet to go to the US Congress and may not go to the congress any time soon, which could potentially have some sugar access. But, equally, I am told that the administration is considering an alternative to actually providing increased access for sugar.

**Senator CONROY**—But the deal is that there is an increase in access for sugar.

**Mr Gosper**—Yes, but, as I said, that is nowhere near congress.

**Senator CONROY**—Neither is ours.

**Mr Gosper**—There is a proposal for monetisation of that access other than actually increased access.

**Senator CONROY**—I have heard that rumour too. So you would dismiss any suggestion that this deal has undermined our credibility in the Cairns Group or as one of the leading advocates of free trade in agriculture?

**Mr Gosper**—I do not believe it should and I do not think it has.

**Senator CONROY**—Do you talk to any of our Cairns Group colleagues?

**Mr Gosper**—We are meeting in Costa Rica next week.

**Senator CONROY**—I know. You have not heard from any of them or you have not sought any intelligence or contacted our embassies in any of their countries to find out if they are hearing anything?

**Mr Gosper**—No. We have not sought to go out and ask them about their views on the FTA we have negotiated with the US.

**Senator CONROY**—So you are not anticipating anyone to even bother raising it next week in Costa Rica?

**Mr Gosper**—The nature of such discussions is about broader trade developments. I am sure it will be the subject of some discussion amongst ministers, maybe in the corridor or elsewhere, but it is not part of the formal agenda by any means.

**Senator CONROY**—Good luck next week! I would have thought Brazil in particular might have been interested or surprised that we had agreed to carve out sugar—I mean, it is one of our major exports—from a trade deal. They are particularly sensitive on matters around sugar. Is that a fair comment?

**Mr Gosper**—Is Brazil interested in exporting sugar to the US? Yes.

**Senator CONROY**—Are you aware of a column by Mr Ross Gittins in last Saturday's paper, in which he wrote:

And various observers have remarked that relatively modest gains we accepted on agriculture in this week's deal ... have damaged our credibility as leader of the Cairns Group and weakened the bargaining position of developing-country agricultural exporters.

Are you familiar with that article? Did you see that over the weekend or has it been drawn to your attention this week?

**Mr Gosper**—No, I have not looked at the article.

**Senator CONROY**—You haven't?

**Mr Gosper**—No.

**Senator CONROY**—Okay.

**ACTING CHAIR**—Before you continue, Senator Conroy, we have been provided with a copy of the transcript of the press conference that Minister Vaile had. If it is the wish of the committee we will table that press transcript.

**Senator CONROY**—Thank you very much. I might come back to that, Mr Deady. Mr Gosper, you have not seen that article?

**Mr Gosper**—I have not looked at it myself.

**Mr McKinnon**—I saw that article. The only note that I made is that it was the first time I had ever seen Ross Gittins write about the Cairns Group or our role in it over the six years when I have been negotiating on, and responsible for, agriculture.

**Senator CONROY**—He probably thought that you were doing a pretty good job before. On 10 February Tom Allard wrote in the *Sydney Morning Herald*:

Now, Australia's reputation as a principled and tenacious fighter for reduced farm barriers around the world has taken a massive hit. It will be difficult to press the recalcitrants of the WTO—Europe, Japan and the US itself—to take a scythe to their farm trade barriers after Australia accepted such a poor offer.

Are you familiar with that article?

**Mr Gosper**—I may have seen that.

**Senator CONROY**—Is that a reasonable assessment from Mr Allard?

**Mr Gosper**—No, it is not. That sort of judgment ignores developments in the trading system over the last half-dozen years and precisely how difficult it is of late to negotiate improved access to world markets. We have seen that with the failure of the meeting in Seattle, the difficulty we had in establishing any form of multilateral negotiation mandate at Doha and the subsequent failure at Cancun to move forward on the agriculture mandate—which, as I again say with respect to market access, is not for complete liberalisation but merely for substantial improvement. The trading system now is very much jammed up with lots of considerable difficulty when it comes to moving forward on market access. To say that the sorts of improvements that we have negotiated with the US, including on agriculture, are not a contribution to moving global trade liberalisation forward ignores the difficulties that we all face in the trading system at the moment on these issues.

**Senator CONROY**—You sound very pessimistic about the global system.

**Mr Gosper**—I would not say I am pessimistic; I am realistic at the moment about how difficult it is to move that forward. That is evidenced by the task we have had over a number of years to do exactly that.

**Senator CONROY**—If it is going to be so difficult to move it forward, as you are saying, why did we put the question of subsidies into that basket when we do not think it is going anywhere? Why didn't we keep subsidies in this basket and say, 'We want a decent deal on subsidies'?

**Mr Gosper**—Generally because the big subsidisers—that is, the United States, the EU, Japan and a few others—will not make concessions on their domestic support programs unless they are matched by domestic support concessions made by the other big subsidisers. That requires a global program.

**Senator CONROY**—It just seems a little strange to say, 'We accept that subsidies have to be done over there but we know that over there is gummed up, stuck, going nowhere.' It is a bizarre position to take.

**Mr Gosper**—What it shows is that for removing domestic subsidies there is no substitute for a global trade round. That has always been the position of the government.

**Senator CONROY**—Did you happen to see Tim Colebatch's in the *Age* on 10 February?

**Mr Gosper**—No, I did not.

**Senator CONROY**—Mr Colebatch wrote:

And on the world stage, the two chief advocates of free trade in agriculture have now done a free trade deal that leaves out agriculture. They will be chuckling in Brussels.

Have you heard of any chuckling in Brussels. Has that filtered through?

**Mr Gosper**—No, I have not heard of any chuckling in Brussels. Again, I do not agree with that because we have made substantial market access improvements in these negotiations.

**Senator CONROY**—Professor Ross Garnaut wrote, also on 10 February:

For the first time, Australia has conceded the legitimacy of significant agricultural exclusions from bilateral FTAs.

Are you familiar with that?

**Mr Gosper**—I am familiar with Professor Garnaut's views.

**Senator CONROY**—There seems to be a fair body of commentators who feel that perhaps we have cut across our ambitions on agriculture in the WTO. Do you reject that?

**Mr Gosper**—There is some commentary like that and there is some commentary that suggests otherwise. I think the position is as I have set out—namely, that this is an important contribution to trade liberalisation. It is not intended to be a substitute for a global trade round but the global trade round, essential as that is for delivering global improvements to agriculture, is a hard grind and it will take some time to produce real results.

**Senator CONROY**—The *Wall Street Journal* is another example. It is not noted for its labour leanings. It wrote this week in terms of the exclusion of sugar from the trade deal:

This is a terrible precedent for future trade-opening negotiations and it may even jeopardise the ratification of this one.

Are you aware of that one, Mr Gosper?

**Mr Gosper**—No, I am not.

**Mr McKinnon**—Can I offer a comment?

**Senator CONROY**—Please.

**Mr McKinnon**—All of those comments are a little bit inexplicable against the history of trade liberalisation in the agricultural sector, where from 1947 through to 1986 you had seven rounds in which agriculture really did not get any liberalisation at all. The first time agriculture was addressed in a multilateral round was in the Uruguay Round. So it has been a pretty sad and sorry history. No government, I think, has been more active in trying to change that history in the WTO context than this current Australian government. We have led the charge. To somehow suggest that we have done a deal that would impede our credibility or weaken that charge I think dismisses altogether the depth of the opposition that we have arranged against us in the WTO. It also is just unrealistic. To say that they are chuckling in Brussels or Tokyo—although you did not say that—

**Senator CONROY**—I am sure they are chuckling in Tokyo, if that helps you.

**Mr McKinnon**—I would simply say to you that if you were to say to anyone in Brussels or in Tokyo, 'Could you accept a deal on agriculture that led to the elimination of all tariffs but two in 18 years?' I think there would be a lot less chuckling. I do not accept that there is chuckling. I think that in market access terms it is a very good deal. To my knowledge there has never been any bilateral—

**Senator CONROY**—Not even Minister Vaile is saying it is a good deal, Mr McKinnon. He has said that we have oversold.

**ACTING CHAIR (Senator Ferguson)**—Senator Conroy, just a second. You were asked before to please let the officer answer the question before you butt in with the next question on top of it. Give him a chance to answer it.

**Senator Ian Campbell**—Mr Chairman, can I say that saying that Mr Vaile does not say this is a good deal is a total misrepresentation. Mr Vaile is very proud of that deal, as all of us in the government are—and as are, I am sure, all of the people who have been involved in negotiating it. It represents a significant liberalisation in agricultural trade, and to that extent it makes world history. If the Labor Party want to put all their eggs in the multilateral basket, wait for agricultural reform through the WTO and not progress on any other angle of attack then that is their policy. Ultimately we will be judged by history as to what is the best approach. This government has decided that you can work effectively in the multilateral field but also put energy into bilateral negotiations and get good outcomes for Australian exporters and the Australian economy.

**ACTING CHAIR**—Mr McKinnon, you were about to answer the question.

**Mr McKinnon**—I was just going to reassert that, having sat in the WTO and negotiated for six years, first of all in the continuation of the article 20 negotiations flowing from the Uruguay Round and then pre Seattle and post Seattle, I believe it is a good deal. For those who hold up the theoretical construct of multilateral trade, I can only say that if they sat through all those negotiating sessions they might have a little bit more interest in the pragmatic outcome of actually getting better access for our exporters. We can all agree on the theory but I do not think that the theory can necessarily be worth anything more than the results that it achieves. So I say that if we were able in the WTO now to get a commitment from all countries to cut their tariffs, even bar two lines, but to give access in one of those lines and to have one exclusion, then that would be a deal that would have to be, against any history of liberalisation by the WTO or bilaterally, very intriguing. So I can say, hand on heart, that I think the deal is good in some regards.

**Senator CONROY**—‘Good in some regards’ The *Wall Street Journal* went on to say in terms of the Doha Round:

The US hopes to revive those talks but the Australia deal will only cheer the protectionists.

If the Bush administration won’t face down the sugar lobby even for a free-trade friend like Australia then what chance does the rest of the world have?

You would probably almost agree with that, judging by what you said before, Mr McKinnon.

**ACTING CHAIR**—Senator Conroy, you cannot read out a transcript from somewhere else in the world and then ask the officers whether they agree with your opinion or agree with the article. You can ask them questions about the free trade deal but not to comment on other people’s commentaries.

**Senator CONROY**—I think we have been having an okay discussion so far.

**ACTING CHAIR**—No, you cannot ask them to give opinions. You can ask them straight-out questions; you cannot ask them to give opinions on other people’s comments.

**Senator CONROY**—Do you think the *Wall Street Journal* is accurate?

**Mr McKinnon**—All I can say is that, from my own observation of the US comment on this deal, there is quite a strong view coming even from industry sectors and they have written to the US administration saying that it was a mistake not to include sugar and that perhaps that will result in a different approach to the WTO negotiations and a different outcome in future. So I do not think it has been accepted much more positively in the United States than it has been here.

**Senator CONROY**—I think you have all got the transcript. It is a transcript circulated by the minister, not by me.

**Senator Ian Campbell**—Yes, and that proves that you were verballing the minister and misrepresenting what he said.

**Senator CONROY**—Let us not get too excited there. I think the question that Mr Allard asked Minister Vaile began with:

... the reduction in farm barriers in the US agreement with Australia is smaller and slower than every other agreement they've done.

Then you cannot make out the rest of the sentences because the transcript says 'indistinct'. But he says:

That's all true.

**Senator Ian Campbell**—That is incorrect. You can make out what it says; it says 'indistinct' for one word. In a convoluted sort of way, the questioner says:

I mean that's, to look at that—I mean you can, you make good points about we're a developing nation and so ...

There are a few words missing there, which obviously the transcriber could not pick up, but then it says:

... would be different, you know these are different economies. That's all true.

We are dealing with a different context. Then the minister goes on to say that that is true and agree with that fact. You can misrepresent him as much as you want, Senator, but it is in black and white. I recommend that anyone who wants Minister Vaile's views about this deal listens to Minister Vaile and not Senator Conroy.

**ACTING CHAIR**—I am not going to allow this to be a debate. You can ask questions, Senator Conroy.

**Senator CONROY**—If you are going to allow Minister Campbell to ramble on, I would only ask for equal treatment, Senator Ferguson.

**ACTING CHAIR**—You will get equal treatment from me, Senator Conroy. I suggest that we do not debate this issue but that we just ask questions.

**Senator CONROY**—I think what Senator Campbell has demonstrated is what an excellent real estate agent he made in his previous life.

**Senator Ian Campbell**—I appreciate that. I take that as a compliment. I am proud to have been in the private enterprise sector and had a real job.



**ACTING CHAIR**—Order! Please return to the subject.

**Senator CONROY**—Coming back to the press release, which is a transcript circulated by Minister Vaile and Mr Deady—

**Senator Ian Campbell**—As a real estate agent, I know that if the Leader of the Opposition had any scruples he would cancel the Centenary House deal and get it referred to an independent valuer for arbitration.

**ACTING CHAIR**—Minister, if we are going to apply rules to one, we should apply them to all. I want Senator Conroy to address his questions to the officers or to the minister, and I want you to stick to the agenda at hand.

**Senator Ian Campbell**—Chair, can I just say I think the FTA is a good deal and Centenary House is a bad deal. Labor can fix the latter.

**ACTING CHAIR**—Minister, we have to let Senator Conroy get on with the questioning.

**Senator Ian Campbell**—If he wants to play politics, I will play it too.

**ACTING CHAIR**—I understand that, but let us get back to the agenda please.

**Senator CONROY**—Mr Deady does have a deadline and a plane to catch. I will come back to the transcript distributed by Minister Vaile's office. He is asked a question which begins with:

... the reduction in farm barriers in the US agreement with Australia is smaller and slower than every other agreement they've done. I mean that's, to look at that—I mean you can, you make good points about we're a developing nation—

I am sure that is a typo and it should be 'developed' rather than 'developing'—

and so [indistinct] would be different, you know these are different economies. That's all true. But that, that's a matter of fact isn't it?

The 'matter of fact' refers to his statement earlier in that paragraph about the reduction in farm barriers being 'the smallest and slowest'. And Minister Vaile—

**Senator Ian Campbell**—If the senator is seeking to misrepresent the minister once again, it is a question for the minister.

**Senator CONROY**—Minister Vaile says:

It is a matter of fact ...

Then he goes on to qualify it, says why it is okay and says you have to look at the deal in totality. Despite Senator Campbell's brave attempts to say otherwise, that is the statement made by Minister Vaile. Given that we were looking for a big, comprehensive outcome and a big market access outcome, given that it can be characterised as 'the smallest and slowest' agreement and given that you have indicated that it was disappointing in parts, did you consider resigning at any stage, Mr Deady?

**ACTING CHAIR**—Senator Conroy, what sort of question is that? You are asking Mr Deady to make a comment on a statement that was made by the minister.

**Senator CONROY**—No I am not, I am asking him whether that was a matter of fact.

**Senator Ian Campbell**—Did Senator Conroy contemplate resigning when he was caught spotting planes at Sydney airport and plotting against his leader? That is about as relevant as his question.

**ACTING CHAIR**—Order! Mr Chester has requested the call and I am giving it to him.

**Mr Chester**—Senator, the last question you asked Mr Deady, I think, was based on your interpretation of these comments that Mr Vaile made.

**Senator CONROY**—No, it is not.

**ACTING CHAIR**—Order! Let him answer the question, Senator Conroy.

**Mr Chester**—The main point I was going to make is that I think it is an extremely unfair question to ask a public servant—someone who has done such an excellent job in assisting in the negotiation of this trade agreement.

**Senator CONROY**—All Mr Deady has to do is say no.

**ACTING CHAIR**—I am not asking him to respond either, Mr Chester. It is not a question which he has to answer.

**Senator CONROY**—All he has to say is no.

**ACTING CHAIR**—He does not have to say anything.

**Senator CONROY**—I am sure it will not hurt him to say it.

**ACTING CHAIR**—He does not have to say anything.

**Senator CONROY**—He looks keen to say it.

**ACTING CHAIR**—He does not have to say anything.

**Senator CONROY**—I am sure that he is keen to get his plane.

**Mr Deady**—I would like say one thing. I am very proud of the effort that has gone into these negotiations for this outcome. Your very first question today was: was this a substantial deal for Australia? I certainly tried to answer that as fully as I could. This is a historic outcome for Australia. The effort put in by the team and the work that we did in those last three weeks in Washington involved very long hours. Mr Vaile and the whole team worked to press Australia's interest and get the biggest deal possible. That is what was achieved, and I think that is what Mr Vaile said in those comments.

**ACTING CHAIR**—Hear, hear!

**Senator CONROY**—It is not a reflection on what you were able to achieve; it is a reflection on what Mr Vaile signed up to, Mr Deady. I did not want you to misunderstand the context of my question so I would just like to make that point. I am happy to move on to questions about the PBS.

**Senator Ian Campbell**—It was a substantial team effort by a lot of very dedicated Australians, and we should all be proud of it.

**Senator CONROY**—What in your view are the implications for the PBS arising from the FTA?

**Mr Deady**—The government's stated objective in this area right through was that it was protecting the fundamentals of the PBS. So there would be nothing coming out of the FTA negotiations that would affect the structure of the PBS, the affordable medicines for Australians or the pricing and listing arrangements. That is the fundamental outcome that has been achieved through the negotiations. We have said in answer to questions before that the Americans had objectives in relation to the PBS. We said all along that we were prepared to look at those proposals from the United States—to look at improving transparency and those sorts of aspects. That is what we have agreed as part of the overall package. There are some improvements in transparency. Some of those improvements certainly cut both ways. We are very pleased with aspects of the agreement in relation to transparency and improving the processes of the PBAC in terms of getting out information both ways. That was something that I think was a very good outcome from the negotiations. The fundamental issue was anything getting to the pricing and listing of the Pharmaceutical Benefits Scheme. No, there is nothing in the agreement that affects that at all.

**Senator CONROY**—But the DFAT fact sheet says:

- Australia will make improvements to the transparency and timeliness of PBS processes and provide more opportunities for companies seeking listing of new medicines on the PBS to have input to the process.

How will companies have more opportunity for input into the process of listing drugs on the PBS?

**Mr Deady**—We have identified specific opportunities for the companies to provide information at various stages through the PBAC process: prior to the recommendations or determinations in order of listing and also on some commitments in relation to shortening the time frames, where that is possible, post the determination of the PBAC processes. The other area we have agreed to is a review of negative listings by the PBAC. So the one new issue here is this question of review. This is one issue that certainly got some attention. We have made a commitment that we will establish this review and allow negative determinations by the PBAC to be looked at by that review. That is really the extent of the commitments we have entered into in relation to the PBS.

**Senator CONROY**—There has been a little bit of commentary but I was hoping to get from the horse's mouth, so to speak, from you guys, what the review process is and what its powers and functions are. I understand from the commentary so far that it is one of those things that has not quite been finalised. But I was just wondering if you could take us through the review process. You go through the normal process of applying and that is then considered by PBAC. Presumably no-one is going to appeal a 'yes', but take the case where there is a 'no': what happens when someone wants to appeal under this new mechanism?

**Mr Deady**—The specifics of this review are something that will be determined by the government in due course. Our commitment to the United States is that we will establish this review process, and officials from the department of health will be working in consultation to establish that review mechanism in due course. The establishment of that, the arrangements, how it will work: they are fully issues for the government of Australia to determine.

**Senator CONROY**—Explain when you say 'the government of Australia'.

**Mr Deady**—The commitment that we have made to the United States is that we will provide an opportunity for an independent review of PBAC determinations where an application has not resulted in a PBAC recommendation to list. That is the commitment that we have to the United States. How we go about implementing that—

**Senator CONROY**—Will you be involved in that negotiation?

**Mr Deady**—No, I would not expect to be.

**Senator CONROY**—Now I am very worried. I would like to have a tough nut in there for us.

**Mr Deady**—I have said this before but, for the record: we had great support from just about every agency in Canberra—

**Senator CONROY**—It is not the agencies I am worried about.

**Mr Deady**—The health department officials—

**ACTING CHAIR**—Senator Conroy, would you stop talking over the top of the officer when he is trying to answer a question.

**Mr Deady**—We had a health department official seconded to the department right through the negotiating process. I think that was very good decision by the department of health. We also had other officials, experts in the PBS, and they had a very close involvement in all these negotiations. Believe me, Senator, they were very tough-minded people and did a great job for Australia.

**Senator CONROY**—As I said, it is more what is going to happen next time that I am starting to worry about now, given what you have said. At this stage it is a government-to-government negotiation, did you say, in terms of what this review process is?

**Mr Deady**—This review process is purely a matter for the government of Australia. There will be no US involvement in this review process. It is purely a review body that will be established—

**Senator CONROY**—So the US do not have to tick it off?

**Mr Deady**—No.

**Senator CONROY**—That is a start. I am sure they can negotiate themselves into a good position. You have no idea what this process will involve—there are no side letters or indications of what that process will be?

**Mr Deady**—No, this is a matter now for consideration by the government of Australia as it implements this obligation, this commitment, that we have made to the United States which, as I said, is to provide an opportunity for this independent review. That is the commitment that we made to the United States. It is for us to determine the nature of that review mechanism and who is on it—those sorts of things.

**Senator CONROY**—Did you mention there were side letters in relation to this?

**Mr Deady**—Just to explain: in the goods chapter of this agreement there will be an annexe which deals with pharmaceutical issues, and that is a reciprocal arrangement. We both identify our commitment to high-quality health and continued improvements in public health. That is a

joint commitment that both countries enter into. What we have is a side letter that Australia has said on the specifics of the PBS: these are the commitments that Australia is prepared to make to the United States, and that is in terms of making commitments that these are the enhanced transparency processes we will go to. One of those is this establishment of this review. So that is in a side letter, but it is a binding commitment by Australia to establish this review.

**Senator CONROY**—We have agreed to establish a review. I will come back to the powers of the review. What are the other commitments in the side letter?

**Mr Deady**—They are really to deal with enhancing transparency, and this does get to providing opportunities for the companies to comment on the reports of some of the technical subcommittees of the PBAC. Many of these things are already in place.

**Senator CONROY**—Yes, my understanding is that at least a summary of the reasons are put up a web site.

**Mr Deady**—That is right. It is a transparent process to begin with, and we spent a lot of time explaining that to the United States right through this process. But, again, as part of the outcome we have made these commitments to maintain that transparency, if you like, and certainly some specific commitments in terms of the capacity for companies to respond, opportunities to respond to technical subcommittees, opportunities for hearings before the PBAC while it is considering its reports. So these are commitments that we made to United States. Many of them, though, are part of the ongoing process of the PBAC and existing arrangements.

**Senator CONROY**—That is what I thought. Is this review able to overturn a negative decision—a decision not to be listed?

**Mr Deady**—No.

**Senator CONROY**—Do you have any idea at this stage who the appeal is to? Isn't it an appeal back to the PBAC? Is there a separate body that then—

**Mr Deady**—This is a review of negative determinations. What this independent review then does—whether it goes back with some comments to the PBAC—is an issue that will emerge. Our commitment to the United States, which we will certainly honour in good faith, is to establish this independent review to look at negative cases. It is hypothetical—what the companies might say and what new evidence they might produce which this review might look at and refer back to PBAC saying, 'Did you take this fully into account,' or something; who knows.

**Senator CONROY**—So ultimately the PBAC still makes the decision?

**Mr Deady**—It makes the determination. The government then makes the decision.

**Senator CONROY**—So it is a bit of window-dressing.

**Mr Deady**—We have said to the Americans that we are prepared to look at improving transparency. That is the commitment we have made in this area. The clear commitment by the government here was that we would do nothing to undermine the fundamentals of the PBS and the pricing and listing structures, and that has absolutely been part of the overall outcome.

**Senator CONROY**—It is a win. Mr Zoellick has been prepared to shout very loudly about his wins; I am not sure why you are being so bashful.

**Mr Deady**—I do not think we have been bashful. We have certainly made it clear that this is an area of great sensitivity. We sat here and talked about these things when we were in the dynamic of the negotiations and there were certainly limits to what we could say. Now we can say very clearly to you that there is nothing in the agreement that will affect pricing and listing under the PBS. Yes, we have made some commitments in relation to transparency. We have said we are prepared to look at that. Some of those things were existing arrangements; some of them, like this review, go a bit further. But what they get to is transparency and enhancing the process; they do not get to the issues of pricing and listing which are the fundamentals of the scheme.

**Senator CONROY**—Will this review lead to more drugs coming onto the PBS?

**Mr Deady**—I do not think that is a question I can answer. We said to the Americans right through that the PBS is a system that provides affordable medicines to the Australian public and that the government had instructed us to ensure that nothing we negotiated would impact on that. That is the outcome we have achieved. This question of innovative medicines being rewarded is part of the PBS system of affordable medicines for Australians, and that is being preserved.

**Senator CONROY**—On 9 February the Prime Minister said that it might lead to even more drugs being made available to the public—not necessarily, but it could. Because of Mr Howard's comments I am trying to get to the bottom of what this mechanism does. The fact sheet states:

Australians will gain a better understanding of decisions about adding new medicines to the PBS and will benefit from faster access to subsidies for new prescription medicines.

Could you explain that to me a bit more?

**Mr Deady**—The government is moving to improve the timeliness and delivery of some of these PBS determinations and decisions. That is what we are getting at there. We have now made some commitments that, where we can improve these timelines, we are working to do so. That is an ongoing part of the government's objectives in this area. The commitments that we made in the FTA just reinforced that process that we are going through.

**Senator CONROY**—Whenever I have spoken to the drug companies I have heard that their biggest complaint is cabinet ticking off on the PBAC decision. That is the final step; it does not actually come on stream until cabinet gives it a tick. Drug companies tell me that their biggest frustration is in getting cabinet to tick it. Is there anything here that involves the cabinet process? Is there a date—say three months after the application begins or three months after PBAC makes a decision—by which there has to be an outcome? Is there anything along those lines in terms of timeliness?

**Mr Deady**—No. We say that we shall reduce the time required to implement the recommendations of the PBAC where possible. That is the commitment we have given to the United States. Where we can improve the timeliness of this, we are working to do that and we made the commitment to the United States that we will work to do that. That is the extent of the commitment in the FTA.

**Senator CONROY**—But it is not prescriptive—there is no time limit?

**Mr Deady**—No.

**Senator CONROY**—Were any costings done on the impact of the PBS over time of more medicines coming onto the scheme? Was that part of the discussions with the health officials?

**Mr Deady**—No, this was not on a matter for us in the negotiations.

**Senator CONROY**—The fact sheet states:

The Government has delivered on its commitment that the price of prescription medicines will not increase as a result of this Agreement.

It says nothing about changes to the PBS possibly impacting on the cost of the scheme. Why has this not been referred to? It talks about the price of prescription drugs. There are two elements to the PBS argument: the first is the price of prescription drugs and the second is the cost to the taxpayer of the subsidy. There is no reference anywhere about guaranteeing there is no increase in cost to the taxpayer via the subsidies. Is there a reason why that is not addressed anywhere in the fact sheet?

**Mr Deady**—I do not think that is a matter for the FTA negotiations with the United States. The concern of the United States, certainly on the part of some of the pharmaceutical companies, was to achieve higher prices for their drugs in this country. That was certainly in some of the statements that came from PhRMA. We have negotiated an outcome that will not affect the pricing or listing of drugs in the PBS. I think it is a separate question to the—

**Senator CONROY**—We have discussed generic drugs, IP and those sorts of things. They can increase the cost to the taxpayer of the PBS system. We have discussed those issues at previous committee hearings, Mr Deady. It is just that, on this one, it boasts proudly and loudly that there will be no increase in the price of prescriptions. So you will walk into the chemist and there will be no change. The other side to the argument and discussion is whether or not the taxpayer will end up having an increased cost to them due to any changes in the PBS. It is just that the fact sheet is silent on it.

**Mr Deady**—If it is silent, it is silent because there is nothing in the FTA that would lead to that result. There is nothing in the FTA with the United States that would lead to higher charges to taxpayers as a result of our negotiations.

**Senator CONROY**—I am hoping to try and test that with you.

**Mr Deady**—That is a fact from what we have negotiated.

**Senator CONROY**—Are you prepared to guarantee that, through the FTA, there will be no increase in government expenditure on the PBS?

**Mr Deady**—There is nothing in the negotiations under the FTA that would lead to that outcome. It is not to say—

**Senator CONROY**—Are there any other side deals or side letters that I should know about?

**Mr Deady**—There are no other side letters. I am probably not answering this question properly, but I cannot comment on an ageing population and all the factors that lead to increasing health costs.

**Senator CONROY**—No, they are separate to the FTA. I accept that absolutely.

**Mr Deady**—There is absolutely nothing in the FTA of itself that will lead to increased prices or costs to the taxpayer.

**Senator CONROY**—With regard to the pharmaceutical patents, the DFAT fact sheet says:

- in those limited cases where a generic manufacturer considers a patent to be invalid, and intends to enter the market before that patent expires, the patent owner will be notified when the generic manufacturer applies to the TGA for marketing approval of the generic version of the patented product.

What do you mean by ‘limited cases’? How many of these cases can we actually anticipate? Help me out.

**Mr Deady**—My understanding, in talking to the generics industry in Australia, is that ‘limited’ means very, very limited. The generic industries in Australia do not intend to bring drugs onto the market whilst there is a patent in place. One thing that came out of the discussions with the United States is that they have a much more prescriptive approach to this notification process. But even in their situation it is only in about six per cent of cases where the generics would indicate that they believe there is an aspect of the patent that is no longer valid and therefore they would intend to market it before that patent was finished. In Australia that is not the situation. It has certainly not been put to us by generics.

As you know, in the United States there is this automatic 30-month injunction that applies as soon as the innovator company says, ‘We believe this is a breach of the patent.’ There is an automatic 30-month stay. That is not what we have negotiated with the United States. There is no automaticity for some sort of automatic stay like that, which is something that we have talked about before.

**Senator CONROY**—We have. I am sure you are going to be more of an expert than me, having lived through this for the last few months. I understand that there are many patents involved with each pharmaceutical. Will this provision only apply to the basic composition patent, the one on which the original discovery was done, and not the manufacturing process or any patents relating to the drug?

**Mr Deady**—I think this gets to the issue of extended protection for new uses and formulations, which is a different article in the agreement. Again, there we have negotiated an outcome that maintains the current arrangements in Australia. There is no change.

**Senator CONROY**—The mickey mouse provision, as it is affectionately known in the US.

**Mr Deady**—The mickey mouse clause—

**Senator CONROY**—They mean in the absolute, literal sense of Mickey Mouse.

**Mr Deady**—This is not actually the mickey mouse clause. That refers to a copyright issue rather than a patent. It is an important question, and the important point to register here is that, in terms of protection of test data for new uses and formulations, we have maintained our current arrangements—nothing has changed as a result of the FTA. That is important, because that was an issue that, in particular circumstances, could have led to the delay of generics onto the market and therefore—



**Senator CONROY**—I understand the test data are the critical issue here. There is no change?

**Mr Deady**—There is no change.

**Senator CONROY**—Who notifies the patent owner—the TGA or the generic manufacturer?

**Mr Deady**—The final implementation of this is something, again, that is still to be worked out with government. That will be done, obviously, in consultation with the TGA and also with industry. I think the expectation is that it will be the TGA, but again the final implementation of these things—as in many areas of the agreement—is still to be worked through fully.

**Senator CONROY**—Can you confirm that a patent owner will not be able to take out an injunction against a generic manufacturer before the pharmaceutical has been approved for marketing by the TGA?

**Mr Deady**—The notification, as we have said, will only apply in those cases where the generic manufacturer is intending to break a patent, so it is in very limited circumstances. I think that will be very limited. Again, if in those situations there was a view that somehow there was a breach of the patent pending, then, as I understand it, it is only once that patent is breached that under the Patents Act the innovator could take action against the generic. In the way this has been crafted and the way we will implement it, we have certainly looked very hard at this and seem to have addressed the concerns of the generic industry and the legitimate rights of the copyright holder. There is a balance there that we believe we have struck. The critical thing here is that in the United States there is this automatic 30 months, and that is not the situation in Australia. If there is a breach of the patent and they can get an injunction against the release of that generic, then that is fully consistent with the current arrangements.

**Senator CONROY**—You are very confident in saying that you do not believe that anything that has been agreed to will prevent the rapid entry of generics onto the market when patents expire?

**Mr Deady**—No, Senator, we have worked very hard in this area to ensure that the outcome is one that does reflect the interests of the generics industry and also takes account of the rights of copyright holders but will not lead to the sorts of frivolous or other cases which would merely serve to delay the entry of the generics. I think we have negotiated a very good deal on both of these critical articles that you have mentioned. One is this notification and linkage issue; the other one is the protection of test data. On test data there is absolutely no change. As for linkage and notification, it is only in very limited circumstances that the notification would happen and it would only be in those circumstances where there was an intention to break a patent. Therefore the patent owner would then have some recourse to the courts if they believed this was actually a breaking of the patent, so the situation is a good outcome there.

**Senator CONROY**—The US Trade Representative's press release got a lot of coverage. In fact, it got more coverage than the minister's, you might be surprised to hear, Mr Deady. That is probably because our minister only put out a one-pager at the time. He states it provides:

... for the extension of patent terms to compensate for delays in granting the original patent, consistent with U.S. practice.

Could you explain to me, if you know, what he means by that? You might not know.

**Mr Deady**—The situation is that this provision only applies if a delay in issuing a patent is unreasonable and is caused by the Patent Office. Any delays due to the actions of third parties—for example, the patent applicant—need not be considered in the calculation of delay. Based on current time frames for patent examination and grant by the Patents Office, the Australian Patents Office will not require any change to our arrangements. So, as I understand this, it gets to the issue of this question of unreasonable delays, and we are very confident of our system—

**Senator CONROY**—in the issuing of a patent here in Australia?

**Mr Deady**—Yes. Delays due to the actions of third parties—that is, the patent applicant themselves—would not be considered as justification for a calculation of the delay, so it would only—

**Senator CONROY**—So what is he trying to get at? He is trying to claim a victory there and I do not actually understand it.

**Mr Deady**—The IP area is a very important chapter, and it is certainly a chapter on which the United States had high levels of ambition. But overall we would argue very strongly—and we argued this right through the negotiations and will continue to argue—that we have a very strong IP regime in this country in any event. Many of the things that the United States are claiming in Mr Zoellick's fact sheets really are important but they reflect very much our existing arrangements, so they do not require changes to Australia's legislation or aspects of IP. There certainly are some legislative changes in the IP area. That is an area where we have made some additional commitments. But overall I think what these statements reflect are very strong IP regimes in the United States and a very strong desire on their part to increase those, but they are balanced against a developed country like Australia. Many of these things have been already achieved through our own system, if not in exactly the same way then certainly the same outcome has been achieved. I suspect this is one of those areas.

**Senator CONROY**—It is possible that these IP changes could also affect non-PBS medicines and hospitals and the non-subsidised prescription medicines that many Australians depend on. These are the drugs outside the PBS that could be impacted by these changes. Could you confirm that IP changes under the FTA will not delay the entry of non-subsidised prescription medicines into the market?

**Mr Deady**—Yes. The same situation would apply. These provisions, as they apply to the generic industry, apply across the board. It is not a question of whether or not they be PBS drugs.

**Senator CONROY**—It should not make a difference.

**Mr Deady**—The status quo has been maintained for patent protections, the protection of test data and those sorts of outcomes.

**Senator CONROY**—The US Trade Representative's fact sheet says that the two sides also agreed to 'establish a Medicines Working Group that will provide for continued dialogue

between the US and Australia on emerging health care policy issues'. You did not mention that in your fact sheet. It is quite a development.

**Mr Deady**—The fact sheets were done very professionally as quickly as we could. They were meant to provide a good summary of the outcomes as we saw them but certainly not every aspect of the agreement was covered. The Medicines Working Group has been established as part of this outcome on pharmaceuticals and in fact there have been many working groups established under the agreement to allow for continuing discussions between Australian and US officials in various areas. We see that as a positive outcome; we do not see it as a negative.

**Senator CONROY**—Is this one of those situations where we do not know what the process is yet or the membership or those sorts of things?

**Mr Deady**—This part of the commitment talks about how the working groups:

... shall comprise officers from federal government agencies responsible for federal health care programs and other appropriate federal government officials.

It is a very general description of who would be on this. The objective of the working group is to promote discussion and mutual understanding of issues relating to this whole aspect of pharmaceuticals, but in particular it is including the importance of pharmaceutical research and development to continue the improvement in health care outcomes. There is an element of encouraging that sort of dialogue on R&D and other things which, again, we see as positive. But it will not require any party to review or change decisions regarding specific applications—and that it is a footnote that we have got here. It is a genuine working group to look at these various issues, including R&D on health care outcomes.

**Senator CONROY**—Back to the USTR paper, it says that it:

Provides for the extension of patent terms to compensate for delays in granting the original patent, consistent with U.S. practice.

If there is a delay in granting a patent, why give the extension? I am just trying to work my way through this. If the patent was for 20 years it should remain for 20 years and then no-one is worse off.

**Mr Chester**—Because the term of the patent starts from the date of lodgment of the application, not from the date it is granted.

**Senator CONROY**—So this is addressing that issue. The trade representatives' paper says:

The working group will further promote the agreement's public health principles for an ongoing dialogue between the US and Australia.

What other public health principles were announced in the FTA?

**Mr Deady**—The way this little annex reads it says that the parties are:

... committed to facilitating high quality health care and continued improvements in public health for their nationals. The important role played by innovative pharmaceutical products, the importance of R&D in the pharmaceutical industry, the need to promote timely and affordable access to innovative pharmaceuticals through transparent, expeditious and accountable procedures, the need to recognise the value of innovative pharmaceuticals through the operation of competitive markets or by adopting and

maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of the pharmaceutical.

They are statements of principle—

**Senator CONROY**—I appreciate that you may not be able to provide it but is it possible to get just that tabled? It may not be possible.

**Mr Deady**—It will not be possible today but it will be possible in a week, as soon as we conclude this.

**Senator CONROY**—You have read some of it into *Hansard* so it would just save time if you could table it, but I appreciate that you want to release it all at once rather than piecemeal. Is there anything else you want to add there in terms of these principles?

**Mr Deady**—No, they are the principles that are reflected in this annex—

**Senator CONROY**—So there are none still being developed other than the legal scrubbing and washing process? You have got them all there?

**Mr Deady**—They are all there. It talks about these principles. It talks about both governments applying the importance of transparency in all of these processes. It talks about this medicines working group. It talks about regulatory cooperation between the Food and Drug Administration and the Therapeutic Goods Administration—there is already an ongoing dialogue there. It talks about the dissemination of information and that this should be fully consistent with each party's laws, regulations and procedures—so there is again a restatement, really, of Australia's current practice in relation to—

**Senator CONROY**—Sure. You can understand that people would be alarmed if we had suddenly agreed to some US principles on health.

**Mr Deady**—Yes. These are broad principles which, as I said, very much reflect the drivers behind the health care system in this country, facilitating high-quality health care and continued improvements in public health. Those are the sorts of principles we are very comfortable to commit to. As I said, that is a commitment that both the United States and Australia have made. It is not part of the side letter where we elaborate some specific things for Australia.

**Senator CONROY**—They will be contained in an annex?

**Mr Deady**—An annex to the goods chapter.

**Senator CONROY**—Is that a different sort of legal position to a normal annex?

**Mr Deady**—No. In a legal sense it has full treaty level status. Footnotes, annexes and side letters have the same status as treaty level obligations where there are obligations. As I mentioned, getting back to Telstra, there is just no obligation in that particular letter. That is the point.

**Senator CONROY**—Any idea how Australian representatives will be appointed to the working group at this stage? Is it too early to tell?

**Mr Deady**—I did not think those sorts of things had been worked through.

**Senator CONROY**—Will this working group have any relationship to the PBAC or any input into PBAC decisions?

**Mr Deady**—No.

**Senator CONROY**—It is completely distinct and separate, nothing to do with it?

**Mr Deady**—Absolutely. This is US-Australia health experts and appropriate federal government officials, so it is a federal government to government working group.

**Senator CONROY**—Do you know which minister the working group will be responsible to—the health minister or the trade minister?

**Mr Deady**—In terms of the structure of the agreement, there is an overriding committee established under the agreement which will be the Minister for Trade and the United States Trade Representative. Essentially that committee is the one that oversees the whole of the agreement. This working group would be established under the framework of the FTA, so it could report back through that committee, I believe. But, as I say, it would involve the experts; it would not necessarily be officials from Foreign Affairs and Trade, depending on the particular work program that this group establishes.

**Senator CONROY**—Just to absolutely confirm it: this working group will not have any role in any disputes arising over the listing of drugs on the PBS—that is not in its bailiwick.

**Mr Deady**—That is correct.

**Senator CONROY**—Do you know if the government wanted to introduce legislative change, or would it be done by regulation? Is there any indication yet how this group will be established? What status will it have in a parliamentary sense? For example, will they appear before estimates? I am sure they would love to.

**Mr Deady**—The working group would not appear before estimates, I did not think, but certainly health officials who are involved in it would.

**Senator CONROY**—The secretariat would, I presume.

**Mr Deady**—This is a working group established under the free trade agreement. There are a number of these right through the agreement—a number of chapters have working groups. In some of our fact sheets we talk about working groups to look at professional qualifications, about the financial services committee that has been established. There is a working group to do with standards and technical barriers to trade. There are working groups or committees in the agriculture chapter. They are all part of the fabric, the framework, that has been established under this agreement. But the critical point of your question is: does this working group impact at all on the PBAC or PBAC decisions. No, it does not. It deals with promoting discussion and mutual understandings of issues relating to this annex, and this gets to these issues of principles and transparency and R&D.

**Senator CONROY**—Has your attention been drawn to comments by US congressman Tom Allen? He said:

The final agreement reportedly contains several provisions that will, in effect, give powerful drug makers more leverage in negotiations with Australian health authorities.

Do you have any idea what provisions Tom Allen is referring to?

**Mr Deady**—No, Senator.

**Senator CONROY**—So would you be pretty confident he is dead wrong?

**Mr Deady**—I certainly know what we have negotiated and the commitments we have made—enhanced transparency, the review processes that we spoke about and an outcome that ensures pricing and listing will not be affected. That is what we have negotiated.

**Senator CONROY**—I have finished all my questions on the PBS, so given that we are almost at half past I do not propose to begin another section and then come back in a week or so. I am happy to stop there. But I want to put on the record my appreciation for all your efforts and Mr McKinnon's efforts in terms of the dedication and hard work you guys have put into this. I do not want you to leave here thinking that, from the opposition's perspective, we do not respect and admire the amount of dedication and effort you have put into the negotiation.

**CHAIR**—Thank you, gentlemen.

**Proceedings suspended from 6.21 p.m. to 7.37 p.m.**

**CHAIR**—The estimate committee is now back in session. The committee has before it the particulars of proposed additional expenditure for the service of the year ending 30 June 2004, documents A and B and the portfolio additional statements for the Foreign Affairs and Trade portfolio. When officers are first called upon to answer a question, they should state clearly their names and positions. When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions and the questions will be forwarded to the department for an answer. The committee has resolved that the deadline for the provision of answers to questions on notice at these hearings is Thursday, 1 April 2004.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute contempt of the parliament. An officer of the department of the Commonwealth shall not be asked to give opinions on matters of policy. However, you may be asked to explain government policy, describe how it differs from alternative policies and provide information on the process by which a particular policy was selected. An officer should be given reasonable opportunity to refer the question asked of the officer to a superior officer or for the question to be taken on notice.

The committee will now consider the additional estimates for Austrade. I welcome to the table Ms Lyons, Mr Collins and Mr Harcourt from Austrade. We will start with the portfolio overview, and I call Senator Conroy.

[7.39 p.m.]

**Austrade**

**Senator CONROY**—I have a number of questions relating to program costs for Austrade which I do not expect the officers here to be able to answer tonight. I would like to place those questions on notice for a response from Austrade as soon as possible; they are very detailed and I will not bore you by reading them out. How are we going with the objective of doubling the number of exporters by 2006? Are we on track?

**Ms Lyons**—I might defer to my colleague Mr Harcourt who will answer that question.

**Mr Harcourt**—I will for your benefit first explain the measurement provided by the Australian Bureau of Statistics. Originally Austrade looked at the exporter community using the ABS's business longitudinal survey, which was in existence until 1997-98. With that survey we produced what we called *A portrait of Australia exporters*, which was our 'Old Testament', if you like. That survey ceased in 1997-98. We then asked the ABS to give us their best estimate of the exporter community for the base year for 2000-01, and they gave us a base estimate of 25,000.

The ABS used the changes in the tax system with the introduction of the ABN—the Australian business number—to track companies as they went through Customs to identify whether they were an exporter or not. So, subject to some measuring constraints, the ABS began providing a measurement of exporters and they have provided three estimates so far. First, they did one of 24,011 for the first six months of 2001-02. Then they produced a first full count for 2001-02 of 31,450—that was the first full year they had actually been able to put the experimental measurement process in place. They have provided us with one more datum point, which is 31,174 for 2002-03. So we have basically had two years of measurement.

I should mention that there are certain exemptions to the measurement. For instance, it is probably easier to measure goods, because goods tend to go through Customs, than it is services. ABS believe they have quite a good fist of goods, but they only count services that are outbound; that is, if you are selling online materials or a legal service overseas it counts, but services provided within Australia—for instance, if a university enrolls a foreign student or a tourist company sells a service to a foreigner within Australia—it does not get picked up in the measurements. That is another constraint. They also do not count very small exporters of less than \$10,000 a year or very intermittent exporters. If you or I sold a jar of Vegemite to a friend in China or Britain, that would not count. They have also looked at exporters at the point of sale. Obviously there are a lot of farm exports and primary producers, but the exporter would actually be the wholesale unit.

That is how they derive the estimate. So at this stage we have two datum points, of 31,450 for 2001-02 and 31,174 for 2002-03. The doubling end point is 2006-07. For the most part we are getting on top of the measure, or the ABS is in assisting us, but at this stage it is probably too early to tell based on the data we have.

**Senator CONROY**—So it is too early to tell?

**Mr Harcourt**—At this stage, yes.

**Senator CONROY**—Whose idea was it to come up with doubling the number of exporters? Did you come up with that idea, Mr Harcourt?

**Mr Harcourt**—No, I cannot claim credit.

**Senator CONROY**—Ms Lyons? Mr Collins?

**Ms Lyons**—As I understand it there was—and I hasten to say this was before I arrived in Austrade—a body of research that was done about growth in particular sectors of the export community. Again, if I get this wrong, I will defer to my colleague Mr Harcourt, who had

been involved in this research. There was a body of research that was done within Austrade. At the time of the 2001 election there was a statement made by the coalition that there would be a target to double the number of exporters. Following the 2001 election that target became a government target that Austrade was asked to assist with.

**Senator CONROY**—The government decided that was the target?

**Ms Lyons**—Yes.

**Senator CONROY**—Was that Minister Vaile or cabinet?

**Ms Lyons**—It was a government target post the 2001 election.

**Mr Harcourt**—With the body of research, Senator, for your information there was a sort of *Lord of the Rings* trilogy. The first one was *A portrait of Australian exporters*, then there was *Why Australia needs exporters* and then there was *Knowing and growing the exporter community*, which Ms Lyons was referring to. That looked at, firstly, where the growth was in terms of sectors. It identified the growth in small business in terms of growth of the number of exporters. It identified the growth in knowledge based exporters, especially knowledge based services, and it also looked at generational change amongst new exporting companies. That provided, if you like, a sketch of the exporter landscape that we used in our research. The research also found that four per cent of Australian companies export, which was a relatively low proportion internationally. The idea of doing the research was to look at where Australia was placed and perhaps where there was more potential. The research identified that a lot of Australian companies had all the right characteristics to be potential exporters in terms of the wages they paid, the innovation they used, the technology they used and the training they did but they had not had an initial lead to get into the market.

**Senator CONROY**—What percentage of Australian firms export?

**Mr Harcourt**—The best estimate we have at the moment is around four per cent.

**Senator CONROY**—Roughly four per cent?

**Mr Harcourt**—Yes.

**Senator CONROY**—Has it always been at that level? What is the historical level?

**Mr Harcourt**—For the research that we have seen, it has been around four per cent. Occasionally it has been 3.9 per cent, but it has been around four or very close to it.

**Senator CONROY**—So over a long period of time it has stayed at around four per cent? I am sure there have been people coming in and people going out, but it has stayed at four per cent?

**Mr Harcourt**—Yes. The thing about the percentage is that you can look at the number of exporters as the numerator, so that is obviously important, but also the denominator as well. So if you had a large increase in businesses due to changes in the tax system and so on that would have changed the overall number.

**Senator CONROY**—I am wondering how you are going to break the long-term average. It is such an ambitious target. 2006 is not that far away now, Mr Harcourt. I am going to be asking you in two years how we are going.



**Mr Harcourt**—You could do, unless you are the Minister for Trade, of course, and then someone else will. I would still say that it is too early to tell, but one thing that has been helpful is that before we did this portrait there was no measure at all of exporter community. The Bureau of Stats produce very good work on exports and so on, but there was not much about exporting companies. Having people talk about targets and growing the community has actually quite helped us in terms of measurement, particularly for tricky things like inbound services and so on.

**Senator CONROY**—Earlier you outlined the statistical base on which you started. How are you dealing with the agricultural exporters? Are you measuring them separately?

**Mr Harcourt**—As I mentioned before, the ABS tend to count the statutory marketing authority as the exporter, as the wholesaler. They have provided a measure of exporters of origin just to see where the primary industry makes their contribution in the counting.

**Senator CONROY**—So for our wheat exports, for instance, you do not include all the wheat farmers, you just include the Australian Wheat Board. Is that right?

**Mr Harcourt**—That is right, but what the ABS will do is provide us with a measure of the numbers of exporters by origin. They do it also by state. Some people say that Victoria and New South Wales have all the exporters, but if you are in Western Australia you would probably claim that you provide the extractive exports, particularly in minerals, so you are important as well, and it is important to make that distinction as well.

**Senator CONROY**—How have the exporter numbers tracked since the program began in 2000-01?

**Mr Harcourt**—In 2000-01 there was no measurement, but we were given an estimate from the ABS of 25,000. Then 2001-02 was a first year we actually did the count, and we went from 31,450 in 2001-02 to 31,174 in 2002-03.

**Senator CONROY**—I have got a figure for the number of exporters in 2002-03 of 31,174, and that was down very slightly from 31,450 in 2001-02.

**Mr Harcourt**—That is right.

**Senator CONROY**—That is a bit of a decline in exporters last year. Any thoughts on that?

**Mr Harcourt**—Given the environment that we had in that year I guess they have had to tread water, if you like.

**Senator CONROY**—It was a tough year, world wide.

**Mr Harcourt**—It was a tough year, no doubt. So they have managed to maintain market share, I guess. I noticed a slight increase in services and are slight increase in manufacturing but, yes, there was a decline overall.

**Senator CONROY**—When was the doubling program initiated? I am sorry, I missed that. When did the government announce the program?

**Ms Lyons**—It was post the 2001 election, so it was at the end of 2001.

**Senator CONROY**—Let us say 2002 for simplicity—the beginning of 2002.

**Ms Lyons**—Yes.

**Senator CONROY**—It was over four years, so that is 2002 to 2006.

**Ms Lyons**—I understand that the government announcement said over five years.

**Senator CONROY**—Is 2006 the target?

**Ms Lyons**—2006-07.

**Mr Harcourt**—When the announcement was made, the base that the ABS provided was 25,000. When the ABS did their first count—

**Senator CONROY**—You would not be claiming that in the year 2001-02 we went up 6,000 exporters? That could have been a classification issue, given the beginning of the program. If you had been so successful there, then my follow-up question would have been: what has gone wrong since?

**Mr Harcourt**—Yes. We had to have a base somehow. For 1997-98 we had 21,787, so we had it from the BLS, for instance. It was not estimated on the same basis but, having that figure of around 22,000 in 1997-98, 25,000 in 2000-01 is reasonable, although not precise.

**Senator CONROY**—Which number are we actually looking to double?

**Mr Harcourt**—The base is 25,000.

**Senator CONROY**—So we are looking to get 50,000 by 2006-07?

**Mr Harcourt**—That is right.

**Senator CONROY**—You mentioned that the trade data show a decline in our exports of goods and services.

**Mr Harcourt**—It was 3.3 per cent last financial year.

**Senator CONROY**—It declined by 0.8 per cent over the previous year but, despite this decline, you are suggesting the number of exporters increased by just over 6,000.

**Mr Harcourt**—Yes, that year, from the measure that we have.

**Senator CONROY**—But services went backwards, according to the 2001-02 figures—only marginally: 0.8 per cent.

**Mr Harcourt**—Yes. It went marginally forward the next year. I think it would suggest a couple of things. As you have said yourself—

**Senator CONROY**—There has to be a reasonable amount of classification issue in there. I am not being critical of that.

**Mr Harcourt**—No, I think that is a reasonable thing. I think the ABS tried in good faith to deal with those things. I think you are right, and because of the constraints I mentioned, particularly in measuring inbound services, we have been working with the ABS on ways of improving the measurement. I guess it is like anything with labour market statistics or the census: you are constantly trying to improve the measure.

**Senator CONROY**—Commonsense says that these figures—which suggest a 25 per cent increase in the number of exporters that year while our exports actually declined—do not quite add up. I genuinely think it is just a classification issue.

**Mr Harcourt**—There are two things involved. One is that the decline in 2002-03 of 3.3 per cent in exports is quite unusual—SARS, the world economy, the drought lingering and so on. In the year before there was not quite the same drop, so there would be some environmental issues and there would be some measurement issues. The other thing is that you notice when you look at the previous measure—even when you did the business longitudinal survey measures—that you often did have declines before, even if you did not quite get the same result in the export value.

**Senator CONROY**—Sure. As you just said, in 2002-03 it declined by 3.3 per cent and the number of exporters on this occasion fell—only slightly, by about 0.8 per cent.

**Mr Harcourt**—That is right.

**Senator CONROY**—So it is interesting that in the first year of the program exports fell but the number of exporters still jumped by 25 per cent and in the second year exports fell and the number of exporters declined, albeit by a small figure.

**Mr Harcourt**—It is not something I can verify but you could also consider that there would be pent-up demand for services from SMEs. They might be thinking about exporting but not into it, and when you announce these programs and so on you draw a lot of people out. That is a hypothesis that might be right, and that would occur in the first year but obviously not as much in the second year.

**Senator CONROY**—You said it is a little too early for tracking the doubling in the number of exporters. Given that there does not seem to have been much movement in the last 12 months, how is that looking? I appreciate that you have said it is a little too early, but they are not encouraging signs.

**Mr Harcourt**—I think so. For a start, we are measuring it.

**Senator CONROY**—That is always a good start.

**Mr Harcourt**—Secondly, the consensus of opinion is that if you get reasonable growth in your trading partners you will get a reasonable recovery in exports.

**Senator CONROY**—There is no question about that. Do you have any specific programs in place to double the number of exporters?

**Ms Lyons**—Within our organisation—and it is not limited to our organisation—we have a number of programs. One of them is TradeStart. There are 51 TradeStart locations around Australia which provide one-on-one export advice to potential exporters.

**Senator CONROY**—You have 51 offices?

**Ms Lyons**—Yes.

**Senator CONROY**—Could we get a list of where they are based?

**Ms Lyons**—Certainly. Within Austrade we also have the New Exporter Development Program, which is a suite of free services to new exporters. We continue the programs that were in place prior to 2002 for existing exporters. EMDG is another program that encourages exporters, particularly focusing on small to medium enterprises.

**Senator CONROY**—I have a string of questions to ask on EMDG and I will get you to hold off on that because I am sure we will be covering it at some length. Are there any others, or are those the main ones?

**Ms Lyons**—No, they are our chief ones.

**Senator CONROY**—I understand that you have a non-exclusive alliance with Hayes Knight to promote and develop SMEs. What exactly is that?

**Ms Lyons**—One way that we have been looking at innovative ways to promote doubling the number of exporters targets is to actually increase our ally relationships, or partnership relationships, outside Austrade and outside government. One thing that has been explored this year and is, I hasten to say, in somewhat of a pilot or developmental stage at this point is some arrangements with those groups of professions who provide services to small to medium enterprises that may be interested in export but that do not come to Austrade or to an industry association and inevitably have to go to an accountant, a bank or an insurance house.

**Senator CONROY**—Are Hayes Knight accountants?

**Ms Lyons**—Hayes Knight are accountants. A number of accountants, including the big four, and a number of what we call second-tier accountants were approached by Austrade to see whether they would be interested in a non-exclusive arrangement whereby we would provide professional development to their firm by exploring and explaining to them the value of export and training them in effectively being export advisers, for want of a better word. In return for that, they would track for us the sorts of numbers of their companies that were succeeding offshore.

**Senator CONROY**—What is the nature of this? Is money involved? Do we pay a fee to them?

**Ms Lyons**—No.

**Senator CONROY**—So all that is really happening is that we train some of their staff?

**Ms Lyons**—Yes.

**Senator CONROY**—Is Hayes Knight the only one we have?

**Ms Lyons**—As I understand it, Hayes Knight was the pilot, and that was completed at the end of December last year. I would have to take on notice the number of people who were actually involved in that training.

**Senator CONROY**—Do you know how many new exporters we achieved arising out of the pilot? Do we have a KPI that says, ‘The purpose of this is to increase the number of exporters?’

**Ms Lyons**—I do not know the answer, but the nature of the pilot would be that, having trained the accountants in how to advise people to go into export, I would not expect that we would get a result on an exporter for some time.

**Senator CONROY**—If I asked you that question in 12 months time, would you be able to say hundreds or five?

**Ms Lyons**—I could answer the question in more detail.

**Senator CONROY**—Hopefully you will be saying hundreds. So we are not in a position to judge whether the pilot is a success yet. Are you rolling it out anywhere else, or are you just going to give it 12 months to see if it works? What is the next step?

**Ms Lyons**—As I understand it, there is another firm that is about ready to have the same sort of training within it. I cannot tell you exactly when, but my understanding is that it is within the next couple of months.

**Senator CONROY**—And who is that; are you able to say?

**Ms Lyons**—It is a firm called RSM Bird Cameron.

**Senator CONROY**—Are they another accounting firm?

**Ms Lyons**—They are.

**Senator CONROY**—I have vaguely heard of Hayes Knight. How large a company is that; is it a nationwide company?

**Ms Lyons**—They are what is referred to as a second-tier firm. There are the big four and then—

**Senator CONROY**—I am familiar with the structure of the accounting industry, tragically. What about RSM Bird Cameron? I have not heard of them, I have to confess.

**Ms Lyons**—They are a second-tier firm.

**Senator CONROY**—So there is no money changing hands in either direction?

**Ms Lyons**—No.

**Senator CONROY**—We do not charge them to train up their staff?

**Ms Lyons**—No.

**Senator CONROY**—And you are not quite sure how many staff we have trained?

**Ms Lyons**—No, I am not.

**Senator CONROY**—Could you take that one on notice?

**Ms Lyons**—Certainly.

**Senator CONROY**—And how many we intend to train at RSM?

**Ms Lyons**—Certainly.

**Senator CONROY**—Thank you.

**Ms Lyons**—We have also had discussions with the CPA, the Institute of Chartered Accountants and the Law Council. There is a proposal to talk to some of the banks, some of the insurance houses and perhaps some of the logistics houses.

**Senator CONROY**—So even though we have not been able to show any results for the first pilot program yet, we are launching into a range of other training mechanisms or follow-up programs?

**Ms Lyons**—Well, certainly with some discussions with those sorts of entities.

**Senator CONROY**—Wouldn't you normally wait to see if a pilot was a success before you rolled out the rest of the program? I would imagine that a fair bit of resourcing is involved at your end in the training of an increasing number of people, so I would have assumed that.

**Ms Lyons**—There has been a redirection of some of our resources internally. I would have to take this on notice, to indicate to you exactly how many resources have been put into it, because I am not aware of that.

**Senator CONROY**—Moving back to the EMDGS, what is the relationship between this program and the program to double the number of exporters?

**Ms Lyons**—I will defer to my colleague Mr Collins, who will talk about the EMDGS.

**Mr Collins**—We are expecting that the impact on the Export Market Development Grants Scheme will be lagged in the sense that the EMDGS, as I am sure you are aware, Senator, requires exporters to spend the money up front and then claim a reimbursement in the subsequent year. The major target group is small and emerging firms. Those firms, in the early stages particularly, might struggle to spend the first \$15,000 that they are required to spend to be eligible for the Export Market Development Grants Scheme. More of them may need two years to spend the \$15,000 to make them eligible—as I think you would be aware, there is a two-year option for first-time claimants—and a lot of the rest will lodge small claims. The changes that the government brought in last year removing some of the more experienced exporters and larger firms from the scheme mean that the scheme can accommodate a lot more smaller firms within it.

**Senator CONROY**—But the Export Market Development Grants Scheme has been capped, hasn't it?

**Mr Collins**—Yes, it has.

**Senator CONROY**—I would have thought that one of the obvious ways to try to help double the number of exporters might have been to increase the size of the pool of funds available, not just make them compete a bit harder within the same pool.

**Mr Collins**—The removal of the larger and more experienced firms has freed up some money for the smaller firms.

**Senator CONROY**—I want to make sure that I have got my facts right. The EMDGS has been capped at \$150 million annually?

**Mr Collins**—It is at \$150.4 million.

**Senator CONROY**—When was the cap imposed?

**Mr Collins**—I think it was when the new legislation was brought in, in 1997.

**Senator CONROY**—And the cap will remain in place until 2005-06?

**Mr Collins**—For the balance of the life of this scheme, and the 2005-06 year is the last grant year; that is the year of spend under the current legislation.

**Senator CONROY**—I presume that when we took the decision to take the larger and more experienced firms out we did some modelling or made an estimate of how that would affect our export performance. Is that so?

**Mr Collins**—No, nothing that could fall under that description.

**Senator CONROY**—So we just worked on the basis that they had been doing it for a while and did not need government help, so they would be out of it and would survive anyway?

**Mr Collins**—The idea behind the policy is that it is aimed at the small and emerging firms, the firms that most need the assistance.

**Senator CONROY**—The cap will remain in place until 2005-06 and the fund is not indexed, because it is a fixed dollar amount, so the real value of the scheme is declining over time, making less money available in real terms?

**Ms Lyons**—That depends to some extent on the number of claimants that we have in any one year and the value of the claims.

**Senator CONROY**—With the \$150 million being a cap, the real value of \$150 million declines over time because of inflation. It is not indexed to inflation and therefore it is declining over time. Is that a fair assessment, Mr Collins?

**Mr Collins**—Assuming there is an inflationary effect, yes.

**Senator CONROY**—If we look back to 1997, there has been a bit of inflation—not 10 per cent or anything like that, but there has been a consistent level of inflation. It is targeted within the Reserve Bank band so I am not suggesting that it is out of control or anything or that it is something we have not anticipated. But in real terms that represents a decline in funds for the EMDGS. What is the real value of the scheme now, given the cap with no indexation? Is it possible to make an estimate assuming inflation of around, let us say, three per cent, which has been about the Reserve Bank average other than when the GST was introduced. I am being generous and saying, ‘Take the GST spike out and let’s not worry about it’. I think it hit almost 6 per cent then, from recollection.

**Mr Harcourt**—The underlying inflation.

**Senator CONROY**—Thank you, Mr Harcourt, the underlying inflation rate. Has there been an estimate? Is it possible? I am no good at maths.

**Mr Collins**—I have not worked it out either. We have not calculated that.

**Senator CONROY**—Okay. I might see whether anybody else in the building is able to work it out because I have not got a calculator. Does the government have any plans to review the scheme before 2005-06 to see how it is tracking?

**Ms Lyons**—There is a provision within the legislation that requires that there be a mandatory review.

**Senator CONROY**—When does that commence?

**Ms Lyons**—We are hoping the preparation for it will commence some time this year because the legislation provides that there must be a report to the minister by 30 June 2005.

**Senator CONROY**—Okay. That's one to watch out for. How many applications have you had for the grants this year?

**Mr Collins**—We have had 4,021.

**Senator CONROY**—How does this compare to last year?

**Mr Collins**—It is a bit over three per cent down on last year.

**Senator CONROY**—Why would the number of applications have decreased do you think?

**Mr Collins**—Mr Harcourt mentioned before the sorts of things—

**Senator CONROY**—Tough world conditions?

**Mr Collins**—Yes, very much so.

**Senator CONROY**—How many first-time applicants have you had this year and how does that compare to last year?

**Mr Collins**—I think it is 1,183. That is in the ballpark of about 20 per cent less than last year.

**Senator CONROY**—Okay.

**Mr Collins**—I might add that last year was a very big year with a very big increase over the previous year of something like 23 per cent in numbers of applications and about a 50 per cent increase in new applicants.

**Mr Harcourt**—It might be that point we spoke about, Senator, where you suddenly broaden access to the scheme and a lot of people jump in in the first year.

**Senator CONROY**—So there was a bit of a spike as you change the structure of the scheme and now it is drifting away.

**Mr Collins**—The way I would describe it is that last year's very big increase has, to a significant extent, been maintained this year. It was 23 per cent up last year and three per cent down this year, so we are up on a higher plane than we were a couple of years ago.

**Senator CONROY**—In terms of trying to double the number of exporters, even a small decline in the number of first-time applicants must make you a bit nervous.

**Mr Collins**—Again, the number of first-time applicants rose 50 per cent in the previous year.

**Senator CONROY**—You need that sort of ongoing growth if you want to double the numbers. You need some spectacular growth in the number of exporters.

**Mr Collins**—Again, getting back to the—

**Senator CONROY**—It is a very ambitious target.

**Mr Collins**—Getting back to the lag factor that I mentioned, the campaign to try to double the number of exporters started in 2002. We are talking about the 2002-03 grants year, so that is only 18 months of possible expenditure from day one.

**Senator CONROY**—Is there a cap on the number of grants a company can receive?



**Mr Collins**—Yes, it is eight under the current legislation plus an additional three new market grants for turning to new markets after the first eight. But that provision was changed through legislation six months or so back and that will now be capped at seven grants.

**Senator CONROY**—So it has been reduced to seven?

**Mr Collins**—Yes, so there is no eighth year and there are no new markets.

**Senator CONROY**—Okay. That is quite significant then?

**Mr Collins**—Yes.

**Senator CONROY**—What would be the impact of this new cap on Australian exporters?

**Mr Collins**—New cap?

**Senator CONROY**—The eight to seven, and no three. That has got to discourage people a bit.

**Ms Lyons**—The changes are actually targeted at small to medium enterprises. Some of the research tends to show that that first seven years is when new exporters need this sort of financial assistance most. I think it would be a fair assumption to say that it may not discourage some exporters. It is inevitable that not every exporter is going to access this scheme or make a claim on the scheme in any event.

**Senator CONROY**—I am reliably informed that ACCI have done some calculations on the real value of the EMCG scheme over the six years, so these are not my figures. I would not want people to think that it was my maths involved. I think Brent Davis is the chief economist over at ACCI. He is quite renowned.

**Mr Harcourt**—He is their chief director of trade and policy. Stephen Kates is the chief economist.

**Senator CONROY**—Of course! An even more eminent figure. He has estimated that the real value of EMDGs has declined by around 16 per cent over the past six years and is likely to fall by nearly 27 per cent in 2005-06 if indexation is not introduced for the scheme. That is a big hit: 27 per cent over the period.

**Mr Collins**—So that is 27 per cent from the start of that period?

**Senator CONROY**—From 1997, yes. It is 16 per cent down now, six years into the scheme, and if nothing changes by the end of the current period it will have added up to a total of 27 per cent. That is a pretty hefty whack in real terms: a reduction of a quarter in the value.

**Ms Lyons**—Not having seen how he has calculated this, I think it is rather difficult to comment on it.

**Senator CONROY**—I accept that. Mr Kates is well known and he is certainly far superior to me on any of these things, so I am happy to defer to his wisdom on this. Will Austrade seek at least an indexation of the scheme to avoid this further fall? Will that be a priority request?

**Ms Lyons**—It is not a request that has been made.

**Senator CONROY**—You have not made it at this stage?

**Ms Lyons**—No.

**Senator CONROY**—You are not planning on making it?

**Ms Lyons**—No.

**Senator CONROY**—At the same time as you are trying to double the number of exporters and get out there in the field, we have got another arm of government policy cutting back on the funds that we can identify as having traditionally helped. That just seems to be running in two different directions at once. That must make your life pretty hard when government policy is pulling in two different directions, but I will not ask you to comment on that. What can the EMDG money be used for? What expenses does it cover?

**Mr Collins**—There are seven categories: market visits; overseas representation; marketing consultancy; trade fairs, literature and advertising; communication costs; free samples; and overseas buyers.

**Senator CONROY**—What is the process of paying the grants? Do you put in an application knowing how much you will get, or is it a bit of a lottery? How does that actually work? You submit it, but there is a cap—that must mean there is a rationing mechanism.

**Mr Collins**—First of all, the rules of the scheme are set out in the EMDG. Act. If you satisfy Austrade that you have spent the money in the ways that are set down under the rules, then you establish an entitlement to a grant.

**Senator CONROY**—But not necessarily the full amount that you have applied for?

**Mr Collins**—The way that the cap works is that—

**Senator CONROY**—The last half a dozen in miss out?

**Mr Collins**—No, definitely not. To make it fair and transparent for all 4,000-odd applicants, the way the cap works is that people who establish an entitlement—

**Senator CONROY**—They do that by submitting receipts?

**Mr Collins**—Submitting their application and being able to substantiate their application to Austrade's satisfaction by submitting receipts or undergoing an audit or whatever. If they have an entitlement up to the initial payment ceiling—an amount which for this year is \$50,000—they get that paid when their claim is assessed.

**Senator CONROY**—So everyone gets the base \$50,000?

**Mr Collins**—Everyone who has had to establish an entitlement up to now. This year we would expect about 70 per cent of applicants to get an entitlement that is \$50,000 or less. Around 25 to 30 per cent may be affected if there is to be a payout factor of less than 100c in the dollar for the balance.

**Senator CONROY**—What is the average amount claimed?

**Mr Collins**—This year?

**Senator CONROY**—Yes.

**Mr Collins**—It is just over \$48,000.

**Senator CONROY**—So most of them fall underneath that gap?

**Mr Collins**—Yes. The median grant claimed is just over \$30,000. That is correct.

**Senator CONROY**—But it does depend on how many are successfully approved, I guess. If all 4,000 were suddenly successfully approved then you might find that the total amount of money you were able to claim back was less. How do you calculate the \$50,000 figure at the beginning of each year?

**Mr Collins**—The initial payment ceiling amount is set in June before the start of the next financial year.

**Senator CONROY**—Yes, that is what I am trying to get to.

**Mr Collins**—Of course, at that particular stage the expenditure has been incurred by the applicants, so you are able to gauge how the economy has gone over the year. That is the best point to do it. It has to be set before 1 July so that we can process claims immediately, and at that point you have the best information and the best snapshot of the year that has just been.

**Senator CONROY**—How many firms would not get all that they applied for?

**Mr Collins**—How many would not get all that they applied for or would not get their full entitlement?

**Senator CONROY**—Both.

**Mr Collins**—There are two means by which they may get less than what they apply for. One would be that they are not able to satisfy their claim or entitlement—

**Senator CONROY**—I am not even pretending that it is an entitlement.

**Mr Collins**—But the more common way is that people cannot substantiate everything that they have claimed for, so they get an adjustment of some amount. The other issue that you are referring to is the payout factor for people who are able to establish an entitlement of more than \$50,000. They have been assessed at more than \$50,000.

**Senator CONROY**—Are there many that do not get their full amount back?

**Mr Collins**—Their entitlement?

**Senator CONROY**—Okay, sorry. You call it an entitlement. In my head I call it something else. Let us say that you put it at \$70,000 and you have a whole heap of firms that can show that they have \$70,000 in expenses. How many—

**Mr Collins**—Last year they would have got \$60,000 and roughly one-third of the rest. About 25 per cent of the total claimant base was impacted by that.

**Senator CONROY**—That creates a fair degree of uncertainty for firms. Is that a fair observation?

**Ms Lyons**—Our literature makes it quite clear that this is a two-tier payment system and that they should not necessarily expect the second payment to be 100c in the dollar.

**Senator CONROY**—So you spell it out to them as much as you can?

**Ms Lyons**—Yes.

**Senator CONROY**—But, when you are thinking about going to an export market or expanding your exports, that degree of uncertainty cannot be conducive to feeling very confident to take on that sort of export field.

**Mr Collins**—To the extent that that is a factor, it is an issue with about one-quarter of the client base.

**Senator CONROY**—Sure. Not having that certainty would make it difficult for companies to plan their promotional and marketing expenditure for that year. This is important to them. It is a good program and it is important—

**Ms Lyons**—Can I just go back to your comment about uncertainty. The reason that we are very clear in our literature that people may not get 100c in the dollar is so that they understand with certainty that beyond the initial payment ceiling they may not get that full component. I understand why you might say it is uncertain, but certainly from where we sit we have done everything we possibly can to make sure that exporters have that degree of certainty.

**Senator CONROY**—So you have given them maximum reassurance about the level of uncertainty.

**Ms Lyons**—They are your words, Senator.

**Senator CONROY**—I will move on. What role has Austrade played, if any, in the US FTA?

**Ms Lyons**—In the negotiations?

**Senator CONROY**—Not in the negotiations, just in the aftermath. If you have had any in the actual negotiations, please let us know.

**Ms Lyons**—We are the agency of government that is responsible for facilitation of business internationally. So in the negotiations we really did not have a great role, because that is more a policy role that DFAT plays. That is not to say that some of our people in the States did not provide some support, but certainly we were not involved directly in the negotiations.

**Senator CONROY**—Were you consulted at all? Did they come back to you asking about anything?

**Ms Lyons**—I would have to come back to you on that because I am not absolutely sure.

**Senator CONROY**—It sounds unlikely.

**Ms Lyons**—Yes.

**Senator CONROY**—But if that is not the case, please come back to me.

**Ms Lyons**—Certainly. If it is not the case, I will come back to you.

**Senator CONROY**—In terms of the role you play, is Austrade established by statute?

**Ms Lyons**—Yes. There is an Australian Trade Commission Act which establishes us. It is what is called a CAC agency.

**Senator CONROY**—I am familiar with a few of them. What role are you playing now with regard to the trade deal?

**Ms Lyons**—I might ask my colleague Mr Fernando to come and assist me with this. As you would appreciate, the US FTA is now really a government policy. So what we are doing is having a look at the ways that we might be able to assist exporters to access the market now that it may open up within the US. We are, in effect, planning some things in the course of the next few months.

**Mr Fernando**—In these first two weeks since the agreement was initialled, we have basically done two things designed around communicating to our client base the fact that the agreement has been initialled. Firstly, last week—

**Senator CONROY**—So you sent out Mr Vaile's press release?

**Mr Fernando**—Correct. We have a database of over 30,000 companies. Early last week we sent to that database a letter from Minister Vaile advising that the government had—

**Senator CONROY**—Can we get a copy of that?

**Mr Fernando**—Yes. Together with that, we sent two fact sheets that DFAT had and a copy of the media release.

**Senator CONROY**—You said you had done two things. Was that one mail-out, or were the two mail-outs the two things?

**Mr Fernando**—It was one mail-out. Part of it went electronically and another part went through the regular mail.

**Senator CONROY**—So that is what you have done so far?

**Mr Fernando**—Yes, that is one of the things that we have done so far. Additionally, we have communicated to our own internal staff the fact that the agreement has been initialled, and that will be expected to assist clients take advantage of the agreement.

**Senator CONROY**—In terms of Commonwealth expenditures on government policies versus things that pass through parliament and become real legislation, is there any constraint that you see in doing these things before the enabling legislation is actually passed through parliament? My point is that it has actually not come into force. I am just wondering about the issue of whether or not under your act you are entitled to proceed down this path before it has come into force.

**Mr Fernando**—I am not aware of the specific legislative requirements, but Ms Lyons may be.

**Ms Lyons**—I do not think our act would preclude us from planning for any government announcements such as the initialling of the US FTA.

**Senator CONROY**—What is the Austrade task force which Mr Vaile announced yesterday to promote the FTA?

**Ms Lyons**—It is a group of people within Austrade, both in the States and here in Australia. It is designed to coordinate, over a period of time, the planning and activity that might emerge so that exporters or potential exporters within Australia can understand the sectors that they might be involved in that might have different access arrangements within the US market after the agreement is ratified.

**Senator CONROY**—How much funding has been set aside for this task?

**Ms Lyons**—We have not yet set aside an amount of funding per se, but because of the way that Austrade works, and by virtue of the nature of the fact that it works with businesses that have different focuses over different periods of time, there is the capacity and flexibility within the organisation to redirect the resources that are there.

**Senator CONROY**—I am thinking in terms of advertising. Is there a media strategy involved? Is that what the task force has to come up with? Will there be radio ads, ads in newspapers, ads in trade journals, TV ads perhaps—featuring Greg Norman, Paul Hogan, throwing utes on the barbie?

**Ms Lyons**—As you would appreciate—

**Senator CONROY**—This mob know no depth, so anything is possible.

**Ms Lyons**—This is really early days for this task force; it is really early days for—

**Senator CONROY**—I do not want to give you any ideas, Sandy.

**Ms Lyons**—The agreement was only initialled last week. In terms of the detail of what we are going to do by way of a communication strategy, we have not worked out the detail. I cannot answer that. I could probably answer it the next time we are here.

**Senator CONROY**—I am sure you will have met Mark Textor by then. At this stage no moneys have been allocated at all for the purposes of promotion?

**Ms Lyons**—To my knowledge, no.

**Senator CONROY**—To promote this and, as you have described, refocus, you must be diverting resources away from other tasks that people are obviously engaged in, like trade promotion in Asia. It is a nil sum game. You do not have any extra money. If you take resources and put them over here, you are losing them from somewhere.

**Ms Lyons**—Generally the way that we organise things in Austrade is to do it region by region. In this instance—

**Senator CONROY**—You have not put one extra staffer on this at this stage.

**Ms Lyons**—No.

**Senator CONROY**—No plans to?

**Ms Lyons**—The people on the task force are existing Austrade employees.

**Mr Harcourt**—For instance—

**Senator CONROY**—Have you drawn the lucky straw, Mr Harcourt?

**Mr Harcourt**—I got the lucky straw when I got on telly with you.

**Senator CONROY**—It was a very rigorous debate.

**Mr Harcourt**—It was.

**Senator CONROY**—You should not have been so evil to me.

**Mr Harcourt**—Just as an example, when they made the announcement about the Thai FTA and the Singapore FTA, I wrote a piece on what the Australian-Thai relationship looks like.

**Senator CONROY**—What did you write about the quarantine aspects of the Thai free trade agreement?

**Mr Harcourt**—I did not write about quarantine.

**Senator CONROY**—Why would that be? Because you couldn't?

**Mr Harcourt**—I just did not.

**Senator CONROY**—Quarantine provisions have not been agreed yet? It would have made it hard to write them if they had not actually been agreed yet.

**Mr Harcourt**—I just did not write about the quarantine.

**Senator CONROY**—Because you could not, because they had not been agreed. What about rules of origin? Did you write about rules of origin in your Thai free trade agreement?

**Mr Harcourt**—No, I wrote about Thai-Australian trade.

**Senator CONROY**—Let us go back to this task force, the lucky straw.

**Mr Harcourt**—The point was that, with existing resources, you would write something about Asia, America, Europe or something.

**Senator CONROY**—So how many people are on the task force?

**Ms Lyons**—I will have to count up. All up, I think we have probably got 10 or 12 on both sides of the Pacific.

**Senator CONROY**—How does that break down for Australia versus over there?

**Ms Lyons**—In the US I think we have got three or four, and the bulk are here.

**Senator CONROY**—And they are all currently within the Americas or the North American region?

**Ms Lyons**—No. As you would appreciate, the US FTA is going to provide access for exporters and potential exporters right across Australia. Our task force is very broad ranging. We have representatives from our marketing group, from our Australian operation sourcing and servicing group, and from the government industry policy group. Have I missed anyone?

**Senator CONROY**—The way that you described it earlier has confused me fractionally. You talked about regions so I assumed that meant there was a region for the Americas and a Europe region and that there were four or five maybe in each. But now you are indicating that you have reached into different groups and taken people into a new task force.

**Ms Lyons**—Yes.

**Senator CONROY**—Okay. So by definition there are not as many people servicing the other regions anymore.

**Ms Lyons**—The people on the task force will have as part of what they are doing a focus on the US FTA.

**Senator CONROY**—But it is additional to what they had before last Monday. Before last Monday they were not working on promoting the FTA.

**Ms Lyons**—It might be additional or it might be different.

**Senator CONROY**—I presume they were not sitting around idly like us now and having a bit of a chat; presumably they were engaged in some activity to do with their job, and now they are going to be able to spend less time—

**Ms Lyons**—Indeed they still are, and most of them are still doing the same jobs. It is just that one of the things they will now focus will be the benefits for exporters that the FTA will have.

**Senator CONROY**—One person can only do so many things. If you are tasking them a new priority—and I am assuming this is a high priority of the government, and for you because of that—then they will stop doing some of the other things they were doing so that they can be focused on this new priority. Is that an unfair way to describe what these poor individuals on the task force are doing? Either that or you have got them working 16 hours a day.

**Ms Lyons**—They are very hardworking public sector employees—

**Senator CONROY**—I am sure they are. They have just become harder-working employees.

**Ms Lyons**—and the way you have described it is one way to describe it. Another way to look at is that all of the people in our organisation have varying priorities at varying times. It just means that what you do on a day-to-day basis may change.

**Senator CONROY**—That is my point. It has changed from what they were doing before. It is like coming to Senate estimates. You have got to drop everything else you are doing and come and sit here for hours, and I know that you love that. I know that it is all part of your job but it means that you are not doing the things that you would otherwise be doing promoting trade, because you are here chatting with us. Is that a fair analogy? These people were sitting there doing their job, looking after Asia, looking after Europe and maybe looking after New Zealand, and all of a sudden they have got to add this, which means that they have just got to be marginally less able to do the other things. It is a resourcing issue. Unless you have got extra staff and resources, by definition, if you have given them a higher new priority, they must not be able to have as much time and resources available to them to continue doing what they were doing before.

**Mr Harcourt**—It does help in some ways. When you are trying to raise the intention to export and write lots of things about exporting which touch on—

**Senator CONROY**—I am sure there is a secondary effect.

**Mr Harcourt**—There is a bit of a spillover.

**Senator CONROY**—When you write an article about Thai-Australia trade—though you could not possibly have written about the agreement because you would not have seen the agreement, would you, Mr Harcourt?

**Mr Harcourt**—I think the point that I was making, Senator Conroy—

**Senator CONROY**—You said that you wrote an article about it, and I am just wondering how you did that without seeing the text.



**Mr Harcourt**—I was making the point that I was writing an article about the Australian-Thai trade relationship like you would do with Singapore or America. That was all. It was actually trying to—

**Senator CONROY**—Would you like a copy of the text—no, sorry.

**Mr Harcourt**—It was actually trying to show that only four per cent of companies export and only two per cent of non-exporters have an intention to do so. You have to do a fair bit of work to get it out there. One thing that the debates on FTAs and so on do is help raise the profile of trade, thanks to people like you.

**Senator CONROY**—What particular aspects of the deal will this task force focus on? Can we get a copy? Has a memo been issued by the minister outlining the role of the task force? I have read about an announcement but I have not seen any specific piece of paper. Is there a ministerial press release?

**Ms Lyons**—Yes, there is a ministerial press release.

**Senator CONROY**—I will get it off the web site. Was there anything else that would be relevant?

**Ms Lyons**—To my knowledge, no.

**Senator CONROY**—What particular aspects of the deal will the task force focus on?

**Ms Lyons**—We will focus on what potential there is for exporters or those companies within Australia who might intend to export to the US. As I said to you earlier, it is a bit early to know the detail of how we are going to do that. The next time we are back I am sure I will be in a better position to answer that question.

**Senator CONROY**—Has Austrade been identifying companies that may benefit from the trade deal?

**Ms Lyons**—We in Austrade identify companies who will benefit from any market access because we find that holding up a company as an example to others that may have an intention to export can mean the difference between a company not exporting and getting into exports. Part of our role is to go out and identify companies that our people work with as clients or who are known to us and put them up as role models.

**Senator CONROY**—That must be like the tuna fisher people in Port Lincoln that I keep reading about. Did you identify them?

**Ms Lyons**—I cannot identify them, no. I am aware that the minister visited them.

**Senator CONROY**—How did he know to visit them? That is what I am trying to ascertain. Did you guys say, 'These tuna fishers in Port Lincoln—that is the place to go.'

**Ms Lyons**—Could I take that on notice? I certainly do not know whether we identified them or not.

**Senator CONROY**—Sure. How about the Footscray market? I think Mr Vaile was there yesterday morning. Did we identify the Footscray market?

**Ms Lyons**—I would have to take that on notice, too.

**Senator CONROY**—I am perplexed as to why he thought the Footscray market was on the ago. Having been many times myself, I am sure he enjoyed the experience.

**Mr Harcourt**—That would be your local market, wouldn't it, Senator?

**Senator CONROY**—Just about, yes. I used to represent the ward so I know it well. Have you asked companies to do anything in terms of the trade deal? Have you sought their agreement on any activities, yet?

**Ms Lyons**—To my knowledge, no. As I said to you it is really early days for the task force and what it is going to be doing. We have not contacted companies with a view to getting them involved in activities.

**Senator CONROY**—You were talking about holding them up as examples.

**Ms Lyons**—I should say, though, that some time ago Austrade had planned a new exporter development seminar series for the US prior to the signing of the agreement—

**Senator CONROY**—I think it would be fair to say that I am not worried about anything that goes on in the US. I do not think there is going to be too much exposure to Australian voters in the US from anything you do. I am totally relaxed about anything you get up to over in the US.

**Ms Lyons**—A couple of people from the US were coming out here—our people in the US were coming here—to promote opportunities in the US to new exporters.

**Senator CONROY**—Have you identified any of these companies that may be potential beneficiaries of the FTA yet?

**Ms Lyons**—In the normal course of what we do in trying to identify companies that might have a particular interest in a particular sector there have been a couple that have identified themselves as being interested in the US FTA because it might have some benefit for them.

**Senator CONROY**—Have you passed on those company names to anybody outside your organisation?

**Ms Lyons**—I would have to take that question on notice because I do not know.

**Senator CONROY**—Thank you. Will any of these companies that you have identified or are potentially going to identify be requested to appear at media events with Minister Vaile or the Prime Minister in support of the deal?

**Ms Lyons**—Again, I would have to take that on notice. I do not know the answer to that.

**Senator CONROY**—Has anybody directed Austrade to identify these companies?

**Ms Lyons**—To my knowledge, no, but again could I take that on notice because I am not the only point of contact in the organisation.

**Senator CONROY**—Sure. I would just be concerned about your role under statute if Commonwealth money were being used to play a role in a PR campaign for the government, through you helping find these companies, wheeling them into press conferences and doing things like that. I think there would be a fine line between your role and what the government might want your role to be, in terms of your statute—as you say, you are a CAC agency set up under legislation.

**Mr Harcourt**—Generally, in all the media that it does Austrade tends to constantly write stories about successful exporters, not necessarily in relation to a trade—

**Senator CONROY**—I appreciate what your traditional role is, and no-one has a problem with your traditional role. The issue is whether the minister's office will front up and say, 'Give me a list of everyone who will be the beneficiaries. You've identified them for us, we're going to give them a ring and they're going to be in the ads in the TV campaign.' But you have not heard anything about that yet.

**Ms Lyons**—No.

**Senator CONROY**—That is probably it. Thanks very much.

**CHAIR**—Thank you, Ms Lyons and gentlemen. We look forward to seeing you in May.

**Committee adjourned at 8.46 p.m.**