



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE

ESTIMATES

(Budget Estimates)

MONDAY, 29 MAY 2006

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

Monday, 29 May 2006

Members: Senator Johnston (*Chair*), Senator Hutchins (*Deputy Chair*), Senators Bishop, Ferguson, Payne and Stott Despoja

Senators in attendance: Senators Allison, Bernardi, Brandis, Conroy, Faulkner, Ferguson, Ferris, Forshaw, Heffernan, Hogg, Hutchins, Johnston, Ian Macdonald, Milne, Joyce, Nettle, Payne, Robert Ray, Stott Despoja and Trood

Committee met at 9.03 am

FOREIGN AFFAIRS AND TRADE PORTFOLIO

In Attendance

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

Department of Foreign Affairs and Trade

Portfolio overview

Mr Doug Chester, Deputy Secretary

Ms Gillian Bird, Deputy Secretary

Ms Penny Williams, First Assistant Secretary, Corporate Management Division

Ms Ann Thorpe, Chief Finance Officer

Ms Bronte Moules, Assistant Secretary Executive Branch

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

1.1.1: North Asia

Mr Peter Baxter, First Assistant Secretary, North Asia Division

1.1.2: South and South-East Asia

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

1.1.3: Americas and Europe

Mr Jeremy Newman, First Assistant Secretary, Americas and Europe Division

1.1.4: South Pacific, Middle East and Africa

Mr David A. Ritchie, First Assistant Secretary, South Pacific, Africa and Middle East Division

Mr Marc Innes-Brown, Head, Iraq Task Force

Mr Paul Foley, Assistant Secretary, Middle East and Africa Branch

1.1.5: Bilateral, regional and multi-lateral trade negotiations

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

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

Mr Jeremy Newman, First Assistant Secretary, Americas and Europe Division

Mr Ric Wells, Head China FTA Task Force

Mr Peter Baxter, First Assistant Secretary, North Asia Division

Mr David A. Ritchie, First Assistant Secretary, South Pacific, Africa and Middle East Division

Mr Stephen Deady, First Assistant Secretary, Trade Development Division

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

Mr Michael Mugliston, Head, Asia Trade Task Force

Mr Tim Yeend, Special Negotiator Agriculture

Ms Michelle Marginson, Assistant Secretary Trade Commitments Branch

1.1.6: Trade development and policy coordination and Asia-Pacific Economic Cooperation

Mr Stephen Deady, First Assistant Secretary, Trade Development Division

Mr Ric Wells, Head China FTA Task Force

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

Mr Michael Mugliston, Head, Asia Trade Task Force

1.1.7: International organisations, legal and environment

Ms Lydia Morton, First Assistant Secretary, International Organisations and Legal Division

Mr Chris Moraitis, Senior Legal Adviser

Ms Jan Adams, Ambassador for the Environment

1.1.8: Security, nuclear disarmament and non-proliferation

Mr David Stuart, First Assistant Secretary, International Security Division

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

Mr Les Luck, Ambassador for Counter-Terrorism

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

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

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

1.3.1: Parliament in Australia

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

1.3.2: Services to attached agencies

Ms Penny Williams, First Assistant Secretary, Corporate Management Division

1.3.3: Services to business

Mr Stephen Deady, First Assistant Secretary, Trade Development Division

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

Mr Noel Campbell, Chief of Protocol

Output 1.4: Services to diplomatic and consular representatives in Australia

1.4.1: Services to the diplomatic and consular corps

1.4.2: Provision of protection advice through liaison with the Protective Security Coordination Centre.

Mr Noel Campbell, Chief of Protocol

Output 2.1: Consular and passport services**2.1.1: Consular services****2.1.2: Passport services**

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

Mr Robert 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 Rod Smith, First Assistant Secretary, Public Diplomacy, Consular and Passports Division

Mr Stephen Deady, First Assistant Secretary, Trade Development Division

Mr Richard Andrews, Executive Director, Economic Analytical Unit

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

Mr Peter Davin, Executive Director, Overseas Property Office

Enabling services

Ms Penny Williams, First Assistant Secretary, Corporate Management Division

Ms Ann Thorpe, Chief Finance Officer

Ms Bronte Moules, Assistant Secretary Executive Branch

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

Mr Bruce Davis, Director General

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

Mr Murray Proctor, Deputy Director General Asia Division

Mr Alan March, Assistant Director General Humanitarian Coordination Public Affairs Branch

Mr Paul Lehmann, Assistant Director General Resources Branch

Ms Catherine Walker, Assistant Director General Papua New Guinea Branch

Mr Andrew Pope, Acting Assistant Director General Pacific Branch

Ms Julia Newton-Howes, Assistant Director General Fragile States and International Branch

Mr Peter Callan, Assistant Director General Asia Regional Branch

Mr Michael Wilson, Assistant Director General Asia Bilateral Branch

Ms Allison Sudradjat, Assistant Director General Indonesia Branch Senior Representative AIPRD

Mr Peter Versegi, Assistant Director General Office of Development Effectiveness
Mr Titon Mitra, Assistant Director General Australian Partners Branch
Mr Phillippe Allen, Director HIV/AIDS Taskforce

Australian Trade Commission (Austrade)

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

1.1: Awareness raising

1.2: Government advice and coordination

1.3: Services and opportunities

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

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

2.1: Consular, passport and immigration services.

Mr Hamish McCormick, Executive Director, Government and Corporate Services
Mr Greg Field, Chief Finance and Information Officer
Ms Margaret Ward, General Manager, Export Finance Assistance Program
Mr Tim Harcourt, Chief Economist
Ms Hazel Bennett, Group Manager, Analysis and Planning

ACTING CHAIR (Senator Hutchins)—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I welcome Senator Coonan, Minister representing the Minister for Foreign Affairs and Minister for Trade, Mr Doug Chester, the Deputy Secretary of the Department of Foreign Affairs and Trade, and officers of the Department of Foreign Affairs and Trade. The committee has before it the particulars of proposed budget expenditure for the year ending 30 June 2007—they are documents A and B—and the portfolio budget statements for the Foreign Affairs and Trade portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. Today the committee will examine the Department of Foreign Affairs and Trade, beginning with the portfolio overview and followed by the outputs and enabling services. Please note that Foreign Affairs and Trade output 1.1.5, ‘Bilateral, regional and multi-lateral trade negotiations’ and 1.1.6, ‘Trade development and policy coordination and Asia-Pacific Economic Cooperation’ will be examined tomorrow evening from approximately 7.30 pm.

When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions. The questions will be forwarded to the department to answer. The committee is due to report to the Senate on 20 June 2006 and has resolved that Thursday, 27 July 2006 is the return date for answers to questions taken on notice at these hearings. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the committee as a contempt. Giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

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

Any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings.

The Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. An officer of a department of the Commonwealth or a state shall not be asked to give opinions on matters of policy. He or she shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy, and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground that is claimed. Any claim that it would be contrary to the public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis for the claim. Minister, do you or any of your officers wish to make an opening statement?

Senator Coonan—No, we have no opening statement.

ACTING CHAIR—Thank you.

[9.07 am]

Department of Foreign Affairs and Trade

Senator ROBERT RAY—We have quite a few questions on the current situation in East Timor. We understand that there is a crisis management group handling it. With the permission of the committee, we set 1.30 as the time for asking questions on that so that officers can be released now. We will try to deal with it in as short a period as possible so as not to distract from the game. How many questions were taken on notice by the department at the additional estimates committee?

Mr Chester—My understanding is that there were around 40 questions taken on notice.

Senator ROBERT RAY—Have all those questions been answered?

Mr Chester—Yes, they have.

Senator ROBERT RAY—Were all those questions answered—

Mr Chester—Sorry, if I could correct that: there were 52 questions taken on notice.

Senator ROBERT RAY—There were 52 questions taken on notice. Were they all answered by the required date, as designated by the Senate?

Mr Chester—No.

Senator ROBERT RAY—How many of the 52 were answered by the required date?

Mr Chester—None of the 52 questions. All 52 questions were sent to the committee on 23 May. We did write to the committee on 29 March, indicating that, because of the number of questions and subquestions, there would be a delay in answering them.

Senator ROBERT RAY—Did all the questions take that long or were some ready by 29 March and you just decided to do them as a job lot so that we would not have the chance to look at them? What is the reason?

Mr Chester—We prepared all the questions and sent them up for clearance as a single package—all but one. There was one question that took a little bit longer to answer. It was a question to do with the CPA in Baghdad.

Senator ROBERT RAY—We understand that complexity is often a mitigating factor. When were they sent to the minister's office for clearance?

Mr Chester—On 5 April.

Senator ROBERT RAY—When did they come back to you as cleared? Was there an iterative process on any of the answers—without going to the specifics?

Mr Chester—I am not aware of that.

Senator ROBERT RAY—So you think not?

Mr Chester—I think not, but I cannot be sure. I would need to check that.

Senator ROBERT RAY—So they went to the minister's office on 5 April. When did they come back here to be passed on, or were they passed on directly from the minister's office to the secretariat?

Mr Chester—They were cleared by Mr Vaile on 9 May and by Mr Downer on 22 May, and then they were all submitted as a package on, as I said, 23 May.

Senator ROBERT RAY—Isn't it humiliating to perform even worse than the Department of Finance and Administration? What does it feel like to be the wooden spooner of answering questions on notice?

CHAIR (Senator Johnston)—I do not know anything about the other department, I have to confess, and I am sure Mr Chester does not either.

Senator ROBERT RAY—But we have asked, so we know.

CHAIR—We will take it from you.

Senator ROBERT RAY—Their miserable, pathetic performance has now been outdone by the department of foreign affairs—perhaps not necessarily the department, because they in effect were probably a fortnight behind what they should have been. Minister, why does it take so long to clear these answers? The answers are quite often valuable to be read so as to allow other questions to be formulated to follow through. In fact, by taking questions on notice it prevents follow-through at these committees. Why wait until 22 May?

Senator Coonan—In this particular instance I cannot tell you, but I can tell you from experience that sometimes the complexities do mean that there is some delay, and Minister Downer and Minister Vaile are frequently away. That is one possible explanation. But clearly the committee has an entitlement to have its questions answered in as timely a manner as possible. I do not take issue with that at all and will mention it to both Minister Downer and Minister Vaile.

Senator ROBERT RAY—Can I take up the question of the job lot. To an extent, if you have one complex question that drags all the others down. Waiting for that complex answer means all the answers are delayed. Is there any particular problem with providing them as they come in and are cleared and with making that recommendation to the minister? I understand that if you get an entirely complex question you cannot make the deadline because a variety of work has to be done on it, but it should not slow down the more simple answers.

Mr Chester—A large number of questions were asked—and I should point out that they were not all the questions that we took on notice. A large number of those questions were provided by senators in writing. They were not actually asked in the hearing. Hundreds of questions were provided to the department in writing. Given the number of questions, we made a decision that we would prepare the answers and put them to ministers as a single set. In that period the ministers were travelling extensively, and, as I said, we made a decision to put them through as a single set of answers.

Senator ROBERT RAY—That is a standard answer across the Public Service: ‘We decided to put them in as a single set.’ I am asking: why, when it slows down the flow of information enormously? You are basically being slowed down by the most complex question and, by awaiting that answer, by the time the answers get to the minister the minister is probably overseas again. Why not do them in two or three job lots? I have some of the answers here, and I concede that some of them are complex, but others are not. Let me quote an answer to a question from Senator Evans that is listed here as question 3—I am not sure whether that is Senator Evans’s designation or the department’s. It is a complex question; it goes to 10 or 12 parts. But the answer said:

These matters were discussed and answered during the Senate Estimates hearings on 3 November 2005 and 16 February 2006. These matters are before the Inquiry into certain Australian companies in relation to the UN Oil-for-Food programme.

It is a fairly familiar answer, seeing it gets repeated many times. What is the complexity of that answer? It is just a brush-off. It is not very complicated to put that in—you just press a button on the computer and it spews out the same answer to most of Senator Evans’s questions. All you have to change is the designation—(a) to (j) or (a) to (p). Why a job lot?

Mr Chester—I think I have answered that. That was a decision we made.

Senator ROBERT RAY—Of course it was a decision. I am asking what the basis of the decision was. It is no use you saying it is a decision. Of course it is a decision. The only worse answer is that you ran amok anarchistically and did not worry about it. Of course it is a decision. I want to know what the basis of the decision is.

Mr Chester—We felt that, given the clearance processes that were needed, it was more efficient to provide them as a single group to the ministers, given their movements and their overseas travel.

Senator ROBERT RAY—You seem to be saying to me that the ministers are not capable of doing this when they have done it for 35 years. There have been a lot more questions asked on notice on other occasions. This occasion it is a solid amount, I can see, but it seems to be a consistent pattern across departments now to do them as job lots. As I say, nought out of 52 by the designated time. It is hardly impressive. No elephant stamp for you this morning.

Senator FAULKNER—I have a question to Mr Chester in relation to question on notice No. 48, which was asked at the budget estimates a year ago. It is a question I asked in relation to heads of missions and whether they met the S3R3 language ability level. An answer was provided that six heads of post in East Asia have language proficiency at S3R3 level or above. How many missions are there in East Asia—just so I understand what the statistics mean?

Ms Williams—I recall that question being addressed to me at estimates last year. There are six posts in the region you are talking about. There is also the office in Taipei.

Senator FAULKNER—I appreciate the information that was provided in answer to the question on notice. Are you able to tell me whether the six heads of post have language proficiency at S3R3 level or above in the local language of the post location? Can you provide that information?

Ms Williams—I can. Some of them do and some of them do not. Would you like me to run through each of the heads of mission?

Senator FAULKNER—Yes.

Ms Williams—There has been a changeover in some of those positions since we answered the question. In Shanghai our head of mission has S4R4 Mandarin, in Guangzhou our head of mission has S4R4 Mandarin, in Seoul our head of mission has S4R4 Mandarin and S2R2 Korean; in Hong Kong our head of mission has S3R3 French; in Tokyo our head of mission has S4-plus R4-plus Mandarin; in Beijing our head of mission has S3R3 Japanese and S3R3 Portuguese. In the case of Beijing and Tokyo, both heads of mission are also taking language tuition in the local language. They are both talented linguists.

Senator FAULKNER—I appreciate that; that is the sort of information I was looking for. We have a situation where four out of the six heads of post in East Asia have proficiency at S3R3 level in the local language of their host country. That is how I interpret or crystallise that information that you have provided for me. Is that right?

Ms Williams—In the terms that you have just asked the question, yes.

Senator FAULKNER—That was the intent of the question. What is the language level in Japanese for the head of the mission in Tokyo?

Ms Williams—I do not have a language level; I only have S3R3 or above ratings here. As I understand, he has also been undertaking Japanese language tuition and, as you can see from his S4-plus R4-plus Mandarin, he is a talented linguist.

Senator FAULKNER—I heard what you said; I wondered if you had a language level in relation to head of mission in Japan for Japanese.

Ms Williams—No, I do not.

Senator FAULKNER—Do you have a language level for the head of mission in Beijing in Mandarin?

Ms Williams—No, I do not.

Senator FAULKNER—Let me ask the obvious follow-up question if I can, through the minister. You have this sort of situation in the missions—we have now been able to distil a little and we know the situation in Tokyo and Beijing. You make the point about intensive

language courses being undertaken by the head of mission in the language of the host country, which is logical and I understand. Does this position, though, bring any particular set of problems or issues that the post needs to deal with?

Ms Williams—I will answer that in two parts. Obviously, the language ability is not the only criteria. It is an asset in a particular post. Both posts are very large missions. We have a number of senior officers—and I do not have the details in front of me—who have very high language capacity in Japanese in Tokyo and in Mandarin in Beijing. Given the particular attributes of the heads of mission we are talking about and the language capacities of other officers at the post, I am very comfortable with our capacity to promote Australian interests.

Senator FAULKNER—That is helpful to understand but I am trying to establish whether the fact that we have this situation with the heads of missions in those two posts brings any particular challenges or issues that the department or the post needs to address?

Ms Williams—No. As I said, our linguistic capacities at both posts are very strong and it does not bring any problems for us.

Senator FAULKNER—I have a question in relation to departmental conduct. In relation to those serving at overseas posts, do the provisions of the Public Service Act APS code of conduct apply?

Mr Chester—Yes. We have supplemented the APS values and the APS code of conduct with a specific departmental code of conduct for overseas service, given that there are some additional elements that we believe are important in relation to staff serving overseas.

Senator FAULKNER—What areas do they go to?

Mr Chester—In general, in an overseas environment they are respect for local customs and traditions, the treatment of and behaviour with locally engaged staff and those kinds of issues.

Senator FAULKNER—You can unequivocally say that the APS values apply to all Australians who are posted overseas—the APS values apply to each and every individual?

Mr Chester—For DFAT A-based staff.

Senator FAULKNER—Yes.

Mr Chester—For locally engaged staff there will be specific codes of conduct—specific to each post, taking into account local law and local customs and traditions.

Senator FAULKNER—What is the expectation on DFAT A-based staff for their knowledge and understanding of the APS code of conduct?

Mr Chester—We have a very expansive outreach training program for all our staff. For example, it is part of our departmental training program for staff going overseas—prior to their posting. Staff from our conduct and ethics unit run regular workshops and regular training at overseas posts. I do not think there is any doubt that our staff, whether they are in Canberra, state offices or overseas, are well aware of the APS values, and the APS and DFAT codes of conduct. That has been borne out by the regular APSC state of the service reports. Those reports indicate that the awareness level in DFAT is amongst the highest of APS agencies.

Senator FAULKNER—Is it true that the APS code of conduct specifically requires public servants to uphold the APS values set out in section 10 of the act?

Mr Chester—I think that is right.

Senator FAULKNER—You would know, Mr Chester, that section 10 of the Public Service Act 1999 sets out the APS values. That is correct, isn't it?

Mr Chester—I think that is correct. I did not bring it with me this time.

Senator FAULKNER—I believe it is correct, too. I had a little bit to do with the quite exhaustive parliamentary examination and consideration of that legislation. In other words, those values form the basis of the APS code of conduct, don't they?

Mr Chester—That is right.

Senator FAULKNER—So you could confirm for this committee that the first APS value under the act is in section 10(1)(a), which says 'the APS is apolitical, performing its functions in an impartial and professional manner'. Could you confirm that to the committee?

Mr Chester—Yes, I can. I have it in front of me.

Senator FAULKNER—Could you also confirm for the benefit of the committee that the Australian Public Service Commission has provided guidance to agencies and public servants on how to interpret the code and values?

Mr Chester—That is correct.

Senator FAULKNER—Could you confirm that the guide that they publish provides that: APS employees should not use government resources including email, telephones, photocopies, and facsimile machines for any political activity.

Mr Chester—I believe that is correct.

Senator FAULKNER—Could you also confirm for the benefit of the committee that the guide provides:

In the course of their employment, however, APS employees should not engage in party political activities such as distributing political material, nor should they use office facilities or resources to provide support of a party political nature such as producing political publications or conducting market research unrelated to program responsibilities.

Mr Chester—I do not have a copy of it in front of me but I vaguely recall that it does include that.

Senator FAULKNER—You mentioned the DFAT code of conduct for overseas service. Is that what it is called?

Mr Chester—It is called the Department of Foreign Affairs and Trade code of conduct for overseas service, which, as I said, is based on the APS code of conduct.

Senator FAULKNER—Does that bind ambassadors and diplomatic staff? Are they bound to that DFAT code of service?

Mr Chester—Anyone who is an APS employee will be covered by it. We also apply it to our contractors as part of the contract arrangements.

Senator FAULKNER—But it certainly includes ambassadors, heads of mission and the like?

Mr Chester—That is correct, because you need to be an APS employee to be a head of mission.

Senator FAULKNER—It is specifically provided under the code, isn't it, that employees on long-term postings, including heads of mission, are obligated to conform with the code?

Mr Chester—That is correct.

Senator FAULKNER—Does the code also refer staff to the Public Service Commission guide?

Mr Chester—Does our code?

Senator FAULKNER—Yes.

Mr Chester—Yes. As I said, it is essentially the APS, the Public Service Act, code and values that are being added to by the department to take into account particular issues relating to overseas service.

Senator FAULKNER—So there is clear guidance then to your A-based staff that the provisions of the Public Service Act, and the Public Service values that are contained in that, and also the code of conduct for overseas service must be adhered to by all your A-based staff? I just want to be clear on this, that the advice and guidance is very clear.

Mr Chester—That is correct.

Senator FAULKNER—Given the clear advice in relation to political activity, have we had a situation where any involvement of A-based staff in domestic Australian politics has been drawn to the department's attention? Have any complaints been lodged with the department in recent times, in the last six months?

Mr Chester—Not that I am aware of, no.

Senator FAULKNER—Has any action being taken by the department in relation to inappropriate involvement in political activity by any A-based staff?

Mr Chester—No.

Senator FAULKNER—Has the secretary of the department been involved in any counselling of any A-based staff in relation to inappropriate involvement in political activity?

Mr Chester—No, not that I am aware of.

Senator FAULKNER—Does that mean no action has been taken in relation to Mr Alston? By the way, what is the current position of former Senator Alston?

Senator FERGUSON—You should know that.

Senator FAULKNER—Let Mr Chester, who is the witness at the table, answer the question.

Mr Chester—He is the high commissioner in London.

Senator FAULKNER—It needs to be confirmed for the record that he is the high commissioner in London.

Senator FERGUSON—We know that you are more interested in the ambassador in New York!

Senator FAULKNER—Has the involvement of Mr Alston, including the publication of material during the recent Liberal Party Kooyong preselection, been drawn to the attention of the department?

Mr Chester—It certainly was not drawn to the attention of the department.

Senator FAULKNER—You are not aware of that?

Mr Chester—The department is aware of it, yes.

Senator FAULKNER—How are you aware of it?

Mr Chester—By reading it in the newspaper.

Senator FAULKNER—So what did the department do as a result? Are you aware of any action taken by any departmental officials or did you just read about it, take it on board and ignore it?

Senator Coonan—That assumes that it warrants some attention on the part of the department.

Senator FAULKNER—I am making no assumptions, as you can hear—I am not even assuming who the High Commissioner in London is. Let Mr Chester answer the question.

Mr Chester—The department talked to Senator Alston about the newspaper reports. On the basis of that discussion, the issue was let rest.

Senator FAULKNER—Who is ‘the department’? Who spoke to Mr Alston?

Mr Chester—I did.

Senator FAULKNER—On your own initiative, on the secretary’s initiative or on someone else’s initiative?

Mr Chester—I spoke to Senator Alston in my capacity as having oversight of these issues within the department, so it was a departmental decision.

Senator FAULKNER—Yes. Was it on your own initiative, or did you discuss it with the secretary first?

Mr Chester—I believe I discussed it with the secretary.

Senator FAULKNER—You would know, Mr Chester.

Mr Chester—I cannot recall, but I believe I would have spoken to the secretary.

Senator FAULKNER—So you were tasked to speak to Mr Alston.

Mr Chester—I do not know if ‘tasked’ is the right word.

Senator FAULKNER—Tell me what the right word is.

Mr Chester—I spoke to Senator Alston. It was agreed that I would speak to—

Senator FAULKNER—What did you say to him?

Mr Chester—I raised the issues in the press with him and reminded him of the APS values and code of conduct. He was well aware of them. He pointed out that the reports in the media were misleading and that he had not been speaking to the media as the media reports indicated. On the basis of that, that was the end of the issue.

Senator FAULKNER—How soon after these press reports appeared did you talk to Mr Alston?

Mr Chester—Soon after. I cannot recall precisely when. It was within a day or two, I think.

Senator FAULKNER—Did you counsel him?

Mr Chester—There was no need to counsel him.

Senator FAULKNER—Why not?

Mr Chester—For what reason? There was no reason to. I spoke—

Senator FAULKNER—Why did you raise it with him?

Mr Chester—Because the media reports had indicated that he may have breached the APS code of conduct or the APS values. In talking to him, it became clear that the way the story had been written had misrepresented his involvement in this issue.

CHAIR—That is a surprise!

Senator FAULKNER—I am sorry?

CHAIR—It is a surprise that he was misrepresented by the media.

Senator FAULKNER—We have not established that yet. We will keep working on this, and see what the situation is.

CHAIR—You have it from the horse's mouth.

Senator FAULKNER—Didn't Mr Alston produce a reference which was published and distributed for one of the candidates in the Liberal Party's Kooyong preselection? Did you ask Mr Alston if he had done that? He was a formal referee—

Mr Chester—I do not recall whether I asked him that, but it was apparent that he had produced a reference, yes.

Senator FAULKNER—So you did not ask him whether he had produced a reference?

Mr Chester—No.

Senator FAULKNER—You took that as—

Mr Chester—I do not think that it was a fact in dispute.

Senator FAULKNER—So it was not in dispute?

Mr Chester—No.

Senator FAULKNER—What else did he do, by the way, before we move to the reference? What other activity did Mr Alston participate in during the Kooyong preselection?

Mr Chester—I have no idea. I do not know.

Senator FAULKNER—Are you aware of departmental resources being expended on telephone calls, emails and the like?

Mr Chester—I am not aware of that.

Senator FAULKNER—Did you ask that?

Mr Chester—No, I did not. Senator Alston, in my discussion with him—

Senator FAULKNER—Hang on—he is not a senator any longer.

Mr Chester—Sorry—High Commissioner Alston—

Senator ROBERT RAY—It is hard to say, with so many ex-senators holding down positions; I understand.

Senator FAULKNER—It was a very political appointment; I will give you that, Mr Chester.

Senator TROOD—That was Neal Blewett.

Senator FAULKNER—He has lost the title—

Mr Chester—I accept that.

Senator FAULKNER—even if he is still an activist in the Liberal party and being a referee for a candidate in the Liberal Party preselection who is splattered all over the press and using Commonwealth resources contrary to the APS code of conduct. And what have you done about it?

Senator Coonan—It has not been established that there has been any improper use of any Commonwealth resources whatsoever. The mere furnishing of a reference surely does not make you a political activist, or else half of Australia would be regarded as political activists in preselections. You need to go a bit further to establish the case, Senator Faulkner, before you can put the question you are putting.

Senator FAULKNER—If you are such an expert, Senator Coonan, can you now explain to the committee—

Senator Coonan—I am not saying I am an expert; I am saying you have not established the case.

Senator FAULKNER—It is a bit difficult when, unfortunately, Mr Chester—who, I acknowledge, was concerned enough to take action to contact Mr Alston; and I give Mr Chester and other departmental officials involved in that credit for taking immediate action, which they should have done—has not asked Senator Alston what departmental resources were involved in his foray into the Kooyong preselection.

Senator Coonan—There is an anterior question, which is whether there are departmental resources involved—not what departmental resources are involved. Just take it step by step and you might get further.

Senator FAULKNER—As you would know, Senator Coonan, if you have been listening to the evidence, Mr Chester, unfortunately, did not ask Mr Alston that question.

Senator Coonan—You are assuming that departmental resources were involved, and you cannot go there unless you can establish that. People do have private pieces of paper and they are capable of producing something in a private capacity.

Senator FAULKNER—His involvement in the preselection was contrary to the APS code of conduct.

Senator Coonan—You have not established that.

Senator FAULKNER—You have a political appointment over there in London, the high commissioner in London, putting the fix in for preselections for the Liberal party in Kooyong. That is what you have.

Senator Coonan—Senator Faulkner, it is not much good making speeches. There is no point in making speeches. You have not established the fundamental premise yet.

Senator ROBERT RAY—Mr Chester has agreed that, from his knowledge, Mr Alston provided a reference for Mr Joshua Frydenberg, a candidate in Kooyong.

Senator Coonan—Yes.

Senator ROBERT RAY—And we do note that Senator Alston, of course, is a resident of the electorate of Kooyong, up in East Kew. Do we know when he provided that reference? Did you ask him when he provided it?

Mr Chester—No. I had no reason to ask that. As I said, on seeing the newspaper reports which prompted the discussion with the high commissioner, he indicated that the reference he had provided he had done in his private capacity and that it was not something he had done related to his duties in London. He further indicated that the reports that had been published that indicated that he was out there, I guess, giving press conferences and talking about this issue—and that is certainly how the media reported it—were, in fact, wrong. The media had received a copy of the reference he had provided, as I said, in his private capacity, and had dressed that reference up as a recent media statement that he had made. In the discussions with the high commissioner he clearly indicated that he was well aware of the APS code of conduct, well aware of the values, and would do and had done nothing that was in breach of the values in the code of conduct.

Senator ROBERT RAY—Later we will be raising an issue about an email sent at 1.57 am, when the person was on rec leave; but the department has used the ‘at all times’ rider in the code of conduct. This is in another case. So why doesn’t it apply to Mr Alston? Of course it is in your private capacity, but how can you issue a reference in a preselection, which is a very political act, when you hold down a high commissionership? I do not understand that.

Mr Chester—Are you saying that you have evidence that he used the departmental system to forward this material?

Senator ROBERT RAY—No, I think that is irrelevant. I am not arguing that at all. I think it is a question you should have asked; who typed that up, was it a staff member—all that sort of thing. You might have pursued that.

Senator FAULKNER—And what letterhead and stationery were used; what Commonwealth resources were used in its preparation and transmission.

Mr Chester—Do you have any allegations about that?

Senator FAULKNER—Did you ask any of those questions? I do not ever make allegations.

Mr Chester—I know; that is exactly right. That is the problem.

Senator FAULKNER—I am not in the business of making allegations. I am in the business of asking questions, unlike Senator Alston, who made many an allegation—most of which were baseless and all of which were baseless in relation to the Labor Party. But that is his stock in trade. My approach is to ask questions. Were any of those questions asked, Mr Chester?

Mr Chester—No, I did not feel there was a need to ask those questions.

Senator ROBERT RAY—I want to go back for a moment if I can. You dismiss some of the press reports; I will accept that. We have taken you through some of the press reports and you have dismissed them. I do not know the truth or otherwise of those particular press reports, but you say the issuing of a reference to a candidate in a preselection by someone who is a high commissioner for this country is a private act. I cannot understand how that is a private act when another person who sends an email at 1.57 in the morning—while on rec leave, on his hotmail—is regarded as being on duty and has been persecuted ever since.

Mr Chester—I think there is a big difference between those two issues.

Senator ROBERT RAY—Would you like to explain it to me so I understand?

Mr Chester—I think you have oversimplified the second issue. That issue is not merely about sending an email at whatever time it was—1.27 in the morning—

Senator ROBERT RAY—All right. Nevertheless he was regarded as being on duty at all times. Why isn't Mr Alston regarded as that?

Mr Chester—I do not think that is correct. I think you are misportraying that second issue.

Senator ROBERT RAY—Having known that he provided a reference, at no stage did you ask how in his private capacity that was provided and whether any departmental resources were used in the typing or transmitting of it.

Mr Chester—That is correct.

Senator FAULKNER—But you did not check that, did you? No check was made.

Senator ROBERT RAY—No, that is what he said.

Mr Chester—That is right.

Senator FAULKNER—Why not?

Mr Chester—I had no reason to. After having the discussion with the high commissioner I felt satisfied that he was not engaging in conduct that may be contrary to the APS values and—

Senator FAULKNER—But if any departmental resources were used it would be a clear breach of the code of conduct, wouldn't it? Open and shut.

Mr Chester—Possibly.

Senator FAULKNER—But you did not ask that question. You do not know how it was transmitted. You do not know what resources were used.

Mr Chester—That is correct.

Senator FAULKNER—And of course we do know—and I hope this was not relevant to the issue—that Mr Downer and Mr Alston were all in the fix over this Liberal Party preselection in Kooyong. We know that, don't we?

Mr Chester—That has got nothing to do with it.

CHAIR—Hang on. 'All in the fix'—what does that mean? Put a proper question to him by all means.

Senator FAULKNER—We know which candidate they were supporting and so do you.

CHAIR—Put a proper question to the departmental officer. He has got no capacity to answer anything as ridiculous as that.

Senator FAULKNER—Well, Senator Coonan can answer it then. Why weren't these checks made?

CHAIR—I think he has answered that. He told you he questioned the high commissioner and was satisfied with the answers he received. It is as simple as that.

Senator ROBERT RAY—Limited questioning and limited answers do not necessarily give us the full story.

CHAIR—They do if the questions are simple, you get simple answers and you are satisfied. End of story.

Senator ROBERT RAY—I think insufficient inquiries have been made.

CHAIR—That is another question.

Senator ROBERT RAY—It is the question. If you pay attention—I know you have had a hard night—

CHAIR—Put it to him.

Senator ROBERT RAY—Pay attention.

CHAIR—Put it to him. Insufficient inquiry: that is the question.

Senator FAULKNER—It has been put a number of times.

Senator ROBERT RAY—You know that a reference has been provided in a rather abrasive preselection, as most preselections are. The question is: did he handwrite it and post it? Did he go around to the British post office, put a stamp on it and send it off or did he use high commission staff to type it up? Was it faxed from the high commission to Mr Frydenberg? We do not know any of those things?

Mr Chester—That is correct.

Senator ROBERT RAY—It is a big inquiry. I agree with Senator Faulkner—I think it is highly commendable that you took the initiative, I have to say that. It is highly commendable. Having had the press report, I think it was very sensible. But it seems that then, whether consciously or—more likely—unconsciously, plausible deniability has taken over here. You

have denied the more extreme parts of the press. That is fine. Surely there has to be some pursuit when it appears in the press. Did then Senator Alston—Mr Alston now—ever put out a denial?

Mr Chester—In what sense?

Senator FAULKNER—To the press about the media reports. If the media reports were misleading, did anyone attempt to correct the record?

Mr Chester—I do not know. You will have to ask him that. I do not know.

Senator FAULKNER—We cannot ask him. He is not here.

Senator ROBERT RAY—Why didn't you ask him? I would have expected you to have asked him. When the department comes under some suspicion that it may be acting outside of the guidelines, I thought you would have suggested to him that he put out a denial. Why wouldn't you do that?

Mr Chester—The thought never crossed my mind.

Senator FAULKNER—So no investigations have been undertaken into the use or possible misuse of official resources in relation to this matter?

Mr Chester—That is correct.

Senator FAULKNER—You see, we have a situation—and I do not want to get into this debate here—where there is obviously a political issue about the nature of some of these political appointments to these very senior diplomatic posts. That is one matter for debate. It is not a matter for debate at estimates committees. What is a matter of concern and consideration here is the involvement of any such political appointees in continuing political activity in domestic politics in Australia. Here is an open-and-shut case of a breach of the APS code of conduct and something ought to happen about it.

CHAIR—Says who?

Senator Coonan—Senator Faulkner, that has not been established.

CHAIR—It is not an open-and-shut case at all.

Senator Coonan—You just cannot make these wrap-up conclusions. You have not established that.

CHAIR—That is just an outrageous comment.

Senator Coonan—It might be frustrating for you, but you have not established that. It is an outrageous conclusion.

CHAIR—These gratuitous evaluations mean absolutely nothing. When you do it in future, I am going to butt in and correct the record every time you do it. That is what the chairman will do in this committee. You are not going to get away with what you do in every other committee. It is as simple as that.

Senator FAULKNER—You butt in all of the time. I do not really care what you do.

CHAIR—I will continue to do so when you mislead the record.

Senator FAULKNER—I have no capacity to control the way you abuse your position as chair of this committee.

CHAIR—There you go—you are doing it again.

Senator FAULKNER—I have no capacity to do that. I just intend to continue to ask appropriate questions about the way that Commonwealth resources are used. I can assure you that nobody else but you will stop me.

CHAIR—I will not stop you. But, when you make evaluations and gratuitous assessments of opinion and put them forward as fact, I will intervene. Do you have any further questions?

Senator ROBERT RAY—How is the high commission in London going? Is it running efficiently? I have had a lot of complaints myself, but they were all very vague.

Senator Coonan—They were probably political.

Senator ROBERT RAY—Probably, yes. That is right. That is why I am asking how it is going.

Senator FERGUSON—I was just thinking about how intelligent these two are.

Senator ROBERT RAY—Did you want to put that gratuitous comment on the record? You might upset our chair.

Senator FERGUSON—I would, but—

Senator ROBERT RAY—You would, but you are in the same party and biased, so we will let you go and get an answer to the question.

Senator FERGUSON—And you guys are not?

Senator ROBERT RAY—Yes, exactly. We have a job to do and so do you. If you want to run interference then you do it.

CHAIR—Let us have some questions.

Senator ROBERT RAY—We want some consistent chairing too on gratuitous comments, Chair. Mr Chester, how is it going?

Mr Chester—The high commission in London?

Senator ROBERT RAY—Yes.

Mr Chester—Fine, as far as I am aware.

Senator ROBERT RAY—The work ethic is good?

Mr Chester—I am not aware of any problems.

Senator ROBERT RAY—It has not been brought to your attention?

Mr Chester—What, Senator?

Senator ROBERT RAY—Mr Alston's work ethic in the job.

Mr Chester—I am not aware of any problems or issues with it.

Senator ROBERT RAY—Would you be aware if there was a problem?

Senator Coonan—With respect, Senator Ray, what does that mean? Does it mean that he does not turn up, he is not interested or he is not discharging his duties?

Senator FAULKNER—All of the above.

Senator Coonan—You wrap it up as some sort of work ethic. What does that mean, precisely?

Senator ROBERT RAY—I am asking a question.

Senator Coonan—Yes, I know that.

Senator ROBERT RAY—If you want to come over to this side of the table and ask me questions, you can.

Senator Coonan—No, I have been there. I would rather be here.

Senator ROBERT RAY—Exactly. That is right. So, being there, you can learn the discipline of not asking me questions. I am sure the chair would rule that way.

Senator Coonan—The questions have to be clear, though.

Mr Chester—One way of answering that question is to refer back to the London bombings in the middle of last year, when we saw how the high commission and the high commissioner responded to that. That is probably the most public example of how the high commission is operating. They did an excellent job in responding to that issue.

Senator ROBERT RAY—Good. I want to raise a subject that I have raised here a few times but I do not think all that recently: the case of a DFAT officer. I briefly referred before to what I regard as the comparative difference in treatment of Mr Alston and Mr Smith. What is the current status of Mr Smith?

Mr Chester—Mr Smith remains suspended from the department.

Senator ROBERT RAY—Suspended on full pay?

Mr Chester—Yes.

Senator ROBERT RAY—How long has that been for?

Mr Chester—A little over three years.

Senator ROBERT RAY—Three years and three months—does that sound right?

Mr Chester—Yes, roughly.

Senator ROBERT RAY—Are any other officers suspended at the moment on full pay?

Mr Chester—There is one.

Senator ROBERT RAY—How long has that been for?

Mr Chester—It is probably around 18 months, but I will need to check that.

Senator ROBERT RAY—Are you checking it?

Mr Chester—Yes.

Senator ROBERT RAY—An approximate time only.

Ms Williams—September 2003.

Mr Chester—Two and a half years.

Senator ROBERT RAY—I am glad we checked. That is about \$60,000 or \$70,000 worth. Under what circumstances—I do not want the person's name—was the second officer suspended?

Mr Chester—That is subject to a suppression order in the court, so I think we are unable to talk in any detail about reasons. We are prevented from identifying the staff.

Senator ROBERT RAY—You are not prevented here, but if you tell me there is a suppression order you may well limit my questioning. But I can ask any question I like and insist on any answer I like.

Mr Chester—I am sure you can.

Senator ROBERT RAY—The court powers do not come in here.

Mr Chester—No.

Senator ROBERT RAY—I need a broad description that would not traverse the court ruling.

Mr Chester—I cannot. You can insist—

Senator ROBERT RAY—No, I will not insist.

Mr Chester—but whatever answer I give to that question will identify them.

Senator ROBERT RAY—Can I ask you this: when do you expect to be able to give evidence at this committee in relation to that particular set of circumstances?

Mr Chester—We understand that the next part of the trial process will be in the period August-September this year.

Senator ROBERT RAY—All right. We will let that one lie.

Senator FAULKNER—You have said that this matter is before the court.

Mr Chester—Yes.

Senator FAULKNER—Are you able to say which court?

Mr Chester—I am not sure. I would like to take that on notice, if I could.

Senator ROBERT RAY—Let us make it absolutely clear—this is not a criticism: you are taking this question on notice to take advice as to whether you should answer it rather than not knowing the answer, which is quite acceptable, by the way.

Mr Chester—I know the answer. It is because of the court order. That is the reason.

Senator ROBERT RAY—I say that because in other instances we have had witnesses at the table, knowing the answer, taking it on notice, and then providing it at a later time when really what they wanted to do was take advice on the matter. Mr Chester has behaved absolutely appropriately here. As long as we have on the record that that is the reason for taking it on notice, okay.

CHAIR—Mr Chester, is it possible for you to table the court order for the benefit of the committee without disclosing the names of the parties?

Senator FAULKNER—On a point of order, Chair, it may well be possible but I have got to say that I have a problem and I think we ought to have a private meeting about that. If we are going to have documents tabled that are not made public there might be a case for that, but I think that it is something that requires a little more consideration than just yes from Mr Chester. I would want to talk about the implications of that in a private committee hearing. I am generally very concerned about the tabling of documents. It is the equivalent of in camera evidence. There are some real issues in relation to that and I suggest to you that you take that—

CHAIR—We will consider that but let me tell you why I want that. I would like to see what the terms of the order are so that the committee can be alert to why and what the parameters need to be if the matter is to be explored even in the most cursory or broad terms. I think that is just a safety mechanism, but we will discuss it at morning tea.

Mr Chester—It was not the department that sought that suppression order—

Senator ROBERT RAY—In any event, if such a document is provided to you, Chair, it can be provided on an in camera basis.

CHAIR—Yes, that is all I wanted so that we knew where we stood with respect to that issue.

Senator FAULKNER—That is different from tabling it at the committee.

CHAIR—Yes, all right—not tabling it but providing it.

Senator FAULKNER—I would not even do that. I do not think that it should be tabled or, if it is tabled, it ought to be public. They are the choices: either do not table it or table it and it is open to committee members and anyone else who cares to examine the document. That is what tabling a document means.

CHAIR—Okay, but not as part of estimates.

Mr Moraitis—The reason we wanted to take that question on notice was because the suppression order prohibits the department from in any way identifying or doing anything which might lead to that person's identification. That is the only criterion by which we try to take this into account. If that could be satisfied by tabling or by mentioning the name of the court then that is acceptable. But it is that criterion which is the test.

Senator ROBERT RAY—Do we know how much the suspension of Mr Smith has cost in terms of salary and other like-minded things—superannuation contributions et cetera? Has anyone calculated that figure to this point?

Mr Chester—In relation to his salary—

Senator ROBERT RAY—There are always on-costs to a salary.

Mr Chester—The salary is around \$200,000—something of that order.

Senator FAULKNER—Can you be any more precise, Mr Chester? You might just give us the full breakdown. You might cut to the chase and save a bit of time if you gave us the updated costs. It must be pushing a million dollars in this case now.

Mr Chester—Unfortunately, it is getting close to that. I think that it is worth noting that after three and a bit years we are essentially where we were this time three years ago. You will recall that three years ago the department made a determination and found that Mr Smith had breached the APS code of conduct. After three years and some half a million dollars, we are now back at that point with an independent process coming up with exactly the same answer.

Senator FAULKNER—Can you give us now the cost disaggregation?

Mr Chester—The costs are round \$580,000 plus salary costs of around \$215,000.

Senator ROBERT RAY—How much did the Kennedy inquiry cost?

Mr Chester—Kennedy was the independent determining officer. The costs for Kennedy himself were \$106,000 but there was also legal advice to Mr Kennedy.

Senator FAULKNER—Do you have in front of you, Mr Chester, a disaggregation of the \$580,000 that you can provide to the committee?

Mr Chester—Yes.

Senator FAULKNER—It might save some time if you do that.

Mr Chester—Of the \$580,000 to \$590,000 costs, \$405,000 has been on total legal costs and that includes legal advice to the department from AGS. I have a year-by-year breakdown of that. Would you like that?

Senator ROBERT RAY—Yes, we would. Does this take into account the cost of departmental staff hours that have been devoted to this or is that in addition?

Mr Chester—Departmental time on this has been minimal. As you know, this issue has essentially been taken out of the department's hands. We have an independent determining officer, Kennedy, and an independent sanctioning officer who is working at the moment.

Senator ROBERT RAY—Is that Mr Boucher?

Mr Chester—Yes. This is all operating at arm's length from the department so our involvement in this whole process is minimal.

Senator FAULKNER—Can we now go to the disaggregation?

Mr Chester—As I said, the total legal costs were \$405,000; legal advice to DFAT in financial year 2002-03 was \$93,000, financial year 2003-04, \$18,000 and financial year 2004-05, \$9,800; legal advice to Kennedy from the AGS, financial year 2003-04, \$98,000 and financial year 2004-05, \$110,000; legal advice from AGS to Boucher, financial year 2005-06, \$20,000; and there were costs in 2003-04 for legal costs that we paid to Smith and court costs which totalled \$37,000.

Senator FAULKNER—The sum total of those legal costs is \$405,000?

Mr Chester—Yes, roughly. Mr Kennedy's costs totalled \$106,000 and Mr Boucher's costs to date are \$74,000.

Senator FAULKNER—Does that mean Mr Boucher has not concluded his work, or he has concluded it and you have not received all the invoices yet?

Mr Chester—He has not concluded his work. He has written his report and has provided a draft copy of that report to Smith.

Senator FAULKNER—What remaining role is there for Mr Boucher? I am not quite clear. Do you mean the draft report might change?

Mr Chester—I think Smith will have an opportunity to comment on that report and after Smith has had a chance to look at the report Boucher will finalise the report. At that stage the department will see the report and I would hope that that is the end of this issue.

Senator FAULKNER—I am still not quite clear how we get to only \$580,000. You said the total legal costs were \$405,000 and Mr Kennedy's costs were \$106,000.

Mr Chester—So that is \$511,000. Boucher's costs were \$74,000 so that adds to between \$580,000 and \$590,000.

Senator ROBERT RAY—There must be some departmental resources—your consideration, other people's consideration.

Mr Chester—It is a very minor amount.

Senator ROBERT RAY—I will not draw the other conclusion to that, then.

Mr Chester—There was, very early on, as you know, when this was an in-house process. But that was only for a very short period—a two-month period. Since Kennedy was appointed three years ago it has been essentially a process that is removed from the department.

Senator FAULKNER—So it is reasonable to settle on these costs of \$585,000—that is the figure you have given—

Mr Chester—Around \$590,000.

Senator FAULKNER—They are the non-salary costs. You add to that Mr Smith's ongoing employment and the time he has been suspended. Is that around \$215,000?

Mr Chester—Yes. The figure I have here is \$215,000.

Senator FAULKNER—If my maths is correct, that would add up to \$805,000 and going north.

Mr Chester—Something of that order—it may be a little bit more than that when it has finished.

Senator FAULKNER—So \$805,000 going north?

Mr Chester—Yes.

Senator ROBERT RAY—I want to go through the issues as you understand them, as I am not sure I fully understand them. This all began with an inquiry into what is known as the Lackey leak, to put it in summarised form, didn't it?

Mr Chester—It began at the same time as the Lackey leak.

Senator ROBERT RAY—Are you saying that the consequences of an investigation into one did not lead to the other?

Mr Chester—That is correct—it did not. Let me explain. In the process of undertaking the inquiry into the leak of the record of conversation between Mr Downer and the New Zealand

high commissioner, evidence came forward to the department that an officer of the department was providing assistance to the opposition in the preparation of Senate estimates questions. They were two distinct issues. That was a separate issue to the Lackey leak.

Senator ROBERT RAY—That is a fascinating phraseology that I will return to in a few minutes. While we are on the subject of the Lackey leak, I remember the then secretary of the department vowing a bit *Gone With the Wind* like that the leaker would be found and done. Has that happened?

Mr Chester—We have answered this question at previous hearings.

Senator ROBERT RAY—I just want to hear it again. In the 18 months since I have asked about it, you may have come up with someone.

Mr Chester—It was referred to the AFP, as you know, and the AFP provided the department with a report. I cannot remember the precise terminology, and that is probably important.

Senator ROBERT RAY—Let me remind you: ‘insufficient evidence for a prosecution’. Does that sound right?

Mr Chester—Something along those lines.

Senator ROBERT RAY—A bit like they found with the leak of the ONA report and a certain candidate—insufficient evidence. So that is a closed matter, now, basically? Someone has got away with it?

Mr Chester—It would appear so.

Senator ROBERT RAY—Yes—they got away with it. There is some document or email that exists that was used in assisting the preparation of the opposition’s estimates questions. Is that right?

Mr Chester—I am not sure it is fruitful to go back over what the determining officer has found.

Senator ROBERT RAY—I will come to its relevance in a moment.

Mr Chester—There was a range of evidence that the determining officer had, on the basis of which the independent determining officer found that Smith had in fact provided this assistance.

Senator ROBERT RAY—In the form of a document—an email.

Mr Chester—That was one element. There was—

Senator ROBERT RAY—That is where the evidence came from—the email.

Mr Chester—There was a range of evidence. There was evidence from other staff in the department; there were a number of documents.

Senator ROBERT RAY—I will come back to the other staff in the department. It is risky territory to go into, looking around this committee, because four members of this committee are on the Senate Privileges Committee. Any document prepared for the assistance of parliamentary proceedings is covered by privilege and cannot be adduced in a judicial or

semi-judicial inquiry. I am just wondering how the Department of Foreign Affairs and Trade, Mr Kennedy or anyone else could have done so.

Mr Chester—I think you may be being unfair on Mr Kennedy. He was very aware of this issue of privilege—

Senator ROBERT RAY—I have no doubt.

Mr Chester—and took a significant amount of advice on this issue.

Senator ROBERT RAY—From who?

Mr Chester—From AGS. I do not believe, from my reading of his report, that any material that was before the Senate was used in him reaching his conclusion. For example, the question that was asked—that is, whether the department was forewarned—would be asked, and that is not part of the evidence used in making his determination.

Senator ROBERT RAY—I am afraid you do not understand—it does not have to be. It is used in the assistance and the development of parliamentary proceedings. It does not have to be used in the chamber. It does not have to be asked anywhere. The fact that a document has been produced for the proceedings of parliament means that it attracts privilege. The only relevant aspect here is that it is cannot be used in judicial or semi-judicial things, which the Kennedy inquiry clearly is. It cannot be used there. It does not mean that it is not a valid piece of evidence if it can be used—it cannot be. I think you are in harm's way there—seriously. You talk about other evidence of APS officers. One of those officers was himself subject to disciplinary action. That is true, is it not?

Mr Chester—That is correct. It was some time ago.

Senator ROBERT RAY—What has happened to him.

Mr Chester—He remains a departmental officer.

Senator ROBERT RAY—Yes. What happened to the—

CHAIR—When you say 'some time ago', what do you mean?

Senator ROBERT RAY—This is the National Party member.

Mr Chester—It was about 10 years ago.

Senator FAULKNER—Has he been promoted?

Mr Chester—No.

Senator FAULKNER—Posted?

Mr Chester—Yes.

Senator FAULKNER—Out of harm's way.

Senator ROBERT RAY—When was the disciplinary action dropped against him?

Mr Chester—I am not sure what you mean.

Senator ROBERT RAY—If I have it wrong I will withdraw the question.

Mr Chester—He went through a disciplinary process 10 years ago when findings were found.

Senator ROBERT RAY—In other words, it was not recent?

Mr Chester—No.

Senator ROBERT RAY—There has been nothing recent?

Mr Chester—No, there has been no recent disciplinary action against him.

Senator ROBERT RAY—While under suspension, can an officer apply for a promotion?

Mr Chester—I believe so. I would have to check.

Senator ROBERT RAY—Because if you are eventually cleared, it could be regarded as a penalty.

Mr Chester—I am not sure. I will have to check it.

Senator ROBERT RAY—Well, let us check it. I also want to check something else in relation to it. Can no-one here answer whether Mr Smith applied for a promotion?

Mr Chester—I am not aware that he has applied.

Senator ROBERT RAY—Who was the branch head that stood Mr Smith down initially?

Mr Chester—Who did the suspension?

Senator ROBERT RAY—Yes. I do not know; that is why I am asking.

Mr Chester—I will let Ms Williams answer this question.

Ms Williams—It was a long time ago, but I think it was me.

Senator ROBERT RAY—And you have not received an application from him at any stage for a promotion or arbitrated on that?

Ms Williams—I was Assistant Secretary, Staffing Branch at the time in 2003. I have been in various positions since, including this one—First Assistant Secretary, Corporate Management Division. I do not have a direct involvement in promotions. I cannot recall, and I would have to check for you.

Mr Chester—Mr Smith's suspension has been reviewed by different departmental officers a number of times since the original one.

Senator ROBERT RAY—I was not being smart by asking who originally stood them aside—I genuinely did not know. I can be smart at times, but I was not being then. Do you know when this might be resolved finally?

Mr Chester—No. I think a number of times in these hearings I have said 'soon'. But, again, that—

Senator FAULKNER—We now treat that as a mislead of the committee!

Mr Chester—I thought you might. I agree with you: this has dragged on for far too long. It has taken a lot of resources. There is \$800,000 of taxpayers' money being spent on it. The sooner it is over the better for everyone. Unfortunately, the process that the department has had to go through is a time-consuming process. I do not think there can be any criticism that it has not been a fair process, but these processes do take time. It is worth noting that Mr Smith has taken every opportunity to extend this process over the last three years, particularly in

relation to the Kennedy process. At every opportunity, Mr Smith extended that process out, and that contributes to the long period that this has taken and, obviously, the mounting costs that have been incurred. So the sooner the better, as far as the department is concerned.

Senator ROBERT RAY—Mr Moraitis might be able to answer this question. I was asking about the status of a document prepared for the purpose of parliamentary proceedings. The answer, to summarise Mr Chester, is that Mr Kennedy sought advice. Was it from the AGS or a solicitor?

Mr Moraitis—In the case of Mr Kennedy, he had AGS solicitors working for him directly—his own separate AGS lawyers. They advised him on all matters pertaining to his role as an investigating officer, including, I understand, the issue of privilege, which he was acutely aware of. But I do not know the details of how he proceeded, because, as Mr Chester said, we, the department, had to keep at arm's length from it. And we have kept at arm's length.

Senator ROBERT RAY—I think that has answered the next part of my question. Was that advice passed on to you or the department?

Mr Moraitis—No. It has been an arm's-length relationship. We have had AGS lawyers acting for us but different AGS lawyers for Mr Kennedy and Mr Boucher. There has been a separation. There has been a distinct arm's-length relationship.

Senator ROBERT RAY—Do you know on what basis they made that advice?

Mr Moraitis—No. I would not be privy to that—not that I am aware of. As Mr Chester said, I think Mr Kennedy, from my understanding of the process, took a very proper and careful approach to these matters, as is his nature, I guess.

Senator ROBERT RAY—I would concede that is the track record. But that he was an exemplary public servant and always took that care does not mean the AGS are experts in parliamentary privilege or anything else. I have been on the committee 10 years dealing with these issues and I am not going to express a view, in case it is ever brought to the committee. All I can say is that there are question marks there. I am not going to say any more than that, in case anyone ever does take it up as a matter of parliamentary privilege. I would then have to put another hat on and rule, so I am not going to dig myself in at this stage.

Senator PAYNE—I am not getting into it.

Senator ROBERT RAY—And neither is Senator Payne.

Senator FAULKNER—Mr Chester, I thought you indicated, when Senator Ray asked about whether Mr Smith had asked for a promotion, that in fact the suspension had been reviewed. Can you confirm that?

Mr Chester—That is correct.

Senator FAULKNER—How many times has the suspension been reviewed?

Mr Chester—Three times.

Senator FAULKNER—Who does the review?

Mr Chester—Each of those reviews was undertaken by an SES officer in the department.

Senator FAULKNER—A different SES officer?

Mr Chester—That is correct—it was a different SES officer.

Senator FAULKNER—So you would not have an SES officer who was involved in the original suspension involved in a review?

Mr Chester—That is correct. We did not.

Senator FAULKNER—And you would not have an SES officer previously involved in a decision in relation to continuing the suspension involved in a subsequent review?

Mr Chester—That is right.

Senator ROBERT RAY—You were unclear about any application by Mr Smith for promotion, so could you take on notice whether Mr Smith has applied for a promotion and what the process is. If you are able to, can you tell us who heads the selection panel? You may not be able to tell us. But, if you can, we would like to know who would have headed such a selection panel, mainly to try to establish that they had nothing to do with any previous dealings with Mr Smith.

Mr Chester—We will take that on notice.

Senator ROBERT RAY—I understand if for some privacy or other reason you cannot name the panel head, so do not feel constricted from answering the rest of the question by that.

Mr Chester—Okay.

Senator FAULKNER—I want to refer you, Mr Chester, to the February-March 2006 issue of the *Diplomat* magazine. I do not know if you are a regular reader of this.

Mr Chester—No, I am not.

Senator FAULKNER—Neither am I. It just goes to show that it is something we have in common. If you do not mind, I want to quote something to you so as to be precise for the record. On page 8 it says:

Word has it that several years of electronic data tape recording movements into, out of and around the Department of Foreign Affairs and Trade HQ in Canberra are missing. Just how this bizarre security breach came about remains unclear. But we hear that the ramifications will extend into the future.

It goes on, in this case, to address very briefly the issue of the Smith case which we have just been canvassing. I was concerned when I read that on one of my irregular dips into the *Diplomat*. I was so concerned I thought that I would ask you about it, Mr Chester. I was just hoping like hell that there is no truth to this report. Can you enlighten the committee please?

Mr Chester—I had not heard of this issue until now.

Senator FAULKNER—I am here to help.

Mr Chester—I think the article is talking about the tapes that may record when people enter and depart from the building. Is that correct?

Senator FAULKNER—It is. That is what I said. It is recording movements into and out of the Department of Foreign Affairs and Trade headquarters in Canberra. That is the RG Casey building, isn't it?

Mr Chester—That is right.

Senator FAULKNER—You did not know that someone had pinched the tapes?

Mr Chester—I did not until now, but—

Senator FAULKNER—But you know now?

Mr Chester—I do know now.

Senator FAULKNER—It just goes to show how useful these estimates committees can be, doesn't it? What has been pinched or, rather, what is missing? Let us not assume that it is a theft at this stage. We do not want to go to the usual suspects.

Mr Chester—I will pass this over to the expert.

Senator ROBERT RAY—That is a very good answer!

Senator FAULKNER—Mr Gerovich, what is missing please?

Mr Gerovich—Visitor access to the department is managed by an independent system created by Chubb. We do backups of the system on a monthly basis. The process is that we retain up to six months of tapes. We have six months of tapes available at the moment.

Senator ROBERT RAY—So none have gone missing, ever?

Mr Gerovich—I am not aware of any that have gone missing.

Senator FAULKNER—So none have gone missing?

Mr Gerovich—I am not aware of any that have gone missing.

Senator FAULKNER—As far as you know, there have been no problems with the electronic data tapes that record movements into and out of the department? Why did Mr Chester tell us a moment ago that this was an issue that he was not aware of? Something is happening there, so why don't you just tell us?

Mr Chester—I was not aware of the article. That is the point I was making.

Senator FAULKNER—All right.

Mr Gerovich—The purpose of the security system is to provide layered security around the department. What that basically means is that it ensures that people who have the right to access certain areas of the department are able to access them. It is not used as a means of monitoring the movements of staff within the department, all of whom are security cleared.

Senator FAULKNER—But something has gone wrong, hasn't it?

Mr Gerovich—I am not aware of anything having gone wrong. The departmental policy on the maintenance of records is to maintain a six-monthly record of backup tapes. We have a six-monthly record of backup tapes at the moment.

Senator FAULKNER—Have tapes been kept for a longer period?

Mr Gerovich—I am not aware of that.

Senator FAULKNER—Who keeps the tapes?

Mr Gerovich—The tapes are kept by the domestic property section of the Diplomatic Security branch of the division that I am in charge of. They are maintained by Chubb, who have the contract.

Senator FAULKNER—Were you aware of the story in *The Diplomat* magazine?

Mr Gerovich—Yes, I was.

Senator FAULKNER—Do you consider it baseless?

Mr Gerovich—Yes, I consider it baseless.

Senator FAULKNER—So have you corrected the record?

Mr Gerovich—I have not. It is not our normal practice to comment on security matters.

Senator ROBERT RAY—Gone are the days when you would walk in and flog the editor? That is a pity.

CHAIR—I would like to break for morning tea.

Senator FAULKNER—That is fine.

Proceedings suspended from 10.32 am to 10.46 am

Senator ROBERT RAY—I have a general question in relation to security clearances, which were mentioned earlier. Is the department up to date or does it have a backlog with its security clearances and how often is a security clearance revalidated? Is it the classic every five years and how are you going with that?

Mr Chester—There is no what I would call backlog on security clearances. For new staff entering the department who require a security clearance, that process does take some time, but it is no longer than it has been over the last few years. So it still takes a few months to get a security clearance. It will depend obviously on the background of the person who is being cleared, so it could take a little longer. You are correct: security clearances are revalidated every five years and that process is proceeding along those lines. Every five years staff are required to have their security clearance revalidated.

Senator ROBERT RAY—So some people have not gone six or seven years without a revalidation?

Mr Chester—No, not that I am aware of. It is monitored fairly closely and it is a somewhat automated system. Coming up to the five-year period, staff are required to start filling in the forms to have their clearance revalidated, and that is followed up by our security area to ensure that staff do comply. If there is a delay in officers providing material, that delay is followed up and staff are strenuously encouraged to get their material in on time.

Senator ROBERT RAY—How many members of the department have their security clearances suspended at the moment? Is it just the one? I know one has lapsed.

Mr Chester—I am not aware of anyone having their clearance suspended, but I will need to check that.

Senator ROBERT RAY—For instance, if you are subject to a court case that we cannot hear about, would you still have a proper security clearance?

Mr Chester—No action has been taken in relation to that person's security clearance.

Senator ROBERT RAY—I do not think I have any more on that.

Senator FAULKNER—Mr Gerovich, as you have returned to the table, let me go back to a matter that I was asking about prior to our short break. Can you explain to me how long in the ordinary course of events tapes recording movements in and out of the RG Casey building are kept? Is it true that the protocol that you work on requires you to keep tapes for a six-month period only?

Mr Gerovich—Our current policy is to retain tapes for six months. There is not a specific requirement under the protective security manual which is produced by the Attorney-General's Department, nor under the Audit Act. For our own purposes, we retain tapes for six months.

Senator FAULKNER—Have these tapes been made since the RG Casey building opened?

Mr Gerovich—That is my understanding—since 1996.

Senator FAULKNER—So what happens to the tapes that are over six-months old?

Mr Gerovich—My understanding is that in some instances they are taped over. We would not have the capacity to retain that number of tapes for that length of time. The judgement was made that a six-month period would be appropriate.

Senator FAULKNER—When was this decision made about the appropriateness of the six-month period? How long has that been the protocol?

Mr Gerovich—That decision was made by me recently. Prior to that, there was no specific record in our system indicating the length of time that tapes were required to be retained for. Prior to making that decision, we checked with the protective security authorities, the Attorney-General's Department and the Audit Office.

Senator FAULKNER—What had been the practice prior to your decision to limit the time the tapes were kept to a six-month period?

Mr Gerovich—There did not appear to have been an established practice that we could confirm on our files.

Senator FAULKNER—How long had the tapes been kept for—a year, two months, two weeks, two days, two years?

Mr Gerovich—We have some tapes that dated back several years. We have other tapes that were recent. There was no established protocol in place with the company that was conducting the security access control arrangements for us.

Senator FAULKNER—So there now is a protocol—six months.

Mr Gerovich—That is correct.

Senator FAULKNER—You say that tapes have been taped over. Is that always the case?

Mr Gerovich—I cannot confirm that.

Senator FAULKNER—Have some of these tapes been destroyed?

Mr Gerovich—I cannot confirm that. I would need to take that on notice.

Senator FAULKNER—Does the department know where all the old tapes are?

Mr Gerovich—My understanding is that the tapes we are able to identify are in a single location within the basement of the department.

Senator FAULKNER—What do you mean by ‘the tapes we are able to identify’? Are there a whole range of these tapes that you have not been able to identify?

Mr Gerovich—There are a large number of tapes, some dating back several years, some more recent. It would take an enormous amount of work to identify the full range of tapes that we have in the location that they are being stored in.

Senator FAULKNER—Are these tapes recording only movements into and out of the building?

Mr Gerovich—That is correct. And movement within the building.

Senator FAULKNER—And the same protocol applies to movement within the building—holding the tapes for six months?

Mr Gerovich—That is correct.

Senator FAULKNER—Can you can assure the committee that there are no tapes that are missing?

Mr Gerovich—I would have to say that I do not know.

Senator FAULKNER—I am trying to understand why this received some media attention. Is there a concern that some tapes are missing?

Mr Gerovich—No, there would not be a concern that some tapes might be missing.

Senator FAULKNER—Would there be a concern that tapes could not be found or identified? That is obviously a problem.

Mr Gerovich—That would not be a concern. The system that is in place is there to monitor the movement of cleared staff within our building. It is not for visitors. It is our own staff who are tracked by this system. Visitors to the building are brought in using a different system. They are brought in by cleared officers. The system that is in place is to provide layered security within our own building. It is to ensure that people who have a need to know can enter certain locations, while people who do not need to know are unable to enter those locations.

Senator FAULKNER—Are these tapes ever accessed? It is one thing to have them, but are they ever used? What is their purpose?

Mr Gerovich—The purpose is, as I said, to provide layered security and access control around the building. As a matter of course, we have now chosen to retain them for six months.

Senator FAULKNER—Do you know of any instance that these tapes have been sought out and used for security or any other purpose? Or is just some sort of make-work function?

Mr Chester—The tapes are there so that they could be used. I can imagine some scenarios where we may want to access the tapes. There could be a security issue where you would want to see who may have accessed particular parts of the building at a particular time. I could foresee a potential use for these tapes.

Senator FAULKNER—Over the years, I have realised that you have a vivid imagination, Mr Chester. But, putting your imagination aside, do we know of any instance where the tapes actually have been used or accessed?

Mr Chester—Yes.

Senator FAULKNER—Is it easy to find the relevant tape?

Mr Chester—I certainly was not involved in the technical task of accessing the tapes, so I do not know. For the request that I can recall, it certainly did not take long to come up with the answer that they did. So it must be relatively easy to access.

Senator FAULKNER—Has there been any security breach in relation to these tapes?

Mr Chester—In what sense?

Senator FAULKNER—In any sense.

Mr Chester—Not that I am aware of.

Senator FAULKNER—I read in the press, which of course does not make it accurate, that there has been a bizarre security breach—bizarre. Forget the adjective. It says that there has been a security breach. I am asking if there have been any in relation to these tapes.

Mr Gerovich—We would not regard that as a security breach.

Senator FAULKNER—You would not regard what as a security breach?

Mr Gerovich—The purported loss of tapes.

Senator FAULKNER—You do not even say that there has been a loss of tapes.

Mr Gerovich—As I said, I am not aware of tapes having been lost. Certainly our standing instructions are that they should be retained for six months. We are able to identify tapes from the last six months as being present in our storage.

Senator FAULKNER—But what does this mean? So you are not aware of tapes being lost? Is it possible that tapes could have been lost and you are not aware of it?

Mr Gerovich—I think the point here is that up until recently there has been no departmental regime on how long tapes will be kept for and that tapes from the past have been overrecorded, in the sense that they have been used for up-to-date monitoring of access to the building and access within the building. I think the main point here is that it is not possible to determine whether tapes are missing or are not missing. They may well have been overrecorded to monitor more recent access to the building.

Senator FAULKNER—So it has not been historically possible to do it, but now it will be.

Mr Gerovich—That is right.

Senator ROBERT RAY—When ASIS shared your building were they subject to taping? I know they have moved out, for rent reasons.

Mr Chester—I am sorry, who? Austrade, you mean?

Senator ROBERT RAY—Austrade, sorry.

Mr Chester—They would have been picked up in the normal building access control, yes—at least coming in various entrances of the building. Within their area, I do not know the answer to that; and in entering their area, I do not know the answer to that.

Senator FAULKNER—Why six months? I am not doubting it; a decision has been made and I think you, Mr Gerovich, have made that decision. Fair enough. You sought advice on it, did you, from security agencies?

Mr Gerovich—I sought advice from security agencies and we were advised that there was no specific time requirement. We chose six months as being a reasonable period in terms of the numbers of tapes involved and in terms of the costs involved in retaining them.

Senator FAULKNER—Is it quite a task identifying, labelling and keeping these tapes? What sort of staff resources are involved in it?

Mr Gerovich—I cannot answer that. My understanding is that there would be certain procedures involved in retaining them for that period of time. The advice that I received from security specialists within our department was that six months would be reasonable period to retain them, given that they are specifically to monitor the layered security system within our building for cleared staff and not for visitors.

Senator FAULKNER—Have you had a situation that you are aware of where there was a desire or need to access or check a tape and that tape could not be located?

Mr Gerovich—Not in the time that I have been in this position.

Senator FAULKNER—How long have you been in the position?

Mr Gerovich—About two months.

Senator FAULKNER—Well, let's go beyond two months. Are you aware beyond just the last two months of any instances where there has been a need to access or a wish or desire to access a tape and, because of the inadequate procedures, that has not been able to be achieved?

Mr Gerovich—I personally am not aware of any instances.

Senator FAULKNER—Are you aware of any, Mr Chester?

Mr Chester—No.

Senator FAULKNER—Can you advise the committee that there has been no such instance?

Mr Chester—I cannot be that definite, but I am certainly not aware of any.

Senator FAULKNER—Can you take that on notice for us?

Mr Chester—Yes.

Senator ROBERT RAY—When did the department receive a copy of the Sheller report and, if so, was it electronic or hard copy?

Mr Moraitis—I understand that the department received a hard copy of the Sheller report, which is the security legislation review committee report. We received one hard copy on 3 May from A-G's.

Senator ROBERT RAY—Has any other agency—PM&C or anyone else—inquired of your department as to whether there was any briefing of the media by DFAT or any leakage of the findings of the report to journalists?

Mr Moraitis—I am not aware of any inquiry from any other agency about this.

Senator ROBERT RAY—Are you aware of the article in the *Sydney Morning Herald* of 8 May that purported to carry recommendations from that committee?

Mr Moraitis—I am aware of that report, yes. I have not read it, but I am aware there was a report about the alleged leak of that report.

Senator ROBERT RAY—Are you aware from any other source that there is no AFP inquiry into that leak?

Mr Moraitis—I have no knowledge of any AFP involvement in that alleged leak.

Senator ROBERT RAY—Mr Smith must be feeling a bit lonely; this is a far more serious leak but is not even looked at. By the way, you do understand that there is no implication that DFAT leaked it? I have asked PM&C and others, such as Attorney-General's, if they know anything about the unauthorised disclosure. There is no implication that your department did. But I am surprised you were not asked.

Mr Moraitis—That is all I know.

Senator ROBERT RAY—Okay. Mr Chester, from time to time and traditionally, governments have sometimes found it necessary to brief opposition spokesmen about security or matters that occur from time to time. I know that has occurred. But two instances have created concern, I think, within the opposition. One very recently was a briefing to Mr Beazley, Mr Rudd and Mr McClelland in which the question was asked very directly, as I understand it—I do not want to go into the details of these briefings, most of which are confidential, but this goes to the process—about the reports of splits between the prime minister and the president. They were assured that that was not the case. That is what their notes say.

Mr Chester—Sorry, Senator, but what is this about?

Senator ROBERT RAY—East Timor. But it is more about process than the basic issue of East Timor; it is about the briefing. Yet the next day, Mr Downer confirmed that there was a split between the president and the prime minister. I wonder how that managed to occur at that briefing. Mr Downer may have had better access to information than departmental officials had at the time.

Ms Bird—I have been party to those briefings of the opposition in recent days. I do not recollect the particular question you have just put to me. Those briefings, which have involved the Department of the Prime Minister and Cabinet, the defence department, intelligence agencies and ourselves, have been as full as we can make them and as accurate as we can make them. I can assure you of that.

Senator ROBERT RAY—That's good. Let me take you to another set of briefings. These are the briefings of 2 May 2005, 26 May 2005 and 16 June 2005. They were directly related to the hostage taking of Douglas Wood. Again, this goes to the process and accuracy of the

briefings. My understanding is that Mr Rudd asked about the composition of the rescue mission. He was given information. A later article by Mr Paul McKeogh—again, not necessarily reliable—indicated a completely different composition. Following that, an explanation was sought. Mr Warner from the hostage team and Mr Haynes from Mr Downer's office briefed the opposition again and indicated that information had been withheld from the opposition at the direction of the minister. Let me make it quite clear that I do not object to ministers withholding information. But I object to direct answers being given that withhold that information without some caution. Can we have an explanation?

Ms Bird—I was involved in those briefings of the opposition as well. Those briefings were done by DFAT and involved several officers directly engaged in the Douglas Wood case, including me. Again, I can assure you we answered the questions we were asked and gave accurate information about the composition of the team that was in Baghdad.

Senator ROBERT RAY—It really goes to whether the presence of the SAS was acknowledged at those meetings. Was it?

Ms Bird—I do not have details. We have notes of those briefings. What I can say, and I assure you, is that we gave accurate information to the opposition in those briefings and we were under no direction to do otherwise than that.

Senator ROBERT RAY—We can only presume that the officer from Mr Downer's office got it wrong, or we have got it wrong.

Ms Bird—I cannot add to my answer.

Senator ROBERT RAY—Can we at least put you on notice that when we return to this specific program I might need to return to this subject and explore it a little further. I might have some notes checked first. I think that is under 1.1.3, which we will look at later tonight or early tomorrow morning.

The question has come up with regard to AWB and not Iraq but India. Is it possible to hear what representations the Indian government or administration may have made to the foreign affairs minister and the foreign affairs officials? I am not thinking police to police because that is really a subject to explore with the Attorney-General's Department. I am interested in what sorts of approaches the Indian government may have made in terms of its investigation. This refers to the February 1998 wheat deal—AWB was still a government owned company at the time. To summarise: certain moneys were paid to the Cayman Islands et cetera. Are we able to get some sort of summary of what approaches the Indian government may have made to the Australian government?

Mr Moraitis—I have no knowledge of any foreign ministry to foreign ministry representations on this issue. My understanding is that this was dealt with as a mutual assistance request through the normal justice-to-justice channels. There were no diplomatic representations. Is that the nature of your question?

Senator ROBERT RAY—Yes. Were any diplomatic representations made?

Mr Moraitis—No, not that I am aware of.

Senator ROBERT RAY—There have been none?

Mr Moraitis—Not that I am aware of.

Senator ROBERT RAY—That is a different answer. Why would you always be aware of these things? I will judge the credibility of your knowledge when I know that. Would it normally come to you?

Mr Moraitis—Not necessarily, no.

Senator ROBERT RAY—Then let us broaden the question out across the department. Who else would know?

Mr Moraitis—I have no record of any such representations at a diplomatic level.

Senator ROBERT RAY—Perhaps we could flag that. It may come up again under 1.1.2. Perhaps the person from the Indian section is not here, so I will give notice. We may revisit it then. That is all on that subject. There is one final note: are any matters currently before the Ombudsman in relation to the Department of Foreign Affairs and Trade?

Mr Chester—We will need to take that on notice. I am not aware of any but we will need to check.

Senator ROBERT RAY—Okay.

Senator FAULKNER—I have some questions about the administrative arrangements in relation to the Cole inquiry. I am particularly interested in departmental resources. How was the coordinating function of DFAT being organised in the department?

Ms Bird—The issues relating to the Cole inquiry have been handled by the Iraq Task Force and the legal branch of the department and I have had oversight of that.

Senator FAULKNER—Has there been in any sense an IDC working on matters relating to the Cole commission?

Ms Bird—As I believe was mentioned at the estimates hearings of the Department of the Prime Minister and Cabinet, PM&C has been chairing an ad hoc grouping of departments in relation to the Cole inquiry.

Senator FAULKNER—There is nothing else apart from that ad hoc group?

Ms Bird—No, that is all we are aware of.

Senator FAULKNER—At what level is DFAT represented on that ad hoc group?

Ms Bird—I have been going to those meetings.

Senator FAULKNER—Are they ongoing?

Ms Bird—There is not a schedule that I am aware of. As I said, they are ad hoc; there is nothing scheduled at the moment.

Senator FAULKNER—It is the Iraq Task Force that has, effectively, the key responsibility for internal departmental coordination, is it?

Ms Bird—There are two areas working closely together—our legal branch together with the Iraq Task Force.

Senator FAULKNER—Where does the buck stop?

Ms Bird—The buck stops with the secretary and me but there are several areas of the department working together on this issue.

Senator FAULKNER—I thought there might be some efforts at trying to coordinate this so you did not have the task force and the legal branch treading on each other's toes. That is working all right, is it?

Ms Bird—It is working very well.

Senator FAULKNER—Are you able to say to the committee what sorts of departmental resources have been involved on Cole inquiry matters?

Ms Bird—Yes, in a general sense. The workload has varied over time so I cannot give you a fixed number of staff who have been involved. As I said, it has been the two areas—the Iraq Task Force and the legal branch. Each of those areas has received some extra staff to help them through the workload required. As I said, the numbers have varied over time. It depends on the intensity of the work involved with the Cole inquiry.

Senator FAULKNER—How many extra staff have gone to those two areas?

Ms Bird—I am advised that from about February 2006 about 14 additional staff were provided, as I said, on and off to the Iraq Task Force to assist it to meet its work priorities, particularly the Cole inquiry. The legal branch has also employed around 12 supplementary staff to deal with the increased workload. Again, that has been on and off on an as needs basis. Most staff have been deployed from elsewhere in the department to assist.

Senator FAULKNER—You used the word ‘additional’ staff to the Iraq Task Force and ‘supplementary’ staff to the legal branch. I just want to be clear: what is the significance of that use of language, if any?

Ms Bird—Obviously, the Iraq Task Force has a set number of staff and they have stayed there throughout. Similarly, the legal branch has a set number of staff. I was talking there about additional staff that have gone in to help, particularly with the Cole inquiry.

Senator FAULKNER—What is the staffing establishment of the Iraq Task Force?

Mr Innes-Brown—There are currently 10 staff.

Senator FAULKNER—So there are 10 plus the additional 14. Mr Moraitis, what about your branch?

Mr Moraitis—The branch is quite large but the number of people involved on and off on the Cole inquiry would be about six to seven on an ad hoc basis. The branch is quite large; there are about 30-something staff. Obviously the majority do not work on the Cole inquiry.

Senator FAULKNER—So you say that the branch is large—fair enough—but you have had six or seven dedicated to Cole over these last few months—

Mr Moraitis—More or less, on an ad hoc basis, as Ms Bird said, sometimes for a few days and sometimes for a few weeks as the intensity of the process waxed and waned.

Ms Bird—To clarify my answer to be absolutely clear, I meant what I said by ‘on and off’. Some of those additional staff deployments were for a matter of a couple of days to assist with a particularly heavy workload, for example, scanning documents. It would be wrong to add

those numbers together and suggest that that is the number of staff devoted to the Cole inquiry.

Senator FAULKNER—I can only deal with the figures you have given me, which are 10 in the Iraq Task Force plus an additional 14, and six or seven in the legal branch plus an additional 12. I appreciate the point that you are saying that they may not have been there for a long time. Are you able to say in the department's response to the committee how many staff hours have been involved in Cole? Have you got any figures that might assist us in this regard?

Ms Bird—It is an ongoing matter. I am not sure that I can give you precise answers beyond the ones I have just given.

Senator FAULKNER—What sorts of resources were involved in the work to actually comply with the Cole inquiry notices? Firstly, was that dealt with by the Iraq Task Force or was that the responsibility of the legal branch?

Ms Bird—It was a combination of both, but I would say that the legal branch had the prime responsibility of oversight in the production of documents for the Cole inquiry.

Senator FAULKNER—Are you able to explain to the committee what the actual roles were of the two key areas? In other words, what was the role of the Iraq Task Force in the broad—and I appreciate that you will not be able to go into all the detail? Would you paint us a bit of a picture of what the Iraq Task Force responsibility was and what the legal branch responsibility was? Perhaps one of the other witnesses might be able to do that.

Ms Bird—The legal branch had the prime responsibility for document production. They clearly worked closely with the Iraq Task Force because a lot of documents were held in the task force. I would be a bit loath to go any further into this matter as our whole methodology and the way in which we produce the documents for the Cole inquiry is covered in a detailed statutory declaration which we have tendered to the inquiry.

Senator FAULKNER—All I am looking for are the broad responsibilities. I thought it might be sensible if the two gentlemen who head up the various areas could explain briefly to the committee what the role has been.

Ms Bird—As I said, legal branch had prime responsibility for the document production. They worked closely with the Iraq Task Force because most of the files were there.

Senator FAULKNER—Let us look at legal costs then. What sorts of legal costs have the department borne in relation to the Cole inquiry?

Mr Moraitis—The legal costs to 30 April were about \$371,000, approximately.

Senator FAULKNER—What did that comprise?

Mr Moraitis—Basically, costs for solicitors and for barristers. Would you like a breakdown?

Senator FAULKNER—I would, thank you.

Mr Moraitis—Solicitors' fees were about \$300,000 and barristers' fees were about \$50,000 to \$60,000.

Senator FAULKNER—That does not even add up.

Mr Moraitis—There is also an amount of \$14,000 for other legal costs. Essentially, solicitors and barristers make up the overwhelming majority of that.

Senator FAULKNER—Let us go to the \$300,000 for solicitors. These are solicitors you have engaged above and beyond those working in your own division—is that right?

Mr Moraitis—Correct.

Senator FAULKNER—Can you tell us who you have engaged?

Mr Moraitis—Yes. As I mentioned, in February we engaged a firm called Sparke Helmore. They are a national firm, I think, originally from Newcastle. I said it was Sydney but it is actually Newcastle. They have been acting for us since the beginning of the year.

Senator FAULKNER—So is all of the \$300,000 in solicitors' fees paid to Sparke Helmore?

Mr Moraitis—Correct.

Senator FAULKNER—All of it?

Mr Moraitis—Correct.

Senator FAULKNER—Have any other external solicitors been engaged at all?

Mr Moraitis—By the department?

Senator FAULKNER—By DFAT. What about the Australian Government Solicitor or the like?

Mr Moraitis—No. As I explained last time, the reason we chose Sparke Helmore was that AGS and many other firms from our panel that we would use were engaged in the Cole inquiry. The AGS in particular are acting for the Cole inquiry, so they were precluded from acting for us.

Senator FAULKNER—So they have exclusively done your legal work and there is no-one else you have engaged.

Mr Moraitis—Correct.

Senator FAULKNER—What about the barristers?

Mr Moraitis—There are three barristers. Senior counsel is Mr Alan Robertson, from the Sydney bar. His junior counsel is Mr Ian Neil. There is also a junior junior we have engaged in the last month or so—Mr Michael Izzo. The cost for barristers up to that period was \$42,000 for Mr Robertson and \$13,500 for Mr Neil. I do not think Mr Izzo's disbursements for that period have arrived.

Senator FAULKNER—Since 30 April has there been much ongoing expenditure on either solicitors or barristers?

Mr Moraitis—Yes, there has been quite a bit, obviously. I can give you an indicative figure of what the invoices would look like.

Senator FAULKNER—That would be helpful.

Mr Moraitis—I would be loath to give figures, because when we receive invoices we obviously go through them with a ruler.

Senator FAULKNER—I think we appreciate that.

Mr Moraitis—I would say a magnitude of another \$400,000 to \$500,000 in legal fees would be involved in that period as well, because of the intensity of the last phase of the Cole inquiry, with a whole variety of activities.

Senator FAULKNER—So you are expecting another \$400,000 to \$500,000 on top of the \$371,000 for which you have already been invoiced?

Mr Moraitis—Correct, assuming that we accept the invoices. Obviously, as I said, we check the invoices.

Senator FAULKNER—That is legal work that has been completed, is it? Are we getting towards the end of the process?

Mr Moraitis—Essentially, yes. Public hearings have not ended, but it is coming to the end of the phase.

Senator FAULKNER—That extra expenditure obviously does not involve the engagement of either new or different solicitors or barristers?

Mr Moraitis—No. It is the same solicitors and barristers. We have had the same team from the beginning.

Senator FAULKNER—There is also a category of other legal expenditure.

Mr Moraitis—Correct. This is about \$14,000.

Senator FAULKNER—Currently. Can you just outline, please, what that category deals with?

Mr Moraitis—Under the guidelines, officials and former officials of departments are entitled to their own legal representation. There have been one or two cases where officers or former officers have sought an independent solicitor's advice just to familiarise themselves with the process, and that has been part of the legal costs.

Senator FAULKNER—What has been the situation in relation to this? If a currently serving or former departmental officer wishes to have separate legal representation, has the department established a protocol or policy with regard to whether it will in fact support the engagement—in other words, pay the bills for such legal advisers?

Mr Moraitis—In the sense that we incorporate or follow guidelines or protocols, as you describe them, set up by the Attorney-General's Department, the Office of Legal Services Coordination provides guidelines for all agencies on this question. We follow those in these instances, including consulting with that office before approving or agreeing to any such matters.

Senator FAULKNER—Are you the decision maker in this regard?

Mr Moraitis—It is not me necessarily; delegates in my area would be but I think it is essentially also in coordination with the Attorney-General's Department, who are the keepers of the rules on this. So if there is a request for legal assistance it is received, consultations take

place with the Attorney-General's office—that is the Office of Legal Services Coordination—and if there is a positive concurrence there then the decision maker decides that that is a legitimate form of assistance.

Senator FAULKNER—Can you tell the committee how many serving staff have availed themselves of this opportunity to use separate legal representation—either solicitors or barristers?

Mr Moraitis—Yes; one.

Senator FAULKNER—Can you tell the committee how many former staff are in the same situation.

Mr Moraitis—Yes; two.

Senator FAULKNER—The current costs you have in relation to that are \$14,000. What would the projected costs be?

Mr Moraitis—I would say they would be about \$60,000, because of the pick-up in activity.

Senator FAULKNER—Have you had any situations where either currently serving staff or former staff of the department have requested such representation but a departmental decision has been made not to allow it?

Mr Moraitis—No; there have been three requests.

Senator FAULKNER—You have had three requests and three have been granted?

Mr Moraitis—Correct.

Senator FAULKNER—But you can assure us in these instances that it is a thorough process?

Mr Moraitis—Absolutely. There are written consultations with the Attorney-General's Office of Legal Services Coordination, guidelines are followed and a written response is given to the officer to inform them of the decision and the reasons in accordance with the guidelines. So, yes, there would never be any other context.

Senator FAULKNER—What we are looking at here is that the legal costs of Cole are likely to push \$1 million. It sounds like it is going to be—

Mr Moraitis—I would say it is going to be more than \$1 million.

Senator FAULKNER—More than \$1 million?

Mr Moraitis—That would be the projection; just slightly over \$1 million.

Senator FAULKNER—If we spent \$371,000 and you are expecting to spend \$400,000 to \$500,000—in fact you think the likely expenditure is a little more than what you have just estimated—

Mr Moraitis—Yes, I would say so.

Senator FAULKNER—When you say a little over \$1 million—and I accept the point you make about the difficulty of being precise—what is the ballpark figure? Could you be a little more precise about what you are working to?

Mr Moraitis—It is \$1 million to \$1.2 million. Last time you asked me I had a figure of about \$300,000, but times have—

Senator FAULKNER—There has been a bit of a blow-out, hasn't there?

Mr Moraitis—In legal expenditure, yes.

Senator ROBERT RAY—How many subpoenas has the department had to produce documents from the Cole inquiry? I am going to go to the process, not the substance.

Ms Bird—We received three notices to produce.

Senator ROBERT RAY—When were they?

Mr Moraitis—Just bear with me one minute. The answer was provided in a question on notice.

Ms Bird—I think I have those notices. The first notice to produce was on 1 December 2005, the second was on 9 January 2006 and the third was on 25 January of this year.

Senator ROBERT RAY—There was one on 25 January this year, and another one was this year, too.

Ms Bird—It was 19 and 25 January.

Mr Moraitis—There were three in total, one on 1 December, one on 9 January this year and one on 25 January.

Senator ROBERT RAY—Was there a separate subpoena delivered to the foreign minister's office?

Mr Moraitis—I am not aware whether there was or not. I assume so, but I do not want to make assumptions. I imagine there would have been. They were not really subpoenas as such; they were notices to produce.

Senator ROBERT RAY—Sorry—notices to produce. I understand the distinction. How many tranches of documents has the department sent to Cole? We know you have had three notices to produce, but in how many tranches have you supplied documents?

Ms Bird—I can advise that we have met each of those notices to produce in full. The method in which we did so and how we did it is all set out in a detailed statutory declaration which we have tendered to the Cole inquiry. I am very loath to go into that, because it is a matter before Cole.

Senator ROBERT RAY—What I am examining here is not what Mr Cole is examining, with due respect. I am checking on the efficiency and competency of the department and its systems to retrieve documents and supply them to specific areas. I am not going to draw conclusions that he may draw. It is still a legitimate process question to ask.

Ms Bird—With respect, we have dealt with this in our statutory declaration before Cole. It is therefore a matter before Cole. If it is helpful to you, we can talk about general departmental processes, but not the specific approach taken to the Cole inquiry.

Senator ROBERT RAY—How many relevant documents have you supplied to Commissioner Cole that you did not supply to Volcker? How many have you discovered

subsequently? We were assured that Volcker was given full cooperation et cetera. Now I want to explore that. Did all relevant documents go to Volcker?

Ms Bird—I can assure that the Volcker commission had all relevant documents. They came out. So did the Cole commission. We have dealt with this in a statutory declaration. We have also dealt with the issue of document production for Volcker in a statutory declaration, and it has come up in testimony before the Cole commission. While we have given evidence on this at the last two estimates—and that stands, of course—we are not able to go into any more detail at this stage.

Senator FAULKNER—Who signed the statutory declaration?

Mr Moraitis—I signed the statutory declaration.

Senator FAULKNER—When was that sworn?

Mr Moraitis—It was on 22 March.

Senator ROBERT RAY—You had three requests to produce documents—we know that—and you say that you produced them all in whole. What I am asking is this: did you produce other documents? Were other documents discovered and sent to Cole outside the three requests?

Ms Bird—The process by which we provided documents is set out in the statutory declaration.

Senator ROBERT RAY—I do not have that before me. I am not going to embarrass officials by asking you to contradict the cabinet direction, but questions on process have been answered by other departments, including PM&C, on the production of documents and the methodology and I am going to persist. It is not good enough to say, ‘We’ve signed a stat dec or put a stat dec before Cole.’ I am looking at the processes the department goes through and at whether they are efficient and proper. I am not looking at whether Mr Cole is satisfied or anything else—that is his concern.

Ms Bird—With respect, the process that we followed is exactly the issue that we have set out in a formal statement tendered before the Cole inquiry. As I said, other departments have not had as close an engagement as we have had with Cole, which might explain why they have been able to answer some questions. In our case, that is very clearly a matter before Cole.

Senator ROBERT RAY—He is examining your role in providing documents to him?

Ms Bird—We have covered that in a formal statement which has been tendered before the Cole inquiry.

Senator ROBERT RAY—If you wanted to avoid any questions at estimates, you could have put in a statutory declaration on East Timor or anything else, and then you could say, ‘You can’t ask questions on that.’ With due respect, that is absolute nonsense. We are entitled to ask whether this department, with public money, has done its job efficiently. I will go to that question of the missing cable: why did the Prime Minister, Mr Downer and Mr Vaile have to go to the embarrassment of answering a question on a cable that was not before Mr Cole at

the time that they were examined about their role in these matters? What role did the department have in that?

Ms Bird—That is a matter that has come up before the Cole inquiry.

Senator ROBERT RAY—You will not answer that, Minister?

Senator Coonan—What was the question?

Senator ROBERT RAY—Sorry; I know you are not fully engaged here. I do not expect you to be. The officer is saying that these matters are before Cole. I am asking process questions about the production of documents. In particular, I am going to one document that was not adduced to Cole until after the Prime Minister, Mr Downer and Mr Vaile gave their evidence. I want to know why that document was not given to Cole earlier. What is the problem in the processes of the department? I expect an answer.

Senator Coonan—This frequently happens in these kinds of matters where documents come to light or a particular nuance becomes relevant. It is almost impossible to make sure that you have answered every possible thing that comes up in an inquiry, unless there is some suggestion that the department has improperly withheld it—and I do not think you are making that allegation.

Senator ROBERT RAY—No, I am not saying that. The department was required to produce documents to help Volcker. They already had a big head-start. They then had three requests for information and they provided that in full—and then, suddenly, one of the most crucial documents turns up afterwards. I am not alleging that it was deliberately withheld; I just want to know how it slipped through the net. We know that there is a working party involved with PM&C to coordinate some of these documents—you probably head it in DFAT—to make sure there is not duplication and everything is covered. I want to know how these accidents occur.

Ms Bird—Senator, with respect, we have met in full our notices to produce. We have provided a voluminous amount of documentation—thousands and thousands of documents. The particular issue you raised is a matter that has come up before Cole and there have been questions about it. It is a matter that is before Cole. But we have met our notices to produce in full.

Senator ROBERT RAY—So you cannot tell me why the document was not produced in one of the earlier areas?

Ms Bird—There has been testimony about that. I do not want to go into matters which have come up before Cole.

Senator ROBERT RAY—Was that document provided to Volcker?

Ms Bird—The issue of document production for Volcker has also been dealt with before Cole. I am not going to go into more details than we have covered in our last two estimates.

Senator FAULKNER—Mr Moraitis, you may be able to help us as to whether the statutory declaration that has been referred to has been posted by the commission on its website.

Mr Moraitis—I really do not know.

Ms Bird—Yes, it has.

Senator ROBERT RAY—I have one of yours here.

Mr Moraitis—You have?

Senator ROBERT RAY—Yes. We will come to that in a minute—obliquely, so you cannot dodge the question.

Ms Bird—I may have misspoken. We will check that. Mr Moraitis has done a couple of stat decs. We will check.

Mr Moraitis—I have actually provided three statutory declarations. So I do not know which one you are referring to.

Ms Bird—It is entirely up to Cole which ones he chooses to make public. We will just have to check which ones have been made public.

Senator FAULKNER—Hasn't Mr Moraitis told us that he has done two statutory declarations—

Mr Moraitis—No, I said three.

Senator FAULKNER—in relation to the issue that has just been canvassed about document handling? I was left with the impression, from the evidence, that we had one that related to the matters before Cole and one that related to the Volcker inquiry. That was the impression that I think was given by the evidence. It may be my interpretation.

Mr Moraitis—No, there are two statements and both relate to documents and documentary production vis-a-vis Cole, documentary production vis-a-vis Volcker. They overlap somewhat, but they are to do with both; they are not in separate ones. But there are two.

Senator FAULKNER—But are there two statutory declarations relating to those matters?

Mr Moraitis—Correct.

Senator FAULKNER—What is the normal budget for your division?

Mr Moraitis—For the division or for legal—what do you mean?

Senator FAULKNER—Perhaps not for the division.

Mr Moraitis—The division is much broader and involves environment branch and UN branch.

Senator FAULKNER—Well, let us go to your annualised budget for the provision of outside legal advice.

Mr Moraitis—I would have to check my folders but it varies between \$700,000 to \$800,000 per annum. I will have to check it.

Senator FAULKNER—I appreciate the fact that there is some wriggle room in the figures, and I understand why, but the \$1 million to \$1.2 million in relation to Cole related advices would be in addition to the \$700,000—would that be right?

Mr Moraitis—Yes.

Senator FAULKNER—You have still got the ordinary requirements of your division.

Mr Moraitis—Absolutely. The legal budget covers a whole variety of legal advice on a variety of issues.

Senator FAULKNER—So your budget has basically just been blown out of the water, hasn't it?

Mr Moraitis—The normal budget would be in a normal cycle, yes, although may I say that the legal budget has gone up and down over the years that I have been involved in this job.

Senator FAULKNER—So this quite massive one-off requirement to pay somewhere in excess of \$1 million for Cole related legal advices: how has this been dealt with, Mr Chester? Can you help me with that?

Mr Chester—We have a small amount of money put aside as a contingency. The expenses from the Cole inquiry will be covered out of that this financial year.

Senator FAULKNER—So this comes straight out of the department's contingency fund?

Mr Chester—Yes, that is correct.

Senator FAULKNER—How big is that contingency fund?

Mr Chester—This year it is around \$3 million at the beginning of the financial year. It is to meet unforeseen one-off events during the year.

Senator ROBERT RAY—Have any other events this year called on that contingency fund?

Mr Chester—Yes, a number. I cannot recall them offhand. It may be, for example, hosting a conference or that sort of thing.

Senator ROBERT RAY—Do you want to take that on notice and give us an answer of what other claims have been made this financial year?

Mr Chester—Yes, sure.

Senator FAULKNER—Of course, external legal advice or consultants, if you like, are just one element of the costs you have borne. That would include any travel et cetera from those legal advisers, I assume.

Mr Chester—The travel cost was in addition to that \$300,000 that Mr Moraitis mentioned.

Senator FAULKNER—But the \$1 million to \$1.2 million figure—

Mr Chester—That would include the travel costs.

Mr Moraitis—Are you asking for travel by legal counsel?

Senator FAULKNER—There are two elements to it. I was going to get to other departmental expenses, because you have had a lot of departmental travel down to the Cole commission—it has been an open door policy, hasn't it? But in the first instance let us deal with the legal travel.

Mr Moraitis—Legal travel is included in that figure of \$371,000. Could I just clarify my answer on the legal budget: I can confirm that it is actually \$600,000 for this year. On the travel as a separate item for Cole: up to the period 30 April it was about \$81,000.

Senator FAULKNER—That is included in the \$1 million to \$1.2 million, or will be?

Mr Moraitis—No, not in the legal budget.

Ms Thorpe—In the contingency fund, yes; that is part of what we will be drawing down from the contingency fund.

Senator FAULKNER—Yes. But let's just try to nail this down, Mr Moraitis: the figure of \$1 million to \$1.2 million—that is for external legal advice only?

Ms Thorpe—Yes. It is related to outgoings from the department where we have received bills and have had to send a cheque and that sort of thing. It is all the outgoings related to Cole. That contingency funding is related to all that.

Senator FAULKNER—I understand that. But the question is: what is it for? The \$1 million to \$1.2 million is for external legal advisers only. That is right, isn't it?

Ms Thorpe—Correct.

Mr Moraitis—Yes, that is correct. That is my answer.

Senator FAULKNER—In addition, there are other costs that you are going to bear. One of those is travel.

Mr Moraitis—Correct.

Senator FAULKNER—And that is travel for your legal advisers?

Mr Moraitis—No. Travel for legal advisers has been covered by the legal budget—the disbursements, as it were.

Senator FAULKNER—Let's go back to travel for departmental officials appearing before Cole. What expenses do you have under travel and accommodation?

Mr Moraitis—Travel costs cover travel and accommodation. It was about \$81,000.

Senator FAULKNER—Does your branch have to front up for that too, Mr Moraitis? Or do you just have the figures in front of you? I am just surprised the legal branch is dealing with that.

Mr Moraitis—As Ms Bird said, Mr Innes-Brown and I have worked very closely and intimately together in the last few months.

Senator FAULKNER—So we have outside legal advisers and we have departmental travel.

Mr Moraitis—Correct.

Senator FAULKNER—What other categories of one-off expenditure do you have?

Mr Moraitis—Administrative expenses of about \$22,000.

Senator FAULKNER—Any others?

Mr Moraitis—That is it.

Senator FAULKNER—The travel costs would also include those people the department had just sitting there. You had officers just sitting in the Cole commission throughout all the public hearings, didn't you?

Ms Bird—We had officers monitoring the hearings, as we explained last time, yes.

Senator FAULKNER—How many of them were there?

Ms Bird—A couple. It varied, but there was generally a couple.

Senator FAULKNER—And would that travel and accommodation figure of \$81,000 include their expenses?

Ms Bird—Yes. Occasionally, members of the legal branch would go down to liaise with counsel. That would be covered in that figure as well.

Senator FAULKNER—I want to be clear, Mr Chester, that there are only those three categories of expenditure: outside legal expenses, the travel costs borne by the department and administrative expenses. Are those the only three categories in relation to extraordinary expenditure, if you like, by the department as a result of the establishment of the Cole royal commission?

Mr Chester—That is correct, Senator, although there is the issue raised earlier about additional staff resources that have been applied, where we have said that we are not in a position to quantify what the cost of those additional staff resources are.

Senator FAULKNER—How are we able to get a handle on that? I appreciate that the admin costs do not involve that. And I have some picture of the amount of staff that have been involved in the Iraq task force and in the legal branch, which figures have been provided earlier. We know that the Iraq task force's normal establishment is 10 plus some 14 extra staff.

Mr Chester—On occasion, Senator. Those 14, as Ms Bird said, were not there in one single group. Some of those 14 individuals may have been working on this for a day or two days and then gone back to their normal jobs.

Senator FAULKNER—Yes, but some of them may have been working there for months.

Mr Chester—They may have.

Senator FAULKNER—If you had that information available, Mr Chester, there would not be any level of uncertainty about it. But, unfortunately, it is not available.

Mr Chester—That is correct—it is not.

Senator FAULKNER—So people will draw their own conclusions. In relation to the legal branch, perhaps six or seven of the existing staff establishment are working in that area, plus a supplementary staff of 12. That is all we know so far. There are no other areas in the department where resources have been applied to the Cole commission, are there?

Mr Chester—Not in any direct sense, but obviously there will be in an indirect way.

Senator FAULKNER—I think it is fair enough for the committee to assume—I do not like making assumptions, but we are told that this operation has been handled out of the task force and the legal branch; that is the evidence that we have received—that no other staff resources have been involved. But you might let me know if there have.

Ms Bird—Perhaps I should add, for the sake of completeness, that our communications area were involved in doing some of the searches that we have talked about and that we have

covered in our statutory declaration, but I understand they did that from within their existing establishment, as far as I am aware.

Senator FAULKNER—Let us go back to the issue of the external legal advice that Mr Moraitis has told us about. Mr Moraitis, are you able to tell the committee whether the figures that you have provided for us are best endeavours to give us a broad picture of the likely costs? That is fair enough: \$1 million to \$1.2 million. Does that include the legal costs of Mr Downer and Mr Vaile, if there are any?

Mr Moraitis—No, that would cover only departmental costs. I think ministers' costs are handled by the Attorney-General's Department.

Senator FAULKNER—So there is no ministerial element to this at all?

Mr Moraitis—No. There is a separate process for that, I understand.

Senator FAULKNER—It is all handled by the Attorney-General's Department?

Mr Moraitis—Yes, through ministers' offices. We do not have a role in that, so our figures are based on departmental costs, which are purely exclusive of that.

Senator FAULKNER—So what sort of role have you had in support of Minister Downer in relation to his appearances before the commission? What, if any, has been the departmental role? The costs are being paid by the Attorney-General's Department—I understand that. I assumed that you were going to say that to me; I just wanted to be doubly sure of that. That is fine. Thank you for that. Now I am asking: what, if any, support the department has provided for portfolio ministers in relation to the commission?

Ms Bird—The ministers, in terms of their appearance before the commission, were dealing with legal counsel to prepare for those appearances. The department's role was limited to assisting where required in providing documents that they might need for their stat decs—that kind of factual material.

Senator FAULKNER—Mr Moraitis, that is the limit of it, that you are aware of?

Mr Moraitis—Yes, that is correct.

Senator FAULKNER—Fair enough.

Senator ROBERT RAY—Who from the department was on the working party looking at documents? We have had evidence from PM&C that—quite properly, to avoid massive duplications, where the same document might exist across six or eight departments—a sort of working party existed. I know that Mr Duncan Lewis from PM&C was on it. Who was on it from DFAT?

Ms Bird—There may have been a misunderstanding of the testimony given at the PM&C estimates. There was not a working party looking at document production. It was up to each department to meet the terms of its own notices to produce.

Senator ROBERT RAY—Are you sure that you never attended meetings to discuss duplication of documents?

Ms Bird—The meetings that we had at PM&C were to discuss general coordination and cooperation. There was not any specific meeting on document production.

Senator ROBERT RAY—Then tell me what the meetings were about and I can judge for myself.

Ms Bird—I think it was set out at the PM&C estimates. It was to ensure that all departments were aware of the requirement for full cooperation with the Cole commission and just to touch base on what was happening in each department on that score.

Senator ROBERT RAY—Who was the DFAT representative, or did it vary?

Ms Bird—It was me, generally.

Senator ROBERT RAY—How do you determine it? It is not a working party and we know that it is not as high as an interdepartmental committee. Is it an informal gathering? What terminology should I use?

Ms Bird—You would have to ask PM&C. They pulled it together. I think that you talked a little bit about that with them the other night. They pulled together those departments that were engaged or had some kind of contact with the Cole commission. They determined the list of departments and agencies that attended.

Senator ROBERT RAY—This only came out because we were worried about the duplication. Document duplication was a matter that would be considered and discussed?

Ms Bird—Not to my recollection. Perhaps I should clarify that the Cole commission provided separate notices to produce to a range of departments and agencies and it was up to each department and agency to comply with those notices to produce. There was no issue, as far as we are aware, in terms of problems of duplication.

Senator ROBERT RAY—I have to skirt around the Cole inquiry here. There was a cable produced there—but I think it goes more generally anyway—dated 23 September 2004. I think it is headed ‘Bribery: Potential Allegations Against Australian Companies’. Was that the first time a cable had been sent out given the fact that the legislation had passed five years before?

Mr Chester—I do not know the answer to that; I would need to check. We get hundreds of thousands of cables a year and to have the titles of those at my fingertips—

Senator ROBERT RAY—Nor do we expect you to read them all, only those when we are bribing Saddam Hussein. They are the only ones I want you to read. Let us just go to that cable for a moment. In part three it says:

In recent months there have been several allegations of bribery made against Australian interests abroad ...

Obviously, if that relates to AWB you will refuse to answer the question—is that right?

Ms Bird—Is this a cable that has been tendered before the Cole commission?

Senator ROBERT RAY—No idea. The cable I have is at 10.22 am to all posts. You are not saying that it is a leaked cable, I hope? It is not indicated to me that it is. I am not saying that it has been tabled before Cole. Should I protect this more seriously?

Mr Chester—No, I think that I have a copy of it here somewhere—23 September 2004.

Senator ROBERT RAY—I will not go into any more details. I do not know where this has come from. We think that it was posted. Part three of that says:

In recent months there have been several allegations of bribery made against Australian interests ...

and I am asking you the trick question: does this refer to AWB—in which case, you cannot answer the question and then I will know that it does.

Mr Chester—I do not know whether that specifically refers to AWB or not.

Senator ROBERT RAY—Do we know of other cases that it refers to? Who sent this cable out? Do we know?

Mr Chester—The cable was prepared—

Senator ROBERT RAY—Hold on—I think I know now.

Mr Chester—Second page, second line—Attorney-General's Department.

Senator ROBERT RAY—So they sent it out and have just used your system to send it out?

Mr Chester—As is normal. Agencies do use the diplomatic communications network, yes.

Senator ROBERT RAY—I suppose the only relevant question is—and I just return to it—would it have been their source that would have said 'in recent months there have been several allegations of bribery' or would it have been DFAT reporting to them about those cases?

Mr Chester—I just do not know. I do not know what was in the minds of the authors when they wrote that paragraph.

Senator ROBERT RAY—This legislation was passed in 1999. You can understand, Minister, why the suspicious mind would think about the fact that five years later, just as AWB was bubbling up, this cable went out. It may have nothing to do with it, of course.

Senator Coonan—I just do not know.

Senator ROBERT RAY—Always pick coincidence ahead of conspiracy theories.

Mr Chester—To be fair, quite a deal of material was produced from 1999 onwards. You have just picked one of the various elements of the work that DFAT and other agencies did to publicise the new law.

Senator ROBERT RAY—You mentioned that there are a couple of hundred thousand cables a year and you cannot be expected to read all of them. That is perfectly understandable. First of all, are too many cables being generated?

Mr Chester—No. I think that, if anything, there are probably too few. DFAT, along with a lot of agencies and the private sector, face the issue of increased email communication and some of the perils and pitfalls of that. From a departmental point of view, we have to remain alert that material is sent in cable so that it gets a wider distribution, rather than in emails that can have a much more limited distribution.

Senator ROBERT RAY—That is highly sensible. I agree with that. Is any consideration being given to the way cables are flagged?

Mr Chester—In what sense?

Senator ROBERT RAY—For instance, a thousand cables may come in on a particular system and they would be flagged for the attention of people. I am not sure how they are prioritised et cetera. I am sure a cable does not come in saying: ‘Latest information on bribing the Saddam Hussein regime.’ Are they made so anodyne as not to create the attention that is required that would then signal to someone that they must read that cable? Is any thought being given to that area?

Mr Chester—Others may have a view on this, but I do not think there is a problem with the way cables are distributed within DFAT, for example.

Senator ROBERT RAY—Has anyone else raised with you—other departments, for instance—that they think there is a problem?

Mr Chester—No. I am not aware of any criticism of the distribution system. I am just checking that I am not going beyond the rules.

Senator ROBERT RAY—That is put beyond doubt now. Ms Bird has ticked it.

Mr Chester—Somebody will hit me if I have.

Senator ROBERT RAY—We had some evidence given to us at PM&C estimates on how the department can recognise whether a particular cable has been accessed or not. We heard their view. Can we hear your view on exactly how the system works, without revealing any state secrets, obviously?

Mr Chester—I will ask Mr Gerovich to answer that.

Mr Gerovich—The initiator of a cable has the responsibility to identify the recipients at the other end. Under the current system we have 23 topics and about 145 subtopics. So the initiator of the cable has to indicate the subject matter, whether it be government relations, political or economic. That then identifies a mandatory group of recipients at the other end. The way to differentiate between the cables in terms of importance rests in a number of facets. One is that the cable can be sent as an ‘immediate’, which indicates that it requires near immediate action. It is now in real time, in contrast to the systems that we had in yesteryear. Cables arrive on the person’s PC virtually as soon as they are despatched. There is a cable summary, which also indicates the nature of the contents of a cable and which makes it readily identifiable as something of considerable importance. In addition to that, we have systems that allow the department to process all of the cables that come through each day into cable summaries so that, if senior officials, ministers and others do not have the time to read individual cables, they are able to at least scan the cable summary to see which particular cables might be of relevance.

Senator ROBERT RAY—I see. So it is the initiator who sends them on. What is required in order to get access? Are there different levels of access?

Mr Gerovich—There are. There are what we call category A cables, which are sent to positions and the positions are then populated. So a position such as the information communications branch might have seven or eight people subscribing to it. That is a category A cable of less sensitive nature. A category B cable, which is considerably more sensitive, would go to individuals. That might have Mr Chester or Ms Bird’s name on it.

Senator ROBERT RAY—How are those cables then sent to other departments? The initiator has already said, ‘I want this sent to X position in DFAT, PM&C’ et cetera—is that right?

Mr Gerovich—That is correct. There are mandatory fields when you dispatch the cable.

Senator ROBERT RAY—So, if I am an officer sitting in PM&C and I want to access that cable, how do I do it?

Mr Gerovich—There are 45 departments that now have access to our diplomatic cable system on their PCs. Others have theirs delivered in a different way. So, if that individual is part of the mandatory group or if he has been identified as being additional to the mandatory group, which the initiator has the right to do, then he will receive it on his desktop.

Senator ROBERT RAY—Is there a code word or password to access it?

Mr Gerovich—He would have his own password to log into the system. There would be no code words involved.

Senator ROBERT RAY—As I understand it, it is then somehow recorded in DFAT that the matter has been accessed—is that right?

Mr Gerovich—Since 2000 we have been able to formally audit the process of a cable having been received, opened and actioned.

Senator ROBERT RAY—Not necessarily all of those. They could be opened and that is all—not actioned in any particular way?

Mr Gerovich—That is correct.

Senator FAULKNER—In fact, that is the key thing, isn’t it? My understanding—admittedly from evidence by another department—is that the mere opening of such a cable was able to be recorded by DFAT.

Mr Gerovich—We can record the opening of a cable, the printing of a cable, the forwarding of a cable, the export of a cable and the closing of a cable.

Senator ROBERT RAY—What do you mean by ‘export’?

Mr Gerovich—Export means that the recipient decides to send the cable into a Microsoft document and then print it out. That is recorded as well.

Senator FAULKNER—Just go through those again.

Mr Gerovich—Opening, printing, forwarding, exporting and closing.

Senator FAULKNER—I see. Obviously, in the case of some of the addressees, there is also a capacity for their own IT systems to be able to deal with some of those elements—perhaps not opening but printing, for example. The Department of the Prime Minister and Cabinet, for example, gave us evidence that if a cable has been printed in the department then that is a matter that would be recorded on their own IT systems. Separate to that, you can say that the DFAT systems cover all those issues?

Mr Gerovich—That is correct.

Senator FAULKNER—How often do you have a situation where another agency or department comes to DFAT for verification that a cable may have been opened or that further action has been taken with a cable? Does that happen often?

Mr Gerovich—In the time that I have been in this division, there have been no instances of that.

Senator FAULKNER—But we now know that that time is quite brief—

Mr Gerovich—It is.

Senator FAULKNER—It is two months. Mr Chester, can you help us with that?

Mr Chester—I am not aware of any instances of that, but, again, I would not rule out the possibility of other agencies coming and asking those questions.

Senator FAULKNER—We have heard from Ms Bird and others that a lot of cables were provided to the commission as a result of orders for the production of documents and the like. In doing all its spadework for the Cole royal commission, did DFAT do any check of the relevant cables as to what happened in relation to those cables in other departments and agencies, given that you have that facility?

Ms Bird—As I said, we provided statutory declarations on our documents search. Perhaps I should add that the cables provided to Cole have very clearly indicated on them the distribution, and the Cole inquiry have followed up on that as they have seen fit.

Senator ROBERT RAY—So it would be capable for them to ask and you to provide who accessed those cables—is that right?

Ms Bird—It is really up to the Cole commission to ask whatever they wish. They have followed up on the distribution of various cables.

Senator ROBERT RAY—That is not quite the question I was asking.

Senator Coonan—I think what she was saying, Senator, was that the distribution was evident on the face of the document.

Senator ROBERT RAY—I am not going to distribution, I am going to access. Say I am an official overseas and I have sent you a cable. I do not know whether you have read it or not. If there are hundreds coming in you may not have given it priority. But, as we now understand, this will tell us at least whether it was opened. It is another presumption to know whether it has been read. I am just asking: if Mr Cole wanted to know, would the department be able to make that available?

Ms Bird—That is covered off in a couple of the statutory declarations we have provided to the Cole commission at their request.

Senator ROBERT RAY—Are they posted on the website? You could tell me—or do you want me to go off and read the website?

Ms Bird—Quite a few of them have been. A large number of Commonwealth statutory declarations were posted a few weeks ago. But, as I said, it was the Cole commission which decided which ones to post.

Senator FAULKNER—My question was whether the department did a search in this regard of the relevant cables associated with the searches, the document extraction and so forth that were done for the Cole commission. We heard evidence—you may be aware of this, Mr Chester—from another department that indicated that they did not know whether a particular document had been accessed or not. Then it was established that they could have checked with the Department of Foreign Affairs and Trade and did not make that check with your department. I was wondering whether your department had, more broadly, run a series of checks on relevant cables.

Mr Chester—I do not know the answer to that, but someone else might.

Ms Bird—As I said, the Cole commission have asked on a number of occasions to do certain searches, which we have done. That is all set out in the statutory declarations.

Senator ROBERT RAY—Implied in that is that you have not refused any request.

Ms Bird—We have met all the requests from the commission.

Senator FAULKNER—Before we leave this issue of the role of your division, Mr Moraitis, and its interrelationship with the minister's appearance at the commission, I heard what was said about the role of the division in relation to Mr Downer's appearance and I wondered if any area of the department was responsible for receiving, checking and examining in any way Mr Downer's statement before it was submitted to the commission.

Ms Bird—No, the statement was very much Mr Downer's. As I said, there were occasions where they wanted documents or to check a fact. We provided that sort of assistance. But the statement was developed by the minister in consultation with the legal counsel.

Senator FAULKNER—I just asked whether, when the statement was in draft form, it was provided to any area in the department for checking or comment.

Ms Bird—Not as a draft statement, as a whole—I said aspects. They wanted to follow up and check that they had the facts right.

Senator FAULKNER—Elements of the statement were but not the statement in its entirety?

Ms Bird—Correct.

Senator FAULKNER—Have there been any overtime costs in relation to this major task you have had with support for the departmental activities surrounding the Cole commission?

Mr Chester—I would imagine there would be some overtime costs, yes. I am sure there were overtime costs.

Senator FAULKNER—Can you quantify it in any way, Mr Chester?

Mr Chester—No, Senator, but I will take it on notice, if you wish.

Senator FAULKNER—I was wondering whether it could be a substantial additional burden.

Mr Chester—It depends what you mean by 'substantial'. It certainly will not be of the quantum of the legal costs or the travel costs.

Senator FAULKNER—If you can take it on notice, I would appreciate it. Did you have a similar relationship, Mr Moraitis, with Mr Vaile in terms of his statement?

Mr Moraitis—Yes, it was pretty much at arm's length.

Senator FAULKNER—Could someone please outline for the benefit of the committee what role the department played in relation to Mr Vaile's appearance before the commission? Can you, first of all, confirm that the costs and the legal representation were borne not by DFAT but by the Attorney-General's Department?

Ms Bird—Yes, that is the case.

Senator FAULKNER—Can you indicate to the committee what role, if any, the department had in relation to Mr Vaile's appearance?

Ms Bird—As I said, our engagement was limited to providing any documents that were requested or answering any factual queries. The statement was developed between the minister and his legal counsel.

Senator FAULKNER—Are you able to say whether the department sighted a draft copy of Mr Vaile's statement?

Ms Bird—As far as I am aware we did not see it, no.

Senator FAULKNER—You can rule that out, can you?

Ms Bird—The three of us at the table did not see it.

Senator FAULKNER—Did you see elements of it like you did of Mr Downer's?

Ms Bird—I am not aware of that. It was more in the nature of queries that we had that we answered.

Senator FAULKNER—What about statements that were prepared by staff? There were a number of those, weren't there, Mr Moraitis? You may be able to confirm how many. There was quite a number, wasn't there?

Mr Moraitis—I think that there were about half-a-dozen to a dozen.

Senator FAULKNER—What was the involvement of your section of the department in those? Perhaps you can assist us with that.

Mr Moraitis—The involvement of DFAT in those was through solicitors and counsel preparing their statements and acting for them if they appeared before the Cole inquiry. It was with their counsel and their solicitors working with them, so we had no dealings with them.

Senator FAULKNER—When the draft statements were finalised these were not examined by anyone in the department?

Mr Moraitis—I think they would have been given to the department after they were finalised and signed, and with the consent of the individuals, which is normal procedure, through their solicitors.

Senator FAULKNER—So you can say to the committee that there was no departmental input—is that right?

Mr Moraitis—That is my understanding, yes.

Senator FAULKNER—I think that you are in the best position to be able to tell us that.

Mr Moraitis—That is right.

Senator FAULKNER—So you saw those statements some time after they were finalised?

Mr Moraitis—Correct.

Senator FAULKNER—In each case?

Mr Moraitis—Correct.

Senator FAULKNER—Did you make a statement, Mr Moraitis? I will use you as an example. I know you provided three statutory declarations.

Mr Moraitis—Yes.

Senator FAULKNER—But those three statutory declarations did not go to your own role.

Mr Moraitis—Yes, that is right. I had no role in this. I am just providing some procedural and contextual advice to the inquiry.

Senator FAULKNER—You did not make a statement to the commission?

Mr Moraitis—The stat decs were statements. They were three statements.

Senator FAULKNER—Did you make a statement about your involvement in the issue?

Mr Moraitis—That is right.

Senator FAULKNER—Did any of the witnesses at the table do that? Did you, Ms Bird?

Ms Bird—No, I was not involved in the oil for food program.

Senator FAULKNER—I cannot ask a senior officer about how it worked in their case if no-one made a statement. There you are; that is lucky.

Senator ROBERT RAY—I have a couple more questions before the lunch break. I have a question for the minister, but my first question is for Mr Chester. You sort of implied—and I agree with you very strongly—that there is a growing problem with emails. It is as though people can say things in emails that they would not say in a letter, fax or even a phone conversation: indiscreet statements that later can be adduced. Have you detected that as a problem in your department? I have in others.

Mr Chester—No, that is not the main concern. The main concern is with issues of some policy importance not being widely communicated within the system. That is more of a concern than the specific content of emails.

Senator ROBERT RAY—Is that really out of convenience? Is it much easier to tap off an email to someone and get a response than to draft it, clear it through a superior somewhere and then put on all the designations?

Mr Chester—I think it is a mix of issues. That is certainly one part of it, but also a somewhat less formal language can be used in relaying things in emails.

Senator ROBERT RAY—My question to the minister relates to the directions to public servants not to comment on matters pertaining to the Cole inquiry. It is normal at estimates—for me at least, and I think most of us follow this procedure—that we ask questions of the

officers who are currently in charge of an issue even if, sitting in the back of the room somewhere, there might be someone with more intimate knowledge but who is no longer in that area. That is the tradition. But, in this instance, could you give some thought to the fact that people's jobs may change between 16 February and the next time we have an opportunity when that direction does not exist. We may want to ask some officers questions about these issues. I think it is most unfair to us in the committee that we cannot ask them simply because they have changed jobs. We would not normally do that, but we have a government intervention that says, 'No, you are directed not to answer questions,' and we may face a situation down the track in which the new person says, 'I have no corporate knowledge of this.' Could you cogitate on that? That is what I am asking.

Senator Coonan—I certainly will. It may be that a line of questioning that you could pursue is to ask, 'Who was the relevant officer who can answer this?' and maybe they can be found. I think the point you raise is fair.

Senator ROBERT RAY—Yes.

Proceedings suspended from 12.29 pm to 1.30 pm

Senator FAULKNER—Mr Chester, I want to ask some questions about the situation in East Timor. I think we flagged that we would do that after the break. I think a sensible place to start would be to first of all have a brief status report from someone about what is the current situation.

Mr Chester—I will ask Paul Grigson, the head of that division, to give that update.

Mr Grigson—The situation in Dili is improving but it remains quite tense. The outbreaks of gang violence have diminished over the past 24 hours as troops have deployed, but we will need to see how that develops today. We are confident that, as the troop presence is established, this will help restore some stability to Dili.

Senator FAULKNER—I see. You cannot give us any more detail on that, Mr Grigson? That is a very skeletal outline that you have managed.

Mr Grigson—The ADF and Defence will give you some more detail on operational issues. There are 2,000 ADF personnel deployed in and around East Timor at the moment, and altogether there are about 3,000 working in support of it. The ADF has deployed progressively over the past 48 hours and, as I said, we are quite confident that they will bring under control the outbreaks of gang violence that we have seen in the past few days.

Senator FAULKNER—Can we please go through in some detail the role of the UN presence in East Timor? Can you outline what has happened over recent years, starting in February 2000. Do you have a time line there that you can go through with us?

Mr Grigson—Let me check. There has been a continuous presence, as you know, since 1999. Each time the mandate has come to an end, the Security Council has considered reports from the Secretary-General and the East Timor government and has made decisions on the size and shape of the UN presence. I do not have a detailed time line here but, if you have a particular issue in mind, I might be able to address it. The international staff, as at 31 December 2005, was more than 100 UN officers. This included 60 police advisers and 15 military liaison advisers.

Senator FAULKNER—How many UN mandates have there been?

Mr Grigson—The mandate has been rolled over on four occasions. UNTAET was the initial UN mission, which was mandated on two occasions. It was replaced by UNMISSET, which became UNOTIL.

Senator FAULKNER—What was the date of the first UN mandate? I thought it was February 2000, but that might be wrong. It might be 1999.

Mr Grigson—The first UNTAET mandate was 1 January 2001. I will need to check on what the situation on the UN was previous to that.

Senator FAULKNER—Fair enough. And that was rolled over once, was it?

Mr Grigson—Yes, it was. There was a new mandate for UNTAET, which took effect on 1 January 2002.

Senator FAULKNER—Was that the final UNTAET mandate?

Mr Grigson—UNTAET continued until it was replaced by UNMISSET on 1 July 2004.

Senator FAULKNER—The second UNTAET mandate lasted two years, did it?

Mr Grigson—That is as I have it, Senator. I will get that checked for you.

Senator FAULKNER—I am just trying to be clear. The UNMISSET began on 1 July 2004.

Mr Grigson—Yes.

Senator FAULKNER—When did that conclude?

Mr Grigson—20 May 2005.

Senator FAULKNER—What happened? Was it rolled over?

Mr Grigson—That is right. It became the current mandated operation, which is called UNOTIL.

Senator FAULKNER—Could you supply to the committee the reason or the background for the new mandate for UNMISSET on 20 May 2005, the significance of that timing and the impact of the new mandate?

Mr Grigson—As I said, the Security Council has considered the shape of the UN missions as they have come up. UNTAET replaced UNMISSET. There was a significant reduction in military contingents and other staff. But this came after the Security Council considered reports in May-June 2004.

Senator FAULKNER—I see. What was the UN presence in Timor after 20 May 2005?

Mr Grigson—That was the UNOTIL mission: 101 international staff, 21 national staff, 212 local staff and 37 UN volunteers. As I said before, it included 60 UN police advisers—40 working with the PNTL; 20 working with the border control unit—and 15 military liaison officers.

Senator FAULKNER—Could you outline the Australian involvement in UNOTIL?

Mr Grigson—From memory, we provided, I think, four AFP officers to participate in the UN policing and three military officers to participate in the military liaison function.

Senator FAULKNER—How did that presence evolve from 20 May 2005 to, if you like, the earlier part of this year when the present difficulties in East Timor were becoming apparent?

Mr Grigson—I am unaware that there were any significant changes on those establishment numbers.

Senator FAULKNER—So that establishment pretty well remained?

Mr Grigson—I would have to check for you, but that is my understanding.

Senator FAULKNER—Were there plans for a gradual UN withdrawal?

Mr Grigson—No, Senator. It had always been considered that there would be a UN presence. There were discussions about the shape of it, but, as you know, the UN agencies are very heavily involved in East Timor—UNDP, UNICEF, UNHCR.

Senator FAULKNER—What role did the Australian government or Australia have, if any, in relation to the shape of the UN presence and the nature of the UN mandate more broadly?

Mr Grigson—There was a broad discussion, as I said, last year at the UN. Decisions were largely taken by the Security Council. We expressed our views but, as you know, we are not on the council. In the end, it was a decision for them.

Senator FAULKNER—Did the department support an extension of the UN mandate in 2004?

Mr Grigson—Yes, it did. I might point out that there was never any proposal for the UN as such to withdraw. It was simply about the shape of what would be there and how it would be run. That is why I made reference before to the major agencies.

Senator FAULKNER—Say the key date again.

Mr Grigson—There was never any proposal from anybody that I am aware of that the UN ever withdraw from East Timor. It was simply a discussion about the shape of its presence and how it would go about its work, which is why I made a reference earlier to the UN agencies, which have played a very important role in East Timor and will continue to do so. UNOTIL was a special political mission. There had been no decision made this year on what or how it might be replaced until the extension of 30 days of its mandate following the riots in April.

Senator FAULKNER—What is the expiry date of the current mandate?

Mr Grigson—It is 20 June.

Senator FAULKNER—I have read that this is to be considered by the Security Council in the very near future. Is that correct?

Mr Grigson—It would need to be considered before 20 June.

Senator FAULKNER—Do we know if or when the Security Council is slated to consider this?

Mr Grigson—No. The Secretary-General will provide a report to the Security Council on the future of the UN presence in East Timor on 6 June but the timeline following that I do not have with me.

Senator PAYNE—Under the circumstances, do you expect that timetable to change?

Mr Grigson—No.

Senator FAULKNER—Do we have any indication of what the possible nature of the Secretary-General's report might be?

Mr Grigson—No.

Senator FAULKNER—Not at all?

Mr Grigson—No. I think a number of institutions and countries are working through what they might think is best for East Timor given the current circumstances, and the UN is in the same position.

Senator FAULKNER—Do we have any indication—I assume Australia would have some indication at least—that what the government of East Timor is proposing would be appropriate?

Mr Grigson—I do not recall any detailed discussions with the East Timorese following the extension of the mandate. I am not aware we discussed with them in detail what their expectations may be. The position has generally been that the Secretary-General takes advice from the East Timorese and from his own bureaucrats, presents a report to the Security Council and then there is a discussion between interested countries.

Senator FAULKNER—Is it true that Australia opposed a continued peacekeeping presence in 2004?

Mr Grigson—I am not aware that anybody in the past few years has advocated a large peacekeeping contingent in East Timor. As I said, it was a decision for the Security Council on the basis of the reports from the Secretary-General.

Senator ROBERT RAY—You were asked whether you opposed it.

Senator FAULKNER—I will repeat my question for you: did Australia oppose a continued peacekeeping presence in East Timor in 2004? Are you able to assist us with that?

Mr Grigson—No. We supported the Security Council decision on the shape of the UN mission.

Senator FAULKNER—And that was?

Mr Grigson—As I have described it to you: 101 or so international staff, a contingency of 60 or so police advisers and 15 military liaison officer positions.

Senator FAULKNER—Is that defined as a peacekeeping mission?

Mr Grigson—No, it is defined, as I understand it, as a special political mission.

Senator FAULKNER—That is right. There is a distinction between a peacekeeping mission and a political mission, isn't there?

Mr Grigson—Yes there is.

Senator FAULKNER—The current mission is properly described as a special political mission. That is your terminology and I am happy to use it. But, just so we are comparing apples with apples, that is a special political mission.

Mr Grigson—Yes, as I understand it.

Senator FAULKNER—It is not a peacekeeping mission.

Mr Grigson—That is as I understand it.

Senator FAULKNER—My question went to Australia's attitude to a peacekeeping mission in 2004. An answer about the political mission does not strike me as being necessarily adequate, as I think we understand. I accept that you are properly drawing a distinction between two very different terminologies and two very different types of mission.

Mr Grigson—That is correct. The Security Council decided, as I understand it, to transition from a peacekeeping mission, as it was called, to a special political mission. I am not a UN expert so I cannot give you the detail of the difference between the two. The difference in general structure I can get for you if you need it.

Senator FAULKNER—That would be helpful but I think we probably both have at least a broad understanding of what the differences are. I am sure you do, Mr Grigson—you are a professional in this area. I think I at least broadly understand what the different terminology means. Is someone able to assist me as to whether Australia made any representations to the Secretary-General of the United Nations? Do we know that?

Mr Grigson—When?

Senator FAULKNER—In 2004.

Mr Grigson—I would need to check.

Senator FAULKNER—We do not know that?

Mr Grigson—We would know it; I just do not have it with me.

Senator FAULKNER—Do we know whether Australia made any representations to members of the United Nations Security Council about this?

Mr Grigson—We certainly would have been involved in discussions.

Senator FAULKNER—Did the Department of Foreign Affairs and Trade make representations to the UN? I think you would agree, Mr Chester, that that is a reasonable question to ask and one that we could perhaps expect an answer to—not necessarily from Mr Grigson if he is not aware, but I am sure some official might be able to assist us.

Mr Chester—Whether the word is 'representation' or something else, I know Australia was involved in the discussions in 2004 on the nature of the successor mission. Since 1999 we have played a fairly important role in relation to East Timor and have been involved in the various discussions with the UN and members of the UN on the nature of the various UN missions. Yes, we would have been involved in discussions. I do not know whether 'representations' is the right terminology.

Senator FAULKNER—Do you think it is fair to say that Australia had an influence on the decision?

Mr Chester—I am not sure I can answer that. We were certainly engaged in the discussions with the UN and members of the UN.

Senator FAULKNER—Did Australia support what has been described as a special political mission as opposed to a peacekeeping mission?

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

Mr Grigson—We were involved in discussions on the shape of the UN presence following the end of UNMISET. As I said, the decision to transition from a peacekeeping force to another form of UN mission was made by the Security Council. We certainly would have been involved in discussions with other members. I do not have the details with me and I would need to take advice on whether we usually make those discussions public.

Senator FAULKNER—I appreciate that Australia would be involved in such discussions—that makes good sense to me. I am trying to understand what position Australia took into those discussions, and I am not clear on that from what I have been told.

Mr Grigson—I will need to take some advice before I can answer that.

Senator FAULKNER—Does that mean you do not know or does it mean that you are not willing to tell me?

Mr Grigson—It means I do not know and I am going to find out what our position usually is on discussions between members before Security Council resolutions.

Senator FAULKNER—I go to Mr Chester as the senior official at the table: can you assist me in this regard?

Mr Chester—No. I cannot say anything beyond what Mr Grigson has said. We need to check both elements of that: what was our position and whether it would be normal to make that public.

Senator FAULKNER—I would have thought representations made by the Australian government to the UN, UN member states, the Secretary-General or a member of the UN Security Council would be something about which there would be a fair degree of knowledge at senior levels of the department, particularly in light of what has occurred in East Timor in recent times. I am a little surprised at that. But you cannot help me?

Mr Chester—Not beyond what I have said.

Senator FAULKNER—Some of these representations that are made to the UN Security Council are public, aren't they?

Mr Grigson—Yes, they are. They are listed on a website following presentation in an open meeting.

Senator FAULKNER—Exactly. Former Senator Hill—we have been talking about former senators today; it seems to be a regular landing place in the diplomatic service—

Senator ROBERT RAY—You did not change your term, Senator—an ambassador.

Senator FAULKNER—Thank you, Ambassador Ray.

Senator ROBERT RAY—I am looking to see who is next at this table, but I cannot see anyone.

Senator FAULKNER—There are no likely starters down there.

Senator ROBERT RAY—Uncle Bill maybe.

Senator FAULKNER—How many boots have been licked? Anyway, some of these representations are available on UN websites. Let me come back to the East Timor situation. Is that not on the website?

Mr Grigson—The public statements made in open meetings are sometimes listed on the UN website. I do not have a copy of Australia's from that time. If one was made, I can get that for you.

Senator FAULKNER—I do not pretend to keep across all the detail, but I know that a lot of these things are posted. Australian addresses to the United Nations and those sort of things are on the website, so I am surprised the government representation to the UN in relation to the UN presence in East Timor is not something that there is a bit more knowledge of. So I am clear on departmental arrangements, is there an East Timor desk in DFAT? I do not think I have ever asked this over the years, so it might be useful to know that.

Mr Chester—Yes, there is.

Senator FAULKNER—How long has that been in place for?

Mr Chester—I think it started as an East Timor task force back in the late nineties and then developed into a formal section as part of the division at some time in the early 2000s, but I do not have the precise date. However, at least for the last few years there has been an East Timor section.

Ms Williams—I have the dates. Mr Chester is correct. As Mr Chester said, it was created as an East Timor task force in March 1999 and became a section in February 2000.

Senator FAULKNER—How many people are in the section now?

Ms Williams—My understanding is that there are three staff members in the section now.

Senator FAULKNER—Does that report to you, Mr Grigson?

Mr Grigson—It does, through a branch head.

Senator ROBERT RAY—An important part of any of these considerations is the degree of accurate intelligence received on these issues. I note some criticism in the papers in the last few days, but I am not going to ask questions directly on it. At what point does the department—or maybe it is a broader government position—go back and assess the intelligence as it came in and match it against events? Bear in mind that I am not one who expects intelligence to be able to predict the future. I am not even suggesting that. I am asking at what point in the cycle—I think it is far too early at the moment—do you go back and say, 'Should we have done better in terms of gathering intelligence to anticipate what happened or did we do as well as we could?' At what point does that occur? You might think about that also in terms of the events in the Solomon Islands, which are some time past us now.

Mr Chester—I think what you say is potentially a valid consideration of the department in particular circumstances. In relation to the present issues in East Timor, I am not aware of any particular shortcomings in either the intelligence or the department's preparedness response.

Senator ROBERT RAY—With the unfolding of these events, which were not entirely predicted, obviously, are you satisfied that our mission in East Timor—that is, the mission

building and the mission staff—were properly protected from a security and safety point of view?

Mr Chester—Do you mean our embassy?

Senator ROBERT RAY—Yes.

Mr Chester—Yes.

Senator ROBERT RAY—Does that include where the staff are living? Are they all in one compound?

Mr Chester—Not all of them. There is a residential compound for DFAT and some attached agency staff and there is also a Defence compound there. There is also the head of mission residence, which is near the broader residential compound.

Senator ROBERT RAY—Do we think that the evacuation plans have gone well? I think 600 or 800 have been evacuated.

Mr Chester—I am not sure it is that many.

Mr Smith—The total number of evacuees as of this morning was 422 on 11 military flights. Those 422 includes 157 Australians and 265 foreign nationals.

Senator ROBERT RAY—Would they be mostly UN employees?

Mr Smith—No. Some UN employees have come out, but I think they have come out on separate charter flights. They are foreign nationals from, I think, something in the order of 30 different countries.

Senator ROBERT RAY—I understand the AFP are going to deploy. Do we have a timetable on that, or will that depend on resurrecting a degree of law and order in Dili and adjacent areas?

Mr Grigson—I think that will be in the next day or two.

Senator ROBERT RAY—Will they be armed?

Mr Grigson—I do not know that.

Senator ROBERT RAY—One of the things I have found difficult to assess in all this is that I saw couple of statements by Foreign Minister Horta that I read as being highly resistant to Australia being involved in an intervention sense—there were several statements up to about 20 May—yet he signed the letter, along with the President and the Prime Minister, requesting Australia's military presence. Is that a fair characterisation?

Mr Grigson—Just on a factual matter: there were three signatures on the request to us. The request was signed by the Speaker, the President and the Prime Minister of East Timor, but Mr Ramos Horta was closely involved in the consideration of it. We had been preparing for a couple of weeks in terms of a request coming, if one were to come. We had always taken the position that we needed a consolidated request from the government of East Timor and that it was a matter for them to decide when they made that request.

Senator ROBERT RAY—But I am right about the public statements by Foreign Minister Horta, aren't I?

Mr Grigson—I do recall an early indication that the East Timorese were keen to try to resolve the issues themselves, but I do not have the detail of the statement with me.

Senator ROBERT RAY—I have a couple of quotes. Mr Horta said in a press conference on 12 May:

East Timor does not need a peacekeeping force, because there is no war in East Timor.

A further statement was:

We have not requested support ... There are still tensions ... but the situation is very peaceful.

... ..

We are confident the Timorese leadership can handle the situation in Timor politically.

That does not look good on his CV when he is running for UN Secretary-General, does it?

Senator PAYNE—I have a question to do with evacuating people, just before we go off the consular matters that Mr Smith was addressing. Mr Smith, I think you said there were 422 people on 11 military flights: 157 Australians and 265 foreign nationals. Were there no East Timorese?

Mr Smith—Yes. That includes some East Timorese.

Senator PAYNE—How many?

Mr Smith—I do not have the precise figure, but I can get that. That figure, of course, is changing all the time.

Senator PAYNE—Of course.

Mr Smith—More flights are coming out. The other point that might be worth making is that commercial flights into and out of Dili continue to operate, so a number of people, including, presumably, East Timorese, who have a right to visit Australia, would be coming out on those flights.

Senator PAYNE—How is the process being managed? Are offers being made to organisations that have large numbers of Australian staff on the ground so that they know that if their staff wish to leave they can leave in this way, or is it being managed in another way?

Mr Smith—We have made a general recommendation, including, for example, in our travel advice—

Senator PAYNE—I have seen the travel advice.

Mr Smith—about departing, given the nature of the security environment. We have withdrawn all Australian non-essential employees and their dependants. That is true of a number of other organisations. The UN, for the most part, is looking after its own staff. As I said, I think three flights evacuated UN staff yesterday. The other foreign nationals who are coming out, including East Timorese, are people who have made approaches to us for assistance with evacuation. Most of the ADF flights that are coming out are not full, so there is the capacity to bring out others. People are obviously making their own judgments day by day as to whether they want to stay or come out.

Senator PAYNE—Are a significant number of East Timorese making requests for evacuation?

Mr Smith—I do not think the number is all that significant. I understand that there has been some increase in the number of visa applications coming into the embassy in Dili. They are being processed in the normal course of events by DIMA.

Senator PAYNE—Thanks.

Senator FAULKNER—I know this is not necessarily core business for DFAT or DFAT officers, but what role, if any, have DFAT played in the finalisation of the rules of engagement? Has there been any role?

Mr Grigson—Rules of engagement are handled by the Department of Defence.

Senator FAULKNER—I appreciate that.

Mr Grigson—I am not aware of any engagement by us.

Senator FAULKNER—I just wondered whether your department had any involvement at all in that.

Mr Grigson—On ROEs, not that I am aware of.

Senator FAULKNER—There was a statement yesterday from the minister that the ADF may not in any way be involved in the investigation of the murder of what appear to be nine unarmed police at the UN compound. I do not know the accuracy of that statement. Can you provide any information to the committee on what is happening in relation to law-breakers who are apprehended?

Mr Grigson—I am not able to. I know discussions have been going on today about those issues, but I have not been involved in them.

Senator FAULKNER—Is there a DFAT role in that? I thought there would be. When you say there are discussions going on, who is involved in them?

Mr Grigson—They are between the relevant agencies—the Department of Defence, the AFP and the Attorney-General's Department. I do not know whether we have been involved. I certainly have not been.

Senator FAULKNER—So that is a matter under consideration as we speak? Is that what you are saying?

Mr Grigson—That is my understanding.

Senator FAULKNER—Has an agreement been worked through with the government of East Timor in relation to what will happen to those who are law breakers?

Mr Grigson—I do not know.

Senator FAULKNER—I accept what you are saying to me. But I am asking that question because I thought that, if such an agreement had been worked through, there would be a role for DFAT. Would that be right? Mr Moraitis is coming back to the table; he might be coming to assist us.

Mr Moraitis—Yes, I am coming to assist you.

Senator FAULKNER—Thank you.

Mr Moraitis—Mr Grigson is correct: there have been discussions, including ongoing discussions in the course of the day, as I understand it, involving those agencies and DFAT to the extent required. The terms of the status of forces arrangement that exists with East Timor, which is a SOFA type arrangement, were finalised late Friday, I think. In its general terms it pretty much provides a capacity to deal with things in an overarching way. This is ongoing, so I cannot be more accurate, but the question now is: how much more specificity is required at an operational level? The status of forces arrangement does provide, in the sense of the objective being to restore law and order, a law and order element. The logical corollary of that is to provide for detention of people as required. I cannot be more specific, because I do not have the information in front of me.

Senator FAULKNER—Thank you. That is helpful. Are you able to say to the committee, Mr Moraitis, what the DFAT role is in relation to working these issues through?

Mr Moraitis—Yes, certainly. With any international agreement that involves DFAT, Attorney-General's Department and Defence—a case of, say, something like a status of forces arrangement—DFAT would obviously be consulted and provide some input, along with Defence legal experts and others, as well as the Attorney-General's Office of International Law, which has, of course, great expertise in these matters.

Senator FAULKNER—Is it fair to say that you are part of the negotiating team in relation to this? First of all, is there a negotiating team?

Mr Moraitis—The negotiations, as far as I understand, were concluded in Dili last week by the CDF.

Senator FAULKNER—I see.

Mr Moraitis—And that status of forces arrangement was more or less concluded late Friday evening. That is basically the arrangement that is in force.

Senator FAULKNER—What is Mr Ritchie's role?

Mr Grigson—David Ritchie?

Senator FAULKNER—Unless there is another Mr Ritchie, yes.

Mr Grigson—Well, there are actually two.

Senator FAULKNER—Oh, are there? Fair enough. There is only one Doug Chester, though!

Mr Chester—Thanks!

Mr Grigson—Mr Ritchie was part of the team that was sent on Thursday, headed by Ken Gillespie, to talk to the East Timorese government about the arrangements.

Senator FAULKNER—Is he the senior DFAT officer on the ground?

Mr Grigson—No; he has now returned

Senator FAULKNER—I see. He is deputy secretary, isn't he?

Mr Grigson—That is correct.

Senator ROBERT RAY—I notice that yesterday the Portuguese foreign minister, Diogo Freitas do Amaral, made some comments on this. Do we value the advice of the Portuguese government, given their expertise at leaving civil wars in Angola, Mozambique and East Timor? Do we highly value their advice as experts?

Mr Grigson—We have been consulting with all countries with an interest in East Timor in the past weeks.

Senator FAULKNER—Mr Grigson and Mr Moraitis, you may not know, but have any East Timorese been taken into custody at this stage?

Mr Grigson—I do not know the answer to that.

Mr Moraitis—I do not have any knowledge of operational matters.

Senator ROBERT RAY—Looking to the long term, do we expect to get the UN's Peacebuilding Commission involved now?

Mr Grigson—We are currently working through what we think the UN might best do post 20 June. The Peacebuilding Commission, as I understand it, is not fully functional at this point. We need to think about how we would involve the various parts of the UN.

Senator ROBERT RAY—Fair enough.

Senator HOGG—How many medical evacuations have there been to Australia?

Mr Smith—Nine people have been medically evacuated so far—all yesterday.

Senator HOGG—Who is undertaking the evacuations?

Mr Smith—The two most seriously injured were evacuated by a commercial air ambulance arrangement, and I understand the other seven were evacuated on an ADF aeromedical evacuation flight.

Senator HOGG—That is the other seven. I presume we are picking up the tab for all medical evacuations?

Mr Smith—That is my understanding, yes.

Senator HOGG—What resources are being deployed for those medical evacuations?

Mr Smith—This issue is being coordinated by an interagency committee that includes the department of health, Emergency Management Australia and their counterparts in the states, because it is a cross-jurisdictional effort. The evacuees have been moved to Darwin Hospital, which is the treating hospital, and I think some support is being provided to Darwin Hospital by other states as well as by the federal government. Any additional detail is more an issue that the department of health can help you with.

Senator HOGG—Are all nine evacuees East Timorese, or are some of them other nationalities?

Mr Smith—Those nine are all East Timorese.

Senator NETTLE—Just going back to the terms of engagement there you were talking about, do you know whether part of those terms of engagement involved agreement that the East Timorese Army would be disarmed by the ADF?

Mr Moraitis—I will try to answer your question in a general way, because I do not have the specifics in front of me. The rules of engagement relate to how the ADF deployment operates in that context. The status of forces arrangement is the overarching agreement which establishes the mission, the processes and responsibilities, and to an extent some immunities that exist for ADF operating so there is a clear understanding of that. On the question of disarming, I would have to check what the actual status of forces arrangement says. It might well have something about ‘conducive to dialogue’.

Mr Grigson—The specific tasks of the security forces outlined by the Prime Minister were ‘facilitating the evacuation of Australian and other foreign nationals as is appropriate and necessary’, ‘stabilising the situation and facilitating the concentration of the various conflicting groups into safe and secure locations’, ‘auditing and accounting for the location of weapons that belong to each group’ and ‘creating a secure environment for the conduct of a successful dialogue to resolve the current crises’.

Senator NETTLE—None of those specifically mentions disarming; they just mention counting weaponry?

Mr Grigson—As I said, they are the tasks that the Prime Minister outlined and we would need to check on how they were operationalised in those other documents.

Senator NETTLE—If you could do that, that would be great. I noticed a media comment came out from the Prime Minister of East Timor criticising what he believed were comments by the Australian government, and by the Australian Prime Minister in particular, about Timor having been badly governed. It is not the first time that we have seen comments from the Prime Minister critical of the Alkatiri government. I want to go to some of those other issues: Timor oil, Telstra and economic matters. Did the Australian government make any representations to the East Timorese government about Telstra continuing to operate the telephone network in Timor?

Mr Grigson—Do you have a particular time frame in mind? I can say this: not to my knowledge since I have been in this job.

Senator NETTLE—Initially, the telephone network set up in Timor was Telstra’s. Then there was a period of transition, so I am asking about that period—I do not have the date here.

Mr Grigson—I would need to check on that for you. I do not know.

Mr Chester—That was some time ago. I do not have any knowledge of it, but we will check.

Senator NETTLE—Has the department been involved in any discussions with the Timorese government or indeed the World Bank, which has been involved in that process, over reform of East Timor’s agriculture?

Mr Grigson—As you know, we run quite a significant bilateral cooperation program. I have an outline here, but AusAID may be able to help you more with that. They have been working very closely with the East Timorese government and particular agencies, as well as international agencies such as the World Bank.

Senator NETTLE—I can ask some of those questions to AusAID later on. Just with regard to the demonstrations in 1995 led by the Catholic Church that were critical of the Alkatiri government, there were some suggestions—

Mr Chester—Sorry; when?

Senator NETTLE—In 1995—the demonstrations that the Catholic Church were leading against the Alkatiri government with relation to religious education in East Timor.

Mr Chester—There was no Alkatiri government in 1995.

Senator NETTLE—Sorry—2005.

Senator ROBERT RAY—It is just 10 years!

Senator NETTLE—Yes. There were suggestions at the time that US and Australian embassies had been involved in providing support for these protests. I wonder if you could clarify that or update that information.

Mr Chester—I had not seen those suggestions, but they are wrong.

Mr Grigson—It is certainly not to my knowledge that there was any support.

Senator NETTLE—You may remember the protests. This is about portaloos and that sort of equipment being provided.

Mr Grigson—Those suggestions are wrong.

Senator NETTLE—That is all I had on East Timor.

Senator ROBERT RAY—I have one more for the general area, and that will be it for general.

CHAIR—Before you start, we have the Beaconsfield mine disaster reception this afternoon at three o'clock. We thought we would adjourn at 3.15 pm and reconvene at 4.15 pm. I apologise to you for not telling you about that, but where we were going with that has been a little bit fluid. That is the timetable.

Senator ROBERT RAY—I wanted to ask about a certain event in the Solomon Islands. We have raised this in another committee. That event was a leaked email from DOFA which found its way into the hands of local Solomon Islands politicians. What role did the Department of Foreign Affairs and Trade play in that?

Mr Ritchie—We became aware of the leak after the event. I was in touch with the RAMSI special coordinator James Batley and with the Department of Finance and Administration about it. There was an agreement between the three—in fact, it was a department of finance decision—that the person who authored that email should be withdrawn and brought back to Canberra. That has been given in evidence already to this committee by the department of finance. Security was part of the consideration of the department of finance, as was stated in the estimates hearing at the time. To summarise: there were a series of contacts between me, the special coordinator of RAMSI and the department of finance.

Senator ROBERT RAY—Did it lead at some stage to some politicians demanding that the Australian high commissioner be withdrawn?

Mr Ritchie—It did.

Senator ROBERT RAY—And what was their response to that?

Mr Ritchie—If memory serves me, it was almost the day after the then Prime Minister made that request that he was replaced as Prime Minister. Our response at the time—

Senator ROBERT RAY—The two were not related, I know.

Mr Ritchie—Yes.

Mr Chester—I am not sure that he specifically asked for the high commissioner to be ‘withdrawn’. He did not use that language.

Senator ROBERT RAY—Do you know what language was used?

Mr Chester—I think it was a more nuanced request that ‘the appropriateness of the high commissioner’s presence be reviewed by the Australian government’.

Senator ROBERT RAY—I see.

Mr Chester—It was more in those sorts of terms.

Senator ROBERT RAY—That is a slightly more nuanced way of issuing a pink slip. I asked earlier if lessons are learnt across departments. DOFA are very contrite about it; I believe they actually apologised to DFAT over it. Is that right?

Mr Chester—Yes. Can I just say that I think the department of finance handled this issue in a very professional and positive way.

Senator ROBERT RAY—We drew that conclusion and compared it with the handling of the Trent Smith case. Thank you for that.

Mr Chester—I do not think there is any similarity between the two cases.

Senator ROBERT RAY—There are not—that is the problem. Leaving this case aside, are the lessons learnt about email traffic going to be pointed out more widely in your training sessions? Will you use this as an example of damage that can occur when messages are not sent through the proper ‘chain of command’, if you like?

Mr Chester—As you would have heard from the department of finance, this was certainly an unusual event, in the sense that there was not a leak as such; it was a private email that was obtained in an unauthorised way. So it was not what you would call ‘a traditional leak’. But there are some lessons from it about the care in transmitting private thoughts and comments, particularly the lack of security around some computer systems.

Senator ROBERT RAY—It was not a malicious leak or a managed positioning leak, was it? It was just an accidental one.

Mr Chester—But with some potentially serious ramifications.

Senator ROBERT RAY—Yes, that is right.

Senator TROOD—Mr Chester, I wanted to ask you about the intriguing topic of budget sustainability, which is alluded to in Budget Paper No. 2 on page 229. This relates to the department’s windfall in relation to additional funding.

Mr Chester—I am not sure it is a ‘windfall’.

Senator TROOD—I would not think so either, and in comparison with other departments and agencies it is certainly not a windfall. But \$48 million over four years is better than nothing, I suppose. Page 29 of the papers alludes to the response to workload increases and expanded foreign policy and trade agendas. I wonder if you would mind elaborating on that, please.

Mr Chester—This element that came forward in this year's budget is \$48 million over four years. I guess the best way to describe it is that, over the last three or four years, the department have undertaken a number of new policy initiatives in support of directions set by the government. We have undertaken these new activities and we have been in a position over the last few years of being able to absorb those additional costs. We have reached a position this year where we are not able to absorb those costs and the government has agreed that they would like us to continue undertaking those functions and therefore has agreed to fund the department to continue those activities.

We are talking about the work we are doing in the South Pacific: the more active engagement that the department is involved with in the South Pacific; the implementing and servicing of a number of FTAs that have now been negotiated; the FTAs with Singapore, Thailand and the United States; work that has increased over the last few of years in taking WTO disputes and defending ourselves in WTO disputes; and, finally, the large amount of additional consular work that the department has undertaken over the last three or four years. That work will continue; hence the additional funding for the next four years.

Senator TROOD—Thank you, Mr Chester. Are those responsibilities primarily undertaken by the department itself or are they responsibilities that are being shared with other agencies?

Mr Chester—Some of those activities are obviously undertaken in a whole-of-government context, but the funding is for the department's involvement in those activities.

Senator TROOD—Does it involve the hiring or securing of new staff or is it in relation to activities that existing staff would be undertaking?

Mr Chester—This budget measure is for existing staff. For example, over the last few years we have created a new branch in that area of the department because of the much greater focus on South Pacific issues and we have added some staffing in that part of the department. As I said, we were able to absorb those additional costs, but the government wants us to continue with that level of activity and we are not in a position in this coming financial year and in the out years to continue to absorb those costs—hence the new funding for that. This in itself will not create new positions; it will maintain the level of activity that the department has unilaterally put in place over the last few years.

Senator TROOD—What kind of activity are we talking about? Are we talking about attendance at international meetings or is it analytical work? What kinds of activities are involved?

Mr Chester—For example, in the South Pacific, we are doing normal DFAT policy work. That may entail more travel to the region, but it is not specifically for that. On the WTO disputes, obviously the work depends on what is happening in the WTO—the disputes that we may wish to initiate or where we want to defend ourselves. There has been a general increase

in the WTO disputes that we have been involved in and this funding will allow us to continue with that work. Regarding the FTAs that have been finalised, we have put in place within the department what you would call, I guess, FTA implementation units—staff to focus on the implementation. Again, this funding will allow us to continue with that level. It is really to pay for existing staff costs rather than any new initiatives. It is not to enable us to attend conferences as such but to continue to provide that policy advice.

Senator TROOD—Do not misunderstand me. I think there may be some utility in members of the department attending the odd conference.

Mr Chester—They will, but that is not the function of the money. That is not the main reason for it.

Senator TROOD—In relation to other functions, such as non-proliferation activities and things of that kind, is none of this funding directed to that kind of activity of the department?

Mr Chester—No, not this element of the budget.

Senator TROOD—As you said at the very outset, this is a modest increase. Is it an adequate increase?

Mr Chester—Yes, it is. The \$48 million for those particular items is sufficient for us to continue to provide those services over the next four years. It is worth noting that, in this year's budget, the department gets just over \$210 million in total for new activities and \$48 million for budget sustainability. The \$210 million over four years is a sizeable increase in the department's budget.

Senator TROOD—The \$210 million for those new activities—

Mr Chester—It is about \$150 million for the new activities.

Senator TROOD—Those activities are what kinds of things?

Mr Chester—They focus on consular work, counter-terrorism initiatives, a continuation of the Smartraveller campaign and money for passports. In fact, I have a list here. There is a number of property related elements: the establishment of an embassy in Afghanistan, work on our chancery in Beijing, work in Baghdad for staff residences and a new chancery in Amman, Jordan. There are a number of smaller elements relating to national security-intelligence connectivity, which is an IT issue. I mentioned regional counter-terrorism. So: consular, counter-terrorism, passports—fairly key parts of our business.

Senator TROOD—The department has also set up a new global issues area, as I understand it.

Mr Chester—That is correct.

Senator TROOD—How large an area of the department is that?

Mr Chester—That branch will also pick up our speechwriting unit. It will be around six staff altogether, including the two existing staff who perform a speech writer function. So I guess you could say there will be four new staff working on the global issues agenda.

Senator TROOD—None of this additional money is directed to that particular part of the department?

Mr Chester—No, the Global Issues Branch is being set up out of existing funding, reallocating resources within the department.

Senator TROOD—The six people are doing essentially what kinds of activities?

Mr Chester—What they will focus on are those key policy issues that cut across more than one area of the department. Some of you will recall that the department had a policy planning branch in the past which took the policy planning function out of the key geographic or functional areas of the department. That policy planning function will continue to be done by the experts in the relevant geographic divisions or functional areas, but where there are issues that cut across a number of broad areas of the department then the Global Issues Branch will focus on that particular area.

Senator TROOD—Is the product from that branch largely for the department's consumption or is it to be shared more widely amongst agencies?

Mr Chester—It is shared within government. The reports that are prepared are provided to ministers and some of the reports are provided a bit more broadly within government.

Senator TROOD—Are those reports produced from the department own sources rather than intelligence sources from elsewhere within government?

Mr Chester—The authors will draw on expertise within the department and external expertise reports, so whatever is necessary to prepare the product.

Senator TROOD—Has there been anything produced from the Global Issues Branch as yet?

Mr Chester—Yes, there has been a number of reports.

Senator TROOD—Are you able to share that with the committee—the topics, for example, or the general subject area?

Mr Chester—I cannot recall; I might need some advice here on the titles of the documents that have been prepared.

Senator PAYNE—Surely you could identify the issues.

Senator TROOD—I do not need detail, but perhaps the general areas.

Mr Chester—Someone is going to check. There are a couple of papers in preparation and a couple have been finalised. Speaking broadly, we have looked at the architecture across the Asia-Pacific, some regional issues, Afghanistan, and the role of the various powers in this part of the world. They are the kinds of issues that the unit has focused on so far.

Senator TROOD—I am instinctively in favour of this, Mr Chester, although it is a bit difficult to be substantively in favour of it without being entirely clear what it is you are doing.

Mr Chester—As I said, it is looking at the big issues that cut across more than one area of the department. It is in a sense policy papers, position papers, on broader departmental issues, not single-country issues or single-issue issues. It is looking at the interaction between some of the great powers in this part of the world—India, China, US, Japan—and looking at some of the cross-cutting issues in relation to those countries.

Senator TROOD—Is there a forward program of work in relation to topics or a number of papers expected to be produced each year?

Mr Chester—Yes, I guess there is a loose forward program. Much depends on what is happening elsewhere as to what order papers will be prepared. I guess that it is not as formal as a forward work program. There are ideas of things that should be looked at by the branch.

Senator TROOD—Departments of foreign affairs and trade should have ideas, Mr Chester. Thank you.

Senator FAULKNER—At a previous Senate estimates committee we asked, and my colleague Senator Hogg has questioned the department, about the break-in at the child-care centre. Do you recall that?

Mr Chester—I do, Senator.

Senator FAULKNER—Since the budget estimates last year could you inform us whether there have been any other cases of security breaches that you might be able to draw to the committee's attention.

Mr Chester—No, Senator, there have been no other instances.

Senator FAULKNER—Are you able to say whether investigations in relation to the break-in at the child-care centre are now complete?

Mr Chester—Yes, Senator, they are complete.

Senator FAULKNER—What was the outcome?

Mr Chester—Mr Gerovich may well have the precise outcome. The Woden Valley police investigated it and came to a dead end in determining who may have been involved in the break-in.

Senator FAULKNER—So we don't know?

Mr Chester—No.

Senator FAULKNER—Were the facts ascertained as to what occurred? My understanding from Senate estimates evidence was that there had been a break-in at the child-care centre and an alarm went off in the security office late in the evening, about 11 o'clock at night—

Mr Chester—10.31 pm.

Senator FAULKNER—and the actual break-in was not detected until staff arrived for work in the child-care centre next morning. In a nutshell, that is the story, isn't it?

Mr Chester—Yes, that is correct. The alarm did sound a couple of times—at 10.31 and 10.39—and it was reset at those times because the guards had assumed it was the cleaner who had activated the alarm because there had been previous instances where the cleaners had done this. The burglary was detected at 7.10 am by staff of the child-care centre when they came to work.

Senator FAULKNER—Did you make any assessment as to why the break-in was not detected by foot patrols in the building?

Mr Chester—My understanding is that the external door showed no sign of damage. It was internal doors that had been—

Senator FAULKNER—We talked this morning about the film footage—I assume it is closed-circuit security camera footage. Would that sort of footage be helpful in trying to establish what occurred in this instance?

Mr Chester—In this instance there are a number of CCTVs set up around the perimeter of the department. My understanding is that the quality of the footage at the relevant period was not of sufficient quality to identify who broke in or how the break-in may have occurred.

Senator FAULKNER—But with closed-circuit TV, is there no capacity for this to be used at that time? I appreciate that one of the issues we were talking about this morning effectively was the record of the stored film.

Mr Chester—No. I think what we were talking about this morning, and somebody will correct me if I am wrong, was really the record of passes being swiped at readers at doors—so things like this pass here as it hits a reader to indicate whether it activated.

Senator FAULKNER—So that is just an electronic tape record of the reader?

Mr Chester—Yes.

Senator FAULKNER—I did not understand that. I thought it might have included actual camera footage as well. Just to be clear on that, the issue in relation to this morning's security tapes is just the electronic reader of passes et cetera?

Mr Gerovich—That is correct.

Senator FAULKNER—Thanks for that. I was not clear on that. Separately to that, there is closed-circuit television, isn't there?

Mr Chester—Yes, there is, at various points around the department and at some points within the department.

Senator FAULKNER—And that was no use—either the examination of the tapes after the event or while the break-in was happening?

Mr Chester—That is correct. The child-care centre is external to the department. Whilst it is within the building, the entrance is on the Sydney Avenue side of the department, so you do not need to access the building to access the child-care centre. But, as I said, the CCTV recordings at that time were not of a sufficient quality to assist.

Senator FAULKNER—Was a review of security undertaken as a result of that burglary?

Mr Chester—Yes, there was—depending on what you mean by a 'review'.

Senator FAULKNER—I was using the usual dictionary definition of review.

Mr Chester—There are reviews and reviews.

Senator FAULKNER—You tell me what happened.

Mr Chester—Certainly. A number of issues obviously arose in respect of this, including the fact that the CCTVs were of somewhat poor quality. I guess a number of issues will be looked at, including the upgrading of our CCTVs around the building so that we do have a

better record—either a live record or a subsequent record—of what is occurring around the building.

Senator FAULKNER—But have there been any changes or upgrading to security so this sort of thing will not happen again?

Mr Chester—Within the guarding service, there were certainly some undertakings given to the department that alarms of all nature will be responded to in the appropriate way rather than—

Senator FAULKNER—So that is an enhancement?

Mr Chester—Yes, it is.

Senator FAULKNER—So previously in DFAT, an alarm would go off and everyone would just ignore it! That is what you are saying. That is terrific—so why have the alarm system? How many millions of dollars did it cost taxpayers?

Mr Chester—I think the APS recognised that there was a shortcoming in this instance. What had happened in the past, I do not know.

Senator FAULKNER—I am not being too harsh saying that: you had alarms going off and people just ignored them.

Mr Chester—We certainly had an instance on 15 September 2005 where an alarm went off and it was ignored, yes. The APS have accepted that and I believe they have dealt appropriately with the issue.

Senator FAULKNER—Do we know how the miscreants gained entry?

Mr Chester—No, we do not.

Senator FAULKNER—We do not know. So the police investigator could not even establish how they got in. That is a bit of a worry, isn't it? There is this highly secure building and nobody knows how the hell they got into it!

Mr Chester—It is not the building. As I said, it is a—

Senator FAULKNER—At least you seem to be able to escape from it—I suppose that is something.

Mr Chester—I think it is misleading to try to portray this as the normal DFAT building. It is a child-care centre that happens to be under the same roof as the DFAT building, but there is a totally different entrance. It does not have readers so that you need a pass to get in and out of it. It is a normal key-lock door. In previous evidence here, it was indicated that there are a number of keys to that door. There may be a suggestion that a key was used, but that was not at all clear from the police investigation.

Senator FAULKNER—You were never able to establish whether or not a key was used?

Mr Chester—No, the police were not able to establish that.

Senator FAULKNER—You did an inventory of the staff keys, didn't you? You found that it was not an inside job in that sense.

Mr Chester—I do not know what investigations the police did into it. I do not have details of that.

Senator FAULKNER—It strikes me as a very worrying thing that this would happen at the RG Casey Building. People really do not know how entry was gained to the building. The security cameras were not up to scratch, or they had too many scratches—something was wrong with them. The closed-circuit TV film was useless. Alarms went off on a couple of occasions and nobody bothered to respond to them. It does not sound very good, Mr Chester, does it?

Mr Chester—I just say again: it was not access to the RG Casey Building; it was access to the Currawong Childcare Centre. I just make that distinction. The security for the RG Casey Building itself is quite different from the security for the child-care centre.

Senator FAULKNER—I hope so!

Mr Chester—It is obviously a concern to have this break-in and it is a concern that the alarms were not responded to. But, as I said, that issue has been addressed by the organisation that guard the department. I believe they have taken appropriate action, and I would certainly be surprised if there was a repeat of alarms being ignored.

Senator FAULKNER—It is actually in the same building, isn't it?

Mr Chester—Yes, it is. But it is quite—

Senator FAULKNER—It is not right to say that it is not in the same building.

Mr Chester—It is under the same roof.

Senator FAULKNER—If it were under a different roof then I would be happy to say it was a different building, but if it is under the same roof then that is normally considered to be the same building. But you are making the point that there is an outside door.

Mr Chester—Exactly—and no inside door.

Senator FAULKNER—Well, yes.

Mr Chester—So the only way to get into the child-care centre is through external doors. You do not have to enter the RG Casey Building to get into the child-care centre.

Senator FAULKNER—It is part of the RG Casey Building. It is the same building. And they did get in, and you do not know how they got in. Alarms went off and no-one responded to them. And the closed-circuit television footage turned out to be useless. So the whole thing was in fact a complete debacle.

Senator ROBERT RAY—Chair, he is summarising again!

CHAIR—He is, actually!

Senator FAULKNER—Don't make me laugh, Senator Ray! You are supposed to be concentrating—

Senator ROBERT RAY—On the next issue!

Senator FAULKNER—Can you assure me, Mr Chester, that it could not happen in any other areas of the building?

Mr Chester—The security situation and arrangements are quite different for the rest of the department.

Senator FAULKNER—So as long as you are in the RG Casey Building and not in the child-care centre, you are safe. Have you improved security in the child-care centre? You have told me that the rest of the building is okay; now I am starting to worry about the child-care centre.

Mr Chester—Senator, I have explained what action has been taken as a result of this. There are new instructions issued to our guards. We are looking at the issue of CCTVs to ensure that they are of better quality. And, in replacing the locks on the child-care centre, there is now a significantly reduced number of keys.

Senator FAULKNER—The actual DFAT offices are located above the child-care centre, aren't they?

Mr Chester—Well—

Senator FAULKNER—Well, yes.

Mr Chester—Yes. And also at the same level and at a level below the child-care centre.

Senator FAULKNER—Yes. Was there damage to the ceiling of the child-care centre?

Mr Chester—That I do not know, Senator.

Senator FAULKNER—It is an odd thing that I know that and you do not. I suppose my contacts are just excellent.

Senator ROBERT RAY—Crooks!

Senator FAULKNER—No, a mate didn't do the break-in!

Mr Chester—Senator, it would not matter if anyone had gone into the ceiling of the child-care centre, because it is absolutely isolated from the rest of the department.

Senator FAULKNER—I have to admit, Mr Chester, that the only reason I know that is because I read it in the *Hansard*. So there you are, I am in front of you.

Mr Chester—I was not here for that estimates.

CHAIR—You missed two estimates.

Senator FAULKNER—You missed a very effective cross-examination, I can tell you.

Senator ROBERT RAY—I wasn't there either, obviously!

Senator FERGUSON—I didn't realise we were in court.

Senator HOGG—Does the closed-circuit TV service the main DFAT premises as well as the child-care centre?

Mr Chester—Yes.

Senator HOGG—And that closed-circuit TV is essentially what you have under review?

Mr Chester—We have a number of cameras around the building. I understand they are of varying quality. What we are looking at doing is upgrading the quality of those cameras that need to be upgraded. They were put there for—

Senator HOGG—When will that be done?

Mr Chester—I will need to take that on notice. Some of that work may well have been done already.

Senator HOGG—Can you find out? It seems to me that this was drawn to the attention of the department some time ago, at the estimates and in the public forum. If the offending CCTV system had not been upgraded in that time, one would be greatly concerned indeed.

Mr Chester—I will take that on notice.

Senator HOGG—Could you get back to us as soon as possible on that? Thanks.

Senator ROBERT RAY—There is a section in Foreign Affairs that is extremely helpful to, at least, MPs—I am not sure about ministers—if they are planning to travel using study leave. What section is that?

Mr Chester—I will ask Mr Smith to help with answering these questions.

Mr Smith—The section is the Ministerial and Parliamentary Services Section in my division—the Public Diplomacy, Consular and Passports Division.

Senator ROBERT RAY—That section gives assistance to people in setting up meetings and helping with their itineraries. Is that right?

Mr Smith—Essentially, it liaises with a Parliamentary Relations Office of the parliament and our overseas post in assisting with the organisation of overseas visits, including study tours, by members of parliament.

Senator ROBERT RAY—Do they deal directly with the MPs concerned?

Mr Smith—In many cases they do, yes.

Senator ROBERT RAY—On average, how many of those sorts of visits a year would you assist with?

Mr Smith—From memory, we have done 93 such visits this year.

Senator ROBERT RAY—This financial year?

Mr Smith—This financial year.

Senator ROBERT RAY—Let us say that you have set up an itinerary for someone. Where do you send that itinerary to, the Parliamentary Relations Office?

Mr Smith—That is right. We work through the Parliamentary Relations Office. In some cases we may work directly with the relevant member of parliament or his or her staff.

Senator ROBERT RAY—I think we are at cross-purposes here. You deal with the Parliamentary Relations Offices on official delegations, don't you, not study leave? I do not think you go through the PRO at all for study leave—no, you do not.

Mr Smith—I will have to check to confirm it.

Senator ROBERT RAY—Let us leave the official delegations aside, and we will not come back to that. In terms of the individual trips, who would have access to that information? Obviously, your section does. Where else is it sent?

Mr Smith—The information is given a fairly limited distribution when it is sent out on our cable system. It would be limited to the post or posts concerned—that is, the posts that are assisting with the visit overseas—and to a limited distribution in Canberra.

Senator ROBERT RAY—I see. If there were inquiries from journalists about it, would you disclose the information to them other than by way of compulsion and an FOI?

Mr Smith—No, we would not do that.

Senator ROBERT RAY—You would not?

Mr Smith—No.

Senator ROBERT RAY—That limited distribution in Canberra: where does that go to?

Mr Smith—That would have a very limited distribution within the department. It would include relevant people in areas in my division. It would probably include the geographic divisions concerned, and maybe some of the functional divisions if there are, for example, some trade policy elements to the program. The distribution would also include some ministers, including Mr Downer and Mr Vaile, our parliamentary secretaries and possibly some other ministers, depending on the nature of the visit.

Senator ROBERT RAY—Can I ask a specific question about a colleague of mine who found himself on page 8 of the *Age*, along with the full disclosure of his itinerary. I should also add that this would probably be also known in DOFA, as they have to approve—

Mr Smith—That is quite possible, yes. I can check that and have it confirmed for you.

Senator ROBERT RAY—The only reason I am asking you is that all the dates were remarkably prescriptive. It has Mr Sercombe in French Polynesia, because he is shadow minister for Pacific island affairs, from 27 June to 6 July, then in New York, then in Washington, then Los Angeles and then back. These are very specific dates. That is the reason I have precluded the leak coming from his political friends on his own side of politics—I do not think that is likely.

Senator FERGUSON—He has not got many!

Senator ROBERT RAY—The dates are so specific, Senator Ferguson, that this smells of a government leak somewhere—in fact, it does. I am wondering from where. Which ministers' offices is this itinerary sent to?

Mr Smith—In respect of that particular program, I would have to check the precise distribution of the cables.

Senator ROBERT RAY—Would you like to take on notice which ministers' offices it went to?

Mr Smith—Certainly.

Senator ROBERT RAY—Was your section contacted about this? I am not even suggesting that it leaked from your section—I am not—but sometimes journalists ring up for confirmation.

Mr Smith—Not to my knowledge, but I can assure you that that information was not provided by my division.

Senator ROBERT RAY—I accept that. The article says ‘ federal government sources said’. That covers a manifest of sins, I suppose, and certainly not yours. Thank you for that.

[2.59 pm]

CHAIR—In the next quarter of an hour we will move through output 1.1.2. Senator Nettle has some questions on Indonesia. I foreshadow that Senator Allison has indicated that she wants to raise some questions in 1.1.1, but that will be when we resume at 4.15.

Senator ROBERT RAY—I have some questions for that output too.

CHAIR—Very good.

Senator NETTLE—I want to start by getting an update on where the negotiations are up to with the new security treaty with Indonesia.

Mr Grigson—There have been ongoing discussions over recent months on the security agreement. They are continuing.

Senator NETTLE—What is the projected end date for those discussions?

Mr Grigson—There is no end date. We will see how we go with the Indonesians. We do not have a drop-dead date for it.

Senator NETTLE—With regard to a meeting between the Prime Minister and President Yudhoyono, has any date been confirmed yet?

Mr Grigson—No, not to my knowledge. We are hoping that a meeting will happen in the near future.

Senator NETTLE—There has been reporting about a request from Indonesia that Australia provide a written guarantee of Australia’s support for Indonesian control over West Papua. Has the department or the government received a formal request from Indonesia for such a written guarantee?

Mr Grigson—I have seen those reports as well. I think they might flow from discussions over the security agreement. The Australian government’s position on Indonesian sovereignty over Papua is very clear. I think that the reports that you have seen flow from those discussions.

Senator NETTLE—So you are not aware of any specific request that might have fallen outside of any discussions on the security treaty?

Mr Grigson—No.

Senator NETTLE—Do you know whether the government or the department have provided the Indonesian government with a guarantee that they will formulate a written guarantee?

Mr Grigson—We have not received a request for a written guarantee outside the ongoing discussions, so the answer to that would be no as well.

Senator NETTLE—Would it be unusual to have such a written guarantee? Are you aware of any instances relating to other countries where such a thing might have occurred?

Mr Grigson—I do not think it would be unusual. It would be a statement of fact. The Australian government's position on sovereignty over Papua is clear. It is on the record from the Prime Minister, the foreign minister and many other ministers.

Senator NETTLE—Which is why it strikes me as unusual to have a written requirement for that. That is why I am asking if you are aware of any similar requests in relation to other places.

Mr Grigson—I do not know about other countries.

Senator NETTLE—Mr Chester, are you aware of any instances?

Mr Chester—No, I am not aware of any.

Senator NETTLE—I want to ask about the department's assessment of the human rights situation in West Papua. Are you able to give us a precis of that?

Mr Grigson—As you know, the department has been watching events closely in Papua. We have seen reports, as you have, of allegations of human rights abuses in Papua. We have consistently urged the Indonesian government to follow up on those reports.

Senator NETTLE—Can you give us an outline of what you have done in relation to requesting that the Indonesian government follow up on those reports?

Mr Grigson—It is a consistent part of the discussions that the embassy has with Indonesian counterparts. As we see those allegations, the embassy raises them and requests that they be followed up.

Senator NETTLE—Could you take on notice to give us the dates on which those allegations have been raised with the Indonesian government since the beginning of this year?

Mr Grigson—Yes.

Senator NETTLE—If you have the answers now, I would be happy to hear them.

Mr Grigson—No, I will take it on notice.

Senator NETTLE—Have you received responses from the Indonesian government in relation to requests made on this issue?

Mr Grigson—I will take that on notice as well. I will give you the two answers.

Senator NETTLE—Is there any consular presence in West Papua?

Mr Grigson—Do you mean Australian presence?

Senator NETTLE—Yes.

Mr Grigson—No.

Senator NETTLE—Have there been any visits by Australian embassy or consular staff to West Papua in recent times?

Mr Grigson—There have. The embassy has visited there several times in the past year, including the ambassador, officials from AusAID, officials from the political section and officials from the defence section as well.

Senator NETTLE—Can you give me the dates and details of those visits?

Mr Grigson—I will take that on notice.

Senator NETTLE—Can you take on notice from 2000? Is that too far to go back?

Mr Grigson—That may be a little far back.

Senator NETTLE—What is realistic?

Mr Chester—Two years would be realistic.

Mr Grigson—I can manage a couple of years.

Senator NETTLE—Thanks. Has the department ever undertaken an assessment of the Act of Free Choice that took place in 1969?

Mr Grigson—Not in recent years. It is not an open issue as far as the government is concerned.

Senator NETTLE—Can you take on notice when the last time was that an assessment was done about whether or not that was free and fair and expressed the legitimate views of the West Papuan people?

Mr Grigson—I can, but I suspect that the answer will be 1969.

Senator NETTLE—I would appreciate it if you could take it on notice to see what is available. I also have a question about Siti Waingai, the wife of one of the 43 West Papuan asylum seekers, who is currently in PNG. Has the department had any communication from her in relation to her circumstances?

Mr Grigson—No.

Senator NETTLE—Has the department had any communication with Indonesian authorities in relation to her circumstances?

Mr Grigson—There have been discussions. The Indonesians have spoken to us about the circumstances of her daughter, but there has been nothing formal from them.

Senator NETTLE—Can you provide some more detail? From whom in Indonesia have those representations been?

Mr Grigson—I would not describe them as representations. The Indonesian officials have raised with us in discussing the general issue of Papua the reporting that has occurred around Siti Waingai and the circumstances of her child.

Senator NETTLE—So there has been no formal representation?

Mr Grigson—No.

Senator NETTLE—I have a question in relation to the 43rd of the West Papua asylum seekers who is on Christmas Island now. This might be going into another section. The Minister for Immigration and Multicultural Affairs has indicated that there have been discussions between the Australian government and Japan on this issue. Am I still in your—

Mr Grigson—You are outside my division, but I suspect you are outside the department as well. Department of Immigration and Multicultural Affairs has been handling the issue of the 43rd.

Senator NETTLE—So, as far as you are aware, the Department of Foreign Affairs and Trade has not been involved in those negotiations?

Mr Grigson—That is my understanding. It is essentially a DIMA issue.

Senator STOTT DESPOJA—I just want to return very briefly to the question that Senator Nettle asked about Siti Wainggai. Is there any information that you can provide to the committee as to exactly what her circumstances are, given the mixed media reports that came out and a number of suggestions—and I am sure all of us have received emails and a range of stories—as to her circumstances and whether or not she has wilfully or otherwise signed various statements et cetera?

Mr Grigson—As I said, we have had no contact from her or people purporting to represent her. We have had no formal contact with the group and therefore no real reporting on it.

Senator STOTT DESPOJA—So the assumption as to what her circumstances are is based on information that has been provided only from Indonesian authorities or anyone who has been in PNG?

Mr Grigson—We have not made any assumptions about her circumstances. She is in PNG. PNG is a signatory to the 51 convention, and the UNHCR has an office there. So she has avenues open to her to have her circumstances considered. As far as DFAT are concerned, we have had no direct contact with her.

Senator STOTT DESPOJA—So you would state that she has not utilised the avenues that are available to her? Would that be correct?

Mr Grigson—I do not do that. She may or may not have had discussions with UNHCR representatives in Papua New Guinea.

Senator NETTLE—I have a question that relates to PNG. Can I ask you that?

Mr Grigson—You can try. I will do my best.

Senator NETTLE—In estimates last week the department of immigration indicated that there were some discussions going on with the PNG government about the removal to PNG of asylum seekers currently detained on Horn Island. Who is involved in those discussions, DFAT or DIMA?

Mr Ritchie—The lead agency would be DIMA.

Senator NETTLE—Has the Department of Foreign Affairs and Trade been involved in those discussions?

Mr Grigson—Through our high commission in PNG, yes.

Senator NETTLE—Do you have any information about where those discussions are at?

Mr Ritchie—I do not know what the latest is. I think they are continuing.

Senator NETTLE—Do those discussions relate only to the three West Papuans on Horn Island or do they also relate to the family of three Afghans who recently arrived in the Torres Strait?

Mr Ritchie—I think they are two separate issues. The ones I have become aware of are the three Papuans.

Senator NETTLE—Is the department of foreign affairs involved in any discussions with the PNG government in relation to the three Afghans?

Mr Ritchie—I do not know. I would have to check.

Senator NETTLE—Is the department aware of statements made by the Papua New Guinean foreign minister that Australia's new policy in relation to turning back asylum seekers would stretch the resources and the capacity of PNG?

Mr Ritchie—Australia's new policy?

Senator NETTLE—In response to the new migration laws, last week the foreign minister of Papua New Guinea was reported by the ABC as saying that Australia's new policy would stretch the resources and the capacity of PNG. I am just wondering whether you are aware of that.

Mr Ritchie—No, I am not aware of that statement. The policy of engaging PNG on the return of asylum seekers who have transited PNG is in fact not a new one. There is a memorandum of understanding with PNG which dates from some time ago.

Senator NETTLE—Has the department of foreign affairs been involved in that memorandum of understanding?

Mr Ritchie—Again, it was negotiated by DIMA.

Senator NETTLE—So there has been involvement by Foreign Affairs?

Mr Ritchie—It precedes my time, I think. It is a memorandum of understanding from some time ago. But I can check to see whether we were involved.

Senator NETTLE—At the estimates hearing with the department of immigration last week there was some discussion about a new memorandum of understanding that was negotiated at the end of last year with PNG. That was the one I was wondering about.

Mr Ritchie—It would have been DIMA, or DIMIA, that undertook those negotiations. I think it was signed at the PNG ministerial forum in December.

Senator NETTLE—Has the department of foreign affairs been involved in any of the discussions relating to finding a third country for the two detainees left on Nauru?

Mr Ritchie—I am not aware of that.

Senator NETTLE—The two detainees left on Nauru have been there for 4½ years. There are discussions to try to find them a third country, but I do not know whether that involves DIMA or DFAT.

Mr Ritchie—It is most likely DIMA, I would think. It is certainly not my division.

Senator PAYNE—I have some questions on Mr Grigson's area.

CHAIR—We will go back to South-East Asia, to Mr Grigson's area.

Senator PAYNE—Mr Grigson, in relation to reports at the end of last week about the much vaunted possible release of Aung San Suu Kyi, which turned out instead to be an extension of her detention, has Australia raised afresh with the Burmese administration its concerns at the continuing detention?

Mr Grigson—It has. As we have discussed previously, the post is very careful to make that a consistent theme in its limited discussions with the regime. There were certainly representations this month. As you probably recall, Mr Downer raised our view in no uncertain terms in December last year with the Burmese foreign minister.

Senator PAYNE—Have Australian representatives in Burma had any contact with UN Under-Secretary-General Ibrahim Gambari, who visited Aung San Suu Kyi last week?

Mr Grigson—He did. We are getting some reports out of UN New York. There have been some reports from Rangoon, but we want to get a full picture of the outcome of that visit before we make a judgment about it.

Senator PAYNE—Could you provide any information to the committee on notice on that when it is available, please?

Mr Grigson—Sure.

Senator PAYNE—I have a quick question on Laos. In January it was alleged that a number of Hmong children were detained—closer to 30 than 20, I think. There was some toing and froing between Thai and Lao authorities about where the children were, whether they had existed in the first place and whether they were being detained in the Lao system. I understand that Australia raised concerns at the time but that there is still no answer on the status of the children and where they are detained, and I wondered whether you have an update on their situation.

Mr Grigson—There are 27 youths, of which 21 are children. There was concern about their being irregularly deported from Thailand to Laos. We have been particularly concerned about the group and their vulnerability, given their ages and the lack of clarity about their whereabouts and welfare. The ambassador has made continuing representations to the Lao government about the need to clarify this issue and sort out where the children are.

Senator PAYNE—But there is no further information on that?

Mr Grigson—No, there is not.

Senator PAYNE—Have we made representations in relation to the alleged massacre in April of unarmed Hmong by Lao soldiers?

Mr Grigson—We are still working to confirm the surroundings around those reports. Of course, if they are substantiated we will raise them with the government.

Senator PAYNE—Could you take it on notice to see if there is any action on that matter in the time frame for answers to questions on notice?

Mr Grigson—Yes. No problem.

Senator PAYNE—Thank you, Mr Grigson.

Proceedings suspended from 3.16 pm to 4.15 pm

CHAIR—I call the committee to order. I go to Mr Chester, who has some clarification for the committee.

Mr Chester—Earlier, Senator Payne asked how many foreign nationals that have been evacuated from East Timor were East Timorese. The figures we have at the moment are that,

of the 265 foreign nationals, 89 were East Timorese and this includes nine of the medivacs. Obviously these figures are changing as more people leave East Timor but they are the latest figures we have.

CHAIR—Senator Nettle, you want to continue with respect to 1.1.4 relating to Iran, and I think that Mr Ritchie is here to deal with those matters.

Senator NETTLE—Can you outline for me which sections of the department are working on the situation in Iran?

Mr Ritchie—There are a number of different functional areas in the department which deal with various aspects of relations with Iran. In the geographic area we deal with the broad political relationship and coordinating the relationship. So while, for example, nuclear issues may be handled by colleagues, we would keep a broad overview of that and we would take an interest in all the significant parts of the relationship.

Senator NETTLE—Can you just outline which other sections there are? You say that you do the general overview and there is the nuclear section. Are there any others?

Mr Ritchie—ISD for nuclear and, if I have not answered your question on human rights, perhaps the International Organisations and Legal Division.

Senator NETTLE—Is it possible to say how many staff are working on the situation in Iran or is that—

Mr Chester—It would be very difficult to give a precise number. A number of staff from different areas of the department will work on that issue as the need arises so, whilst there is a core section that deals with it, and obviously we have our post in Teheran that deals with it, there will be staff at other posts that also deal with aspects of this issue. So it is always difficult to put a precise number on how many staff are working on a particular issue.

Senator NETTLE—How many are in your section, Mr Ritchie?

Mr Ritchie—In my division there are 42. In the Middle East Section—and I can get that exact figure—

Senator NETTLE—That is fine. That is the general idea.

Mr Ritchie—There are five dealing with the Middle East.

Senator NETTLE—Have there been any departmental or interdepartmental assessments of the impact of any military attack on Iran?

Mr Ritchie—Not to my knowledge; certainly not that I have been involved in.

Senator NETTLE—Has the Department of Foreign Affairs and Trade had any discussions with the United States regarding Iran more generally?

Mr Ritchie—I think that we would have a broad range of discussions with the United States on a number of issues and I think that Iran is one of those.

Senator NETTLE—What about any military attack on Iran? Would the department have had any discussions with the United States about that?

Mr Ritchie—I cannot give you the detail of that; I just do not know.

Senator NETTLE—Could you take on notice whether such discussions have occurred?

Mr Ritchie—The broader issue—and I will be guided by Mr Chester on this—is whether we are at liberty to disclose what we actually to discuss with the United States in confidential discussions between governments.

Senator NETTLE—Do you know whether there has been any assessment by the department of the report by the Oxford Research Group about the likely consequences of any military attack on Iran?

Mr Ritchie—No, not by this department.

Senator NETTLE—Has the department done any assessment of why the United States will not have direct talks with Iran? Is that something that would be looked at by your section?

Mr Ritchie—It is something that we understand to be the case. I am not sure that we would do an assessment of it. It is simply a fact.

Senator NETTLE—What avenues are available to the department in gathering information about the seriousness of the United States's focus on a diplomatic process with Iran? How are we able to make an assessment about the genuineness or otherwise of that approach by the United States?

Mr Ritchie—I think that goes to a previous answer. We have discussions with the United States on a broad range of issues. Iran would be one of those, both within the context of discussions in Washington and in the context of discussions in the UN.

Mr Stuart—Senator, we do not believe the United States is getting ready to use military force against Iran. We have not had any talks to them about that—certainly none that I am aware of. The United States, like Australia, is committed to pursuing a diplomatic solution to the problems there.

Senator NETTLE—On what do you base your assessment or belief that the United States are not involved in or preparing for a military attack on Iran?

Mr Stuart—Both our contacts with them and our observation of what is going on.

Senator NETTLE—Has there been any assessment by your department—I was thinking of, perhaps, the international law section—about what the legal basis under international law could be for a military attack on Iran?

Mr Stuart—Not to my knowledge. We do not think the United States is getting ready to use military force against Iran. I might remind you that President Bush described some of the recent media reports about the United States intending to use military force as 'wild speculation'.

Senator NETTLE—The other issue that I want to ask about is reports in the media last year of the hanging of two Iranian teenagers on the basis of their homosexuality. Did the Australian government make any representations to the Iranian government in relation to that issue?

Mr Ritchie—We certainly made strong representations to Iran on its human rights record. That particular incident was part of that; we made representations on that instance.

Senator NETTLE—Can you outline the nature of the representations that were made?

Mr Ritchie—I would think that we made representations against the use of the death penalty, certainly, both generally and in this case against the, as I think you said, homosexuals.

Senator NETTLE—Yes.

Mr Ritchie—We would have made very strong representations against the use of the death penalty in general and in that specific instance.

Senator NETTLE—Can you take on notice the dates of those representations as they relate to that specific instance?

Mr Ritchie—Sure.

Senator NETTLE—Has the department done any assessment of the refusal by the United States administration to rule out the use of nuclear weapons in Iran? Is that something on which the government has expressed a view or which the department has assessed?

Mr Stuart—Could you clarify that question. Do you mean nuclear weapons used by Iran or nuclear weapons used by someone else?

Senator NETTLE—By the United States. The Bush administration have refused to rule out the use of nuclear weapons in any military attack on Iran and have insisted on that continuing to be on the table. Has there been any assessment done of that and the statements made by the US government?

Mr Stuart—To repeat what I said before, not only do we not believe that the US are getting ready to use military force of any type in Iran but we certainly do not believe they are considering options such as the use of nuclear weapons. Our own position—and it is one we share with the United States; it was discussed by the Prime Minister in his recent visit to Washington—is that we are committed to and working hard towards a diplomatic solution.

Senator NETTLE—Is the department aware of the statements by the US administration that they will not rule out a military attack on Iran?

Mr Stuart—I am aware that in many situations the United States will not rule out the use of force in some extreme situation. It does not mean that they are getting ready to do it at any particular time.

Senator NETTLE—Has the department made any recommendations or the government expressed any view in relation to any Australian involvement in a military attack on Iran? Has Australia ruled out any support for a military attack on Iran?

Mr Stuart—The government has made a number of very clear statements, including quite recently, that it is committed to pursuing a diplomatic solution.

Senator STOTT DESPOJA—I have a couple of quick queries on Indonesia. Mr Grigson, I do not know about you, but I woke up on, I think, 7 April to discover that I was on a so-called enemies list of people in relation to Indonesia.

Senator ROBERT RAY—I thought that was the Democrats.

Senator STOTT DESPOJA—Touche, Senator Ray. Is the Australian government aware of the foreign affairs commission generating this list? Obviously you have seen it. Has the government—not made any input to the process—queried our Indonesian counterparts as to what their information is based on?

Mr Grigson—We certainly had no input into the process. I have seen the reports. I would need to check for you, but I am not aware that the list has ever been passed to us, so our knowledge of it is the same as yours—from media reports.

Senator STOTT DESPOJA—Have you seen the list? I have seen a photographic version of it that is circulating on the web.

Mr Grigson—Yes, I have seen the public reporting of it. I would need to check for you, but I am not aware that it has been passed to us, and certainly if it has it has not got any great attention in Canberra. In terms of discussions about it with Commission 1, I would also need to check for you to see whether the posts have raised it in their conversations with them.

Senator STOTT DESPOJA—I will leave it there and wait to see if you can get anything further about it on notice. I might quickly ask you about Burma as well. I think Senator Payne covered some of the issues, but I want to clarify specifically whether our government has done anything in the last week not only in relation to the UN visit but, in particular, in relation to the news of the extension of the detention of Aung San Suu Kyi. Has it made any specific representation? Beyond any plans by government to respond to that extension to, I think, 27 May next year, do we have in mind any sanctions or specific responses to make it clear how we feel about this?

Mr Grigson—From memory—I do not have my papers with me—we have certainly made representations this month. I do recall some on 2 May. There may have been more recently as well. We are still trying to clarify the exact nature of the extension—whether it is for six months or 12 months—and, in the wake of what we find out on that, we would certainly be making our views known if it turns out that her detention has been extended for either of those periods.

CHAIR—Senator Allison has some questions on organ transplants, but she is not here. Do you have some questions, Senator Ray?

Senator STOTT DESPOJA—I could ask some of those questions if you would like me to, but I am happy to go to Senator Ray.

Senator ROBERT RAY—No, we are in a deferential mood.

CHAIR—So let us polish those off.

Senator STOTT DESPOJA—Apart from the cracks about the Democrats, you have been lovely.

Senator ROBERT RAY—I am in total fear of your compliance committee. It has such a magnificent name.

Senator FAULKNER—We just knew you would agree with those comments about the Democrats.

Senator STOTT DESPOJA—No. I understand that my colleague is interested specifically in the uranium discussions with China, whereas I am quite happy to ask about—

Senator FAULKNER—That was not fair about the Democrats. It is actually an extermination—

Senator STOTT DESPOJA—Senator, pick on the National Party today, please, not me.

[4.32 pm]

CHAIR—We go to output 1.1.1, North Asia. It is the organ transplant issue.

Senator STOTT DESPOJA—I have some general queries in relation to the reports of live organ harvesting from detainees in China. First of all, is the department aware of media reports of this practice?

Mr Baxter—Yes, we are aware of media reports about the incidence of organ harvesting from executed prisoners in China.

Senator STOTT DESPOJA—What has the government done to verify, or otherwise, those reports? What is the government's understanding of whether or not this is the case? Specifically, in which area is it going on? Indeed, media reports suggest that practitioners of Falun Gong are specifically affected. Are you aware of any evidence to support that?

Mr Baxter—In terms of the general issue of organ harvesting in China, the Chinese Vice Minister for Health acknowledged in December 2005, in a magazine article, that the sale of executed prisoners' organs was widespread in China and promised to tighten the rules associated with organ transplants. The Chinese ministry of health announced a new regulation on 28 March this year which bans organ trading from 1 July and strengthens oversight of transplants. While the new rules lack the authority of a full law, the World Health Organisation has called it a positive step.

As far as the Australian government's position goes, the Australian government strongly opposes the use of organs from executed prisoners. We are also aware of allegations that have been made by Falun Gong practitioners outside of China that there was a particular prison camp in China that was allegedly being used to harvest organs from Falun Gong practitioners who had been incarcerated there. There is no credible evidence to suggest that those reports are correct. The United States sent some officials to that particular location, a public hospital. They found that it was operating as a public hospital. I would note that none of the credible international human rights organisations, Amnesty or Human Rights Watch, have taken up those allegations as being proven.

Senator STOTT DESPOJA—I am aware of the US State Department findings. Is our government's belief or satisfaction that this practice is not necessarily going on in that particular area or prison based on US State Department evidence or is it more broad ranging? I acknowledge your comments about human rights organisations. I am not sure that they have necessarily had access, but I should pursue that in some greater detail at a later time.

Mr Baxter—We have not visited the site ourselves, but United States officials were given full access to the site in question and conducted a thorough investigation of the claims and, as I said, found no basis for them. On the basis of that, we have accepted that there is no basis to the allegations that this particular facility is being used for the purposes that were alleged.

Senator STOTT DESPOJA—Is there any intention by the government to raise this matter as part of the ongoing human rights dialogue process?

Mr Baxter—Certainly that is a strong possibility. We are in the process now of formulating our agenda, if you like, for the next human rights dialogue, which will be held in July.

Senator STOTT DESPOJA—Are you in a position to perhaps elaborate on that and tell us more about some agenda items by any chance?

Mr Baxter—We go through a process of consultation, as you may be aware. We talk to NGOs and other groups with interests in human rights issues in China. It is on the basis of those consultations and also other reports that have been brought to our attention in various ways that we then formulate the agenda. We have agreed with the Chinese government that this year's human rights dialogue will have as its theme 'labour rights', so there are likely to be a number of issues relating to labour rights in China that we will raise. But we will raise a whole range of issues, from individual cases of people who we believe have been unfairly detained in China to more systemic issues.

Senator STOTT DESPOJA—Just on the issue of human rights and our ongoing dialogue with the Chinese government and Chinese government officials, was this the subject of any discussion when the Chinese Premier, Wen Jiabao, was here in April? For example, was the issue of alleged harvesting of organs from live donors as well as from executed prisoners the subject of any discussion?

Mr Baxter—Not the specific issue of the harvesting of organs but certainly human rights were raised with Premier Wen Jiabao during his visit by our foreign minister, Mr Downer. At the same time as Premier Wen's visit, the Chinese foreign minister was also here and there was quite an extensive discussion of human rights with the Chinese foreign minister during that visit.

Senator STOTT DESPOJA—Can you elaborate specifically on what some of those issues were?

Mr Baxter—I certainly can. They included the issue of Tibet and the need for religious freedom in Tibet. They included media freedoms and a need for greater transparency in the way in which China deals with international human rights organisations.

Senator STOTT DESPOJA—Was Falun Gong the subject of any discussion?

Mr Baxter—Falun Gong was a subject of discussion. The foreign minister reiterated our position that we believe that the treatment of Falun Gong practitioners in China fundamentally breaches international human rights standards.

Senator STOTT DESPOJA—Thank you.

Mr Baxter—The whole issue of freedom of religion, which related to both Tibet and Falun Gong practitioners, was raised.

Senator STOTT DESPOJA—I have one more question on the issue of organ transplants. You have referred specifically to executed prisoners. Is our government aware of any

Australians who may have been the recipients of such organs? Is that something that we are aware of?

Mr Baxter—We are not aware of specific details, but certainly we are aware that some people from outside China who need medical treatment have gone to China to undergo transplants. It may have been the case that some of these transplants were in fact using organs harvested from executed prisoners. We are not aware of any specific Australian cases, but we certainly cannot say that it has not happened, either.

Senator STOTT DESPOJA—What about Australians who may be commercially involved in any way in the organ transplant activities?

Mr Baxter—We have no evidence that there is any Australian commercial involvement in that.

Senator STOTT DESPOJA—Thank you.

Senator ROBERT RAY—I want to follow up on Senator Stott Despoja's area. You mentioned, Mr Baxter, that the foreign minister raised human rights issues with Premier Wen. Did the Prime Minister raise them as well? Are you aware of that?

Mr Baxter—My understanding is that human rights issues were raised in the meeting between Premier Wen and the members of cabinet, and the Prime Minister was in attendance.

Senator ROBERT RAY—So they all had an opportunity to raise them at that stage. You said that religious freedom in Tibet was one of the issue raised?

Mr Baxter—It was certainly one of the issues that was raised by foreign minister Downer with his counterpart from China.

Senator ROBERT RAY—Did you raise press freedoms in China?

Mr Baxter—Press and media freedoms, certainly.

Senator ROBERT RAY—Were any other human rights related areas touched on?

Mr Baxter—There was a broad discussion about the direction of our human rights dialogue and the importance of our human rights dialogue as part of the infrastructure of the bilateral relationship and of the fact that this year will be the 10th year of our human rights dialogue with China and we are seeking to improve that dialogue by giving it a specific focus on labour rights this year.

Senator ROBERT RAY—Did the Chinese Premier or any of the delegation raise what they regard as Australian infractions in the human rights area? If so, what?

Mr Baxter—No, they did not raise those issues with us.

Senator ROBERT RAY—Does our embassy regularly report back on human rights issues in China?

Mr Baxter—Very much so.

Senator ROBERT RAY—Is it just as a regular course of action, is it an annual event or what?

Mr Baxter—In the normal course of their reporting, we receive quite a bit of reporting from our post on things like media freedom, for instance. We have expressed concern about a crackdown on media freedom in China, and so we get quite detailed reporting from our post about what is happening in particular cities, what is happening in particular publications and what the policies of the government are in China towards media freedom.

Senator ROBERT RAY—Have we looked at all of the Chinese justice system? Last year the *New York Times* carried some massively alarming reports of miscarriages of justice that, even when discovered, are not rectified. I think it was in about October or November of last year that there was a series of what I thought were well-written articles of substance rather than just accusation.

Mr Baxter—We certainly get quite detailed reporting from our post on the operation of the judicial system and on issues like how far, for instance, the rule of law has been imbedded within the Chinese system and what in fact the rule of law means from a Chinese perspective as opposed to an Australian perspective. So we look at those issues in quite some detail, from the perspective of both how this impacts on our particular national interest, including our commercial interests in China, and how it impacts on the freedom of the Chinese people.

Senator ROBERT RAY—I see. Is there any sort of difference in progress in terms of criminal law as opposed to commercial law? Is commercial law developing at a more rapid and sophisticated rate than criminal law?

Mr Baxter—That is a difficult question to answer. There have certainly been improvements in China in most areas of the judiciary, but there is still a long way to go in many areas. There is certainly not, for instance, a concept like the separation of powers as it would apply in Australia. There is still a problem with the training levels of members of the judiciary, for instance, and their understanding and knowledge of the laws that they are charged with upholding.

Senator ROBERT RAY—They certainly seem to deal with the bribery issue with more efficacy than Australia does, don't they? That is rhetorical!

CHAIR—I thought it might be!

Senator ROBERT RAY—On a related matter, I read in the *Melbourne Age* of 17 May a report—and I do not necessarily believe it—that they had obtained copies of cables which showed that the foreign minister's comments in Beijing in August 2004 on the ANZUS treaty, and in particular how it might apply in the case of Taiwan, prompted a response. My first question is: I was unclear from that article whether the *Age* was alleging that they had obtained Australian cables or US cables. Do we know what they were alleging?

Mr Baxter—The story was written on the basis of a response to a freedom of information request from the department.

Senator ROBERT RAY—So they were certainly referring to Australian cables.

Mr Baxter—That is right.

Senator ROBERT RAY—Because it is an FOI one, I do not have to ask about leaks at all. It was obtained—

Mr Baxter—Through that process.

Senator ROBERT RAY—through the FOI process.

Mr Baxter—Yes.

Senator ROBERT RAY—I see. I have read the journalist's question and I have read the foreign minister's response. Did that provoke a reaction or a comment from the United States querying what the interpretation was?

Mr Baxter—The United States representatives, through their embassy here, did come in and talk to people in the department about the comments, seeking clarification of the context of the comments, but that was a normal routine call.

Senator ROBERT RAY—It was just a routine call?

Mr Baxter—Yes.

Senator ROBERT RAY—Was that after the article came out in the *Age* or after the comments were made—

Mr Baxter—After the comments were made in late 2004.

Senator ROBERT RAY—On 17 August 2004?

Mr Baxter—Yes.

Senator ROBERT RAY—So they did that. Was it their initiative that they raised that particular subject?

Mr Baxter—That is right.

Senator ROBERT RAY—Was that information conveyed in the same newspaper article by way of FOI or not? I cannot remember.

Mr Baxter—My recollection is that one of the cables that was released under the FOI request in fact detailed the conversation that US officials had with people in the department at the time.

Senator FAULKNER—At what level? This occurred in a period where there was no ambassador—is that right?

Mr Baxter—My recollection is that it was around first secretary level, so it was mid level and not senior level. It certainly was not the charge d'affaires or the acting deputy.

Senator FAULKNER—Perhaps Mr Chester can help us. We have had a very long period without an ambassador. I am just trying to work out whether this occurred when we still had a US ambassador.

Mr Chester—It has been around 18 months, so that takes us to very late 2004.

Senator FAULKNER—So it may in fact have predated—

Mr Chester—Or early 2005.

Senator ROBERT RAY—And relations are exceptionally cordial between the two countries. It raises the question whether we need quite so many ambassadors—the relationship prospers without them.

Senator FAULKNER—Has that set some sort of record of a period of time without a US ambassador? It is a long time.

Mr Chester—I do not know.

Senator FAULKNER—Eighteen months is a very long time, isn't it?

Mr Chester—It is a long time, yes. We look forward to the new ambassador arriving.

Senator FAULKNER—When is that expected to be?

Mr Chester—He is going through the confirmation process at the moment, so it will depend on how long those US processes take.

Senator ROBERT RAY—Just coming back to this FOI of the cables, to what extent is the Department of Foreign Affairs and Trade, with sensitive international relations, in a different position in responding to FOIs than many other government departments which have what I would call less sensitive information? Is the obligation the same? I am not so much thinking in terms of you being able to claim that there is a security aspect to this, but, if it affects sensitive international relations, how far do you protect them?

Mr Chester—The FOI Act obviously applies equally amongst all government agencies. In responding to any FOI request, we apply the provisions of the act.

Senator ROBERT RAY—So you have no extra protection due to the fact that you are in a sensitive international relationship?

Mr Chester—There is an exception within the act of material that can be withheld. That includes material that deals with the relations between governments.

Senator ROBERT RAY—I want to ask a question about Hong Kong, but it may fall into the consular services area at the same time. I read an article in the *Canberra Times* on 5 April regarding Australians who, unfortunately, have been detained and sentenced in Hong Kong. Where are we up to in any negotiations about Australian citizens in Hong Kong serving jail time in Australia? Have we developed or are we in the process of developing a protocol?

Mr Chester—We are just checking now, but this issue of prisoner transfers is one that is covered by the Attorney-General's Department, not the Department of Foreign Affairs and Trade.

Senator ROBERT RAY—You do not negotiate it on their behalf?

Mr Chester—No, they negotiate these.

Senator ROBERT RAY—You provide the consular services, though, to these people, I assume.

Mr Chester—That is correct.

Senator FAULKNER—I noticed that the Parliamentary Secretary to the Minister for Foreign Affairs, Ms Gambaro, made public comment on this on 5 April 2006. Can you confirm that, Mr Chester?

Mr Chester—No, I am not aware of that.

Senator FAULKNER—I refer you to a *Canberra Times* article of Wednesday, 5 April 2006 entitled ‘Australians could serve Hong Kong drug sentence at home’. Perhaps one of your staff can draw it to your attention. I accept the point that you make about the various agencies’ responsibilities, but here we have Ms Gambaro—I assume in her capacity as Parliamentary Secretary to the Minister for Foreign Affairs—making comments. First of all, could you confirm that for me?

Mr Smith—I am not familiar with the specific article you refer to but, in answer to your previous question, I can confirm that we concluded with Hong Kong an international transfer of prisoners agreement in April of this year. I expect that was what Ms Gambaro was referring to.

Senator FAULKNER—It might be best if I ask the committee secretariat to get a couple of copies of this article to give to you so that you can see the public comments and then we will perhaps come back to that later, so that we do not waste any time. I can assure you that it is not a secret.

[4.51 pm]

Senator ROBERT RAY—Have a couple of questions under 1.1.2, South and South-East Asia. Given that it is very current, I thought I would ask a couple of questions about the earthquake in Indonesia. Am I right in remembering that we quite often have embassy staff in Yogyakarta for long-term language training? Is my memory of that right?

Mr Chester—That is correct.

Senator ROBERT RAY—Are all the people there safe?

Mr Chester—My understanding is that the long-term language trainees came out of Yogyakarta some two weeks ago because of the expected eruption of the volcano. I am not aware that they returned prior to the recent earthquake.

Senator FAULKNER—Is there someone there, Mr Chester, who perhaps can give us a status report on what the current situation is—what we know about it?

Mr Chester—About the earthquake?

Senator FAULKNER—Yes. There are reports that thousands are dead and perhaps up to half a million are homeless. I do not know how accurate those figures are. If Mr Grigson could give us a brief overview, I am sure that would be helpful.

Mr Chester—Certainly.

Mr Grigson—I am reading from a report from earlier this morning. I do not know what has occurred during the day. The death toll figure was around 4,000 and the number continues to rise. There were media reports citing a figure of 4,611 deaths. That was compiled by the Social Affairs Ministry’s Disaster Task Force. UNICEF have been using a figure of 20,000 injured and about 100,000 homeless—although UNICEF are being very careful to say that those numbers need to be confirmed. There has been structural damage to the south and centre of the city. The initial estimate is that about 70 per cent of the houses and buildings have been damaged. Utilities are not working in some areas, including electricity and water. Telephone lines have also been affected.

Senator FAULKNER—What sorts of advices have been provided to Australians who might be in the area?

Mr Smith—We have advised Australians in the area to leave if it is safe to do so—there are obviously some problems with infrastructure—but that is a judgment they have to make themselves locally.

Senator FAULKNER—I would assume that in these sorts of circumstances often communicating this sort of advice might be very difficult. Is that right?

Mr Smith—Yes, that is correct. There are problems with the communications infrastructure. The principal means by which we do that is through the travel advice, and when the travel advice is changed we do what we can to bring it to the attention of Australians whom we know to be in a particular area. In the case of Yogyakarta, I think we had 86 Australians registered with the embassy as being in that area. One of the priority tasks that the consular response team that we sent there on Saturday night had was to contact all of those Australians and ensure they were safe, and to provide them with that advice.

Senator FAULKNER—Has there been a change to the travel advisory in the last 48 hours?

Mr Smith—We have been keeping the Indonesia travel advice updated as we have needed to over the course of the last 48 hours, yes.

Senator FAULKNER—So there have been changes?

Mr Smith—Yes, there have been changes.

Senator FAULKNER—Are you able to tell the committee on how many occasions the travel advisory has been updated?

Mr Smith—Since the earthquake struck I think it is twice. We have also incorporated some more detailed information into what we call a travel bulletin, which is a more detailed accompanying document that provides some of that more detailed advice.

Senator FAULKNER—What is the current advice in the advisory?

Mr Smith—In relation to the vicinity of the earthquake it is that Australians should leave the area if it is safe and possible to do so.

Senator FAULKNER—And the additional advice that you referred to?

Mr Smith—It provides some general information about the state of the infrastructure and some advice about following the instructions of local authorities and so on.

Senator ROBERT RAY—I think we have committed \$3 million so far?

Mr Grigson—That is right.

Senator ROBERT RAY—What is the nature of that commitment?

Mr Grigson—AusAID might be able to give you some more details later, but \$500,000 has gone to the International Red Cross and the remainder has been distributed amongst other NGOs and agencies working in the area. They are looking at that each day, so I do not know whether there have been any developments today.

Senator ROBERT RAY—Do we have a game plan or do we give consideration to what would happen with our immediate neighbour and how we would respond to a very large volcanic explosion? They have had Krakatoa, but before that they had one about seven times as big. World wide, these are some of the biggest ever. I know they only come up every now and then, but do we have a plan for how we would react?

Mr Smith—There would be number of dimensions to a response from the government. One would be a consular response, and the embassy in Jakarta has a very detailed consular contingency plan that was refined, reviewed and updated just a couple of weeks ago when the Indonesian vulcanology institution raised the alert level. So we are very confident that that consular contingency plan is in place. There would obviously be a humanitarian response as well, and that would involve us and some other agencies. Mr Grigson might be able to comment on that.

Mr Grigson—That is right. AusAID would take the lead in conjunction with Emergency Management Australia.

Senator FAULKNER—When you have advice from the vulcanologists that the danger level is increased, which I assume is reflected by what you describe as an alert level, you also reflect that in travel advisories?

Mr Smith—That is correct.

Senator FAULKNER—Are you able to tell the committee when travel advisories first reflected that increased risk of an eruption of Mount Merapi?

Mr Smith—I do not have the exact date. I can check that if you like, but it has been in the travel advice for some time—certainly for a while before the alert level went to what it is now, which I think refers to imminent eruption. Part of our concern has been to ensure that any Australians in the immediate vicinity have plenty of notice to evacuate that immediate vicinity in good time.

Senator FAULKNER—So there is a direct relationship between the increased risk of an eruption at Mount Merapi and the language-training people leaving? Is that right?

Mr Smith—I am not sure whether that was a specific trigger for the decision to withdraw the language trainees. The consular contingency plan that I referred to was developed well in advance of this, but it was reviewed and refined when that alert level went up, and, at about that time, we looked at the general risk level for Australians. That decision was made and, at the same time as that decision was made, comparable advice was provided to Australian citizens who might be in the area, and the travel advice reflected the decision to withdraw the language trainees.

Senator FAULKNER—Are you able to say whether the Indonesian government has sought specific assistance from Australia?

Mr Grigson—There were discussions with the Indonesians about what they might require, but they were ongoing today. When AusAID arrives, they might be able to help you with that.

Senator FAULKNER—So that has occurred but you are not sure of the details? Is that the thrust of what you are saying?

Mr Grigson—That is correct.

Senator FAULKNER—And is the needs assessment there one that comes mainly from the Indonesian authorities, or are other international agencies involved in that?

Mr Grigson—Both.

Senator FAULKNER—Are you able to outline for the committee which other agencies are involved, apart from the Indonesian authorities?

Mr Grigson—Certainly the ICRC is, but I do not have the details of any further agencies. The lead on this has largely been taken by AusAID.

Senator FAULKNER—So I think that you are suggesting to us that perhaps those questions are better directed when AusAID officials are at the table. Is that the thrust of what you are saying?

Mr Grigson—That is right. They will have more details.

Senator FAULKNER—You successfully ducked that one—that is fine. We shall heed that advice, Chair. I think that it is best to heed the advice that has been given to us and ask questions about this when AusAID officials are at the table.

CHAIR—All right. Senator Macdonald has some questions on Indonesia. Will we go to those questions?

Senator FAULKNER—Before you do, at some stage I will come back to the issue that we left in abeyance.

CHAIR—We will do that.

Senator IAN MACDONALD—In relation to Indonesia and illegal fishing, just before Christmas Mr Downer and another minister spoke with the Indonesian foreign minister regarding Indonesian involvement in the fight against illegal fishing. Without disclosing anything that might be sensitive or inappropriate to talk about publicly at this time, could you tell me if those talks have progressed. Have things been done from DFAT's point of view or are they being pursued by another department?

Mr Grigson—My division has been involved with another division in the department, with DAFF and with others in terms of the illegal-fishing issue. We have had an ongoing discussion with the Indonesians on a whole-of-government basis about the importance of this to us. Mr Downer has taken opportunities to raise it personally and has continued to do that. As you know, after the budget there was an announcement of a large budget boost in terms of combating illegal fishing, and that strategy is still under development.

Senator IAN MACDONALD—But discussions are continuing between your department, the minister, the Indonesian foreign minister and his department and the Indonesian fisheries minister?

Mr Grigson—They certainly are.

Senator IAN MACDONALD—You cannot be more specific than that? Is there any finality? There was an indication at the time that the Indonesians were very keen to get

involved from their side of the border in helping to stop illegal fishing by their nationals. Is there anything tangible you can tell me about that?

Mr Grigson—Senator, I do not have any detail with me in terms of a briefing.

Mr Moraitis—Mr Grigson and I work closely on illegal fishing issues in Indonesia. I work from the legal perspective and Mr Grigson works from the bilateral perspective. There has been ongoing dialogue, of course. There were some discussions in December, as you know, regarding information campaigns, awareness raising, a joint study and a notification system for vessels. All of those proposals are being pursued. In February this year, there was a meeting between Minister Downer and Dr Wirajuda, and there was a discussion about coordinated naval patrols on the border regions; obviously, that is a good way of going forward. And there have been further discussions between the respective defence ministers as well. It is a complex issue and requires a lot of coordination and, especially, cooperation and dialogue with Indonesian authorities at all levels.

Senator IAN MACDONALD—That is very good news to hear. There is also some discussion about the United Nations Convention on the Law of the Sea, which allows the jailing of offenders from another country, providing the two countries agree. That was also mentioned in some of those discussions. Is that being or will that be pursued?

Mr Moraitis—I cannot recall the specifics of where that is at the moment, but you are certainly right to point to the law of the sea convention, which does not allow for imprisonment of illegal fishers in the EZ. There is consideration being given, of course, to territorial sea issues, which is another issue. Obviously, bilateral consent between two states is a good basis on which to pursue that sort of issue, and that is something that I think is still ongoing. As I have enumerated in my previous answer, there is a whole variety of initiatives that are being pursued, and that is certainly something that warrants consideration.

Senator IAN MACDONALD—That is good news, too. The legislation concerning arrangements out to the territorial limit of 12 nautical miles is before the parliament at the present time.

Mr Moraitis—Yes, that is correct.

Senator IAN MACDONALD—But there is still that gap which, as you say, requires the agreement of the Indonesian government. That needs to be pursued, so I am pleased to hear that it is.

CHAIR—Mr Chester, you have before you a copy of the *Canberra Times* of 5 April 2006. Senator Faulkner wants to go over the commentary contained in the press release relating to the parliamentary secretary.

Senator FAULKNER—Chair, I have asked the committee secretariat if they could provide the media clip that I was referring to earlier; I think the witnesses at the table have a copy of it. The witnesses would note from it that there has been an involvement by the parliamentary secretary, Ms Gambaro. Was Ms Gambaro briefed about the specific issue of the three Australians who were sentenced by a Hong Kong court? Was she briefed in relation to prisoner exchange negotiations with Hong Kong?

Mr Smith—Senator, I cannot answer definitively about what kind of briefing went to Ms Gambaro on that case at this time. As does the foreign minister, she receives regular updates from the Consular Operations Branch on the progress of cases. Whether or not something additional to that was given to her, I would have to check.

Senator FAULKNER—Are you saying that this is something for the Consular Operations Branch?

Mr Smith—That is part of my division. That is a part of my division which provides—

Senator FAULKNER—It is a bit hard for you to duckshove it to somebody else, then, if it is part of your division.

Mr Smith—I am trying to answer you as helpfully as I can.

Senator FAULKNER—Are you saying that there are not officials available who actually know whether or not this has happened?

Mr Smith—What I am saying is that I cannot answer definitively as to whether there was a briefing other than the regular progress reports that the parliamentary secretary and the Minister for Foreign Affairs receive on a range of consular cases. But, if it would be helpful, I would be happy to check that.

Senator FAULKNER—I do not think there are any particular tricks in this. I took account of what Mr Chester or one of the officials at the table said—that is, that this is primarily the responsibility of another department. I accept that. Prisoner exchange matters or negotiations, if you like, are primarily the responsibility of the Attorney-General's Department. I think that is right, isn't it, Mr Chester?

Mr Chester—Yes.

Senator FAULKNER—I accept that. What was unclear to me and is still unclear to me is why there is the involvement of the Parliamentary Secretary for Foreign Affairs. That is what I am trying to grapple with and understand. Hence my questions. If that can be explained to me, fine. I am not suggesting that it is not appropriate.

Mr Chester—Having read through the article, I can see that it picks up two issues. It picks up the issue of prisoner exchange agreements, which, as I said, the Attorney-General's has the lead on, but it also picks up consular issues, which are issues that the Department of Foreign Affairs and Trade has the lead on. The parliamentary secretary is commenting on the specifics of the consular aspects of this, referring to the potential for a prisoner exchange agreement with Hong Kong to possibly be used in relation to a group of Australians who have been sentenced in Hong Kong.

Senator FAULKNER—That gets us back to square one, which is the consular issues—which are part of Mr Smith's branch, as I understand what you have told us, Mr Smith.

Mr Chester—That is right.

Senator FAULKNER—Mr Smith, what are you indicating—that you do not know the nature of the briefing, specifically, in relation to this? Let us just put the issue of briefing aside. Let us go to the substance of the issue: whether you are able to outline to the committee what involvement your consular branch has had with this issue. I do not want to get hung up

on the issue of briefing. I am not suggesting that it is not proper for Mrs Gambaro to be briefed. I am not concerned about that; nor am I making any suggestion that it is not appropriate. The reason I am asking questions here of this department, however, is that Mrs Gambaro has made public comment and her responsibilities have been clearly identified to have at least some overlap. So, can you say to me, Mr Smith, what, if any, the involvement of your consular branch has been?

Mr Smith—The Consular Operations Branch oversees the provision of consular assistance to all Australians overseas, including the individuals in this case.

Senator FAULKNER—Yes. Is there any role at all for the department—not necessarily your branch, Mr Smith; it may in fact be something that Mr Moraitis might have an involvement in; I do not know—in relation to the negotiation of prisoner exchange agreements?

Mr Smith—The negotiation of prisoner transfer agreements—they are not exchange agreements; they are transfer agreements—with other governments is the responsibility of the Attorney-General's Department. DFAT have some broad involvement in identifying the countries which for us are a priority for the negotiation of these agreements. That really comes down to the issue of: where are our prisoner populations overseas and what are the countries that, as a result of that and some other factors, are, from the point of view of our consular interests, the priority countries? The negotiation of those agreements, though, is the responsibility of the Attorney-General's Department. When the negotiations take place in a formal face-to-face sense, it is likely that a representative of DFAT will be present. For example, if they take place in the other government, a representative from our embassy will attend. But, again, the lead is with the Attorney-General's Department.

Senator FAULKNER—Yes. I appreciate that. Is it true in the specific case identified—the case of Chris Ha Vo, Rachel Ann Diaz, Hutchison Tran, who are the three prisoners referred to in the material you have before you—that legal representatives for one or more of those particular individuals have made a number of approaches to the Department of Foreign Affairs and Trade in relation to having either one or more of those prisoners serve sentences under the prisoner exchange program? Whether this is primarily a responsibility for the Attorney-General's Department or not, I am asking whether approaches have been made to DFAT in this regard.

Mr Smith—Not to my knowledge.

Senator FAULKNER—Really? I see. Is the department aware of any requests from the lawyers representing at least one of those prisoners about an attempt to release intercept transcripts for the appeal process? Are you aware of that? Has that been raised with the Department of Foreign Affairs and Trade?

Mr Smith—In relation to the intercept of—

Senator FAULKNER—There has been a request to release intercept transcripts for the appeals process of at least one of those prisoners. What I am asking is whether that issue has been raised with the Department of Foreign Affairs and Trade.

Mr Smith—I have no knowledge of that matter. To the best of my knowledge, it has not.

Senator FAULKNER—Thank you for that. Then you are saying that DFAT's role in this is limited to just some consular assistance for the individuals—is that it?

Mr Smith—Our role is in the provision of consular support, consular assistance, to the three individuals concerned. In addition to the negotiation and conclusion of international prisoner transfer agreements, the negotiations associated with the actual return of individuals under those agreements, once they have been concluded, are also a matter on which the Attorney-General's Department takes the lead. It involves a number of jurisdictions, including the Australian states to which the individuals would be returned. They would then become part of the corrective service institutions of those states. That is, as I said, a process on which the Attorney-General's Department takes the lead. I would expect though that, as we provide the consular support in the country in which they are currently incarcerated, we would be aware of that, but it would be a matter for the Attorney-General's Department to lead on.

Senator FAULKNER—Yes. I accept that the Attorney-General's Department takes the lead—of course. All I am exploring is: what, if any, involvement has there been of your department in this case? If there has been any involvement, could you let the committee know what it has been? I accept that the Attorney-General's Department is the lead agency in that.

Mr Smith—Senator, not only is this agreement with Hong Kong very new but these three individuals have only just been convicted and sentenced. It remains open to them to make appeals. I do not believe they have done so yet, but nor am I sure whether the period in which they can appeal has expired. It is usually the case that prisoner transfer negotiations for individuals only commence once all of the appeal avenues have been exhausted. I am not sure if we have got to that point yet. If it would be helpful to the committee I can take on notice the question of whether discussions have commenced in relation to these three individuals and provide the committee with the information after consultation with the Attorney-General's Department.

Senator FAULKNER—I appreciate you taking that on notice. My understanding, and it is only an understanding, is that there is frustration from legal representatives over the nonrelease of transcripts of intercepted telephone calls that could have been used in an appeal by one of these people—in this case, Rachel Ann Diaz, as I understand it—against the length of sentence. My understanding is that these were not made available for the trial even though copies were forwarded from the New South Wales police to the Attorney-General's Department or the department of justice before the trial. I was asking if you could confirm that, which you have not been able to do, or if you had any knowledge of it, which it appears you do not have at this stage. I have also been trying to establish the role that the department might have played or is playing in this matter. I think you are clear on what I am asking. I have certainly listened carefully to what you have seen, and you have taken one or two further issues on notice that I would appreciate a response to. I certainly do accept that this matter is not a concluded matter, which is the other point you make, and I acknowledge that that is the case.

Senator STOTT DESPOJA—Mr Smith, I am not sure if you can tell me this but I am wondering when was the last time those three Australians in Hong Kong had consular assistance or a visit by consular officers. Again I am not sure if you can answer this but I wonder if you can give us an idea about their wellbeing.

Mr Smith—I do not know the precise date of the last consular visit. What I can say is the consular officers from our consulate-general had been visiting them on a weekly basis, so it would not have been long ago. As to their wellbeing, we obviously monitor that very carefully. My understanding is that they are in good health and they are being treated properly. Needless to say, if we had any concerns about the nature of their treatment then we would take that up robustly with the prison authorities.

Senator STOTT DESPOJA—Okay. There may be matters that I will pursue in a different way rather than drawing attention to them now. Can I just clarify one thing. From this article in front of us and from reports online, the period during which or by which they can appeal seems to have run out. You don't know if they have sought to appeal their sentence?

Mr Smith—The latest advice I have is that they have not appealed. Whether or not that is because they have decided against doing so or because they are still considering it I would have to check.

Senator JOYCE—Their sentences can be increased if they appeal—is that right?

Mr Smith—That is usually the case. I do not know if specifically it is the case in Hong Kong.

Senator STOTT DESPOJA—In relation to the age of those who have been convicted, the defendants, this media report has Chris Ha Vo as aged 16 and I note some reports have him as 15. Regardless, I am just wondering if there are specific circumstances that the government needs to draw attention to in relation to minors. I am looking at a response to a previous estimates question I asked the department about consular assistance and protocols when prisoners who are detained abroad may be minors—I am just checking the original response on that. But I am wondering if these circumstances require any specific attentions from our government and, indeed, if you have made any particular representations to the Hong Kong jurisdiction as a result.

Mr Smith—We are obviously particularly concerned when Australian minors are arrested overseas, and the more so when they are arrested for serious crimes. We provide very careful and extensive consular support to them. Where we can, where it is possible to do so under local laws, we will press the local authorities to try the Australians as minors. That is not always possible, and in the case of the minors in Hong Kong that we discussing, the third of course is legally an adult. The advice that we received when we raised this with the Hong Kong authorities at the time of their arrest was that, under Hong Kong law, juveniles under the age of 16 years are tried in juvenile courts but only for what they describe as 'lesser charges'. Because of the serious nature of these charges, they were tried as adults.

Senator FAULKNER—In your answer to Senator Stott Despoja, I heard you say that the three Australian in this instance are, firstly, in good health and, secondly, being looked after properly. I appreciate that evidence that you have provided. Are you able to say—this is still not clear to me—how regular the consular contact is?

Mr Smith—It is weekly.

Senator FAULKNER—Are you able to say when the last consular contact occurred?

Mr Smith—No, I am not. But, as I said to Senator Stott Despoja, it would not have been very long ago because we have been quite assiduous in visiting the individuals weekly. I can ask the department to let me know and get that information to you.

Senator FAULKNER—Thank you. Is weekly contact a typical level or amount of contact?

Mr Smith—The level of consular contact, the frequency of consular visits, varies very much from country to country and from case to case, depending on the needs of the individual, the nature of the local system they are in and the proximity of the place of detention with our embassy—there is a range of factors. In the case of juveniles, of minors, we do pay very close attention to their welfare and we endeavour to visit them on a more frequent basis. One visit a week is unusual. In other words, that is not a frequency of consular contact that we can sustain across the whole of our consular population overseas, but in the case of juveniles in detention it is one that we do.

Senator FAULKNER—When you say that it is unusual, you mean that it is an unusually high level of contact, not an unusually low level of contact?

Mr Smith—That is correct. Weekly is pretty regular.

Senator FAULKNER—I do not have any more questions on that.

CHAIR—What area would you like to move on to? That was 1.1.2, South and South-East Asia. Shall we move on to 1.1.3, Americas and Europe; 1.1.4, South Pacific, Middle East and Africa; and 1.1.5, Bilateral, regional and multilateral trade negotiations?

Mr Chester—Can I check which outputs you have finished with so some of the people behind can leave.

CHAIR—We have finished with 1.1.1, North Asia.

Senator FAULKNER—Yes, we have finished with 1.1.1.

CHAIR—And I think we have finished with 1.1.2.

Senator FAULKNER—I had slipped out, so I am wondering if any of my colleagues have canvassed the issue of the proposed security treaty and bilateral relations with Indonesia.

CHAIR—Yes, that has been done.

Mr Chester—Exhaustively!

Senator FAULKNER—I am going to check that in the *Hansard*, Mr Chester. It would be a very serious matter if you have misled the committee in that regard!

CHAIR—It was Senator Nettle who did that questioning.

Senator FAULKNER—I must say I missed that. Just so I am clear, in which program number does West Papua fall? Can you assist me with that, Mr Chester?

Mr Chester—Papua is in output 1.1.2.

CHAIR—We have had some questions on that.

Senator FAULKNER—I think we are still in 1.1.2.

CHAIR—Okay.

Senator FAULKNER—That is my feeling. As far as the opposition are concerned—I cannot speak for anyone else—we have concluded our questioning on 1.1.1.

CHAIR—So North Asia can go?

Senator FAULKNER—Okay.

Mr Chester—He has already gone; that is fine.

CHAIR—He was very quick. He just needed a bit of acquiescence and he was off!

Senator FAULKNER—Obviously a huge amount of business was dealt with in the very short amount of time that I slipped outside.

CHAIR—True.

Senator FAULKNER—It is the way it is.

CHAIR—It is.

Senator FAULKNER—It is amazing how quickly things move along when I am away. I am sure that is significant in itself. Did anyone deal with the issue of Burma?

CHAIR—Yes.

Senator FERGUSON—Twice.

Senator FAULKNER—Excellent.

CHAIR—Very thoroughly!

Senator FAULKNER—We will come back to that. What about the Philippines?

CHAIR—No.

Senator PAYNE—It's all yours.

Senator FAULKNER—I am just seeing what we have covered. I might ask a couple of questions in that area if I can. I do not know who the relevant official is.

Mr Grigson—I am.

Senator FAULKNER—Are you able to inform the committee when Mr Downer last met with a member of the government of the Philippines?

Mr Grigson—I think that would have been during the Philippines-Australia Ministerial Meeting, which was most recently held last year. I will see if I can find the date for you.

Senator FAULKNER—Thank you.

Mr Grigson—I do not have it immediately to hand, but I can get it for you.

Senator FAULKNER—Do you know when it was held?

Mr Grigson—About the middle of last year, I think. I will check that.

Senator FAULKNER—Okay.

Mr Grigson—It was in August 2005.

Senator FAULKNER—Thank you. Are you able to inform the committee whether the minister raised or discussed human rights issues during that meeting?

Mr Grigson—I would need to check.

Senator FAULKNER—If you would, I would appreciate it. What, if any, representations have been made by the Australian government to the Philippines government on human rights issues this year?

Mr Grigson—I do not have details with me. I will need to get those for you.

Senator FAULKNER—I would appreciate it if you could find those details and also the details of the last time the Australian government made human rights representations to the government of the Philippines.

Mr Grigson—I can do that.

Senator FAULKNER—One issue that I have become aware of is the arrest and detention of Mr Crispin Beltran. I think he was charged with some sort of involvement in a plot to overthrow the Philippines government. Are you aware of that case?

Mr Grigson—Yes. He was arrested on 25 February.

Senator FAULKNER—Has the Australian government made any representations in relation to the arrest of Mr Beltran?

Mr Grigson—I would need to check that.

Senator FAULKNER—Do you know if the Australian embassy has investigated this case? I thought that this would be something that you would be able to inform us of.

Mr Grigson—Certainly the embassy would have been following the case, but I need to check on the details of the representations that they have made and the reporting that has come in. I do not have that with me.

Senator FAULKNER—Is the Australian government aware of the reports of, I think, four members of a trade union movement having been murdered in politically motivated crimes in the Philippines in the past several months? Has that matter come to the attention of the department?

Mr Grigson—Again, I would need to check for you. We are aware of concerns that there has been a deterioration on human rights in the Philippines since February 2006. We are obviously concerned about the continuing arrests and detention, particularly of politicians, in February and March. The embassy has been monitoring the situation and has been talking to a range of players in the Philippines, including the Human Rights Commission and NGOs. I simply do not have the details of those discussions with me.

Senator FAULKNER—And the minister has had no contact with any member of the Philippines government since August 2005?

Mr Grigson—I would need to check for you.

Senator FAULKNER—I hope you do not check that, because that is actually evidence that you have provided to us. The last contact the minister had with a member of the—

Mr Chester—Senator, there may have been—

Senator FAULKNER—Hang on, Mr Chester; this is important. That is something that I hope Mr Grigson does not have to check, because that is actually something he has told us.

That is information that has been given in evidence. If it is not right, it will need to be corrected—not checked.

Mr Grigson—If it is not right, I will correct it.

Mr Chester—I think the distinction that Mr Grigson was making was that that was the last formal meeting between the two foreign ministers. There has been contact since then. For example, at the APEC ministerial meeting in November last year, there would have been contact between the two foreign ministers.

Senator FAULKNER—Thank you for that. Have any representations been made, Mr Chester, about the state of emergency powers?

Mr Chester—I am not aware of that. I would defer to Mr Grigson's answer on those issues.

Senator FAULKNER—This is cutting to the chase on this matter. So all I can deal with is the information that has been provided to the committee, which indicates that the last meeting Mr Downer had with a member of the Philippines government was August 2005 and that, on this range of other human rights issues, no-one knows whether the Australian government has expressed a view at all. That is the evidence that we have just received.

Mr Chester—That is correct.

Senator FAULKNER—I am surprised that the branch, with respect, cannot provide a little more information than what has hitherto been given to the committee.

Mr Chester—We can provide the information, but we do not have the information with us at the moment.

Senator FAULKNER—When are you likely to have it, do you think? Are you taking these matters on notice to provide in answers after the hearing?

Mr Chester—If you wish us to.

Senator FAULKNER—Or are you going to come back after the dinner break and provide this information?

Mr Chester—We are happy to take this on notice.

Senator FAULKNER—Yes. And when were you planning on providing answers?

CHAIR—Pursuant to the normal course of questions on notice.

Senator ROBERT RAY—That would be about three days before we meet next. About cup day, by the look of it.

Mr Chester—Is it?

Senator ROBERT RAY—If you are going to short-change us again and put it in a couple of days before the next hearing, that would be a good date. I would not recommend it, though. I would get it in a bit earlier so we can read and absorb it and ask you intelligent questions.

Senator FAULKNER—In a similar vein, are you able to say, Mr Grigson, when Mr Downer last met with a representative of the government of Burma?

Mr Grigson—On 10 December.

Senator FAULKNER—Is that December 2005?

Mr Grigson—Correct.

Senator FAULKNER—What was that occasion?

Mr Grigson—That was an ASEAN related meeting.

Senator FAULKNER—In the past six months—or this calendar year, perhaps, to fine it down a bit more—what representations has the Australian government made to the Burmese government on human rights issues?

Mr Grigson—That is a continuing part of our discussions with the regime. In January the ambassador made representations to ministers, and that has continued on through this part of the year, including this month.

Senator FAULKNER—Is it the practice of Mr Downer to raise the human rights issues in Burma with some of his ministerial counterparts in the region?

Mr Grigson—Yes. He has had discussions with his counterparts in the region about Burma.

Senator FAULKNER—Can you tell the committee when they have occurred?

Mr Grigson—I think most recently in December, but I would need to check for you. He does discuss it with his counterparts.

Senator FAULKNER—Thank you. Can you say which particular regional counterparts these discussions have taken place with?

Mr Grigson—I do not think that would be particularly helpful, but let me take that on notice and I will seek some advice about that.

Senator ROBERT RAY—Where is our mission now; we are still in Rangoon, are we?

Mr Grigson—We are.

Senator ROBERT RAY—Do we have to actually travel up-country to the new administrative centre to raise these matters, or can it be done in Rangoon?

Mr Grigson—Not at present; it can be done in Rangoon.

Senator ROBERT RAY—That is a bit better. We have no plans to move, or there is no suggestion we should move?

Mr Grigson—No, not at this stage.

Senator ROBERT RAY—Has any other embassy or consulate moved up there?

Mr Chester—No.

Senator ROBERT RAY—So everyone is still in Rangoon.

Mr Chester—Foreigners are not allowed there at the moment.

Senator ROBERT RAY—Well, that is a stroke of luck.

Senator FAULKNER—Can you outline to the committee what the situation is in relation to the proposed security treaty with Indonesia? Just give us a status report on that please, Mr Grigson.

Mr Grigson—It is the subject of ongoing discussion between Australia and Indonesia.

Senator FAULKNER—So a negotiation process is well under way?

Mr Grigson—A negotiation process is under way.

Senator FAULKNER—Not ‘well under way’; just ‘under way’. At what level are these negotiations being carried out?

Mr Grigson—Between officials.

Senator ROBERT RAY—The last ministerial involvement was in Singapore on 15 May. Is that right?

Mr Grigson—Yes.

Senator FAULKNER—What level of official has been handling this for Australia?

Mr Grigson—It has been handled both through the post and by officials from Canberra. I have had some discussions, but at this point it has been largely handled through the mission.

Senator ROBERT RAY—Only Foreign Affairs officials, no other departmental officials, at this stage?

Mr Grigson—Other departments were involved in an initial draft. They will be involved as we go through the process.

Senator ROBERT RAY—Yes. At the actual negotiations it is the department of foreign affairs, but then a wider consultation on the substantive issues. Is that a fair summary?

Mr Grigson—Yes.

Senator FAULKNER—So is it a drafting team, effectively, that has been established?

Mr Grigson—Yes, you could put it that way. We consulted initially on a draft, which we have passed to the Indonesians. There have been some discussions with them about that draft. As Senator Ray said, we will consult with other agencies as the process goes on.

Senator FAULKNER—So there is no question that a draft text has been exchanged?

Mr Grigson—We have put some proposals to the Indonesians and we are waiting to see what their response is.

Senator FAULKNER—Can you say to the committee when that text was provided to the Indonesians?

Mr Grigson—In the middle of last year. I would need to check, but it was about July.

Senator FAULKNER—Is it also fair to say that this process has become bogged down?

Mr Grigson—No. From the very moment that it was announced, we said that we would take our time about this to make sure that we got it right.

Senator ROBERT RAY—I do not know if you want to address this, but how crucial has been territorial integrity as part of the negotiating aspect of the treaty?

Mr Grigson—It has been discussed, but I would not want to go into the details of the negotiation around issues in the treaty.

Senator ROBERT RAY—Sure.

Senator FAULKNER—Are you able to identify the broad categories of issues that are covered in the treaty? What can you say to us about that? I am not asking for the detail of the draft text, obviously, but for the sorts of issues that the negotiations involve.

Mr Grigson—Mr Downer has made reference to the fact that the territorial integrity issue would be covered. At the time of its announcement in April last year there was discussion that it would be broad ranging. But I would need to check on what has been made public about that.

Senator ROBERT RAY—Mr Downer has in fact on several occasions over the years addressed the issue of Indonesia's territorial integrity.

Mr Grigson—Yes.

Senator ROBERT RAY—Is it to DFAT that the Indonesian government may have made its concern known about the actions of DIMA in granting refugee status to West Papuans or did that come at a prime ministerial level? Were representations made on this issue?

Mr Grigson—By the Indonesians? Yes.

Senator ROBERT RAY—To Mr Downer and the department or just to the embassy in Jakarta?

Mr Grigson—To our ambassador in Jakarta in the first instance, and then it was the subject of discussion between the foreign ministers.

Senator ROBERT RAY—Did that only occur after the DIMA decision, not before?

Mr Grigson—No. In the lead-up to the DIMA decision there was discussion with Indonesia about issues to do with the arrival of the Papuans, including consular access.

Senator ROBERT RAY—I take it that DFAT does not make representations on behalf of another country or about things that have been raised by another country to DIMA.

Mr Grigson—No.

Senator ROBERT RAY—You can talk about what the Australian approach is.

Mr Grigson—That is correct, and that is what we did. We explained the process.

Senator ROBERT RAY—What the principles are.

Mr Grigson—Yes.

Senator ROBERT RAY—How would you characterise Indonesia's cooperation with Australia in terms of illegal immigrants—not ones using Australia as a country of first refugee but those using it as a country of later refuge; in other words, those who transit through Indonesia and then eventually attempt to arrive in Australia? The cooperation level was getting very good. Does it remain so?

Mr Grigson—It has been good. I would need to check with my colleagues at DIMA, but I have not seen any reporting of practical problems in the last few months.

Senator ROBERT RAY—That is good. I might go to 1.1.2, but this is also covered in 1.1.8. It is the question of India and uranium. It would come as a big shock, wouldn't it, that we would raise this.

Senator FAULKNER—You are going to have to pick yourself up off the floor, Mr Chester.

Senator ROBERT RAY—Did we know in advance of the likely position to be discussed and the accord between the US and India in relation to nuclear power? In other words, did we get a heads-up at all?

Mr Stuart—We knew about the intention to negotiate an agreement because it was announced when Prime Minister Singh went to Washington in July of 2005. We had sought to follow it, but it was actually negotiated fairly quickly in the immediate lead-up to President Bush's recent visit to India. So we only learned of the content of the agreement when it was announced.

Senator ROBERT RAY—Have we made some assessment of what impact this arrangement may have on the nuclear proliferation treaty?

Mr Stuart—Yes, we have.

Senator ROBERT RAY—What do we think? Can we say at this stage?

Mr Stuart—I can make some general comments, but I would probably have to be careful that I do not go to the nature of the advice. We are very conscious of the importance of the agreement, if you like, as a geostrategic development—in other words, two major powers agreeing on a level of cooperation which offers benefits to Australia. I think Mr Downer set that out very clearly in an answer to a question in parliament in March. We are also conscious of the need to work in partnership with other countries in addressing proliferation threats. We believe that India can be a very helpful partner; indeed, in its more recent record, we see a lot of evidence for that. So, overall, the government has responded positively to the announcement. By the nature of what was announced there are a number of areas where we are seeking to find out more about how it will work. In fact, some elements of it are only being worked on at present. It will take some time for them to emerge.

Senator FAULKNER—Is this an internal DFAT assessment that you speak of or are there other agencies involved?

Mr Stuart—We have discussed it with other agencies which have expertise in these matters. We have also provided advice to ministers ourselves.

Senator FAULKNER—Which other agencies are involved?

Mr Stuart—I understand that the matter is being discussed in the non-proliferation coordination group, which is the main standing body that considers such matters. It has been discussed there a number of times. That group includes representatives from the Department of Defence. It includes some of the intelligence agencies. It includes the Department of the Prime Minister and Cabinet. I would have to check exactly, but I think that some of the agencies with an interest in nuclear issues, such as DITR and DEST, also take part.

Senator FAULKNER—What is the lead agency for the non-proliferation coordination group?

Mr Stuart—It is chaired by an assistant secretary in my division—the assistant secretary responsible for arms control and counter-proliferation.

Senator FAULKNER—So DFAT is the lead agency?

Mr Stuart—Yes.

Senator FAULKNER—Is it actually, technically, an IDC?

Mr Stuart—It has been meeting regularly, at least for the last three or four years. I do not know when it originated. Certainly I could describe it as a standing group. I believe it is a coordination group, rather than a formally mandated IDC with a direction from government, but, again, I am not absolutely sure.

Senator FAULKNER—Fair enough. What is the significant difference between a coordination group and an IDC, given that an IDC has as one of its main aims the coordination of agencies?

Mr Stuart—That is a fair point. In effect, not a lot.

Senator FAULKNER—Okay.

Senator ROBERT RAY—This is something I have not really followed, but what precisely is the Nuclear Suppliers Group?

Mr Stuart—The Nuclear Suppliers Group is an arrangement amongst around 35 countries which have agreed that they will work together to contribute to the goal of non-proliferation of nuclear weapons, through implementing common guidelines for nuclear exports and nuclear related dual-use exports.

Senator ROBERT RAY—Is it predominantly countries that have uranium or is it countries that have technical expertise, or is it a combination of both?

Mr Stuart—It is mainly industrialised countries or countries that have developed a strong industrial base in the last 20 or 30 years—for example, Brazil. The common thread of those countries is that they have either the technical base or an existing capability to supply nuclear goods. Only a small minority of them are uranium producers.

Senator ROBERT RAY—I see. Do they discuss the Nuclear Non-Proliferation Treaty and their attitude to it on a regular basis? I notice they met in March, and I think they are meeting later today in Rio de Janeiro.

Mr Stuart—Yes. They had a committee meeting in March. They have a full meeting in Brazil, starting today. They discuss a number of measures—what are technically called control measures—to monitor and in some cases deny trade in goods that contribute to nuclear weapons programs. That is done through the process of export controls, with which I believe you are familiar. Each nation does that slightly differently, but this group is a group for the coordination of those respective efforts.

Senator ROBERT RAY—Thank you for that. Bilaterally between Australia and India, have we had discussions on the nuclear issue, such as on the export of uranium to India or other related matters?

Mr Stuart—The most recent discussion of nuclear matters took place on 2 and 3 May, when an Australian delegation visited India. That followed the agreement made by our Prime Minister and the Indian Prime Minister, when Mr Howard visited New Delhi in February, that

we would send a group, essentially as a fact-finding exercise, to learn more about how the processes under the US-India agreement would work.

Senator ROBERT RAY—They travelled in early May, you said?

Mr Stuart—Yes, they were in India on 2 and 3 May.

Senator ROBERT RAY—Just for two days.

Mr Stuart—Yes.

Senator ROBERT RAY—Who was on the delegation?

Mr Stuart—The delegation was led by David Ritchie, Deputy Secretary of the Department of Foreign Affairs and Trade.

Senator ROBERT RAY—Is that David Ritchie 1 or 2?

Mr Stuart—Not the David Ritchie who has been talking to us today. I do have a full list of the members of the delegation if you wish me to supply it. They included Mr John Ryan, a deputy secretary of the Department of Industry, Tourism and Resources. Mr John Carlson—who is here—the Director-General of the Australian Safeguards and Non-Proliferation Office, was a member of the delegation. The Australian Nuclear Science and Technology Organisation sent Dr Ron Cameron, who is its chief of operations. There was a representative from the National Security Division of the Department of the Prime Minister and Cabinet. The director of the relevant section in my division attended and a member of the South-East Asia and South Asia Division also went.

Senator ROBERT RAY—So it was pretty comprehensive. Who did they meet with, in general? Give me flavour of who they would have met on that May trip.

Mr Stuart—There were some delegation-level talks—chaired by the Additional Secretary for International Organisations, Mr Singh, from the Indian foreign ministry—which included representatives from the Indian Department of Atomic Energy and from the Directorate-General of Foreign Trade. Our principals had a meeting with Dr Kakodkar, the Secretary of the Department of the Atomic Energy. They also had a meeting with the Foreign Secretary, Mr Shyam Saran, from the foreign ministry. There were some meetings with some Indian academic commentators and experts, a meeting with the planning commission and the chairman of the experts committee to formulate energy policy in the parliament. Mr Ritchie had a meeting with the National Security Adviser, Mr Narayanan. I think there were some other meetings with senior experts, but those were the official meetings.

Senator ROBERT RAY—It was pretty full-on.

Mr Stuart—Yes, it was a very full program.

Senator ROBERT RAY—When they come back, do each of these individuals simply report to the person above them or do they write a formal, agreed delegation report that is then circulated?

Mr Stuart—There has been some cable reporting and I understand that Mr Ritchie is working on submitting a report.

Senator ROBERT RAY—We do not know when that will be available, though?

Mr Stuart—As you noticed, Mr Ritchie was going to Dili on Thursday and Friday on business there. I think he has quite a lot on his plate. I am sure it is an important priority and I know that some work is being done in my division to help.

Senator ROBERT RAY—Good point anyway: yes, he has other priorities at the moment.

Senator FAULKNER—Who is that report submitted to?

Mr Stuart—I am not absolutely sure. I think it is probably to the Prime Minister because the Prime Minister asked for the trip to take place.

Senator ROBERT RAY—Do we know—if we may ask, and we may not be told—on Mr Howard's recent trip to Washington was this issue again raised or is he awaiting the report of this committee and other matters before it is taken up again?

Mr Stuart—I am not absolutely sure because I have not yet seen the relevant records, but I believe there may have been some discussion of it.

Senator FAULKNER—It is true, isn't it, that India conducted some quite recent nuclear tests?

Mr Stuart—Not since 1998, I do not believe. India has a self-declared moratorium on testing and has had for some years. Maintaining that moratorium is one of the points of its agreement with the United States.

Senator FAULKNER—The most recent date is 1998, is it?

Mr Stuart—I believe so.

Senator FAULKNER—Five nuclear tests were conducted in '98, weren't they?

Mr Stuart—I am not sure how many, but that was the last time I am aware of them testing.

Mr Carlson—Five.

Mr Stuart—Mr Carlson tells me it is five, and he is very reliable on these things.

Senator FAULKNER—In May 1998?

Mr Stuart—Yes.

Mr Carlson—Yes.

Senator ROBERT RAY—Going back to the issue I raised earlier about any involvement by the Department of Foreign Affairs and Trade in the issue of AWB and the Indian wheat contract—forgive me if I summarise the evidence—there was no involvement of the department. Is that right?

Mr Chester—My recollection was that the department could be described as a conduit for the request from India through to the Attorney-General's Department.

Senator ROBERT RAY—You are the conduit?

Mr Chester—I believe that is what Mr Moraitis said.

Mr Moraitis—I think the question was whether there had been any diplomatic representations. I am not aware of any and I do not think Mr Grigson is either. Certainly, in a case of mutual assistance there are occasions when requests would pass through our high

commission and then pass to the Attorney-General's Department. That would have happened in this case, probably. I am pretty sure it did, but in the minimal way that mutual assistance processes work, which are justice to justice through a high commission either in New Delhi or a high commission in Canberra. But the question was, I think, about diplomatic representations on this issue, and I am not aware of any and neither is Mr Grigson.

Mr Grigson—We did a quick check, Senator. The only material we could find was, as Mr Moraitis said, a reference to the third-person note that was passed to Attorney General's.

Senator ROBERT RAY—What is a letter rogatory? Is that a third-party note?

Mr Moraitis—It is a request, basically, for assistance from justice ministry to justice ministry.

Senator ROBERT RAY—Would it have come through—

Senator Coonan—A letter rogatory is a legal mechanism that usually issues from a court, but I do not know what happened in respect of this one. It usually seeks a foreign jurisdiction's assistance in some proceeding.

Senator ROBERT RAY—The reference from the Indian parliament's Standing Committee on Commerce, dated 14 March 2005, notes that a letter rogatory was sent to Australian authorities, not necessarily to this department; it could well have been someone else.

Mr Grigson—Attorney-General's, Senator.

Senator ROBERT RAY—Okay. The money sent to the Cayman Islands would be a matter for AUSTRAC, I assume, rather than the department of foreign affairs.

Senator PAYNE—It was discussed in legal and cons last week.

Senator ROBERT RAY—I will note that. Thank you. I have nothing further to ask on that issue.

[6.10 pm]

CHAIR—We will move to 1.1.3, Americas and Europe.

Senator ROBERT RAY—Senator Faulkner has some Irish questions.

Senator FAULKNER—We have had a situation where the Prime Minister has visited Ireland in very recent times, Mr Newman, as you would be aware. Are you able to say to the committee what the objective of the Prime Minister's visit was?

Mr Newman—As I understand it, the objective of the visit was to update the relationship, in the sense of modern contacts between Ireland and Australia, and also to acknowledge the strong connections through Irish immigration into Australia.

Senator ROBERT RAY—What are the core foreign affairs policy interests between the two countries at the moment that DFAT would define?

Mr Newman—Ireland is a significant player in the European Union. It has a major role in issues of very close interest to Australia in terms of the current negotiations on the Doha Round and in terms of where EU positions are on agricultural reform. So it is a very important country to have contact with on those issues.

Senator FAULKNER—What about our trading relationship with Ireland—are you able to make some comment about that? That is quite significant, isn't it?

Mr Newman—We do have a quite substantial trading relationship, but I would need to take on notice the actual figures. I do not have them to hand.

Senator ROBERT RAY—If you do not have the figures, what is the main trading area between the two countries?

Mr Newman—I would need to check to make sure I got it right. We can do that quite easily.

Senator FAULKNER—You would get pretty regular reporting, I would imagine, from the embassy there to Canberra.

Mr Newman—Yes.

Senator FAULKNER—What sorts of issues does that cover on a regular basis?

Mr Newman—A variety. Ireland's role, as I mentioned, in the European Union. Particular bilateral relationships. We talk to them about matters in the United Nations, about common positions—a range of issues there.

Senator FAULKNER—Is it the practice of the department to task individual embassies, Mr Chester? Is there regular tasking of individual posts with foreign policy priorities? They might be very different in Ireland, for example, to those we have been talking about in relation to Indonesia. Priorities are different; I am sure we all accept that. But does the department play a role in this sort of tasking?

Mr Chester—Yes. Across a broad range of issues, posts will be tasked either by the Department of Foreign Affairs and Trade or by other agencies in Canberra. As you would recall, the posts do serve a whole-of-government function and they represent a whole-of-government view, so it is not just Department of Foreign Affairs and Trade issues that they prosecute; they prosecute issues on behalf of other agencies as well.

Senator FAULKNER—Is it a regular tasking? Is there a regular program of tasking?

Mr Chester—I am not sure you could describe it that way. There will be particular—

Senator FAULKNER—In other words, once a year or once every six months is tasking and the like updated?

Mr Chester—Let me try to explain this. There will be a general requirement for posts to provide regular reporting on specific issues. They will be the obvious issues of political developments—for example, with Ireland we would expect reporting on issues of note in a domestic sense. We would be looking for reporting using Ireland as a window into the EU and developments in the EU. We would be looking for reporting on trade and economic issues, whether it is on the domestic economy and elements of that that may be relevant to Australia or, more broadly, on multilateral trade issues. So there will be that kind of regular reporting that posts know they have a requirement to cover off on.

Senator FAULKNER—That is their reporting to you. How often would that happen? Let us take the post in Ireland as an example.

Mr Chester—I need to take that on notice.

Senator FAULKNER—If it is regular, is it once a week? Is it twice a week?

Mr Chester—It is as necessary. That is the requirement of post: ‘as necessary’. I do not have at my fingertips the information on the level of reporting coming back. There will also be specific requirements where a tasking cable goes out to a particular post, a group of posts or all posts, asking posts to prosecute particular issues, whether it is a multilateral issue, a UN issue, a Doha Round issue or something else. That kind of tasking cable will go out, and the posts are required to report back. There will also be tasking cables going out from other agencies on specific issues, whether they are on specific bilateral issues, regional issues—for example, EU issues—or multilateral issues. I guess what I am saying is that you cannot put a simple label on describing the tasking and describing the reporting for any particular post.

Senator FAULKNER—Specifically, then, are you able to say—for example, this calendar year—what tasking there has been of our post in Ireland?

Mr Chester—No, I cannot. I am not sure I would want to take it on notice because it is such a complex question to seek to answer.

Senator FAULKNER—I assume that one of the tasks would be a role in the organisation of the Prime Minister’s visit. Would that be right?

Mr Chester—The post will have been tasked by the Department of the Prime Minister and Cabinet to put in place arrangements for that visit. That is right.

Senator FAULKNER—You would not be made aware of that? Or do you just take that as a given?

Mr Chester—We would be aware of the visit and, yes, we would take it as a given that PM&C would put in place the various elements of the organisation for such a visit.

Senator FAULKNER—But doesn’t the Department of Foreign Affairs and Trade actually give some input into prime ministerial visits in the general area of suggested activities or functions the Prime Minister might undertake?

Mr Chester—We will have an involvement in various aspects of any visit. We will provide input to briefings, which is put together for PM&C. From a post point of view, they will be involved in programming in consultation with the relevant areas at PM&C. But, ultimately, these are issues for PM&C. They make the final decisions on—

Senator FAULKNER—Yes, but does the Department of Foreign Affairs and Trade provide its input automatically or do you wait for a request from PM&C? When we hear the Prime Minister is going to Ireland, we all know that he is going to, for example, the Western Front and the World Cup. I mentioned this at PM&C estimates, with high dudgeon from officials, although everybody knows it is true. I just wonder whether the Department of the Prime Minister and Cabinet actually suggests program matters or things that the Prime Minister might include in his itinerary.

Mr Chester—There will be inter-agency discussion on elements of this. By inter-agency I mean that there will be discussions between PM&C and DFAT, and between PM&C and the

post—maybe between the post and DFAT. There would be that kind of consultation for any visit to ensure that it all comes together and works.

Senator FAULKNER—Is Ireland a place that receives a significant number of ministerial visits?

Mr Chester—I do not know what you mean—what we are comparing it with.

Senator FAULKNER—I do not know what to compare it with either.

Mr Chester—I do not know what you mean by ‘significant’. For some, one might be significant; for others it might be 10.

Senator ROBERT RAY—For the previous financial year and this financial year to date, could you take on notice how many ministerial visits have been made to Ireland?

Mr Chester—Yes.

Senator ROBERT RAY—Then it is up to us to argue or otherwise suggest whether that is significant or not. I do not know what you could compare it with, so I will not ask that.

Senator FAULKNER—You might also add to that question on notice: when those visits occurred, the dates of the visits and the length of the visits. That would be helpful.

Mr Chester—That is, ministerial visits over the last two financial years?

Senator FAULKNER—Yes.

Mr Chester—When?

Senator ROBERT RAY—Up until the Prime Minister’s visit, let us say. Your best endeavour anyway.

Senator FAULKNER—It is still not clear to me whether the Department of Foreign Affairs and Trade take the initiative in suggesting to the Department of the Prime Minister and Cabinet or to the Prime Minister’s office: ‘We think it’s time for the Prime Minister to visit country A’ or ‘The Australian Prime Minister hasn’t been to country B for a very long time. We feel that a visit is due or overdue.’ Is the Department of Foreign Affairs and Trade that proactive with prime ministerial travel?

Mr Chester—I am not sure.

Senator FAULKNER—Mr Chester, if you do not know, what hope do the rest of us have?

Mr Chester—I will need to take that on notice.

Senator FAULKNER—You are supposed to be running the show over there.

Mr Chester—No—I am a mere deputy secretary.

Senator FAULKNER—So you do not know whether you make suggestions to the Prime Minister about possible—

Mr Chester—Again, is there a formal process? I am not sure; I will need to check. But, yes, we have discussions with PM&C and there may well be discussions between ministers and the Prime Minister on what role we might have in providing advice to our minister on this. I do not think there is a straightforward answer to it.

Senator FAULKNER—What was the objective of the Prime Minister's visit to Ireland? Can you tell us that?

Mr Chester—It would be foolish to underestimate the bilateral relationship with Ireland, as it stands. It is an important relationship that Australia has. Prime ministerial visits are an important element of ensuring that the bilateral relationship develops and grows. As Mr Newman said, there were issues of some note, particularly issues relating to the EU that are of contemporary importance. On that basis, it was a timely visit and one that had been postponed a number of times, I understand.

Senator FAULKNER—And those issues were raised by Mr Howard with his Irish counterpart, where they?

Mr Chester—Yes, as I have seen in the press reports. We have not seen records of conversation or details of the discussion, but from press reports that is correct.

Senator FAULKNER—You can confirm to the committee, of course, that the visit was a complete triumph?

Mr Chester—From the reports I have seen, yes, it looked like it was a successful and well worthwhile visit.

Senator FAULKNER—I thought you would say that. You will not be a deputy secretary for long, Mr Chester, I am sure there is a promotion coming on soon.

[6.25 pm]

CHAIR—We have not finished with 1.1.3 but we will move to 1.1.4, South Pacific, Middle East and Africa, as Senator Milne has some questions on Africa.

Senator MILNE—I want to ask what role DFAT is playing in north-west Africa, in particular in supporting Australian oil and gas companies. Generally speaking, could you give me a rundown of what your view is on Australia's relations and opportunities in north-west Africa, Mauritania in particular.

Mr Ritchie—I think it is fair to say that there are substantial prospects in Mauritania, which you mentioned in particular. As you probably know, Woodside has a presence there. I think it is part of a broader interest in Africa by Australian companies. I think there is a realistic sense of what can be done in Africa generally, but there is a move by Australian companies into investment in Africa in particular.

Senator MILNE—Where is the DFAT office that would be supporting Woodside in Mauritania?

Mr Ritchie—We are accredited to Mauritania from Paris.

Senator MILNE—So it is the Paris office that supports Mauritania.

Mr Ritchie—Yes.

Senator MILNE—Have DFAT been involved in facilitating access to Mauritania for Woodside?

Mr Ritchie—Woodside has generally operated under its own steam. I think generally we see our job as being to facilitate the work of Australian companies overseas. I am not sure of

the particular circumstances you are thinking of, but I think Woodside has had a very strong relationship with Mauritania over a number of years by itself.

Senator MILNE—Is there anyone in the Paris office who has worked with Woodside on facilitating this access in Mauritania? Could you take that on notice for me.

Mr Chester—It really depends on what you have in mind. There will be instances where the Paris embassy may make representations on behalf of Australian companies in Mauritania. When the head of mission visits she may pick up issues in relation to a number of Australian companies that are working in Mauritania. Similarly, when other people from the embassy are there they may take up issues. As Mr Ritchie says, it is an ongoing part of our work, as necessary, to promote Australian business access and deal with their issues.

Senator MILNE—Specifically, has anyone from DFAT, from the Paris office, taken up any issues for Woodside with the Mauritanian government since the beginning of last year? That is what I would specifically like to know.

Mr Chester—The answer is yes, a number of issues.

Senator MILNE—Can I ask specifically what those issues were?

Mr Chester—It will be a broad range of issues. There were a number of consular issues that had to be dealt with last year with the coup when we had Australian citizens there working for Woodside. A number of representations were made in respect of that. Post-coup there was contact between the embassy and the new government, where issues were also taken up on behalf of Australian companies.

Senator MILNE—If we can go to pre-coup for a moment: did DFAT work with Woodside in negotiating the four amendments to the production sharing agreements that later became a matter of some contention between Woodside and the Mauritania government? Was DFAT involved in that negotiation?

Mr Chester—I think we are now probably getting into an area where we probably cannot comment, because these issues are being looked at by law enforcement authorities in Australia.

Senator MILNE—I suppose it would be the same answer with regard to post the coup? Has DFAT been facilitating Woodside's resolution of that crisis?

Mr Chester—Again, these are issues that may be with law enforcement authorities.

Senator MILNE—What advice does DFAT give Australian companies working in Mauritania and in North-West Africa and Africa generally in relation to the difference, if there is one, between a facilitation fee and a bribe?

Mr Chester—What advice DFAT gives?

Senator MILNE—Yes; to companies operating in that region.

Mr Chester—I am not sure that we give specific advice. We would expect that companies are well aware of the law and know how to abide by the law.

Senator ROBERT RAY—Chair, can I make a suggestion that, judging by experience, at the rate we are going, I think there is a strong possibility that we will be finished the

department tonight and be ready to start AusAID first thing in the morning. I cannot guarantee it but I would say that, at the pace we are going, we could give people due warning that that may occur.

CHAIR—That is very good of you, and I appreciate that. I would also mention that the department would like questioning of officers on output 1.4 to be completed tonight, because they have other duties tomorrow.

Senator ROBERT RAY—I cannot speak for other senators, the Labor side can guarantee it.

Senator Coonan—With the indulgence of the committee, Mr Ritchie just asked whether I could enquire as to whether Senator Milne was almost completed or whether another couple of questions would dispose of the need for Mr Ritchie to come back.

CHAIR—Are there any further questions for Mr Ritchie in terms of Africa or the Middle East?

Senator Coonan—We have just realised that he has to come back anyway, Senator Milne.

CHAIR—Okay, so that is academic.

Proceedings suspended from 6.33 pm to 7.30 pm

CHAIR—I call the committee to order, and we will continue with questions from Senator Milne.

Senator MILNE—Before the dinner break, I asked about whether DFAT had been involved in facilitating Woodside in negotiating amendments and then, subsequent to the coup, negotiating an outcome. You indicated that you were not prepared to answer questions because of potential investigation. Can you tell me why answering those questions would, in your view, compromise such investigation—if, indeed, there is one?

Mr Chester—As I said, my understanding is that certain allegations have been referred to the AFP for their consideration, so I think you are right in the sense that it is not clear that an investigation has been or is being undertaken. But, given that allegations pertaining to Woodside have been referred, we think it would be inappropriate for us to talk about issues relating to those allegations. We have written to the AFP advising that we will provide assistance to them, and it is because of the nature of that letter that I stand by the view that it would be inappropriate for us to canvass our knowledge of and involvement in these issues.

Senator MILNE—Just to continue then, you indicated that any DFAT assistance in Mauritania would be through the Paris office. Does that mean that somebody from the Paris office would go out to Mauritania or Libya or wherever very often, or is it mainly done by email et cetera?

Mr Chester—Paris looks after Mauritania; Libya is looked after by our embassy in Cairo. As for our visits to Mauritania, our post will visit Mauritania on occasion during the year. The number of occasions would be relatively small—maybe twice or three times a year. Other communications that we would have would include contact between our head of mission in Paris and the Mauritanian head of mission in Paris. That is a conduit for dealing with some of these bilateral issues between Australia and Mauritania.

Senator MILNE—Can you indicate to me what support DFAT might have given oil and gas companies to date in Libya?

Mr Chester—Not in detail, but we would make representations to the Libyan government on behalf of Australian companies that wish to have a presence in Libya, and raise issues of concern that companies may ask us to raise with the Libyan authorities.

Senator MILNE—Can you explain to me what you see as DFAT's role in relation to the private sector activities?

Mr Chester—As it is, no matter where in the world we are talking about, Australian diplomats seek to open doors for Australian companies so that they can pursue their commercial interests in a particular country. As far as the detail of such commercial negotiations or discussions is concerned, DFAT does not get involved in those. We are there to promote Australian businesses and Australian companies, but we leave it up to the companies to pursue the commercial elements of any arrangements they have.

Senator MILNE—Does DFAT give advice to companies operating overseas in relation to the OECD convention signed in 1999 on corruption and so on?

Mr Chester—There is a range of advice available to companies. It is in a lot of material that we make available to companies travelling overseas, there is material on our website, there is material included in the booklet on advice to travellers, there is a hand-out, I think prepared by Attorney-General's, that is available in our offices and in our passport offices. We are involved in providing a range of advice to Australians who go overseas.

Senator MILNE—In relation to your assessment of Australian trade opportunities in north-west Africa, but northern Africa generally, what have you identified as being the most likely areas which you may wish to support or increase levels of support for?

Mr Chester—There are probably a wide range of opportunities but obviously work in the mining sector is of some significance, whether it is the mining itself or the provision of mining equipment. Mining services, where Australia has some particular expertise, is certainly one of our focuses. There are other areas of focus as well, whether it is in the agricultural area or in areas of manufactured goods.

Senator MILNE—Are there any particular countries that you are focussing on?

Mr Chester—Perhaps you could say, yes—Mauritania and Libya are two countries that we are focusing on—but there are Australian interests in other parts of that part of Africa where there is a focus. Ghana is another example where there are a number of Australian companies working and where we do have a presence.

[7.37 pm]

Senator ROBERT RAY—I go back to 1.1.3, Americas and Europe. During the recent visit of the Secretary of State, Condoleezza Rice, was the case of David Hicks raised with her?

Mr Newman—I understand that, no, it was not.

Senator ROBERT RAY—Was the broader issue of Guantanamo Bay raised in those discussions?

Mr Newman—No.

Senator ROBERT RAY—Do we know when these matters were last raised with the US by the Australian government?

Mr Newman—In the joint press conference that the Prime Minister had after his meeting with Defence Secretary Rumsfeld he noted that he had raised the David Hicks case in response to a question by a journalist.

Senator ROBERT RAY—So it was raised with Mr Rumsfeld and not with President Bush?

Mr Newman—I am not aware if it was raised with President Bush. I do not believe so.

Mr Chester—I should clarify that. We do not have a read-out of those discussions and it is probably more appropriately a question for PM&C.

Senator ROBERT RAY—I have more chance of getting an answer here, I think.

Senator FAULKNER—Did you prepare briefings on this matter? I am not asking about the content of the briefings.

Mr Newman—The department prepared briefings on the Hicks case for the Department of the Prime Minister and Cabinet before the visit.

Senator ROBERT RAY—On that, have we made any representations to the British government, because they have the issue of dual citizenship or citizenship before them? Have we made any representations to them in any particular way on the Hicks matter?

Mr Newman—I will defer to my colleague on that.

Mr Moraitis—No; the issue of Mr Hicks's citizenship is a matter between him and the UK government.

Senator ROBERT RAY—Have we raised the Hicks case with British government in any way—not necessarily in terms of his dual citizenship?

Mr Moraitis—Not recently, as far as I know.

Senator ROBERT RAY—Not recently?

Mr Moraitis—There may have been discussions about the processes of the UK and very general discussion about where things are at in terms of UK legal processes. I think the high commission has informed us of the court process in the UK, but that is about it.

Senator FAULKNER—What about the issue of consular visits to Mr Hicks? Is this appropriate place to deal with that issue, Mr Chester?

Mr Chester—We can do it now. I will get Rod Smith to address that question.

Senator FAULKNER—I think, Mr Smith, that in a previous estimates committee we heard that there have been some consular visits to Mr Hicks. Could you confirm that for us?

Mr Smith—That is correct.

Senator FAULKNER—Could you indicate what the pattern of visits has been this calendar year—in recent times, in other words? I cannot recall whether we addressed this in the February estimates, but we certainly did in the round before. Anyway, let us just deal with this calendar year.

Mr Smith—The most recent visit was on 16 March this year. That was the first visit that has taken place this calendar year. We are working to arrange another visit shortly. We have a date tentatively set in early June.

Senator FAULKNER—I appreciate that, and I realise that I did ask you about this calendar year. But just so I understand a bit about the pattern, what was the date of the visit prior to the visit of 16 March?

Mr Smith—It was 15 September 2005.

Senator FAULKNER—And prior to that?

Mr Smith—It was 17 to 18 May 2005. Prior to that it was 17 January 2005 and 1 to 3 November 2004. The pattern has been a little uneven but on average it has been around four to five months.

Senator FAULKNER—How many Australian officials have been involved in the consular access visits?

Mr Smith—The officer who has recently made those visits is the consul-general based in Washington.

Senator FAULKNER—Does this schedule of visits conform with the requests that have been made by Australian authorities to US authorities? In other words, when a request is made for consular access has it in each and every case been granted?

Mr Smith—Yes, it has. There is always a little bit of discussion involved in setting the exact date, but we have never been denied a visit to Guantanamo Bay for that purpose.

Senator FAULKNER—Does our consul-general request of the US authorities a visit? Is that how the process works?

Mr Smith—That is correct.

Senator FAULKNER—Who does the consul-general make that request through—the State Department?

Mr Smith—I think that request is made of the Pentagon. If that is not correct, I will correct that subsequently.

Senator FAULKNER—So it is made of the Pentagon. Can you confirm to the committee that in all cases when a request has been made it has been agreed to by the relevant US authority?

Mr Smith—That is my understanding.

Senator FAULKNER—Are you able to indicate to the committee what report was received from the consul-general in relation to the most recent visit to Hicks on 16 March 2006?

Mr Smith—The consul-general reported on that visit. There were a number of matters raised by Mr Hicks at the time in relation to the circumstances of his detention which were duly taken up by the consul-general with US authorities, as is always the case.

Senator FAULKNER—Run that last bit by me again. What was taken up?

Mr Smith—Any issues or concerns that Mr Hicks raises with us about the circumstances of his detention will then be pursued by us with the US authorities.

Senator FAULKNER—Are you able to say what those issues are? I do not want to go through all these cases; just the most recent. Let us go to 16 March 2006. You, Mr Smith, have told the committee that the issues that Hicks raises with the consul-general are then subsequently raised with US authorities. All I am asking is whether you can outline to the committee what issues were raised on 16 March.

Mr Smith—I am hesitating simply because we would normally be cautious in disclosing these kinds of details on privacy grounds.

Senator FAULKNER—Normally?

Mr Smith—That is correct. That is our normal practice.

Senator FAULKNER—I see. Haven't a number of these issues been raised by Mr Hicks's legal representative?

Mr Smith—There have certainly been some matters raised and aired publicly in relation to the conditions of his detention. In fact, that has happened since the most recent consular visit. We have taken up those matters directly with US authorities. One of the reasons that we have been concerned to press for another visit shortly is so that we can pursue those further with US authorities.

Senator FAULKNER—I believe that there is a public interest in relation to this particular matter and that this is a reasonable question to press, so I will direct my question through the minister to you.

CHAIR—What was the question again?

Senator FAULKNER—I have asked the minister if—

Senator Coonan—I am sorry?

Senator FAULKNER—I am asking, Minister, if the official could outline to the committee the issues that have been raised with the consul-general by David Hicks in relation to his internment in Guantanamo Bay. I am directing my question through you.

CHAIR—Just before we persist with that, do you understand what the officer has said? There are issues personal to Mr Hicks likely to be divulged in that answer.

Senator ROBERT RAY—We had the commandant of Guantanamo Bay commenting on *AM* two or three weeks ago and complaining about David Hicks having too good a time because he demanded a second towel. Some of the stuff is already on the record, that is all.

CHAIR—I just want you to be aware that if the department answers these things it may not necessarily be in Mr Hicks's best interest.

Senator FAULKNER—There is an issue of discretion in relation to the way this is answered. The reason I have directed my question through the minister is that I hope that the minister can deal with the information that is available to witnesses at the table and make an appropriate response to what I think is a reasonable question. So, if there is some matter of personal privacy, perhaps it is appropriate that it not be mentioned. But there may well be

general issues in relation to the internment that are more than appropriate to be provided in information to the committee, in answer to this question. That is why I have directed my question to Senator Coonan. I have not asked the official at the table to apply his mind to this. I think it is fair that the minister responds to it.

Senator Coonan—Because there are issues that I think are very sensitive that relate very much to Mr Hicks's privacy, and some other issues, I really would want to take that on notice. I will give you a very considered answer, but I am certainly not going to do it on the run.

Senator FAULKNER—Minister, are you able to say to the committee whether the department—the consul-general or someone else—makes an assessment as to the validity of the issues that Hicks raises? Can someone deal with that? That is not a privacy issue.

Senator Coonan—Yes.

Mr Smith—You asked me specifically about matters raised by the consul-general, pursuant to the 16 March visit. I think that public debate on this has changed because the issues that have been aired publicly have arisen since that visit. That relates particularly to the claims that Mr Hicks is being held in solitary confinement. I can say something about that. Obviously, when those claims were made we checked that with US authorities. The advice we have been given is that, along with a number of other detainees, Mr Hicks was, since that last consular visit, transferred to a newly completed facility in Guantanamo Bay where he is being held in a single occupancy cell. It is quite distinct from solitary confinement, but it is a single occupancy cell. He does have access to exercise facilities. He has access to outdoor areas. He has access to other detainees. He continues to have access to other privileges—I think that is the word they use. So we can say very clearly that he is not being held in solitary confinement.

Senator FAULKNER—I gather this change of cell occurred after the visit of the consul-general on 16 March.

Mr Smith—That is correct.

Senator FAULKNER—Has any Australian official sighted the cell?

Mr Smith—At this stage, no. That is why we are keen to make another visit to see those facilities for ourselves.

Senator FAULKNER—So the information that you are providing to the committee in relation to the cell is information that has been given to DFAT or Australian interests by whom?

Mr Smith—By the US detaining authorities.

Senator FAULKNER—But no Australian consular official has sighted this new cell in which Hicks is interned. Is that right?

Mr Smith—That is correct. That will be done on the next visit, which we hope will be in early June.

Senator FAULKNER—How long has Hicks been in this new cell?

Mr Smith—Since very shortly after the 16 March visit.

Senator FAULKNER—When were Australian authorities told that the cell in which Hicks found himself was going to be changed?

Mr Smith—I understand that we were advised of that just after it occurred.

Senator FAULKNER—So no Australian official was informed, prior to the change, that the change was either contemplated or going to occur?

Mr Smith—Not to my knowledge.

Senator FAULKNER—You say there was a range of issues. You would appreciate that opposition senators do not have access to too much information—all of it in relation to this matter, as far as I am concerned anyway, just comes through a few scrappy media reports. Given that circumstance, can you explain to the committee, in relation to the matters raised by Hicks with the Australian consul-general on the most recent occasion, which was 16 March this year, what action Australian authorities have undertaken to establish whether any of those complaints have any validity?

Mr Smith—We have raised each and every one of those complaints with the US detaining authorities and we have had responses which so far have satisfied us. Obviously, we will test those further when we have an opportunity to conduct a further visit—again, as I said, hopefully in early June.

Senator FAULKNER—Given that the minister has effectively refused to detail the complaints, can you say how many individual complaints were made on the occasion of the consul-general's visit on 16 March?

Mr Smith—I do not have a list which identifies each of the issues seriatim, but they all generally deal with the conditions of his detention and the privileges that he has access to in the new facility.

Senator FAULKNER—‘Privileges’ and ‘Guantanamo Bay’ are words that to me do not sit well in the same sentence. What do you mean by ‘privileges’?

Mr Smith—It is a term that refers to the rights that he has that determine his day-to-day activities.

Senator FAULKNER—Anyway, regarding the issues that were raised, how have they been tested by Australian officials?

Mr Smith—They have been raised with the US detaining authorities and we have received advice back from the US detaining authorities on each of those complaints.

Senator FAULKNER—You use the terminology ‘US detaining authorities’. Who are the US detaining authorities in this instance? What do you mean by that terminology?

Mr Smith—The issues are taken up directly with the detention centre authorities on the ground at Guantanamo Bay. They are also matters that we have pursued through the Pentagon in Washington.

Senator FAULKNER—So it is directly with the authorities at Guantanamo Bay?

Mr Smith—In the case of the issues that have arisen since the last consular visit, those inquiries have been made of the Pentagon.

Senator FAULKNER—Given that they do not even arise from a consular visit, how do we know what to actually pursue? Is this as a result of Hick's legal representatives raising issues with Australian authorities? We have just learnt tonight that the Australian authorities did not even know that he had been moved to a cell in a new cell block until after it had happened, so to me it does not sound as though you are much in the loop. So how do we know about these issues that have been raised subsequent to the last visit of the consul-general on 16 March this year?

Mr Smith—The consul-general in Washington is in very regular contact with his legal representatives.

Senator FAULKNER—So this comes from Hick's legal representative—is that the source?

Mr Smith—That is correct. To the extent that issues have also been aired or raised in the media, those issues are also followed up by the consul-general.

Senator FAULKNER—You say 'raised in the media'; they must come from somewhere. The detention centre authorities at Guantanamo Bay do not put out press releases, do they? So there must be a source for this. If it is Hicks's legal adviser, that is what it is. I am just trying to nail it down.

Mr Smith—I do not know all the sources of the media reports. I imagine some do come from his legal representatives; others I do not know. We monitor the media very carefully on this case. We are always concerned when Australians who are detained overseas express concerns about the circumstances of their detention; we will always pursue those with the relevant authorities. We will also stay in very regular contact with legal representatives if they have them—and in all cases people at the presentencing stage of a judicial process will have them—and we will follow up matters that those legal representatives raise with us.

Senator FAULKNER—Since 16 March the cell where Hicks has been placed has changed, right?

Mr Smith—That is correct.

Senator FAULKNER—What else has changed that we know of? Has anything changed in relation to these so-called privileges or other aspects of Hicks's incarceration that you can say to the committee? The cell is obviously a major change, but are there any other changes you can inform us of?

Mr Smith—The physical circumstances of his detention have obviously changed, and there may be some changes to the daily routine as a result of that. It is getting into levels of detail that I am not sure it would be all that helpful to go into.

Senator FAULKNER—What do you mean by physical circumstances?

Mr Smith—He is in a different kind of cell now from the cell he was in before.

Senator FAULKNER—Yes, a different kind of cell. What else? The cell has changed, physical circumstances have changed and the daily routine has changed. But we did not know any of that, did we, until after it had happened?

Mr Smith—We were not given prior notice, as I understand it.

Senator FAULKNER—And in fact we did not know until after it had happened, did we?

Mr Smith—That is correct.

Senator FAULKNER—As a result of not knowing about any of these changes that have occurred, has any official complaint or concern been lodged by officials of the department of foreign affairs with either the detention centre authorities at Guantanamo Bay or the Pentagon about the fact that the Australian authorities were completely unaware of these changes?

Mr Smith—I think the best way to answer that is to reinforce that we have focused our efforts on this issue with the US authorities on the substance of his complaints to ensure that they are properly looked into and that we can be satisfied with the response that we have received.

Senator FAULKNER—Okay, but with respect that is not an answer to the question I have asked. You have informed this estimates committee, in relation to Hicks's incarceration at Guantanamo Bay, that his cell has changed, perhaps other physical circumstances have changed and the daily routine has changed; and the Australian authorities did not know about it until after it occurred. My question goes, firstly, to whether this was a matter of concern to Australian authorities and, secondly, to whether those concerns were raised with the detention centre authorities, the Pentagon or any other responsible authority in the US. Did we raise our concerns about the fact that Australian authorities had been kept in the dark about the circumstances of Hicks's internment having changed?

Mr Smith—As I said, to the best of my knowledge we were not given prior advice of the move to a different camp. I would like to check that, just to confirm that that is in fact the case. As to the representations that have been made to US authorities and the inquiries we have made, we have focused those representations and inquiries on the issues that have been raised by Mr Hicks's legal representatives about the conditions and circumstances of his detention. Needless to say, if we were not satisfied with the response that we received we would pursue those matters. We will not know more than that until we have had an opportunity to see the facilities for ourselves at this next visit, when we will have a further opportunity to discuss these matters directly with Mr Hicks himself and with the detaining authorities on the ground at Guantanamo Bay.

Senator FAULKNER—Have you been satisfied with the responses you have received?

Mr Smith—At this stage, yes, we have. Again, self-evidently, if we were not we would have continued to pursue the matter with the US authorities. It is important to us that we go and see these facilities for ourselves.

Senator FAULKNER—It is also about three months after Hicks has been in those new facilities, is it not?

Mr Smith—That is correct.

Senator FAULKNER—Can you help me with this, Mr Chester? Do you know whether any Australian authorities have indicated to any American authority some concern about not knowing about these changes in relation to Hicks's status and circumstances at Guantanamo Bay until after changes were made? Are you able to assist me with that?

Mr Chester—No, I am not aware of whether representations were made. As Mr Smith said, we will check that and give you an answer.

Senator FAULKNER—What I fail to understand here is how the Australian authorities, in this case the consul-general, or perhaps others with departmental responsibility for this, satisfy themselves about the validity or otherwise of complaints that they effectively hear about on the grapevine, or second-hand, because all these complaints we have heard about apparently postdate the last consular visit on 16 March 2006 to Hicks at Guantanamo; everyone accepts that. A range of issues have been raised after the consular visit but it is not clear to me how Australian authorities satisfy themselves about those complaints and concerns, whether they are valid or not valid, and how it is progressed. Perhaps Mr Smith or someone can assist me with that.

Mr Smith—There is no great mystery to this. We have a dialogue with the US authorities, in this case the Pentagon. We raise with them the complaints or the allegations that have been made by Mr Hicks, as described to us by his legal representation. We take these matters up with the US authorities. They will look into them and give us an answer. We need to satisfy ourselves as to the adequacy of those answers. As I said, we will also continue to pursue them, particularly by making a visit to the new detention facility, seeing it first-hand, for ourselves, and seeing and talking to Mr Hicks as well.

Senator FAULKNER—Yes, but that is three months after the event. It sounds very hands-off to me and quite extraordinary that three months after the cells change, the physical circumstances change, the daily routine changes, we may manage to have a consular visit to look at these new circumstances and new situation. Do you consider that satisfactory, Mr Chester? I do not.

Mr Chester—Yes, I do. As Mr Smith said, the issues that have been raised publicly were taken up very quickly by the consul in Washington. Those issues were taken up with the American authorities and, as Mr Smith said, we were satisfied with the answers that we were given. If we were not satisfied we would still be pursuing them. We will then confirm those answers when we do our next consular visit. I think it is wrong and misleading to leave the impression that we sit still and do nothing, when we do pursue the issues as they arise.

Senator FAULKNER—Is there any answer that has been provided by US authorities that you have not been satisfied with?

Mr Smith—At this stage we are satisfied with the responses, but we will test them ourselves when we have an opportunity to visit Guantanamo Bay.

Senator FAULKNER—Thank you for that, but that is actually not an answer to the question I asked. In fact, I asked: have you received any answers or responses from US authorities that you have not been satisfied with? I hear that you are currently satisfied—God only knows why, given you have not even visited the place to see what the new accommodation is like. I accept that you are satisfied currently. Whether you should be or not, that is another question. You have told us that you are satisfied. All I want to know is: are there any answers that have been provided by US authorities at any stage that have not satisfied you?

Mr Smith—No.

Senator ROBERT RAY—Do we have any idea of a timetable in which Mr Hicks may face a trial?

Mr Moraitis—Yes. The military commission process for Mr Hicks has been put on hold because of an imminent Supreme Court decision called Hamdan, which is basically an appeal of previous decisions in the US. All military commission processes as such have been stayed pending that decision. That is due in June or July. That is my understanding. Once that decision is made either way, depending on what the Supreme Court decides, that will then decide—

Senator ROBERT RAY—So how long has Mr Hicks been in custody, if you like, without trial?

Mr Moraitis—Since Guantanamo Bay?

Senator ROBERT RAY—Yes.

Mr Moraitis—I think he went to Guantanamo in early 2002.

Senator PAYNE—Could I just ask Mr Moraitis to finish the sentence that he did not quite get to the end of for the previous question? He said that when the Supreme Court decision is handed down then it will be decided—

Mr Moraitis—Yes. I did not get a chance. It depends. I do not know what the outcome of the Supreme Court decision will be. If the Supreme Court decides that military commissions are valid under the US law and presidential powers et cetera then obviously the commissions will resume, the process will begin for Mr Hicks and the process of the military commission will go forward. If, on the other hand, the Supreme Court finds that the commissions are extra-constitutional or not within US laws then those processes are vitiated and it is a decision then for the US authorities as to what they do with Mr Hicks. Obviously, if they decide that they will not try him because they only want to try under military commissions then it is clear that Mr Hicks will request his return.

Senator ROBERT RAY—How many countries have negotiated for their own citizens to be released from Guantanamo Bay? Do we know?

Mr Moraitis—I do not have a list of countries. There are a few, obviously, that people are aware of: the UK and a few others. I cannot really quantify that, because over the last few years there have been quite a few decisions made by US authorities to release detainees back to their home countries. I understand that it was on the basis of undertakings made by those home countries, as such.

Senator PAYNE—I am sorry, but this again follows on from Senator Ray's question and Mr Moraitis's response. Mr Moraitis, to paraphrase, you said, 'If the military commission process is not found to be valid'. Then, at the end of your detailed response, you said, 'I think Mr Hicks will request his return.' His return to where?

Mr Moraitis—If no military commission process or any other process of deliberation regarding Mr Hicks is envisaged and the decision is to detain him and do nothing about it, then obviously, from our perspective, the view—and this is the view that has been held all along—would be that he should either be tried, obviously with all due celerity, which

unfortunately has not been the case, or released, which has been a basic proposition of the Australian government.

Senator PAYNE—Thank you for clarifying that.

CHAIR—Going on from that, his status as a citizen is now what? Currently, he has an entitlement to a British passport, does he not?

Mr Moraitis—He is an Australian citizen, as far as Australia is concerned.

CHAIR—He is an Australian citizen, but he has applied successfully to be declared a British citizen.

Mr Moraitis—Various decisions have been made by UK courts reaffirming his rights to UK citizenship by virtue of his mother's nationality. That is a matter for the UK and Mr Hicks.

Senator FAULKNER—But he does not lose Australian citizenship.

Mr Moraitis—No. The only way a person could lose Australian citizenship in this context would be to seek to renounce it.

Senator FAULKNER—Hence, however adequate or inadequate it might be, consular involvement from Australian authorities will continue while ever Mr Hicks is an Australian citizen, I assume.

Mr Moraitis—That is my assumption. Mr Smith would decide that.

Mr Smith—That is correct.

Mr Moraitis—I think that would be the proper assumption.

Senator ROBERT RAY—We know that citizens of the United Kingdom have been released.

Mr Moraitis—Correct.

Senator ROBERT RAY—I do not want to put words in your mouth, but that is basically because the government of the United Kingdom does not recognise the validity of the military commissions and the Guantanamo Bay process. Is that right?

Mr Moraitis—That is my understanding, yes.

Senator ROBERT RAY—In fact, I think I saw on the BBC World Service the British Attorney-General condemning this particular institution and calling for its closure. Do we have a record of that?

Mr Moraitis—I think there was some discussion of that. Can I clarify that nine UK detainees have been released but, if I recall correctly, none of them had been charged with any offences. That is a distinction.

Senator ROBERT RAY—That is the distinction, is it?

Mr Moraitis—That is a distinction—not that I am suggesting that that is any distinction to make. But, certainly, the UK view has been somewhat different.

Senator ROBERT RAY—At the time that they were released and returned home, had Mr Hicks actually been charged?

Mr Moraitis—I will have to check. I cannot recall. Attorney-General's would know the details, but I do not. I will have to check.

CHAIR—Mr Moraitis, can you further explain to us about the appeal that is currently before the Supreme Court of the United States. It is an appeal by whom?

Mr Moraitis—By a Mr Hamdan, who is a detainee in Guantanamo Bay.

CHAIR—So at first instance he was unsuccessful in seeking to have the process vitiated or derogated by the court.

Mr Moraitis—Correct. In his initial claim before a US court—I think it was the court of appeal in Washington DC—there was a unanimous decision, as far as I can recollect, upholding the validity of the military commission process. Thereafter, one of the judges on that court, Judge Roberts, was promoted to the Supreme Court of the United States. He has recused himself from this Supreme Court hearing, which means that there are eight judges who will decide.

CHAIR—What is the anticipated time frame with respect to that decision, given that Mr Hicks and others are apparently currently in limbo?

Mr Moraitis—It is June, as I mentioned before. June is my understanding.

CHAIR—Will it be late June or early June? When in June?

Mr Moraitis—I would have to check the exact date.

CHAIR—Is it a hearing de novo or do we have to go through a reserved judgment period?

Mr Moraitis—I do not know the details of the US legal process, but I understand that it is an appeal on questions of law from a court of appeal.

CHAIR—So it is likely to be August at the earliest when a decision will be handed down.

Senator ROBERT RAY—You are joking. August in the US—no-one works.

CHAIR—I am being optimistic.

Mr Moraitis—I do not know how the US legal calendar works in that period of the year, to be honest with you.

CHAIR—Do you have any information you can assist the committee with as to an expectation of when?

Mr Moraitis—Our expectation has been all along that it will be August or September, but, as Senator Ray suggested—

Senator ROBERT RAY—They do not normally sit in August, like congress.

CHAIR—Thank you for that indulgence.

Senator ROBERT RAY—That was good. It added to the sum of our knowledge. I have nothing further on this.

Senator MILNE—I have some questions on 1.1.3, particularly in relation to the US and Australia's involvement in the AP6 climate partnership. In the news today it is reported that the appropriation has been refused at this point from the US side. Can you tell me if the Prime

Minister had a discussion with US officials relating to AP6 and, in particular, to expected difficulties with appropriation in relation to this matter?

Ms Adams—To answer the first part of your question: yes, we have seen the reports of the developments in the US House of Representatives Committee on Appropriations and the house bills that have been passed regarding the AP6 funding. Of course, that is only part of the US budgetary process, so that is an ongoing process.

Senator MILNE—Yes, but did the Prime Minister have any discussions in relation to this matter when he was in the US on his most recent visit?

Ms Adams—I am not able to answer that but the budget process is the congress not the President.

Senator MILNE—I am aware of that but I am asking whether the Prime Minister had any discussions with any US officials while he was in the US on his recent visit about the AP6 partnership and perhaps this appropriation?

Mr Chester—We are not aware of the detail of the discussions the Prime Minister had. We have not seen the records of conversation for those discussions. I suggest that the Department of the Prime Minister and Cabinet is the appropriate area to ask about the details of the discussions that may have taken place.

Senator MILNE—On a different matter, have we made any representations to the US relating to the issue of military planes flying through European airports carrying detainees en route to other destinations for interrogation? Have we made any representations to the US, the EU or to Britain in relation to this matter?

Mr Chester—This question is probably best directed to somebody from another area of the department.

Mr Stuart—Your question is about whether we have made representations about US practices of rendition?

Senator MILNE—Yes.

Mr Stuart—No, we have not.

Senator MILNE—Do we have any information about what has been going on or how many flights have been involved? Have we had any meetings about it? Have we asked any questions about it?

Mr Stuart—There was a lot of media discussion and public commentary on this, particularly last year. Following criticism internationally of US practices, the US Secretary of State made a statement on 6 December last year that in conducting any renditions it was the policy of the United States to comply with its laws and its treaty obligations. On the basis of that statement we have not thought it necessary to raise the issue with the United States.

Senator ROBERT RAY—I would have thought that with such weasel words the answer was the opposite, but I might be a cynic. It would have been easier to say, 'No, we do not do it.' I thought the Secretary of State could have said, 'No, we do not do it,' rather than the words you have read out. These are not words attributed to you but to her. Highly suspicious.

Senator FAULKNER—Mr Chester, this is a matter that you may have been informed was raised in the PM&C estimates. I wonder if you can help me because PM&C suggested we ask, you so I will ask you. This goes to the Prime Minister's recent trip to the United States and Canada—Ireland as well, so it all fits under 1.1.3, doesn't it?

Mr Chester—It does.

Senator FAULKNER—Front and centre, right where we should be. Could you confirm for me, Mr Chester, that the Department of Foreign Affairs and Trade, through our embassy in the US, was asked to nominate certain individuals to attend a state dinner for the Prime Minister in Washington?

Mr Chester—I do not know whether that is true or not, but it would not be unusual for that to happen.

Senator FAULKNER—I am sure that it would not necessarily be unusual, but surely someone can confirm whether the Australian embassy was involved in this matter.

Mr Chester—I do not have the details of that with me.

Senator ROBERT RAY—You are not aware that it is traditional that 12 to 14 names can be suggested, not necessarily accepted, as those who should attend such a dinner? A lot of other people are invited irrespective of that suggestion.

Mr Chester—I am not aware of the details of how the invitation list is put together.

Senator FAULKNER—Who is our current ambassador to the US?

Mr Chester—Dennis Richardson.

Senator FAULKNER—If you are not aware of the role that the embassy played, are you aware of who attended the state dinner for Mr Howard in Washington?

Mr Chester—No, I am not.

Senator FAULKNER—Let us go back a step. Are you aware that there was a state dinner for Mr Howard in Washington?

Mr Chester—Yes, I am.

Senator FAULKNER—Right. That is a start. That is terrific. Can you tell me when that state dinner occurred?

Mr Chester—Tuesday, 16 May.

Senator FAULKNER—Was that an evening function?

Mr Chester—Yes, it was.

Senator FAULKNER—You can confirm that Mr Howard attended with Mrs Howard?

Mr Chester—Yes.

Senator FAULKNER—From the briefing you have in front of you, can you confirm any other attendees at the dinner?

Mr Chester—No, I do not know who the attendees at the dinner were.

Senator FAULKNER—You just know that it was on and Mr and Mrs Howard attended it?

Mr Chester—It was a state dinner for the Prime Minister, yes.

Senator ROBERT RAY—In terms of those nominated by the embassy—you will have to take this on notice, I think—was one of those guests Mr Brian Loughnane, Federal Director of the Liberal Party of Australia? That is the first part of the question on notice. Was the second person Mr Chris McDiven, Federal President of the Liberal Party of Australia? Was the third guest nominated Mr Shane Stone, former president of the Liberal Party of Australia?

Senator FAULKNER—It has all bases covered, really.

Senator ROBERT RAY—I am waiting on the National Party here, but—

Senator FAULKNER—Keep waiting! Forget it!

Senator ROBERT RAY—Did the list include Mr Andrew Peacock, former leader of the Liberal Party—

Senator PAYNE—And former ambassador to the United States as well.

Senator FAULKNER—Yes, he is that as well.

Senator ROBERT RAY—Did it include Mr Michael Thawley, former ambassador; Mr Paul Ramsay—

Senator FAULKNER—Who worked in Mr Howard's office.

Senator ROBERT RAY—who is on the AEC site, I notice, for giving \$12,000 to the Liberal Party in 2004-05; Mr Doug Kefford, who, I notice, is on the AEC site for \$10,000 for the Liberal Party—and he did give some money to the Labor Party one year too, so we should be grateful for that; and, finally, Mr Tony Clark, director of Ramsay Health Care? I will not read out all of his donations. It would take us all night. If you can take that on notice, that would be good.

CHAIR—So you want to know who was at the state dinner in addition to the people that you have named?

Senator ROBERT RAY—No, not at all.

Mr Chester—I think you are asking me to confirm whether those people were at the dinner.

Senator ROBERT RAY—Let me put it into context. I assume there were about 100 to 200 people at the dinner. Quite appropriately, we get to nominate 12 or 14. The State Department does not have to accept that. It is my understanding that these are the 12-odd who were nominated, plus a couple of partners.

Senator FAULKNER—Can I add a further question to those important questions on notice: was the Prime Minister or his office involved in requesting the attendance of certain individuals at the dinner? Can you take that on notice for us too?

Mr Chester—That is probably a question for Prime Minister and Cabinet rather than DFAT.

Senator FAULKNER—Well, no—

Senator ROBERT RAY—We might have a joint estimates committee, because we get shoved from one to the other.

Senator FAULKNER—Not in this case, because the invitations are issued through the embassy. So I think it is a reasonable question. Also, the Department of the Prime Minister and Cabinet invited me to ask you, Mr Chester.

Senator ROBERT RAY—Not him personally.

Senator FAULKNER—No.

Mr Chester—We will see what we can do.

Senator FAULKNER—I think it is, in this circumstance, appropriate.

Senator Coonan—Just so that we are perfectly clear, Senators Ray and Faulkner, what point are you seeking to make with this?

Senator ROBERT RAY—When I get the answer I might make the point, but I have not got the answer yet.

Senator Coonan—It is just that you tend to be attributing certain characteristics to these people on the lists that you have read out—

Senator FAULKNER—You know, Minister, that if I were to make a political comment like that, immediately the chair would jump all over me—

Senator ROBERT RAY—Pounce.

Senator FAULKNER—yes, pounce—because he has ruled out any such comments and making points. Not that we would ever make a political point.

Senator Coonan—I am just interested to know, because some of the people—

Senator FAULKNER—You are flouting the chair's ruling.

Senator Coonan—I am saying to you that some of the names that you have read out are people who have quite considerable attributes—

Senator FAULKNER—No-one is doubting that.

Senator Coonan—and they are people who belong to the business community who would in any view, Labor or Liberal, be perfectly entitled to be given an invitation.

Senator ROBERT RAY—Of course they might be entitled to one.

Senator Coonan—I am just seeking to make that point.

Senator ROBERT RAY—Suppose every one of them, though, happened to be from the conservative side of politics or to be a donor et cetera. You see, there was a controversy to do with the White House, especially under the Clinton regime, when the White House was used for fundraising.

Senator Coonan—I understand your point.

Senator ROBERT RAY—So we just want to know who, out of choice, was invited. There were a lot of other people there too—good golfers. I think Geoff Ogilvy and Greg Norman were there. A whole range of prominent Australians were invited.

Senator FAULKNER—At this stage we will ask the questions, Senator Coonan, and draw the appropriate conclusions after the answers are provided. Let us hope that they are provided on time.

Senator Coonan—I was just assuming that you had not prejudged; that was all.

Senator ROBERT RAY—You cannot assume that.

Senator Coonan—That is why I was asking the question.

Senator FAULKNER—I have always said, Senator Coonan, that an estimates committee is not a place for assumption.

Senator ROBERT RAY—Like the Queen of Hearts in *Alice in Wonderland*, we bring down the sentence, then the verdict and then hear the evidence. You know that.

CHAIR—We do know that.

Senator Coonan—That is why the committee sometimes falls into serious disrepute.

Senator ROBERT RAY—Gagging public servants to prevent them answering questions on valid matters, like your government has, is what really drives it into disrepute. We are having a little editorial, but that is all.

Senator Coonan—Let us not get into that kind of name-calling, because it goes both ways.

CHAIR—Let us stay focused on the questions.

Senator FAULKNER—I have a question in relation to the dinner. You could perhaps take on notice for me also, Mr Chester, whether there are any guidelines or protocols for determining the invitees to such events, particularly those who are the slated invitees of the embassy—the 12 to 14 who are nominated by the embassy. Any criteria that are used in relation to that would be helpful. Thank you.

CHAIR—We will move to 1.1.4—South Pacific, Middle East and Africa.

Senator MILNE—I want to ask Mr Innes-Brown, if he is here, a question in relation to Iraq. I would like to note that in the British press last week, for the first time that I have seen, reference was made to ethnic cleansing in Iraq. Can you tell me whether that is occurring under our watch?

Mr Innes-Brown—I am not aware of the precise report that you referred to. I am also not aware that the phrase ‘ethnic cleansing’ has been used widely in relation to developments in Iraq. Obviously it is a very difficult security situation. There has been violence which can be attributed to a range of causes. There has been criminal violence, violence perpetrated by the insurgents and sectarian violence as well according to accurate reports. I do not have any specific information on a specific policy of ethnic cleansing by any of the groups in Iraq.

Senator MILNE—That is why I said it was the first reference that I had seen in relation to people being expelled from Sunni and Shia neighbourhoods et cetera. Given the discussion that is currently going on about an exit strategy from Iraq, I wanted to know specifically whether there has been any discussion in the task force or any report or discussion in relation to the notion of ethnic cleansing as opposed to just criminal damage or other aspects of violence.

Mr Innes-Brown—I can add a bit more, actually, now that you have clarified it a bit more. There have been reports of certain areas where, for instance, some different groups have targeted others on a religious basis. In terms of a discussion in the task force, an issue that we are starting to focus on is in relation to recent reports of displacement of persons. Indeed, there is reporting that a large number of people have been displaced in recent months. It is an issue we have started to discuss in the task force. I had a discussion with another agency on it last week and it is an issue we are planning to seek additional information on.

Senator MILNE—Can you explain to me the difference between displacement and ethnic cleansing when we are talking about moving people out of areas by force because of religious factionalism?

Mr Innes-Brown—We have received a range of information on that. It is sometimes a bit difficult to determine on what basis people are leaving their homes. It could have an ethnic or religious basis or it could just be the state of the security situation in particular neighbourhoods. The information I have received is not specific on that. There obviously have been allegations that certain groups have been chased out of certain areas on the basis of their religion, as you are suggesting. But I do not have any categorical information on it. It is something that we will seek some additional information on. If there are indeed a large number of people who are being displaced, there is obviously a humanitarian dimension to that. We will see whether it is something that we can perhaps assist in helping the Iraqi government to address.

Senator MILNE—In relation to the exit strategy from Iraq, a lot has been made of the idea that the Prime Minister of Britain's visit to the US pertains to an exit strategy. Have Australian authorities made representations to either the US or the UK to understand what the proposed negotiations are? Are we privy to those?

Mr Innes-Brown—As far as I am aware, I have not received any information about the recent visit by Prime Minister Blair to Washington and what they discussed. Mr Chester indicated earlier the discussions that Prime Minister Howard had during his recent visit to the United States. I have not had a readout on what was discussed in relation to Iraq.

Senator MILNE—Will DFAT be following up in relation to what has been decided on the exit strategy?

Mr Innes-Brown—I am not sure that anything has been decided as yet. I think the Prime Minister about two weeks ago made some comments on the general question of Australia's military involvement in Iraq. My understanding is that he said that this was an issue that was still under consideration. So I do not think any decision has been made on any activity that is different to what we are doing now.

Senator MILNE—Is it normal for Australia not to be included in discussions of an exit strategy, when we are one of the 'alliance', so to speak, in Iraq?

Mr Innes-Brown—We do engage with those governments on Iraqi matters. In terms of a so-called exit strategy, there is a body that involves the Iraqi government and is looking at the transfer of security responsibility to the Iraqi government and Iraqi security forces. Australia is not a member of that body, but there are ongoing discussions of these issues and we stay in contact with our coalition partners on these matters.

Senator ROBERT RAY—Are we on 1.1.4?

CHAIR—1.1.7.

Mr Chester—Can the officers dealing with 1.1.4 leave?

Senator FAULKNER—What is the title of 1.1.4?

Mr Chester—South Pacific, Middle East and Africa.

Senator FAULKNER—Does Iraq come under this heading? I know Mr Innes-Brown is from the task force. Is this where Iraq comes in?

Mr Chester—That is right.

CHAIR—Do you have some questions for the task force?

Senator FAULKNER—Yes, I have a couple of questions. I wondered if the department had made a close examination of the reports that were compiled by the Pentagon for the US congress. I think two reports have been undertaken by the Pentagon for congress on a range of things, including the details of civilian casualties in Iraq. Has the department had an opportunity to cast an eye over those two reports that have been tabled in congress?

Mr Innes-Brown—Staff in the task force have looked at them.

Senator FAULKNER—When you have that sort of examination, what do the staff do? Do they prepare themselves, crystallise them, and report as a result of that, or is it just one of the many inputs into the task force's work? Can you explain to the committee what the task force does with this sort of material?

Mr Innes-Brown—It depends on the issue. In those cases, I think they were read and the information helped inform a broad understanding of the situation in Iraq. Obviously those particular reports, as has been commented by other agencies, are not categorical, in some ways, but they do provide some sort of a snapshot. It generally feeds into our understanding of developments in Iraq. We read a wide variety of information. Some of it is more credible than others, but it gives us a broad understanding. For instance, we look at media reports every day on the internet, which is a source of information. Some of those reports are less accurate than others, but you can get a sense of developments from them.

Senator FAULKNER—I have been interested for some time in the impact of the war in Iraq on the Iraqi civilian population and have asked questions at this estimates committee and a range of others about that issue. Since the last budget estimates round—to give ourselves a clear time frame—has the department requested any analysis of the impact of the war on the civilian population in Iraq?

Mr Innes-Brown—No.

Senator FAULKNER—Obviously, however, you have received some analysis to that effect, because we have just spoken about at least some.

Mr Innes-Brown—Yes, we have received some information and partial statistics on the issue. That is correct.

Senator FAULKNER—Apart from the issue I have raised about the reports compiled by the Pentagon for tabling in the congress, are you able to give a brief overview to the committee of what analysis has been received by the department?

Mr Innes-Brown—Not in specific terms. If you are looking at the overall security situation, we indicated that we receive media reports on developments on that front. We also receive other information that relates broadly to those issues, whether from our embassy in Baghdad or through other channels.

Senator FAULKNER—Following on from some issues raised a moment ago by Senator Milne, has the department at any stage requested any analysis of the ongoing humanitarian situation in Iraq?

Mr Innes-Brown—Aspects of it. For instance, there have been recent reports about health issues, and I have sought information from AusAID on that. There were some recent reports about malnourishment of children and so forth. I have had a look at some of the reports that are available to see what I could make of them, and my staff have as well. I have spoken to AusAID to get a more expert analysis of how serious the problem is and whether there is something we can possibly do. If the problem is as serious as what some of these reports say in the headlines, there might be a role for us to assist. As I said, displaced persons is an issue that, in light of recent reports, we are starting to focus on. I have had a discussion with another agency on it and we will be seeking further information. We have already had some reporting from our embassy and abroad on that. It was not detailed, but again it is an issue that in light of recent developments is something that I believe we need to do some further work on.

Senator FAULKNER—What is the other agency you have spoken to?

Mr Innes-Brown—I spoke to AusAID about it last week.

Senator FAULKNER—Broadly, you have requested at least some analysis of the humanitarian situation in the terms that you have just provided to us. I mentioned the impact on the Iraqi civilian population and, specifically, the civilian casualties as a result of the war. Is there nothing on that area?

Mr Innes-Brown—Not specifically. If you are asking whether we have sought clarification of the statistical set which is in those reports, I have not.

Senator FAULKNER—What about the economic impact of the war? Is that also something that you are involved in the consideration and analysis of in the Iraq task force? I am talking about the economic impact on Iraq.

Mr Innes-Brown—We do monitor the issue. We have not commissioned any specific work on it. The issue that I mentioned—the nutritional situation of the population—is one subset of the economic impact. We are aware of reporting that is around from other agencies—not Australian government but international agencies—on the economic situation in Iraq. We are aware of reporting on specific indices that are covered in some of the websites that collate this sort of information. But, no, we have not specifically analysed that angle.

Senator FAULKNER—Are you able to say what the economic outlook is for Iraq?

Mr Innes-Brown—My understanding is that the IMF is forecasting growth of around five to six per cent this calendar year—in that vicinity. Obviously inflation is reasonably low; I think the estimate is around five per cent. But unemployment is still a significant issue, and it is around 30 per cent.

Senator FAULKNER—I assume the post reports on these issues. Would that be right? I said to the minister that we should not make assumptions in committees, so tell me if the post reports on these sorts of issues.

Mr Innes-Brown—Are you asking me?

Senator FAULKNER—Yes.

Mr Innes-Brown—From time to time, yes.

Senator FAULKNER—What about the situation in relation to oil production? Is that going up or down?

Mr Innes-Brown—I do not have any specific information here, but it is below capacity. I am aware of that. I do not have specific information on the trend in recent months, but my understanding is that insurgent attacks on the infrastructure have definitely had an impact on production and it is well below the actual capacity.

Senator FAULKNER—Are you able to say whether access to water is better or worse than pre invasion?

Mr Innes-Brown—I would have to take that on notice.

Senator FAULKNER—A pretty fair slice of Iraq's revenue is from oil. The figure is over 80 per cent, isn't it? Is 80 to 90 per cent of their revenue gained from oil?

Mr Innes-Brown—It is a high proportion.

Senator FAULKNER—I would have thought that, in any analysis, this sort of consideration would be absolutely crucial. Would you accept that?

Mr Innes-Brown—That is correct.

Senator FAULKNER—The last figures I saw showed that oil production had dropped by eight per cent in 2005. Are you able to confirm whether those figures are correct?

Mr Innes-Brown—No.

Senator FAULKNER—Can you take that on notice?

Mr Innes-Brown—Sure.

Senator FAULKNER—I would appreciate that. And can you also take on notice what the trend is for the beginning of this calendar year. There is an issue about the pipeline. Is the pipeline to Turkey?

Mr Innes-Brown—I think there are several pipelines, but there is a large pipeline that goes north.

Senator FAULKNER—Isn't it true that the capacity or the flow in relation to whatever the pipeline that goes to Turkey is called has dropped from something like 800,000 barrels a

day pre-invasion to about 40,000? Is that an accurate figure? It has certainly been quoted in the media.

Mr Innes-Brown—I do not know. I would have to check on the dimension of production.

Senator FAULKNER—It was 800,000 barrels a day pre-invasion to about 40,000 in 2005. I do not know its precise name, but it is a northern pipeline to Turkey. You might check that for us and confirm what the situation is. Does the department agree that the fact that we now have two reports compiled by the Pentagon for the purpose of tabling in the US is a clear indication that there actually is an effort being made by US authorities to establish the numbers of casualties and, specifically, the number of civilian deaths in Iraq? Isn't that the crucial thing about these two reports—that there had been no confirmation prior to the tabling of these reports that the US was attempting, in any sense, to collate or keep these statistics? Now we know that is the case because of these public reports. Is that right?

Mr Innes-Brown—I do not know what their precise intention was, but it appears that in order to produce them they are obviously collating some information on the issue. However, I note that they are not saying it is totally comprehensive, and obviously it is caveated, but I agree that they are obviously starting to keep information on these issues.

Senator FAULKNER—The key change is that, previously, US authorities had been saying words to the effect that they do not do body counts—obviously apart from US military casualties. But with this sort of exercise, however accurate it might be—and of course there are difficulties in being absolutely precise about the number of civilian casualties—at least there is now clear and tangible evidence of US authorities trying to get a real handle on these statistics. That is quite a significant change since we last examined this issue at Senate estimates, isn't it?

Mr Innes-Brown—Yes, it appears that they are now collating information on this issue and trying to tabulate it, in a sense.

Senator FAULKNER—Has the department a view as to the accuracy and validity of the numbers of deaths that are recorded on the Iraq Body Count website? It seems that most objective observers believe it has a high level of credibility. Is that a view that is shared by the Department of Foreign Affairs and Trade?

Mr Innes-Brown—It is not something we have considered—whether it is valid or invalid. People do quote it, as you suggest, but beyond that we have not done any independent testing of it or anything like that.

Senator FAULKNER—Does the department monitor the Iraq Body Count website closely?

Mr Innes-Brown—I would not say regularly. Closely? No, I would not think so.

Senator FAULKNER—Does the department believe there is any more valid statistical basis for trying to establish a tally of civilian deaths and casualties in Iraq?

Mr Innes-Brown—It is not really an issue. We have not sat down and looked at the various estimates that are around and worked out which we believe is the most valid or otherwise. Iraq Body Count and Brookings seem to be the ones that are most quoted by others, but we have not done any independent testing. In terms of working out which is a

better or more accurate estimate or indices, it is probably more an issue for someone like ONA, who might be able to—

Senator FAULKNER—I do not know what your terminology in saying ‘it is not really an issue’ means, but the number of civilian casualties in Iraq I believe is a very important issue. It certainly is as far as I am concerned. It is an issue I have raised on very many occasions in the parliament and in committees of the parliament. I am interpreting your comment that ‘it is not really an issue’—and I am trying to be generous, Mr Innes-Brown—as being in relation to not the number of civilian casualties per se but the actual mechanism for recording them.

Mr Innes-Brown—You asked me whether we had a view on one set of statistics in relation to another set of statistics. That is what I was referring to. I was not talking about the issue in general. Obviously, civilian deaths in Iraq is of considerable concern to us.

Senator FAULKNER—I would have a strongly different view anyway to yours. The mechanism for counting the civilian casualties and the different public tallies of civilian casualties is very important matter. It seems to me that this country, as a country that was one of the three countries in the coalition of the willing, ought to have the closest interest and a very real responsibility in this area. I have been concerned for a long period of time about the lack of concern and consideration for these matters.

Senator Coonan, you might be able to tell me, as minister, whether the fact that we now know the US congress is receiving official material in relation to numbers of civilian deaths in Iraq via a Pentagon report to the US congress has meant any change of attitude in the Australian government on the issue of the need for a country involved in invading Iraq, like Australia, to take a real responsibility in measuring the civilian casualty toll in that country. Has there been any change of attitude by the Australian government?

Senator Coonan—What do you mean by ‘real responsibility’?

Senator FAULKNER—I cannot ask my question in any different way. We have a situation where the Pentagon—

Senator Coonan—I have been following your line of questioning.

Senator FAULKNER—You would be aware then that a report dealing with a whole range of issues, but including for the first time two reports including figures on civilian deaths in Iraq, has been tabled in the US congress. I have been told consistently at committees like this over a long period of time that these statistics have not been kept by either this country, Australia, or our coalition partners. We now know, courtesy of those official reports from the Pentagon, that tallies of civilian casualties have been kept. Has there been, as a result of this knowledge, any change of policy or approach in relation to the Australian government?

Senator Coonan—Again, I am not quite sure what you mean by ‘real responsibility’. You know what the government’s policy is and it has not changed.

Senator FAULKNER—I am talking about the approach to trying to ensure that this country understands the impact of the war on the civilian population, and just one element of that is the numbers of innocent civilians who have been killed in the war. No efforts have been made. I have heard from a range of agencies over a very long time to try to establish the authenticity of publicly available material on the number of civilian deaths in Iraq. As a result,

we now know that the Pentagon has undertaken some work and has tabled this work in congress. I am asking whether there has been any change of approach by the Australian government and whether there is now some interest on the part of the Australian government in trying to establish the cost of the war in Iraq in terms of the deaths of innocent civilians in that country.

Senator Coonan—Do you mean—

Senator FAULKNER—I cannot make it any clearer than that.

Senator Coonan—I will raise it with the minister. Do you mean independently of being cognisant of what the US has done with the publishing of its report? Are you suggesting there should be some independent evaluation by the Australian government?

Senator FAULKNER—I have been told time and time again that no coalition partner has been responsible for trying to come to grips with this matter. In other words, no coalition partner has been involved in finding out what seems to me to be a fundamental issue: how many civilians have died in Iraq as a result of the war. The world has moved on, Senator Coonan. We now know the Pentagon has made an attempt—however accurate it is is another issue, but it has made a real attempt—to try to see if it can quantify this impact and a range of other impacts in terms of the civilian population and the humanitarian situation in Iraq. But the specific issue that I have been asking questions about for a very long time is the number of civilian deaths: the deaths of innocent civilians in Iraq. That is what my question focuses on. We know the US has been keeping a tally of the deaths. We know that on two occasions information has been tabled in congress. Has it changed the policy of the Australian government in attempting to find out the impact of the war in relation to the numbers of civilian casualties?

Senator Coonan—Obviously the US has made a report and provided a tally. Insofar as that provides relevant information for the consideration of this government, no doubt it will be carefully considered.

Senator FAULKNER—How important does the Australian government believe it is to try to establish what is the human cost in terms of the deaths of innocent Iraqi civilians? Does the Australian government believe that is important?

Senator Coonan—The Australian government will always act responsibly and obviously regard any civilian casualties as important. Of course we do.

Senator FAULKNER—Do you know how many Iraqi civilian deaths there have been?

Senator Coonan—I can take it on notice, but you were just saying that there is tally of the consequences that was done for the Americans. No doubt, that provides some base for consideration by the Australian government.

Senator FAULKNER—It does, and there is a range of other sources, some of which I have been working through with Mr Innes-Brown at this very estimates committee hearing. My question to you is the policy question as to whether there has now been a change of approach or attitude on the part of the Howard government with regard to maybe trying to establish what the impact on the civilian population has been. Has there been a change of

policy given that we certainly have a very clear and tangible indication that things have changed in the US because of the Pentagon's work that has been tabled in the congress?

Senator Coonan—My answer on that—

Senator FAULKNER—It is not an appropriate question for me to ask Mr Innes-Brown.

Senator Coonan—I understand. It is just that what you are trying to suggest, I think, is that the government should be making some independent assessment. I am not in a position to tell you that. What I have said is that this government regards as an important matter the consequences and impact on civilians. Of course we do. But no doubt these other reports provide a basis for us to give further consideration to these matters.

Senator FAULKNER—Why then since the invasion of Iraq has no effort ever been made by the Australian government to establish the impact in just this one area? I am not even going to other humanitarian areas or the economic impact or a range of other things that have already been canvassed at this committee. It is just this one issue, which I think is a crucial one. I have tried to contain it to this issue of civilian deaths and casualties in Iraq.

Senator Coonan—My answer remains the same.

Senator FAULKNER—What is the answer?

Senator Coonan—The answer is that there are some reports that provide these assessments. You yourself have just established—and I have no reason to doubt you—that the Americans have done some sort of tally. It can provide a reference point for us to have a look at those matters. I do not really see that there is some basis for some further independent assessment.

Senator FAULKNER—Why hasn't the government been trying to establish this impact from day 1?

Senator Coonan—My answer remains the same.

CHAIR—We will adjourn for the evening break. Thank you.

Proceedings suspended from 9.12 pm to 9.25 pm

CHAIR—I call the committee to order. In an endeavour to finish off these sections tonight, I will go to Senator Payne, who has some further questions on Iraq, I think.

Senator PAYNE—No, not on Iraq. I want to ask Mr Ritchie some questions about the Solomon Islands and RAMSI. As I understand it, with respect to the ministers' joint visit to the Solomons 10 days ago, in foreign minister Peters and Mr Downer's discussions with Prime Minister Sogavare and other appropriate Solomon Islands office holders there was some discussion about the future of RAMSI and how it will be reviewed. Will that review be based on the eminent persons report? How is that to progress?

Mr Ritchie—We do not quite know yet how that review will progress, but you are absolutely right to say that Prime Minister Sogavare pointed to the eminent persons group of the forum. He said that that would be a starting point and that his government would look at the way the previous government had implemented that report and would take it from there. That is pretty well all the detail we have got. Mr Downer said that, being a new government,

it was understandable that it wanted to have a look at RAMSI and see how it was going and so on. However, we do not have a great deal more detail than that.

Prime Minister Sogavare was very quick to recognise that RAMSI was a very positive intervention, or a very positive presence, in the Solomon Islands. I think he went as far as to say that without it there would be chaos and that nobody in their right mind would oppose it. I think we have got a good starting point of acceptance of RAMSI—and, indeed, more than just acceptance. There is an understanding that it has been a very positive move for the Solomon Islands.

We will have to work with the Solomon Islands government in terms of finding out where they want to take a review. One of the things that they have talked about is to have a greater number of Solomon Islanders in positions of responsibility. I think that is absolutely something we can talk to the Solomon Islands government about. We should engage them generally on the capacity-building agenda—building up their institutions and building up their people to take over positions. As the minister, Mr Downer, said, RAMSI is there for as long as it is useful and for as long as it is wanted by the people in government in the Solomon Islands, and no longer. I think there is an area there in terms of capacity building and Solomon Islanders taking over positions which we can talk about. The rider to that has to be that the individuals who do take over the positions have to be well qualified and well able to do the job. That is something that we can talk to the Solomon Islands government about in terms of actually providing support and training for those people.

Senator PAYNE—This is not necessarily a question for you, Mr Ritchie, but I think AusAID has already played a role in identifying some of those sorts of people in the work that it has done with key public servants. Are there any key areas of the work of RAMSI, like law and order or anticorruption measures and justice work, which we would be concerned may be diluted in this process? They are obviously pretty fundamental from where we are sitting.

Mr Ritchie—They are. I think our intention would be not to dilute the various elements of RAMSI. You have mentioned two: law and justice is one; economic governance is another. Machinery of government is generally the third broad pillar of RAMSI. Our concern would be to make sure that the gains that RAMSI has registered already are consolidated and that we go forward. Mr Downer has made that point by talking about the integrity of RAMSI and not wanting it to be cherry picked—that is to say, not wanting parts of it to be continued and other parts not to be.

Senator PAYNE—You said in answer to my earlier question that we would endeavour to work with the Solomon Islands government in finding out where they want to take a review. How do you see that playing out? How do we, New Zealand and other RAMSI members work with the Solomon's government to do that?

Mr Ritchie—That is a good question, Senator. I think we are at the start of that process. We need to give it some considerable thought and advise the minister on the way forward. He will definitely have his own views on that. We really are at the start of that process now—the visit only took place on Friday a week ago.

Senator PAYNE—Certainly, I think the committee would have an ongoing interest in that as well as all of the other issues that we have discussed. Thank you.

Senator FERGUSON—Just moving slightly further west from what Senator Payne has been asking you about, is the situation in Bougainville currently as stable as we would want it to be?

Mr Ritchie—There have been recent problems in Bougainville with the presence of, at first, eight former Royal Fijian Military individuals; three left, leaving five. They are associated with an individual called Noah Masingku. We, as PNG does, have concerns about those individuals. There were newspaper reports last week, I think, that Masingku had gone into hiding and that the remaining five Fijians were seeking to leave. Mr Downer spoke to Sir Peter Barter, who is the PNG minister responsible for Bougainville, last week, I think, about that, and Sir Peter was at that stage very hopeful that there might be a peaceful resolution to that particular issue in Bougainville. More broadly, you would have to say that the peace process is working really well on Bougainville. But the province has a long way to go in terms of its economic development.

Senator FERGUSON—It is almost four years since the peace treaty was signed. Is it fair to say that following the signing of that peace treaty things have really settled down into what you might call almost normal in the area?

Mr Ritchie—I think they have settled down broadly throughout Bougainville, except there is a no-go zone in the south, which is essentially around the so-called Mekamui area where Noah Musingku has his headquarters. Broadly throughout the province I think things are fine, with a big economic job to be done. There is that one particular area which still remains to be resolved.

Senator ALLISON—Going back to Iraq, Mr Chester, did you meet this week with the secretary-general of the Doctors for Iraq? A visit was paid to Australia by Dr Saalam Ismael.

Mr Chester—No, Senator, I did not.

Senator ALLISON—Are you aware of the organisation?

Mr Chester—My understanding is that the department did not meet with Dr Ismael.

Senator ALLISON—Was a request made for a meeting?

Mr Chester—Not that I am aware of, Senator.

Senator ALLISON—You were familiar with the fact that Dr Ismael was here? It was reported on ABC radio and so on.

Mr Chester—I saw a media report that there was a visit by one of their persons.

Senator ALLISON—Have any attempts been made to look at the claims that were made by the Doctors for Iraq?

Mr Chester—Not specifically, no.

Senator ALLISON—I will run some of them past you then. They claim serious breaches of the Geneva convention, human rights and, in particular, medical neutrality, which is what the Doctors for Iraq were here to talk about. They say that during the sieges of Fallujah US soldiers occupied the main hospital in the city and arrested doctors and handcuffed medical personnel. Is that something the department was aware of in 2004? I think that was when the first siege of Fallujah was.

Mr Innes-Brown—I would have to take that on notice. I am not aware that we were aware, but I would like to check. That was a couple of years ago. It was before—

Senator ALLISON—Australia did have a role at Fallujah, did it not?

Mr Innes-Brown—I am not sure. I would have to check.

Senator ALLISON—There are also eye-witness accounts of US soldiers shooting at an ambulance and injuring the driver. Apparently there were some patients in the back of the ambulance. They were forced to stay in the ambulance for three days. Three patients bled to death inside the ambulance.

Mr Innes-Brown—Was that also in Fallujah?

Senator ALLISON—Yes; all these questions are about Fallujah. Soldiers were armed with guns and forced doctors out of a theatre room, accusing them of treating insurgents. Your understanding of the Geneva convention would be that that would be a breach of it—would that be fair to say?

Mr Innes-Brown—I am not an expert on the Geneva convention but I can take advice on that.

Senator ALLISON—Okay. There is an accusation that during both sieges the US army announced that if any ambulances were found operating in the area they would be targeted, and it turns out they were. Again, I think this is a serious reach of the Geneva convention. Also, Fallujah field clinics inside the city were targeted and bombed, despite the fact that the military were given information about where those clinics had been. US and Iraqi soldiers took over the hospital and used it as a military camp—if that could be checked—for very long periods of time during and after the siege. Weapons used were illegal under the conventions of warfare, including cluster bombs and white phosphorus. Apparently the United States denied using chemical agents but now admit to doing so. Was the Australian government aware of this at the time? Also, US soldiers prevented aid workers from entering the city for some three days after the siege.

Senator FERGUSON—Can I just interrupt you, Senator. I notice Mr Innes-Brown is trying desperately to write things out. It sounds as though you are putting questions on notice. I think if you are reading them into the *Hansard* we could get the *Hansard*—

Senator ALLISON—I am happy to provide the document that was provided to me, in full.

Senator FERGUSON—That would be much better, because Mr Innes-Brown is going flat out trying to write.

Senator ALLISON—I am happy to provide this and, of course, to the rest of the committee as well.

Mr Innes-Brown—Thank you.

Senator ALLISON—There is much more detail than I am expressing, but it did seem to me that even if one of those accusations was accurate then we are talking here about a serious breach. That leads me to the end of this paper, which calls for the European Union and the United Nations to investigate these matters. My question to you is: will Australia support an investigation by the UN and the EU or by other appropriate organisations, given Australia's

role in Iraq? Further, I ask whether the department is aware that, as a result of both the attack on Fallujah and subsequent violence in Iraq, 3,000 doctors have now left Iraq and there are very few medicos who can treat people. Sixty-one senior medical personnel have been killed in just the last year and a half. Doctors for Iraq say that is because of lack of security and lack of protection for the medical workforce. So I ask, firstly, whether the department was aware of that. Has Australia made any efforts to restore the hospital system in Iraq and, if not, why not? That must be something that Mr Chester or Mr Innes-Brown know about.

Mr Chester—Senator, I think there were about four questions there, maybe more than four.

Senator ALLISON—I am happy to go back through them if you think you can answer any of them.

Mr Chester—I think the first question was in relation to whether the government will support an investigation by the United Nations. The way I would answer that is that I think ministers will make a decision on that taking into account an assessment of the information that is put forward. I am not aware that ministers have made that decision yet. We will need to provide advice following an analysis. The second or maybe third question, I think, was whether we are aware of the reports of the number of doctors that had left Iraq and the number of doctors and other medical staff that had been killed. I am not aware of those particular records, but Mr Innes-Brown may be.

Mr Innes-Brown—I am not specifically aware, but I have read reports more broadly. There was a recent UN report which talked about the impact of the violence in Iraq on various groups in the community. It is not clear to me whether these unfortunate deaths of doctors that you mentioned and the fact that 3,000 doctors have left is a consequence of the ordinary security situation in general or whether they are being targeted. I am not sure whether that is what you are suggesting has been claimed.

Senator ALLISON—Yes, this paper does suggest that they have been targeted. That is correct.

CHAIR—Senator Allison, can you help us all by identifying the paper? Does it have a particular title?

Senator ALLISON—‘Fallujah—one year on’ is the title. It is prepared by Doctors for Iraq. It is subheaded, ‘Doctors for Iraq calls for an independent investigation into human rights abuses’.

CHAIR—I think we can call it the Doctors for Iraq allegation. I am sure these allegations have probably been raised in other forums.

Senator ALLISON—There is one other point that is part of the recommendations of this document. It is that the UN pressure the Iraqi government and the US administration to lift the siege of Fallujah. I was not aware that there were still a siege going on in Fallujah. Perhaps the department can advise the committee as to whether this is the case or not.

Mr Innes-Brown—I am not aware of one, but I would like to double-check on that. I think it might be talking about the previous period in 2004.

Senator ALLISON—One of the recommendations is that the ‘humiliating checkpoints’, as they are described, should be dismantled to ensure that Iraqi civilians living inside the city have a free and safe passage into and out of the city. This is quite a recent paper. It is from December last year. Unless something has changed in the first few months of this year—

Mr Innes-Brown—I guess it was just the word ‘siege’ that threw me. I think that phrase has been used in connection with the previous—

Senator ALLISON—The attack?

Mr Innes-Brown—large-scale operation.

Senator MILNE—I just wanted to ask whether DFAT has a record of the size of private security forces operating in Iraq. If you do, what sorts of numbers are we talking about that are operating in private armies?

Mr Innes-Brown—I am not aware that we have a record of that.

Senator MILNE—If DFAT does not have a record, are you aware if anybody has a record of the number of troops serving in private armies?

Mr Innes-Brown—I think that Defence, if they do have any information, would probably be best placed to try to give you an estimate of that statistic.

Senator MILNE—Do you happen to know if there is a record of the number of deaths that occur amongst people serving in those private armies?

Mr Innes-Brown—When you are talking about private armies, are you talking about the private security forces?

Senator MILNE—Yes.

Mr Innes-Brown—I think there might be some statistics on some of these websites that Senator Faulkner was mentioning before. There might be some estimates of that particular statistic on deaths amongst security firms.

Senator MILNE—But DFAT does not have a record?

Mr Innes-Brown—We do not have any independent record of it.

Senator MILNE—Do we know if there are Australian citizens serving in these private security forces in Iraq?

Mr Innes-Brown—I would like to double-check. I assume there probably are. I am aware that previously there have been. Regarding at the moment, I am not precisely sure, but I think there is some possibility.

Senator MILNE—Would DFAT be aware if there were a build-up in the number of those private security forces?

Mr Innes-Brown—I am not aware of the trend on the size of the security agencies over there. That is something we would have to ask our embassy in Baghdad and we would probably also liaise with the Department of Defence to get some reliable trend information on that.

Senator MILNE—So it would be possible to minimise the reportable number of deaths by increasing private security forces and decreasing public security forces, in theory?

Mr Innes-Brown—I think that is a hypothetical question. I cannot really come to grips with that question.

Senator FERGUSON—Chair, I do not think it is right to ask anybody at the witness table for an opinion. I think they can answer matters of fact but not give opinions.

Senator MILNE—That is fine. Thank you.

CHAIR—Could I now leave the subject of Iraq? Do you have some more detailed questions on Iraq?

Senator FAULKNER—Yes.

CHAIR—Senator Heffernan has a very short matter. I am sorry to do this to you, Mr Innes-Brown, but Senator Heffernan has some questions on output 1.2, Secure government communications and security of overseas missions. I think Mr Gerovich is the person responsible for that. I am assured that these are short questions. We will then come back to Senator Faulkner.

Senator HEFFERNAN—As you may be aware, there has been an offer to take a private briefing from DFAT on some of the more complex questions I have put on notice. I do not know who is aware of that, but I have agreed to take up the offer. I asked: how does the memorandum of cooperation between the AFP and DFAT give AFP a role in vetting the appointment of ambassadors, high commissioners and diplomatic staff prior to their appointment? The answer came back that DFAT entered into a memorandum of understanding with the former Australian Protective Service, now integrated in the AFP, in June 2002. That MOU expired on 30 June 2005 and was exercised with an option until June 2006. Do you know what I am talking about?

Mr Chester—Yes, I do.

Senator HEFFERNAN—Will you renew that after 2006?

Mr Chester—Somebody has the answer.

Senator HEFFERNAN—I will be brief because I would prefer to take a briefing.

Mr Chester—I understand about the briefing and I would be happy to be involved in that.

Ms Williams—I can partially help you. That MOU has been extended until the end of June and we have been talking to the AFP about extending it. Since the MOU came into force, obviously the relationship with the AFP has broadened. We have been looking at the different aspects of the relationship between the department and the AFP and how we might build that into the MOU. I guess the answer is that we are in discussion with the AFP at the moment.

Senator HEFFERNAN—Thank you very much for that. Finally on that matter, the MOU does not provide for the conducting of security clearances for Australian ambassadors, high commissioners and other staff—is that correct?

Ms Williams—My understanding is that the MOU is not related to the conducting of security clearances per se.

Senator HEFFERNAN—I suppose it does conduct some sorts of inquiries into the suitability of people to the ‘further down the food chain’ appointments, but not ambassadors, high commissioners and other diplomatic staff—is that correct?

Mr Chester—The AFP are involved in elements of security clearances—checks for security clearances—and also, to some extent, checks in relation to criminal records for applicants who seek to apply to join the Department of Foreign Affairs and Trade.

Senator HEFFERNAN—But not diplomatic staff—according to your information?

Mr Chester—If you are asking whether, when the government decides to make an appointment of an ambassador or high commissioner, the AFP is consulted in that process, the answer is no.

Senator HEFFERNAN—It says here: ‘and other diplomatic staff’.

Mr Chester—No, they are not. Not at that point.

Senator HEFFERNAN—Who does the check?

Mr Chester—Checks are done—

Senator HEFFERNAN—You can take that on notice, if you like.

Mr Chester—No, I am happy to answer. There are internal checks done on diplomatic staff, including heads of mission appointments, by our Conduct and Ethics Unit and within the security area of the department.

Senator HEFFERNAN—Who would have checked Mr Scoble?

Mr Chester—You are talking about—

Senator HEFFERNAN—The check failed, didn’t it?

Mr Chester—decades ago. I do not know what the—

Senator HEFFERNAN—And for Mr Holloway, Mr Brown and a range of people.

Mr Chester—I do not know what the processes were, back in the seventies and eighties.

Senator HEFFERNAN—Would it be possible for a Mr Scoble to get through the system these days?

Mr Chester—I am not sure I can answer that question.

Senator HEFFERNAN—It is better not to answer that.

Mr Chester—I am not sure I can because of the way it is framed.

Senator HEFFERNAN—I can assure you that it would be possible. Has Mr Scoble applied to have his passport again?

Mr Chester—I do not know.

Senator HEFFERNAN—Could you take that on notice?

Mr Chester—We will seek to answer it if we can.

Senator HEFFERNAN—Would Mr Scoble be eligible for a passport from another country?

Mr Chester—Again, I do not know.

Senator HEFFERNAN—You might care to take that on notice. At the last estimates I asked some questions about Mr Scoble and included a question on notice that is numbered 262. There were five parts to the question: (a), (b), (c), (d) and (e). I noticed that the (e) part of the question, when you answered the question, did not make it to the question list, but the answer did. Could you—

Mr Chester—Is this a question of the department?

Senator HEFFERNAN—Yes.

Mr Chester—Of the Department of Foreign Affairs and Trade?

Senator HEFFERNAN—It is a question that involves you fellas. But I think, rather than deal with it here, I will deal with it in a briefing. I think that will be tidier. Thank you. I look forward to the briefing.

CHAIR—Senator Faulkner, do you have some questions on Iraq?

Senator FAULKNER—I have one question on Iraq. I want to ask a process question. I think it is only one question—but we will soon see—about a matter that came to light in the Cole commission. I would like to ask some detail about it, but I will not. To save time I will confine myself to a process question. A declassified document has been posted on the website of the Cole inquiry. I do not know what status the document has. It could be an email—who knows? It is from the then head of the Iraq Task Force—that is why I thought I would ask the question here—and Bassim Blazey signed it. Mr Blazey is no longer with the task force, is he?

Mr Chester—That is correct.

Senator FAULKNER—Where is he now?

Mr Chester—He is working in the consular area of the department.

Senator FAULKNER—It was to Michael Thawley. I can identify the document for you. You may know the one.

Mr Chester—I think I know the document you are talking about.

Senator FAULKNER—‘We have discussed this issue in the department’—and so it goes on. I only have one issue, on process: can you tell me what is the date of this document and why it does not appear to be dated? It may be blacked out. There are a lot of blacked out things and pen script, which may be the date. I do not know. Is the pen script the date? What was the date?

Mr Chester—I do not know.

Senator FAULKNER—Do you have a copy of the document?

Mr Chester—No, I do not.

Senator FAULKNER—I will get this photocopied and given to you so you might be able to let me know, as we did with the previous document. I am interested in finding out the date. I am not going to go to the other issues of substance. Does Afghanistan come into this subprogram?

Mr Chester—No, it was picked up by Mr Grigson in—

Senator FAULKNER—So we have missed the boat on Afghanistan.

Mr Chester—1.1.2. He is well and truly gone.

Senator FAULKNER—Fair enough. I was only going to ask—and I will not—for a status report because it sounds like there has been a bit of unrest recently. If it was under 1.1.2, I will not ask. I want to get this date if I can, but I am happy for us to move on to something else and come back to the date. It will only take a minute or two. Either Mr Chester will be able to answer it or he will take it on notice.

Mr Chester—Is the date on the document?

Senator FAULKNER—I am not sure. I do not know what the pen script means, and you will be able to tell me that. It could be DFAT code, for all I know.

Mr Chester—I doubt it.

CHAIR—Let us come back to it.

Senator FAULKNER—That is all I am interested in knowing—just the date.

[9.57 pm]

CHAIR—Senator Milne has some questions on 1.1.7, International organisations, legal and environment.

Senator MILNE—My question relates to environmental security. I assume it is under this group and not ‘security and nuclear’.

CHAIR—Yes.

Mr Chester—It may well be covered by the Ambassador for the Environment.

Senator MILNE—I would like to know if DFAT is aware of the report commissioned by the Pentagon called *An abrupt climate change scenario and its implications for United States national security*. Has DFAT considered the geopolitical implications of climate change in our region and produced or commissioned—or is DFAT in the process of doing—any report on or analysis of the national security implications of climate change in our region?

Ms Adams—I have heard of that report, but Foreign Affairs and Trade does not have the lead responsibility for science issues, so the department as such would not have undertaken any analysis of that report. The science agencies would be DEH and the Bureau of Meteorology, in particular.

Senator MILNE—It is not the science that I am talking about; it is the national security ramifications of climate change, and that is why the Pentagon did the report and not the science agencies. They took the science and did a report on the implications for the national security of the United States that were posed by abrupt climate change scenarios. I want to know if DFAT sees climate change as a national security issue and, if so, is it commissioning any work similar to the work that has been commissioned by the Pentagon?

Ms Adams—No, DFAT is not commissioning any work similar to that that you have referenced.

Senator MILNE—Does DFAT consider climate change to pose any national security issues for Australia?

Ms Adams—DFAT deals with climate change as an important issue in many respects. I would not specifically say that we have a national security analysis, but the government and DFAT treat climate change as an important issue from an environmental, economic, energy security and many other perspectives.

Senator MILNE—So you do not see it as a national security issue? Or have you not considered it as a national security issue?

Ms Adams—We have not undertaken any specific analysis in those terms.

Senator MILNE—Is there any plan to do so?

Senator FERGUSON—Senator Milne, I am sorry to interrupt your line of questioning, but there are some things, policy decisions, that are government decisions and not departmental decisions. I think you are straying into the area of decisions that might be made by the government, not decisions the department of foreign affairs might be making. I think you are straying into government policy decisions and questions that should be asked of the government, not the department.

Senator MILNE—I am very happy for Senator Coonan to respond instead of Ms Adams. I am asking: does the government see any geopolitical or national security implications of climate change? If so, is it going to do any work on it?

Senator Coonan—I am not quite sure from what perspective you mean, Senator Milne. I will read your line of questioning and see if I can give you a considered answer.

CHAIR—Going back to the document, do we have any advance on that?

Senator FAULKNER—It has been tabled now, Chair. I thank the committee for their cooperation. My only question goes to whether you, Mr Chester, can confirm or tell me what the date of the document was.

Mr Chester—I do not know the date of the document. I will have to take that on notice.

Senator FAULKNER—If the document is undated that will obviously also be something I would like to know. I thought the pen script on it might in fact be the date.

Mr Chester—No. That looks like a file number, but I do not know.

Senator FAULKNER—Does it? I thought the '04' might relate to a calendar year.

Senator Coonan—It also has '69' on it, which might not be relevant.

Senator FAULKNER—It could be anything. Could you take on notice what the date of the document is, please. Hopefully, you will be able to respond to that one pretty quickly.

Mr Chester—I will see.

[10.02 pm]

CHAIR—We now move to 1.1.8, Security, nuclear disarmament and nonproliferation.

Senator ALLISON—When was the Australian government briefed by the US administration about the proposal on nuclear cooperation with India?

Mr Chester—I think we already covered this ground earlier today.

Senator Coonan—We did.

CHAIR—That question was answered earlier today.

Senator ALLISON—Okay. Did you also answer the question as to whether the government considers the supply of uranium and nuclear technology by the US to India to be appropriate?

Mr Chester—I did not answer that question, no.

Senator ALLISON—Could you?

Mr Stuart—The government has no current intention of changing Australia's longstanding policy of selling uranium only to countries that are party to the Nuclear Non-proliferation Treaty and with which we have a bilateral safeguards agreement. India is not a party to that treaty and we do not have a bilateral safeguards agreement with India.

Senator ALLISON—In other words, the answer is, no, it is not appropriate?

Mr Stuart—That is the government's current position.

Senator ALLISON—Was that view expressed to the United States administration?

Mr Stuart—That view has been conveyed in some discussions, I am aware, to the United States administration.

Senator ALLISON—Is the following quote accurate:

Ashley J. Tellis, a senior State Department official and a key architect of the new strategic policy on India—

that is, for the US—

has argued that a buildup of India's nuclear arsenal is not only in New Delhi's interest, but Washington's. It will cause Beijing to worry more about India and less about the United States ...

Do you agree with that? Does our intelligence support that statement by Mr Tellis?

Mr Stuart—If I am not mistaken, that was part of the answer to question No. 1613 that you put on notice.

Senator ALLISON—That is right. My question on notice was dated 6 March and it remains to be answered.

Mr Stuart—It is possible that our draft answer is still in the system. I thought it had been provided.

Senator ALLISON—Is it possible to provide an answer now?

Mr Stuart—All right. Your question is whether we are aware of Mr Tellis's views about the build-up in the Indian nuclear weapons capacity?

Senator ALLISON—I actually asked in this question whether your intelligence agrees with that.

Mr Stuart—I am not going to comment on what our intelligence does or does not comment on. We do not as a matter of practice and I am not going to do it today.

Senator ALLISON—So you were aware of that statement then?

Mr Stuart—I became aware of Mr Tellis's views when I checked them after I read the question you asked on notice.

Senator ALLISON—Shall I go through the rest of the questions or do you have them there in front of you?

Mr Stuart—As it happens, yes, I do. I am certainly willing to try to answer some of them. I understand that a considered answer is at least in the system, but I am quite happy to answer them as long as you understand that there is a difference between my answer as an official and what the answer ultimately might be.

CHAIR—How many questions do we have?

Senator ALLISON—If the answer is coming, I will leave it at that as long as it turns up fairly soon.

CHAIR—I think that is a matter of logical convenience.

Senator ALLISON—Perhaps you can advise the committee what the latest is as far as your department knows on the agreement between the US and India.

Mr Stuart—Do you mean the current status of that?

Senator ALLISON—Yes.

Mr Stuart—The agreement was concluded and announced in February when President Bush visited New Delhi. To be implemented, the agreement requires some legislative action in the US congress, which is currently under way. It requires agreement in the Nuclear Suppliers Group—we discussed that earlier in proceedings, but I am happy to review that—to a United States proposal to make an exception for India to standards applied in that group. Until this action takes place in congress and the Nuclear Suppliers Group reaches this agreement, the US-India agreement cannot be implemented.

Senator ALLISON—Is there a time frame that you are aware of, once the legislation is dealt with, which spells out how long it will take before technology and uranium is provided to India?

Mr Stuart—By the United States under that agreement? India is to carry out the agreement up to 2014. It has agreed to classify 14 nuclear power reactors as civilian reactors, which will be subject to permanent safeguards under an agreement with the International Atomic Energy Agency. So it is a phased agreement over that period. Subject to these conditions for implementation being met, the US will begin supplying technology to these power stations as they are included in this phased arrangement.

Senator Coonan—And congress may impose conditions.

Mr Stuart—As the minister says, congress may impose conditions. There is a way to go before we see this implemented.

Senator ALLISON—Is Australia in a position to impose conditions too? For instance, would any uranium from Australia be part of this transfer from the US?

Mr Stuart—We are not in a position to impose conditions on a sale which we are not currently contemplating making. The government's position is that it has no current intentions of changing its longstanding policy on the sale—

Senator ALLISON—I understand that, but we supply uranium to the United States, do we not?

Mr Stuart—Yes, we supply some to the United States.

Senator ALLISON—What safeguards are in place to make sure that our uranium is not then forwarded to India?

Mr Stuart—There are very strict safeguards about the use made of our uranium when we sell it to the United States. There are very strict and reliable safeguards.

Senator ALLISON—So where will the uranium come from that the United States provides to India?

Mr Stuart—Not from Australia.

Senator ALLISON—Won't Australian uranium just displace American uranium or uranium from somewhere else?

Mr Stuart—Under our agreements with the United States, we do not believe so.

Senator ALLISON—Will the IAEA be monitoring on our behalf the transfer of uranium to America? What exactly are the safeguards that are in place to make sure it does not end up in India?

Mr Stuart—I will allow my colleague the Director General of the Australian Safeguards and Non-Proliferation Office to answer, because that is part of his daily work and he is an expert.

Mr Carlson—The transfer of uranium to the United States is covered by an agreement concluded in 1981 between Australia and the US which applies a number of conditions—for instance, no retransfer to a third country without Australian consent. The uranium is accounted for back to my office by United States authorities as to where it is and how it is being used. The uranium is also subject to the safeguards agreement between the United States and the International Atomic Energy Agency.

Senator ALLISON—How does the IAEA monitor Australian uranium?

Mr Carlson—The IAEA has the right to select facilities for inspection in a nuclear weapons state and, if it does select a facility, it will obtain the detailed accountancy records for that facility. In other respects, the United States is required to report transfers to other countries to the IAEA, and the IAEA monitors those transfers. As I explained before, transfers of Australian material cannot take place without our consent, and our consent would not be given for transfers to India, as we do not have an agreement with India that would cover that material.

Senator ALLISON—Correct—I understand that. Does the IAEA approve of and support the transfer of uranium to India when it is not a signatory to the NPT?

Mr Carlson—The IAEA is not a secretariat to the NPT so it has a neutral position. The Director General of the IAEA has gone on record welcoming the US-India agreement.

Senator ALLISON—Despite the fact that it undermines the NPT in Australia's view?

Mr Carlson—I think it is a matter of opinion as to whether it undermines the NPT.

Senator ALLISON—Is it not your opinion?

Mr Carlson—No.

Senator ALLISON—I see. Would you like to expand on that?

Mr Carlson—I do not think I should.

Senator FERGUSON—Mr Chairman, you cannot ask them to give their opinions. You are here to ask them questions of fact not opinion.

Mr Carlson—I do not think I should elaborate on my opinion.

Senator ALLISON—Mr Carlson offered it. I did not request his own opinion—

Senator FERGUSON—You asked him: 'What is your opinion?'

Senator Coonan—Yes, you asked for his opinion.

Senator ALLISON—No, I did not. Mr Carlson said, 'In my opinion'—

Senator FERGUSON—And you said: 'What is your opinion and would you like to elaborate on it?'

CHAIR—Yes, you said, 'Is that your opinion?' and he said no. So, next question?

Senator ALLISON—That is all the questions I have on India, but I do have some on China.

CHAIR—Senator Milne has some questions on India.

Senator MILNE—Further to what Senator Allison was asking, I want to ask about the meeting of the Nuclear Suppliers Group in March this year. Did Australia send representatives to that particular meeting and can you confirm that the decisions of the Nuclear Suppliers Group are taken by consensus?

Mr Stuart—We were represented at that meeting of the Nuclear Suppliers Group by our deputy head of mission in Vienna, where the meeting took place. Yes, decisions of the Nuclear Suppliers Group are taken by consensus.

Senator MILNE—Was the US-India deal put to the Nuclear Suppliers Group for approval at that meeting?

Mr Stuart—No. A briefing was provided about it and there was some discussion.

Senator MILNE—Presumably it will come back to that meeting once the US legislative processes have taken their course.

Mr Stuart—There is another meeting of the group going on right now in Brazil. I do not think the matter is going to come to a decision at this meeting. I think it will take some more discussion.

Senator MILNE—Senator Coonan, what direction has the government given the Australian government officials in relation to blocking consensus in the Nuclear Suppliers Group—because one party, I understand, can block consensus—in relation to the US-India deal because it is outside the provisions of the Nuclear Non-Proliferation Treaty?

Senator Coonan—That has not arisen, Senator.

Senator MILNE—So the Australian government has given its officials attending that meeting no instructions?

Senator Coonan—I am not going to be conveying the instructions that have been given, but the scenario that you have assumed in your question has not yet arisen.

Senator MILNE—What is the Australian government's position on blocking consensus or giving consensus to the US-India deal?

Mr Stuart—As I said, we do not anticipate the matter is going to be put for decision. The government have not provided instruction to the delegation based on making that decision because we do not think it is going to need to at this meeting.

Senator MILNE—Minister, what is the government's view about the US-India nuclear arrangement which is outside the provisions of the non-proliferation treaty?

Senator Coonan—It does not arise for Australia. We are not supplying uranium to India.

Senator MILNE—With respect, the Australian government has a vote in the Nuclear Suppliers Group, so it does arise for Australia.

Mr Stuart—In relation to the countries in the Nuclear Suppliers Group considering this proposition and making a decision, it is not established that it is outside the terms of the non-proliferation treaty. A number of countries do not take that view at all. In fact, most countries have not yet formed a firm view, and they will not until the matter comes to decision. That has not happened yet; it may not happen for some time. For one thing, a number of countries are waiting to see what will happen with the passage of the legislation in the US Congress. So, with respect, Senator, your assumption is premature. It has not got to that point yet.

Senator Coonan—And, Senator, it is not inconsistent with upholding the wider nuclear non-proliferation regime. It is a matter where this group has to meet and a lot of the matters that you refer to may arise, but they may not. We just cannot pre-empt it. You are asking us to have a pre-emptive view about something that has not arisen.

Senator MILNE—Well, Minister, I do apologise, but I have noted at most international meetings most people go with a direction from the government as to how to vote. I thought I heard Mr Stuart say that one of the reasons that this was going to congress was to exempt this deal from the Nuclear Non-Proliferation Treaty.

Mr Stuart—No, I did not say that.

Senator MILNE—What did you say about that?

Mr Stuart—I said that for the US-India deal to be implemented there would have to be legislation passed in the Congress, and I said that the Nuclear Suppliers Group would need to agree to a US proposal to exempt India from some of the rules that currently apply in the Nuclear Suppliers Group.

Senator MILNE—It is the rules of the Nuclear Suppliers Group.

Senator Coonan—It is an exception to the rules.

Senator MILNE—Yes, that is what I understood.

Senator ALLISON—I am interested in a confirmation. Is China's uranium production capacity subject to the International Atomic Energy Agency's safeguards?

Mr Carlson—No, it is not. China as a nuclear weapons state has what are called voluntary safeguards. Facilities that it places under safeguards are subject to IAEA inspection; facilities it chooses not to are not. In any event, the IAEA does not safeguard uranium production. Mines and uranium ore are outside the scope of safeguards.

Senator ALLISON—Do we know how much of China's domestically produced uranium is utilised in its military programs and how much is used for power generation?

Mr Carlson—This is the subject of answers to question No. 1691, if I am not mistaken, which should have reached you by now or else is very close to that stage.

Senator ALLISON—Mr Carlson, again, I would not be here if they were answered.

Mr Chester—I would like to correct the record. The earlier question 1613 has been answered. Where it is in the Senate process I do not know but it has been cleared by both ministers and from my records has been submitted.

Senator FAULKNER—To whom has it been submitted? The committee?

Mr Chester—I am not an expert on the process.

Senator ALLISON—Can I give you some advice, Mr Chester? It might be wise to get those questions answered a few days before estimates so we do not waste one another's time.

Mr Chester—I do not think it was a question from estimates.

Senator FAULKNER—It was the chamber question?

Mr Chester—Yes.

Senator FAULKNER—What is the number of the one that has not been answered? Is it 1691?

Mr Carlson—It has been answered from our side; perhaps it is still in the system. I can answer the question at any rate.

Senator FAULKNER—No. The answer to 1691 has not been provided. The answer has not been approved by the minister.

Mr Carlson—As far as I am aware it has been, but I might be mistaken.

Senator FAULKNER—Then how come it has not been communicated through?

Senator FERGUSON—Was it a question asked in the Senate? It is probably still in the Senate.

Mr Chester—Question 1691 has not been answered.

Senator FAULKNER—That is right; but 1613 has.

Mr Chester—That is correct.

Senator FAULKNER—I am talking about 1691. Do not tell me it has been answered when it has not—nothing to do with you, Mr Chester; my apologies.

Senator FERGUSON—I did not say it had been answered. We got the impression that it had been answered from Mr Carlson.

Mr Carlson—I was under the impression that the answer had been signed off by the minister, but I could be mistaken.

Senator FAULKNER—I am interested to know when the draft answer was provided to the minister.

Mr Carlson—That would have been last week sometime.

Senator FAULKNER—It is quite recent.

Mr Carlson—There was some revising of part of an answer late last week.

Senator FAULKNER—There was some sort of iterative process between the minister's office and the department. Is that what you are saying?

Mr Carlson—Yes.

Senator FAULKNER—And as far as you are aware that has concluded and has now been signed off by the minister.

Mr Carlson—Yes, that is my understanding.

Senator ALLISON—I will leave my questions at that.

CHAIR—Are there any questions on output 1.4—Services to diplomatic and consular representatives in Australia?

Senator FAULKNER—That is a very good question. I personally do not have any questions.

CHAIR—Senator Milne, we will go on with China.

Senator FAULKNER—I have flagged one area.

CHAIR—Yes, I know about that—1.1.7.

Senator FAULKNER—I am not sure exactly where it is. I have done my best to establish that. It may be a matter for Mr Moraitis.

Senator MILNE—Mr Carlson, can you walk me through how Australian obligated nuclear material will be tracked in China?

Mr Carlson—Under the agreement we have concluded with China, China has agreed that all facilities using Australian material will be on a facility list agreed with Australia and will be subject to China's agreement with the International Atomic Energy Agency. Australia and China will agree on which facilities will use Australian uranium. China will supply reports to us on the movement of that uranium through the facilities and facilities can be selected for inspection by the IAEA.

Senator MILNE—Is there anything to stop the Chinese from withdrawing those facilities from IAEA inspection at any time?

Mr Carlson—Under the agreement with Australia China cannot do that without Australian consent.

Senator MILNE—Is the agreement with the IAEA as well, though? The point is that China's agreement for inspection is with the IAEA. Australia's agreement with China is separate from that.

Mr Carlson—That is correct. Under China's agreement with the IAEA, it can withdraw facilities from the eligible facility list for inspections. That is how a safeguards agreement with a nuclear weapons state operates. In our negotiations with China we specified that China should first obtain Australia's consent before it withdraws facilities from the coverage of its agreement with the IAEA, and China has agreed to that condition.

Senator MILNE—What enforcement and compliance mechanism is in place?

Mr Carlson—For a start, we do not believe that China will act in bad faith or we would not be concluding an agreement with China. If it were to break a condition of the agreement then Australia has the right to terminate all further transfers and to require the return of material already supplied.

Senator MILNE—How would you require the return of material already supplied when it has been enriched and processed and passed on to either weapons or nuclear power facilities?

Mr Carlson—I can assure you for a start that it would not be passed on to weapons. That is the whole purpose of the agreement. The fact that China is intending to operate a very large scale electricity program means that it is not attempting to subvert rules to obtain nuclear material for weapons. China, to the best of our knowledge, stopped producing fissile material for nuclear weapons in the early 1990s. I disagree with the proposition you are putting. As to the question of what we would do in practice if we ever had to invoke this right, that is obviously a situation we would face if it happened. It is not a situation we would expect to happen. We would not conclude agreements with countries where we thought that breach was likely. In China's case, or in the case of any other country for that matter, the penalty for breach would be very severe because they would be dependent on imports for a sizeable proportion of their electricity and those imports would be terminated.

Senator ALLISON—Is that the penalty—we just stop selling it to them?

Mr Carlson—Certainly.

Senator MILNE—When we send the yellowcake to China and it goes in for processing and enrichment, are all those facilities military facilities?

Mr Carlson—They would be civil facilities. The facilities have not yet been designated. The agreement has only just been signed, as you are aware, and we have yet to discuss with China which are the facilities that would be listed under the agreement. But, by definition, they would be facilities that would be subject to the safeguards agreement with the IAEA and that means they have to be civil facilities. Military facilities are not eligible for safeguards, and I cannot imagine a nuclear weapons state wanting to designate a military facility.

Senator MILNE—That is why I asked the question, because I do not know of any civilian facilities that provide this in China. So I would appreciate it if you could provide to the committee a list of those potential civilian facilities where the enrichment might take place.

Mr Carlson—When we discuss the list with China that list will become a public document in the same way as the agreement is a public document.

Senator MILNE—Why do you think we should expect China to act in good faith with our uranium when our only sanction is to stop selling it to them if they do the wrong thing?

Mr Carlson—China has taken a decision to expand very substantially its use of nuclear energy, and to do that it will be dependent on imports; it will be dependent on its reputation in the international community. There is no reason to believe that China would act irresponsibly in this regard. If it was seen to be in breach of a treaty this would have serious repercussions, not just from Australia's point of view but from all other nuclear suppliers.

Senator ALLISON—It is my understanding that the United Nations rating of countries in terms of the safety regime they have in place for their nuclear reactors puts China very low on the list of safe countries. Did that rating enter into our considerations in dealing with this agreement?

Mr Carlson—I am not aware of that rating. I have to say that I am not a nuclear safety specialist, but I am certainly not aware of that rating and I do not see why that would be the case. The facilities that China is building are very modern, in most cases being supplied by foreign vendors—France, Canada, the United States—and I do not see any reason to believe that the operation of those facilities would be substandard.

Senator ALLISON—Would you take that question on notice after you have researched this United Nations study? I do not have the date or the title of it with me but I am sure you would be able to find it on the website.

Mr Carlson—I think that is a question more properly addressed to those responsible for nuclear safety.

Senator ALLISON—So there was nothing in the agreement that leveraged better safety of those facilities from China for us providing them with uranium?

Mr Carlson—No, there was not. Our safeguards agreements do not deal with safety.

Senator ALLISON—Our safeguards agreements do not deal with safety?

Mr Carlson—They do not deal with safety.

Senator MILNE—Can I—

CHAIR—No, we are going to Senator Faulkner now. He has some questions with respect to—

Senator FAULKNER—Well, had that concluded?

Senator MILNE—No; I just wanted to ask another one on China.

CHAIR—All right.

Senator MILNE—I am not sure who is the most appropriate person to answer this. In justifying the Australia-China nuclear material transfer agreement and nuclear cooperation agreement, DFAT stated that China has sufficient uranium for their military programs. I would like to know how DFAT knows that. What source have you got for that and what gives you

the confidence that China will not displace some of this uranium into an expanded or rejuvenated nuclear weapons stockpile? How do you know?

Mr Carlson—I can answer that. We did an internal assessment, but we also looked very closely at a number of open sources, including publications of other governments, to find out what was understood about China's uranium production and nuclear weapons production. The consensus of open-source information is that, for a start, China ceased production of fissile material for nuclear weapons in the early 1990s, as I mentioned before, and, secondly, that it has a stockpile of fissile material from which it can draw if it chooses to do any warhead modernisation programs. So we have no reason to believe that China is looking for nuclear material with the idea of a military expansion. It has a stockpile already, in common with the other nuclear weapon states.

China continues to have some military production for naval reactors. We believe that the quantities involved would be quite small. The quantities involved in nuclear weapons programs are very small compared with the amount of uranium required to run a power reactor. To make a warhead, you need something in the order of five tonnes of uranium; to run a modern power reactor, you need something like 200 tonnes every year. So I think we need to put the material flows into some sort of perspective. What is required for a weapons program is very small. China, in common with the other nuclear weapon states, has ample material for that purpose, except for the fact that it is not actually producing any more for that purpose.

Senator MILNE—In answer to my question about how you know, you have not got anything in writing from China itself?

Mr Carlson—No, we have not. We have asked the Chinese if they could confirm formally that they have a moratorium on fissile production for weapons. At this stage, they have not formally confirmed that. However, our sources would be SIPRI, the Stockholm International Peace Research Institute; the Monterey Institute of International Studies; and the Nuclear Threat Initiative. Even publications of the United States Department of Defense state that it is generally believed that China ceased fissile material production for weapons in the early nineties.

Senator MILNE—Minister, in view of that, why did Australia go ahead and sign an Australia-China nuclear material transfer agreement and nuclear cooperation agreement in the absence of any written or formal undertaking from China that they had sufficient uranium for their military programs, and in view of the fact that their ambassador to Australia said only last year that China did not have enough uranium for both its weapons and its nuclear power programs?

Senator Coonan—As you know, the agreements have been signed, subject to a number of things that still have to be worked out, including a number of administrative agreements. The nuclear cooperation agreement includes safeguards on other nuclear transfers, nuclear related materials, equipment, technology and exploration. Before the agreements enter into force, they have to be ratified by both us and China, so both countries still have to ratify the agreements. There are a number of things yet to be undertaken, including getting appropriate responses from China on the matters you have just talked about.

Senator MILNE—Is ratification of these agreements conditional upon China giving a formal undertaking that it has a moratorium on the production of any fissile material?

Senator Coonan—The conditions upon which the treaties and agreements would be ratified have yet to run their course. They are subject, obviously, to examination by, for example, the treaties committee in this parliament. Obviously, they will be subject to a number of things; I cannot elaborate on them all.

Senator MILNE—But, to date, that does not appear in the list of conditions for those agreements that you just read out.

Senator Coonan—I have not read an exhaustive list out. I have said that they are subject to ratification.

Senator ALLISON—Would the agreement allow for Australia to provide enriched uranium to China?

Mr Carlson—The agreement is silent on that. Obviously, we are not in a position to supply enriched uranium to anyone. The agreement simply covers the transfer of nuclear material from Australia. Were we to have enriched uranium, for instance, imported from someone else, we could resupply it to China under the agreement.

Senator ALLISON—It does not spell out quantities?

Mr Carlson—No, not at all. The quantities are a matter for commercial negotiation between uranium producers and Chinese power utilities. The agreement provides for the regulation of the transfers and the subsequent use in China.

Senator ALLISON—Does it provide for China owning any uranium mines in Australia?

Mr Carlson—No, the agreement does not cover that at all. Again, that is a commercial matter. Chinese officials made it clear that China has an interest in buying into uranium production in Australia. The agreement does not allow that or not allow it.

Senator ALLISON—Will there be a subsequent agreement? Is one being drafted at present?

Mr Carlson—No. It would be a commercial matter.

Senator ALLISON—It does not require an agreement for China to own or operate a uranium mine in Australia?

Mr Carlson—No, not at all. I should point out that if China did own a uranium mine in Australia, the uranium would be subject to all the normal requirements, regardless of its ownership. For the Chinese to own a mine would not be a way of circumventing Australian controls.

Senator Coonan—However, I think it is appropriate to say that any contract negotiated between an Australian uranium mine and a Chinese entity would have to be subject to Australian government approval anyway. And the Australia government, of course, has to approve any shipment.

Senator MILNE—Minister, why did China ask whether or not an investment in a uranium mine in Australia would help them to evade the provisions of the Nuclear Non-Proliferation Treaty?

Senator Coonan—I am sorry, but could you say that again. I did not quite follow the question.

Senator MILNE—In the reports of speculation about China buying into uranium mines in Australia—

Senator Coonan—Which is subject to what I have just said. It would have to be subject to government approval.

Senator MILNE—That is right. China asked the Australian government—

Senator Coonan—Is this speculation? What is the basis for your question?

Senator MILNE—Well, you tell me. Did China ask—

Senator Coonan—I cannot tell you unless you can tell me. Seriously, I am not going to be subject to that kind of question, Senator Milne.

Senator MILNE—Did China ask the Australian government whether China investing in uranium mines in Australia would help them to evade the provisions of the Nuclear Non-Proliferation Treaty?

Senator Coonan—That is not a proper question.

Mr Carlson—I could comment on that. There were press reports claiming that Chinese officials had asked a question—

Senator Coonan—It was not correct.

Mr Carlson—I think the word was ‘circumvent’ rather than evade.

Senator MILNE—‘Circumvent’, yes.

Mr Carlson—I attempted to find out what the basis of this was because, frankly, I did not believe it. I have not been able to get confirmation from anybody who was at the meeting that language of that kind was used. It seems to be simply the case that the Chinese inquired: if they owned a mine, how would the rules apply? This seems to have been turned around by enthusiastic media reporting. That is a reasonable question, I would have thought.

Senator MILNE—Thank you for that. My final question is on nuclear floating power stations. The Chinese are currently funding one such station in Russia, which is under construction. Is there any provision in these two agreements that have been negotiated with China which precludes the use of Australian uranium in joint Chinese-other country floating nuclear power stations around the planet?

Mr Carlson—There is nothing in the agreement that specifies particular kinds of technologies. Obviously, any reactor using Australian uranium would have to be situated in a country which had an agreement with Australia. So it would not be permissible for China or anyone else to fuel a reactor in a country that was outside our agreement network. As to the question of what we would do if it was proposed to fuel a floating reactor, as I said, the agreements do not specify the kinds of technology that could be used. If we had a concern

about the safety of technology, it is something we could pursue with the governments concerned. But I would regard that as a hypothetical issue.

Senator FAULKNER—My questions relate to the rather esoteric issue of detriment caused by defective administration—something that will be riveting for people. I gather this comes under 1.1.7, International organisations, legal and environment, to the extent that it has a home at all. Would that be right, Mr Moraitis?

Mr Moraitis—Yes, that is correct. Obviously there is interaction with other areas of the department as well.

Senator FAULKNER—Requests for compensation for detriment caused by defective administration: is that common throughout the Australian Public Service?

Mr Moraitis—I understand that it is.

Senator FAULKNER—What are the cases mainly that have to be dealt with by your section? What are they mainly concerned with? Is it mainly passports and the like?

Mr Moraitis—I cannot recall. There has been a whole variety of cases. There have been some pretty varied types of request for consideration. I can recall one case where someone complained about the import of a kombi van from overseas, for example; there was the suggestion that they were not given the right specifications by embassies overseas, and that sort of stuff. I would have to take on notice whether the question of passports is something that takes up a large amount of consideration in a defective administration context.

Senator FAULKNER—My colleague Mr Rudd in the House of Representatives asked a question on notice about this which you might be aware of, and it did appear in terms of the response to that question that passport services was one clear area. You obviously would only do it in relation to the departmental elements. Obviously there would also be compensation payments in AusAID, Austrade and the like. I suppose they are not handled by you, are they?

Mr Moraitis—No. AusAID and Austrade would have their own processes. I cannot recall the question on notice, Senator.

Senator FAULKNER—It was House of Representatives question on notice No. 1357. I am not imagining it. The imagination runs wild at this time of night, but not that wild.

Mr Moraitis—No, I just don't have any briefing on it or recollection of it; that is all.

Senator FAULKNER—In terms of the department itself, have you been able to establish whether there was a fairly consistent pattern in these sorts of claims for compensation or the like? It seems that there have been a number of them over the years. They often tend to be for comparatively small amounts, as I understand it. Is that right?

Mr Moraitis—Yes, pretty much so.

Senator FAULKNER—Do you have any figures available to you which would indicate to the committee what that pattern might be?

Mr Moraitis—No, I do not have any figures with me. I will have to take that on notice and provide that as quickly as I can.

Senator FAULKNER—What I am not aware of in relation to the way these effectively small claims for compensation, if you like, are dealt with is whether any of them have resulted in follow-up changes to departmental practices, policies, guidelines or the like. I do not know if that question is best directed to you or to Mr Chester in this instance, but I would be interested to understand if a pattern has developed or, if you have come across circumstances where compensation is paid—and obviously compensation is paid when there is defective administration; that is, defective departmental administration—what the follow-up is.

Mr Moraitis—That is a very good question. If we find there is a pattern of defective administration in the same areas and the same small mistakes are made regularly, that is obviously something that we would refer back to our corporate area to ensure that it was rectified. If such a pattern is problematic, it is counterintuitive to leave it alone. Obviously we have an interest in ensuring those sorts of mistakes are not repeated. As I said, the types of defective administration in my time have been quite varied; there is a very wide spectrum of situations. But I take your point; you mentioned passports, for example. I can imagine there are probably other similar patterns. Again, I would have to check with my corporate colleagues to see whether there has been some follow-up. On the defective administration score, as I said at the beginning, certainly our area works primarily on this issue, but there is a lot of interaction with our corporate areas and our enabling service areas, which are the front line, as it were, and are possibly the sources of allegations of defective administration. Therefore, you would wish to feed it back upstream and say, ‘This is where the decision was made wrong.’ My colleagues in the legal branch would raise it with Mr Chester or Ms Williams and say: ‘We’re finding a pattern here. Let’s do something about it.’ But I will have to take that on notice.

Senator FAULKNER—So you are not able to say to the committee if there have been any changes to departmental procedures or policies as a result of any of these compensation payments?

Mr Moraitis—I would not want to make any assumptions, of course, but I imagine there have been cases over the years, in the last decade or so. For example—and this is possibly hypothetical, possibly realistic—in relation to payroll administration issues, if on termination someone thinks they have missed out and have not been properly paid out, they might want to raise it as a former employee, and you would obviously want to fix up your payroll processes. That is obviously being facilitated by the technological changes with the use of software systems in the nineties and onwards and that has made it much easier. But, as you can imagine, there are also glitches in the use of payroll systems and you want to make sure that you get that correct.

Senator FAULKNER—What is at the departmental decision-making process in relation to these claims?

Mr Moraitis—My recollection is that the decision maker would be within the legal branch and would be the director of the administrative law section. It is a director level position, I think.

Senator FAULKNER—Is there a delegation capped amount?

Mr Moraitis—I would have to check the delegation limits. I do not have them off the top of my head. Maybe Ms Thorpe, who is our CFO, might know, but I cannot recall the limit. As you mentioned, the amounts we are talking about are relatively small.

Senator FAULKNER—From what I have picked up, most of them seem to be comparatively small.

Mr Moraitis—Sure. But I take the point about them cumulatively, that you would want to make sure they are controlled. I do not know if the annual report has anything on this.

Senator FAULKNER—I thought it did—otherwise I would not know about it!

Mr Chester—It does. The annual report just talks about the number of cases—open cases, closed cases and pending cases at the end of each financial year.

Senator FAULKNER—Have you got an update on those figures in the annual report?

Mr Chester—No, I do not. Just for the record, the last annual report said that at the end of last financial year there were nine cases lodged; four cases were resolved satisfactorily, three of which were ongoing from previous financial years, resulting in five payments made from administered funds; three cases were rejected; and six cases remained in progress. But I do not have an update of what has happened with those six cases or any new cases that have come in since then.

Senator FAULKNER—Let us take as a case in point one of these claims that is agreed by the decision maker in the department and compensation is paid. Because this is for defective administration, do you have a policy about trying to deal with the defect in administration for which compensation has been paid? That is what I am trying to understand, and it is still not entirely clear to me.

Mr Chester—I can make a couple of points. I am not aware of an increase in cases. I am not aware of a focus of cases in any particular area of the department. I guess if that were the case then we would be taking some action. As far as the specific cases are concerned, I am at a disadvantage in that I do not know the details of them—I do not have the details with me to be able to answer the question as to whether the department should take some action. I can imagine there would be cases that, whilst they fall under the heading of defective administration, may have been caused by some oversight or error by a member of staff in, for example, the processing of salary or superannuation payments or the inputting of data—a human error rather than a systemic failure by the system or an individual. So it really just depends on what the cases are.

Senator FAULKNER—Do you know of any situations where there has been such human error and there has been some sanction, counselling or whatever, applied to a member of staff? Does it go to that sort of level?

Mr Chester—No, I am not aware of any. I am fairly sure there have been no instances at least in the last few years—the last six, seven or eight years—where there has been a formal sanctioning or formal counselling in a code of conduct sense. Again, I would not rule out a situation where somebody has made a mistake and their supervisor has spoken to them about that mistake. I would not rule that out.

Senator FAULKNER—By paying compensation that is prima facie an admission of some failure or defect in administration, however minor it might be. That is right, isn't it?

Mr Chester—That is correct. We certainly would not be paying the money if we did not believe there had been some error made.

Senator FAULKNER—In the situation, Mr Moraitis, of someone making a claim for detriment caused by defective administration and that claim not being successful, not agreed by the decision maker in the department, is any appeal process possible?

Mr Moraitis—I am not sure.

Senator FAULKNER—You might take that on notice.

Mr Moraitis—Possibly it could go to the Ombudsman, for example. I think I have taken something on notice on the Ombudsman, so I will pursue that.

Senator FAULKNER—If you could take that on notice and also indicate whether over the last three or four years there have been any such appeals, I would appreciate it. I realise that we have, as they say in the classics, run out of time.

CHAIR—Mr Chester, tomorrow it is anticipated that we will go on to trade issues from 9 am until 12 pm.

Mr Chester—This is 1.1.5.

CHAIR—Yes, and 1.1.6. At 1 pm we commence with AusAID, until 3 pm. From 3 pm until 4 pm, we will deal with Austrade. That is obviously in the hope that we will have canvassed mainly opposition questions, but, as you have seen tonight, senators come in from all over the place and do not disclose which areas they want to get into or how deeply and how many questions they have. That is a rough schedule for tomorrow that I think is feasible.

Senator FAULKNER—This will mean, then, that questions on outputs 1.2, 1.3, 1.4 or 3.1 will have to be placed on notice. I do not think there are any on 2.1. If that is the decision, that is fine.

CHAIR—That would be nice.

Senator FAULKNER—No doubt you have discussed this with my colleagues, and I am happy with that. I want to say this to Mr Chester: that may have a consequence. I am just saying to the chair, Mr Chester, that what this effectively means is that I am not sure how many questions my colleagues or other senators have on outputs 1.2, 1.3, 1.4, 2.1 or 3.1—or, for that matter, outputs 4.1 and 4.2. They will have to be placed on notice in this circumstance. Giving this certainty means that there may be—

Mr Chester—A large number of questions.

Senator FAULKNER—I do not know about a large number, but there will obviously be more questions placed on notice than would be the case if the committee kept ploughing through the outputs. I think you appreciate that.

Mr Chester—I understand that.

Senator FAULKNER—I am just saying to the chair, to you and to the minister that that is obviously a consequence, which I am sure you appreciate, Chair.

CHAIR—Yes.

Senator FAULKNER—I imagine that you have discussed this with other committee members, which is fine.

CHAIR—It is flexible, but that is a broad, feasible outline of where we are going.

Senator FAULKNER—I want to place on record that that will certainly mean that certain questions will need to be placed on notice in this circumstance. It is best if it is flagged now.

Mr Chester—That is fine. We will have our officials here from 9 am. I assume the committee will talk to Austrade and AusAID to get them here on time.

CHAIR—Thank you, Mr Chester.

Committee adjourned at 11.04 pm