



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION  
COMMITTEE

ESTIMATES

**(Budget Estimates)**

THURSDAY, 1 JUNE 2006

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE**

**Thursday, 1 June 2006**

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

**Senators in attendance:** Senators Adams, Mark Bishop, Brandis, Chris Evans, Forshaw, Faulkner, Ferguson, Ferris, Fierravanti-Wells, Hogg, Humphries, Hurley, Johnston, Nettle, Payne and Mason

**Committee met at 9.02 am**

**DEFENCE PORTFOLIO**

Consideration resumed from 31 May 2006.

**In Attendance**

Senator Sandy Macdonald, Parliamentary Secretary for Defence

**Department of Defence**

**Portfolio overview**

Mr Ric Smith AO, PSM, Secretary of Defence

Air Chief Marshal Angus Houston AO, AFC, Chief of Defence Force

Air Commodore John Harvey, Director General, New Air Combat Capability

Air Commodore Rodney Luke, Director General, Airlift and Training Systems

Air Commodore Brian (Jack) Plenty AM, Director General, Headquarters Joint Operations Command Project

Air Commodore Colin Thorne, Director General, Aerospace Maritime and Surveillance

Commodore Peter Law, Director General, Guided Weapons and Explosive Ordnance

Commodore Mark Campbell

Air Vice Marshal Tony Austin AM, Head, Defence Health Services

Rear Admiral Trevor Ruting, Head, Maritime Systems Division

Brigadier Anthony Fraser

Brigadier Mark Patch, Director General, Army Aviation Systems

Brigadier David Welch, Director General, Land Combat Systems

Ms Sue Parr, Director General, Personnel Policy and Employment Conditions

Dr Roger Lough, Chief Defence Scientist

Ms Shireane McKinnie, Head, Electronic and Weapon Systems Division

Mr Frank Roberts AO, Head, National Operations Division

Mr Colin Sharp, Head, Land Systems Division

**Budget summary (financial statements, capital investment budget and improvement initiatives)**

Mr Phillip Prior, Chief Finance Officer

Mr George Veitch, First Assistant Secretary Budgets and Financial Planning

**Capability development**

Lieutenant General David J Hurley AO, DSC, Chief Capability Development Group

Dr Ralph Neumann, First Assistant Secretary Capability Investment and Resources

**Defence Materiel Organisation****Outcome 1: Defence capabilities are supported through efficient and effective acquisition and through-life support of materiel****Output 1.1: Management of capability acquisition (including major capital equipment projects)****Output 1.2: Capability sustainment****Output 1.3: Policy advice and management services**

Dr Stephen Gumley, Chief Executive Officer Defence Materiel Organisation

Mr Kim Gillis, Acting Deputy Chief Executive Officer Defence Materiel Organisation

Dr Ian Williams, Chief Finance Officer Defence Materiel Organisation

Mr Frank Lewincamp, Chief Operating Officer, Defence Materiel Organisation

**Major capital facilities projects**

Mr Alan Henderson PSM, Deputy Secretary Corporate Services

Mr Geoffrey Beck, Head Infrastructure Division

**Defence outcomes****Outcome 1: Command of operations in defence of Australia and its interests****Output 1.1: Command of operations****Output 1.2: Defence Force military operations and exercises****Output 1.3: Contribution to national support tasks**

Lieutenant General Ken Gillespie, Vice Chief of Defence Force, AO, DSC, CSM

Rear Admiral James Goldrick, Commander Joint Offshore Protection Command, AM, CSC, RAN

**Outcome 2: Navy capability for the defence of Australia and its interests****Output 2.1: Capability for major surface combatant operations****Output 2.2: Capability for naval aviation operations****Output 2.3: Capability for patrol boat operations****Output 2.4: Capability for submarine operations****Output 2.5: Capability for afloat support****Output 2.6: Capability for mine warfare****Output 2.7: Capability for amphibious lift****Output 2.8: Capability for hydrographic, meteorological and oceanographic operations**

Vice Admiral Russ Shalders, Chief of Navy, AO, CSC

Mr David Spouse, Director General, Navy Business Management

**Outcome 3: Army capability for the defence of Australia and its interests****Output 3.1: Capability for special operations****Output 3.2: Capability for medium combined arms operations****Output 3.3: Capability for light combined arms operations****Output 3.4: Capability for army aviation operations****Output 3.5: Capability for ground based air defence****Output 3.6: Capability for combat support operations****Output 3.7: Capability for regional surveillance****Output 3.8: Capability for operational logistic support to land forces****Output 3.9: Capability for motorised combined arms operations****Output 3.10: Capability for protective operations**

Lieutenant General Peter Leahy, Chief of Army, AO

Mr Lance Williamson, Director General Corporate Management & Planning—Army

**Outcome 4: Air Force capability for the defence of Australia and its interests****Output 4.1: Capability for air combat operations****Output 4.2: Capability for combat support of air operations****Output 4.3: Capability for surveillance and response operations****Output 4.4: Capability for airlift operations**

Air Marshal Geoff Shepherd, Chief of Air Force, AM

Ms Grace Carlisle, Assistant Secretary Resource and Planning—Air Force

**Outcome 5: Strategic policy for the defence of Australia and its interests****Output 5.1: International policy, activities and engagement****Output 5.2: Strategic policy and military strategy**

Mr Michael Pezzullo, Deputy Secretary Strategy

**Outcome 6: Intelligence for the defence of Australia and its interests****Output 6.1: Intelligence**

Mr Shane Carmody, Deputy Secretary Intelligence and Security

Outcome 7: Superannuation and housing support services for current and retired defence personnel

**Output 7.1: Superannuation support services for current and retired defence personnel****Output 7.2: Housing assistance for current defence personnel****Output 7.3: Other administered expenses and revenue****Business processes****Inspector General**

Claude Neumann, Inspector General

**Chief Information Officer**

Air Vice-Marshal John Monaghan AM, Chief Information Officer

Corporate Services

Mr Alan Henderson PSM, Deputy Secretary Corporate Services

Mr Mark Cunliffe, Head Defence Legal

Coordination and Public Affairs

Mr Peter Jennings, Chief of Staff Australian Defence Headquarters and Head of Coordination and Public Affairs

**People****Defence Personnel**

Major General Mark Evans, Head Defence Personnel Executive, DSC, AM

Mr Peter Sharp, First Assistant Secretary, Defence Personnel Executive

**Defence Housing Authority**

Mr Richard Bear, General Manager, Development and Sales

Mr John Kitney, Chief Financial Officer Department of Veterans' Affairs

**Portfolio overview****Corporate and general matters**

**Outcome 1: Eligible persons (including veterans, serving and former defence force members, war widows and widowers, certain Australian Federal Police personnel with overseas service) and their dependents have access to appropriate income support and compensation in recognition of the effects of their service**

**1.1: Means tested income support, pension and allowances**

**1.2: Compensation pensions, allowances etc**

**1.3: Veterans' Review Board**

**1.4: Defence Home Loans Scheme**

**1.5: Incapacity payments, non-economic lump sums through SRCA**

**1.6: Administer individual merit reviews of SRCA decisions**

**1.7: Incapacity payments, non-economic lump sums through MRCA**

**1.8: Administer individual merit reviews of MRCA decisions**

Mr Mark Sullivan, Secretary

Mr Ed Killesteyn, Deputy President

Mr Ken Douglas, General Manager, Service Delivery

Mr Barry Telford, General Manager, Policy and Development

Mr Paul Pirani, Principal Legal Adviser, Legal Services

**Outcome 2: Eligible persons (including veterans, serving and former defence force members, war widows and widowers, certain Australian Federal Police personnel with overseas service) and their dependents have access to health and other care services that promote and maintain self-sufficiency, wellbeing and quality of life**

**2.1: Arrangement for delivery of services**

**2.2: Counselling and referral services**

**2.3: Deliver medical, rehabilitation under SRCA and related legislation**

**2.4: Deliver medical, rehabilitation under MRCA**

Mr Mark Sullivan, Secretary

Mr Ed Killesteyn, Deputy President

Mr Ken Douglas, General Manager, Service Delivery

Mr Barry Telford, General Manager, Policy and Development

Dr Graeme Killer, Principal Medical Adviser

**Outcome 3: The service and sacrifice of the men and women who served Australia and its allies in wars, conflicts and peace operations are acknowledged and commemorated.**

**3.1: Develop and implement commemorative initiatives**

**3.2: Maintain, construct and refurbish war graves and post war commemorations**

**3.3: Coordinate and manage the delivery of commemorative and related activities at**

**Gallipoli**

Mr Mark Sullivan, Secretary

Mr Ed Killesteyn, Deputy President

Ms Kerry Blackburn, General Manager, Commemorations and War Graves

Major General Paul Stevens AO, Director, Office of Australian War Graves

**Outcome 4: The veteran and defence and certain Australian Federal Police communities have access to advice and information about benefits, entitlements and services**

**4.1: Communication, community support to the veteran community and providers, including veterans' local support groups**

**4.2: Advice and information to members of the defence force community under the SRCA**

**4.3: Advice and information to members of the defence force community under the MRCA**

Mr Mark Sullivan, Secretary

Mr Ed Killesteyn, Deputy President

Ms Jo Schumann, General Manager, Corporate

Mr Chris Harding, General Manager, Business Integrity

Mr Ken Douglas, General Manager, Service Delivery

Mr Barry Telford, General Manager, Policy and Development

Mr Pablo Carpay, National Manager, Parliamentary and Corporate Affairs

Mr Neil Bayles, Chief Finance Officer, Resources

Mr Bob Hay, Chief Information Officer, Information Management

**Outcome 5: Serving and former defence force members and dependents have access to support services provides through joint arrangements between DVA and Defence**

**5.1: Joint Defence/DVA projects**

Mr Mark Sullivan, Secretary

Mr Ed Killesteyn, Deputy President

Ms Jo Schumann, General Manager, Corporate

Mr Chris Harding, General Manager, Business Integrity

Mr Ken Douglas, General Manager, Service Delivery

Mr Barry Telford, General Manager, Policy and Development

Mr Pablo Carpay, National Manager, Parliamentary and Corporate Affairs

Mr Neil Bayles, Chief Finance Officer, Resources

Mr Bob Hay, Chief Information Officer, Information Management

**Output group 6: Provision of services to the Parliament, Ministerial services and the development of policy and internal operating regulations—attributed to outcomes 1 to 5**

Mr Mark Sullivan, Secretary

Mr Ed Killesteyn, Deputy President

Ms Jo Schumann, General Manager, Corporate

Mr Chris Harding, General Manager, Business Integrity  
Mr Ken Douglas, General Manager, Service Delivery  
Mr Barry Telford, General Manager, Policy and Development  
Mr Paul Pirani, Principal Legal Adviser, Legal Services  
Mr Pablo Carpay, National Manager, Parliamentary and Corporate Affairs  
Mr Neil Bayles, Chief Finance Officer, Resources  
Mr Bob Hay, Chief Information Officer, Information Management

[9.02 am]

**CHAIR (Senator Johnston)**—I call the committee to order and welcome Air Chief Marshal Angus Houston and Minister Sandy Macdonald.

**Senator Sandy Macdonald**—Could I make an opening statement, Chair?

**CHAIR**—Yes.

**Senator Sandy Macdonald**—Thank you, Chair. I just wanted to say that the CDF will be here for up to two hours this morning if there are questions of an operational or overview nature. I think he will make some preliminary comments to update us on the position in East Timor and to advise the committee that the deputy CDF, the commander of operations, will not be coming today because of the operational tempo. The secretary, Mr Smith, will be here at approximately 10 o'clock and, subject to all-of-government meetings today, he will be here till four o'clock, at which time he has to leave for the NSC. That is the state of play. I think the CDF would like to make a brief opening comment.

**CHAIR**—Sorry, CDF. I did not realise you wanted to say something. Chief, over to you.

**Air Chief Marshal Houston**—Chair and members of the committee, I thought I should let you know that things in Dili are quiet at the moment. Yesterday we saw a 60 per cent reduction in the number of incidents on the streets, which is good news. Things are starting to settle, but I would be very quick to add that we expect the level of violence on the streets to wax and wane until things are sorted out in that country.

In terms of the overnight reporting from Iraq, you would be aware that we had an improvised explosive device attack on one of our armoured vehicles. It was an Australian light armoured vehicle, an ASLAV, and the vehicle sustained minor damage but remains operational. Of course, most important of all, all our people are safe.

I would like to highlight the fact that the improvised explosive device threat is the most serious threat that we face in both Afghanistan and Iraq. Indeed, you would recall that a couple of weeks ago we had another IED attack on one of our vehicles operating in southern Afghanistan. I would like you to be aware of the fact that we have done a lot of work in anticipation of the fact that this would become an increasing and more lethal threat. We have created a centre of excellence within the Australian Defence Force, under the Chief of Army—an improvised explosive device task force, with 12 people, led by Colonel Phil Winter. Essentially, their job is to keep one step ahead of the technology that is out there, to develop appropriate doctrine, tactics, techniques and procedures and also to provide direction to our people in the DMO and in Australian industry so that we can develop appropriate countermeasures to this very lethal threat. I have him here this morning so that the committee can pursue any issues they wish with him. I think the work that he is doing is very important.

It is going very well. We are hopeful that by doing this work we can mitigate some of the risk that we face out there when we operate in these two very dangerous environments.

**CHAIR**—Thank you, CDF.

**Senator MARK BISHOP**—The first issue I want to talk to is the matters that have been recently reported in the press attached generally to the heading of military justice. I want to discuss with you, Chief, issues relating to the Robyn Fahy case: the use of public funds in recent years to pay heavy litigation costs in a range of matters associated with that particular case and the attitude towards the practice of the legal division to engage in extensive litigation in a whole range of matters in this country. Of course, I want to discuss the state of proceedings in the Robyn Fahy case, such as whether there are any matters before tribunals, particularly in relation to press reports on mediation. I do not want to go into detail on the department's position but I note that there have been very alarming and colourful reports deliberately made in the media about actions that are alleged to have occurred in respect of Ms Fahy over a period of years.

The first question want to ask of you, Chief, in the Fahy matter is: why has Defence never fully investigated Commander Fahy's allegations of assault while she was in the Defence Force Academy and, in particular, her allegations that she was repeatedly physically assaulted, that often her body was black and blue and that it was drawn regularly to the attention of more senior personnel at that time in the defence academy? Why has there not been an inquiry, those allegations found to be untrue and dismissed as lies and the very good name of a whole range of now senior men who were around in those times properly protected? Or why was an inquiry not done, the allegations to some degree found to be proven and the appropriate recourse to discipline taken under the relevant regulations within the defence forces?

**Air Chief Marshal Houston**—I will start off, and then I will pass over to the Chief of Navy, who is actually handling this case. We have reached a situation with Lieutenant Commander Fahy where the department will go into mediation with her under a mediator, a retired Federal Court judge, who will mediate the case. This is a great step forward because I have been deeply concerned by the way that this and other cases have been played out in the media.

One of the things that concerns me about the way these things are played out in the media is the lack of natural justice that applies to some of the individuals who are named. I feel very strongly that natural justice is something that every individual is entitled to, regardless of their part in a particular set of circumstances. I just want to make that point. I think it is a very important point because I know the effects of speculation in the media about how things happened denies people natural justice and has a huge impact on the personal circumstances of those involved—that is, all of the parties involved. I want to make that point before we get into this discussion, and I would ask the Chief of Navy to take you through the answers to your specific questions. Thank you.

**Senator CHRIS EVANS**—I take your point, CDF, but this started in 2000 and clearly Defence has to take some responsibility about whether natural justice has occurred given the length of time it has taken to resolve these matters. I had dealings with her family and this

issue a good four years ago. I take your point about natural justice, but part of natural justice is resolving complaints quickly and this just seems to have dragged on and on.

**Air Chief Marshal Houston**—I would like to see us settle things like that much more quickly. Admiral Shalders and I have been in our respective jobs for less than a year. We have a way ahead to try and settle this matter. I think we have made a huge step forward in getting to the stage where the principal parties are prepared to sit down and enter mediation under a retired Federal Court judge. I am very hopeful that we get a good outcome from that process.

But I think it is important to state that I am talking generically about all the cases that are out there. We have been through a process—a military justice inquiry—where the issue of natural justice was raised time and time again. I would like to make the point that sometimes, in the coverage of these circumstances, natural justice is not provided in a reasonable way to those involved in these circumstances. One of the things that we need to do is to try and come up with a better way of covering those circumstances so that people are not hurt badly by the process.

I am aware of some of the casualties from this process of debate and speculation in the media about certain sets of circumstances. It is not just the Fahy case; there are a number of other ones out there as well. I would appeal to everybody in the community—and it is a general appeal—that we need to always consider the rights of an individual. We pride ourselves on that in our society, and those rights extend to everybody involved in the process—not just who appears to be the principal victim. That is all I want to say. I think it is important that I say that because I am aware of huge impacts on the personal circumstances of some of those who are involved in some of those cases.

**Vice Adm. Shalders**—Senator Bishop, I would start by saying that I fully agree with you that a lot of the reporting around this particular case has been not only colourful but also sensationalist. You did not use the word but I would use the word ‘unbalanced’ when referring to the reporting of this case. It has been unbalanced from the defence side because it has been our line that all parties to this particular debate need to be protected. It has been my personal opinion and CDF’s opinion that the privacy of Lieutenant Commander Fahy needs to be protected, and that is what we have endeavoured to do. In a report in the *Sydney Morning Herald* last week, an internal Navy document was reported. That document was, in fact, a message from me to all members of the Navy, attempting to explain why we have not become involved in a media slanging match. That report in the *Sydney Morning Herald* was an accurate portrayal of that internal Navy document.

Senator Evans, yes, it has taken a long time—too long; we would agree—but there are many complex reasons why it has taken such a long time. One of the reasons is that there has been a long-running debate by Lieutenant Commander Fahy about her medical fitness. I am pleased to report that that debate was finished in March this year, which has brought us to the situation we are at at the moment. In March this year, Lieutenant Commander Fahy became medically fit and medically deployable. She had not been in that situation since, I think, 1991. She had appealed—

**Senator MARK BISHOP**—2001?

**Vice Adm. Shalders**—1991. She became medically categorised with a physical problem, which I do not need to go into here, in 1991, which did not allow her to go to sea. Since 2000, she has been appealing her medical fitness on those grounds. In March this year, 2006, she successfully won that appeal and became fully medically employable and deployable. In March this year, as a result of that successful appeal and as a result of a conversation that I had with her in August last year, we attempted to rehabilitate her to the workforce, which was one of two options that she gave us in my conversation with her in August. Her option 1 was to return to the workforce. Having been medically re-categorised as being deployable, we attempted to bring her back to the workforce.

On 2 May this year, we spoke with Lieutenant Commander Fahy in an attempt to bring her back to the workforce. She was unhappy with the positions that were offered to her. On 10 May, in a letter that I received on 11 May—just three weeks ago—she indicated that she no longer wished to pursue option 1: return to the workforce. Following that, we exchanged a series of correspondence which resulted in Lieutenant Commander Fahy agreeing, on 25 May—one week ago—to a mediator being appointed. At this stage, the mediator is being briefed and the mediation process is moving ahead at a pace.

In terms of how quickly we have moved in the past and how quickly we are moving now, I agree with CDF, of course, that we are making progress. I could not and will not put a duration on the mediation process—that will take as long as it needs to take—but I can commit and will commit to making this happen as quickly as we can possibly make it happen.

**Senator MARK BISHOP**—I have a couple of points. This, of course, is the second attempt at mediation. There has already been one attempt at mediation and, clearly, that was unsuccessful.

**Vice Adm. Shalders**—Senator, if I could correct you, that is not correct. Lieutenant Commander Fahy applied through the Human Rights and Equal Opportunity Commission. That HREOC application was unsuccessful, if that is what you mean by mediation.

**Senator MARK BISHOP**—Yes. There was an attempt at mediation through HREOC.

**Vice Adm. Shalders**—Through HREOC—there was.

**Senator MARK BISHOP**—Yes, that is what I am saying: there was a prior attempt at mediation and the tribunal then was the HREOC tribunal—

**Vice Adm. Shalders**—That is correct.

**Senator MARK BISHOP**—and that attempt at mediation eventually failed.

**Vice Adm. Shalders**—The HREOC commissioner dismissed the application because it became evident that that form of mediation was not going to be successful.

**Senator MARK BISHOP**—That is right: the mediation was unsuccessful. But my question to the chief, which he passed to you to answer, Vice Admiral, was: why has there not been an investigation into the most serious allegations raised in the press as to the continuing assault and verbal tyranny alleged by Commander Fahy in her time at the Defence Force Academy? Why hasn't an inquiry been convened, conducted and concluded so that the allegations can be dismissed for lack of truth or whatever and the good name of those persons

protected—or, alternatively, if the allegations have substance, so found and the appropriate disciplinary proceedings instituted under the relevant act of parliament?

**Vice Adm. Shalders**—There has been an inquiry. It has been conducted by the Australian Federal Police. The Australian Federal Police were given a series of allegations made by Lieutenant Commander Fahy's father in April 2001. The AFP were given those allegations. They have not found any substance that I am aware of. They have certainly not reported back to Navy as to the results of their investigation.

**Senator MARK BISHOP**—No, and Navy were less than helpful in that inquiry.

**Vice Adm. Shalders**—I am not sure about that.

**Senator MARK BISHOP**—But that is not the inquiry I am talking about. The allegation is that she was regularly assaulted, verbally and physically, by fellow cadets and seniors in her time of training. My concern is not the criminal aspects of that, which you choose to answer; my concern is whether that activity—a form of bastardisation—occurred and what the Defence Force would have found in an inquiry into those allegations. Let the criminal law proceed; I am concerned about the good name of the Defence Force people.

**Air Chief Marshal Houston**—Senator, could you be more specific about what allegations, who was making them—

**Senator MARK BISHOP**—I refer particularly to the allegations that Commander Fahy made on *The 7.30 Report* some two or three weeks ago, when she said that, whilst in her time at the academy, she was regularly attacked, that her body was black and blue, that she was mentally assaulted—

**CHAIR**—She was bashed every day, I think is the exact quote.

**Senator MARK BISHOP**—Yes; they were most extreme allegations—and that, on the day of her graduation, as I recall, where she graduated first in class, as she walked up to receive her commendation or medal or sword from the Governor-General of this country, her fellow cadets spat on her to the extent that she had saliva dripping from her body as she received her award. If that is a pack of lies, come out and say so. Clear the good name of her fellow cadets and all of those involved. If it is true, tell us the results of an inquiry. It is just unacceptable to have people around the world in the uniforms that a lot of people in this room wear under fire and dying and allegations are made that our uniforms are spat upon and there is no public response from responsible people. What is the story? Is it lies or is it true? That is the question.

**Vice Adm. Shalders**—Senator, I can tell you that there is no record at the Defence Force Academy of any complaint having been made by Lieutenant Commander Fahy along the lines that she alleged on *The 7.30 Report*. There is no record at the Defence Force Academy. There is no record of such a complaint being made through the Defence Equity line. I am not sure whether those allegations are true or not. There is no record of those allegations having been made contemporaneously.

**Senator MARK BISHOP**—Admiral, I do not really care whether someone has made a complaint to the hotline or someone has filled out the appropriate form drawing your attention to such matters. These allegations have been made on TV—they are in every paper in

Australia—that cadet force officers spat upon our uniform. You say you have not got any record. Have you done an investigation on your own initiative, and what are the results? If not, why not?

**Vice Adm. Shalders**—Yes, we have investigated those allegations. Her peers at the time have indicated that they have no memory of some of those allegations.

**Senator MARK BISHOP**—They have no memory of some of those allegations.

**Vice Adm. Shalders**—You have one person's point of view against a number of other persons' points of view—

**Senator MARK BISHOP**—What inquiries have you conducted?

**Senator FERGUSON**—Mr Chair, I suggest that we let the admiral answer the question before cutting in.

**Senator MARK BISHOP**—The question is—

**Senator FERGUSON**—He is halfway through an answer and you are interrupting.

**Senator MARK BISHOP**—With due respect, the question was: has an inquiry been conducted? The admiral responded that there is no record of some of the allegations.

**Senator FERGUSON**—All I am saying is that he was still speaking when you cut over the top of him. You must let him finish his answer. Let us have the answer to the question.

**Vice Adm. Shalders**—Sorry, Senator, the current question is?

**Senator MARK BISHOP**—The question is: has there been an investigation by Navy or the responsible authority in the Defence Force Academy into those allegations made by Commander Fahy and reported on the *7.30 Report*? If the inquiry has occurred, has it concluded and what are its findings?

**Vice Adm. Shalders**—There has been no formal inquiry as a result of Lieutenant Commander Fahy's allegations on the *7.30 Report*. There have been a number of informal inquiries that I have made and that my staff have made. As I mentioned earlier, the criminal allegations which were part of the same allegations have been subject to Australian Federal Police investigations since April 2001.

**Senator MARK BISHOP**—Admiral, why has there been no formal inquiry? Yesterday, the Chief Air Marshal advised how well our men and women in uniform were doing in a range of theatres around the world and how proud he was of their achievements. That is what the chief said and no-one here demurred from that. Commander Fahy alleged that her peers spat on her body and spat on her uniform—the uniform you wear every day—as she graduated first in class. They showed contempt, she alleges. I would have thought that that is a most serious matter to be bandied about in the press and that it should be dismissed if it is untrue. Will you not commit to an independent, formal inquiry into those allegations?

**Vice Adm. Shalders**—I will not commit to that. I notice that you required a judicial inquiry. I think that was your suggestion. Mr Fahy himself indicated that he did not wish to have a judicial inquiry. I believe, given the state of where we are up to in this case in terms of mediation, that another formal inquiry would be unhelpful to the settlement of the case.

**Senator MARK BISHOP**—So, in Ms Fahy's case, in terms of a settlement, monetary compensation is one thing—and that should be processed, as you say, in the appropriate mediation forum—but we are talking about the rather disgusting allegations made of then cadets, now generally senior officers in command positions. Would you not be interested in having those allegations dismissed as lies, if they are such lies?

**Vice Adm. Shalders**—There is nobody more interested in the good reputation of the Australian Defence Force than the chiefs and the Chief of the Defence Force. As to whether an inquiry such as you suggest will be helpful in terms of that reputation management, I doubt it.

**Senator MARK BISHOP**—Is that also your view, Chief?

**Air Chief Marshal Houston**—My view on this is that we have a mediation process going. You were asking us earlier why things have taken so long. We have got a way ahead at the moment. There is a need to mediate these circumstances. No doubt the allegations that came out on TV a couple of weeks ago will be discussed and no doubt out of the mediation will come a way ahead to resolve some of the concerns that Lieutenant Commander Fahy has. So I would like to let that process run and I would not want to see anything that interferes with that particular process.

Having said that, I think that the defence academy has moved on since those days. We are talking about circumstances over 20 years ago. As you know, through the years the defence academy has had one very big investigation; out of that came a number of actions that I think have established the academy on a very firm footing. I am very happy with the way things are done at the academy today. My view would be: let this process run. Mr Fahy has indicated that he does not want a judicial inquiry, and we need to work through the issues under a retired Federal Court judge—a man very suitable for the task—to get an outcome on this matter.

**CHAIR**—Could I ask a question to clarify some matters. Vice Admiral, what year did Lieutenant Commander Fahy graduate?

**Vice Adm. Shalders**—I think it was about 1986, but we will check that.

**Air Chief Marshal Houston**—It was 1988. She joined in 1986. Of course, the academy started in 1986, and she graduated in 1988. I believe she was in the first group of people who went through the new defence academy which brought the three service academies together.

**Vice Adm. Shalders**—Her graduation date was 20 June 1988.

**CHAIR**—All right. There have been matters taken to the Federal Police by Navy—

**Vice Adm. Shalders**—Correct.

**CHAIR**—What year was that?

**Vice Adm. Shalders**—April 2001.

**CHAIR**—There was an application to the Human Rights and Equal Opportunity Commission by Lieutenant Commander Fahy. Do we know what year that was?

**Vice Adm. Shalders**—It concluded last year, in July 2005.

**CHAIR**—Do we know when the application commenced? Probably 2001 or something like that, was it?

**Vice Adm. Shalders**—August 2001, I believe.

**CHAIR**—What were the results of the 1998 police inquiry?

**Vice Adm. Shalders**—The AFP inquiry which commenced in April 2001?

**CHAIR**—Yes, sorry.

**Vice Adm. Shalders**—We have not had a result from the Federal Police, but there have been no prosecutions. We checked with the Federal Police in September last year but, as far as we are aware, investigations are continuing.

**CHAIR**—In other words, that has been pending for five years and there are allegations of assault and other criminal matters in that event.

**Vice Adm. Shalders**—Yes. There were allegations made in April 2001 which the AFP have been investigating.

**CHAIR**—The Human Rights and Equal Opportunity Commission matter of 2001 contained allegations of a similar administrative nature, I take it.

**Vice Adm. Shalders**—Without going into detail, they were similar, yes.

**CHAIR**—That has been finalised?

**Vice Adm. Shalders**—That was finalised in July 2005.

**CHAIR**—What was the result of that matter?

**Vice Adm. Shalders**—The complaint was terminated by the Human Rights and Equal Opportunity Commission, because no resolution was able to be reached.

**CHAIR**—So it did not go to a hearing, it could not be mediated to a satisfactory solution, and the commission refused to proceed to a hearing on it.

**Vice Adm. Shalders**—It went to a hearing, and then the commission felt that it was unable to be satisfactorily resolved in the commission. So they terminated the complaint.

**CHAIR**—So the applicant was unsuccessful.

**Vice Adm. Shalders**—Correct.

**CHAIR**—When was the first time that Navy became aware of *The 7.30 Report* allegations; that is, that on every day, this member of the Australian Defence Force was bashed, and there were the allegations of spitting at graduation, et cetera. When did we become aware of the allegations contained in that report?

**Vice Adm. Shalders**—When the report was broadcast.

**CHAIR**—This year?

**Vice Adm. Shalders**—This year.

**CHAIR**—So we are asked to go back and establish what happened 18 or 19 years ago, effectively?

**Vice Adm. Shalders**—That is Senator Bishop's suggestion.

**Senator MARK BISHOP**—You were unaware of those allegations prior to *The 7.30 Report*?

**Vice Adm. Shalders**—In the specific form that they were represented by Lieutenant Commander Fahy on *The 7.30 Report*, yes.

**Senator MARK BISHOP**—But you were generally aware that she had been raising allegations of assault and battery for many years?

**Vice Adm. Shalders**—Since April 2001 in written form from her father, yes.

**Senator FERGUSON**—Could I clarify one thing: with the AFP inquiry, the matter referred to them was for alleged assault or alleged misdemeanours that took place some 13 years prior?

**Vice Adm. Shalders**—Yes, it was; in April 2001, following a complaint.

**Senator FERGUSON**—In all of those intervening 13 years there was no complaint or no mention made of any mistreatment of Lieutenant Commander Fahy, until 2001?

**Vice Adm. Shalders**—There was mention made by Lieutenant Commander Fahy to her commanding officer while she was serving as executive officer on *Stirling*, which was in 2000.

**Senator FERGUSON**—So that is 12 years—

**Vice Adm. Shalders**—Correct.

**Senator FERGUSON**—after she graduated. In fact, nothing was said for 12 years; it was not until then that she raised the issue?

**Vice Adm. Shalders**—She did not raise the issue formally until April 2001, when her father raised it on her behalf, except for the discussions she had with her CO towards the end of 2000, at which time she said that the matters had been resolved satisfactorily.

**Senator MARK BISHOP**—But it was raised informally at various levels over the years after it occurred, as reported in the findings of the Western Australian medical board, after you tried to have her removed from the Navy on psychiatric grounds, and those grounds failed. You have not reported on that full public hearing of the Western Australian medical board after you tried to cashier her from the Navy. In that hearing, similarly, those allegations of assault and continuing assault were raised.

**Vice Adm. Shalders**—The Western Australian medical board was last year, Senator, in 2005. If I could correct—

**Senator CHRIS EVANS**—That is not right either; it was in 2004, wasn't it?

**Vice Adm. Shalders**—I am sorry, 2004.

**Senator MARK BISHOP**—How long did it go for? Two years?

**Vice Adm. Shalders**—The Navy did not try to cashier Lieutenant Commander Fahy from the Navy.

**Senator MARK BISHOP**—You tried to remove her on psychiatric grounds.

**Vice Adm. Shalders**—Lieutenant Commander Fahy, as reported by her father, was diagnosed by a civilian psychiatrist as being manic and having bipolar disorder. This was reported in the press last Saturday. The Navy has never said this before. She was diagnosed by a civilian psychiatrist as being manic and having bipolar disorder. As a result of that diagnosis, it was recommended to her commanding officer that she be removed from the position as executive officer. Subsequently, Lieutenant Commander Fahy had independent psychiatric opinion that that diagnosis was incorrect.

**Senator MARK BISHOP**—That civilian medical officer, was that Dr McKenzie?

**Vice Adm. Shalders**—No. Dr McKenzie was a serving reservist. Dr McKenzie was the referring doctor to the civilian psychiatrist.

**Senator MARK BISHOP**—So Dr McKenzie referred Ms Fahy's case to a civilian psychiatrist. The civilian psychiatrist made a very adverse finding, which was in no short time rejected by two alternative competing psychiatrists. That, of course, was in the scenario where Navy was trying to dismiss her from her position, and she took a case to defend her position in the appropriate tribunal. That doctor you refer to—you having raised him—Dr McKenzie, was found by the Western Australian medical board, who inquired into that matter, and I will read you the extract, seeing that you choose to rely—

**Vice Adm. Shalders**—Senator, I did not raise Dr McKenzie.

**Senator FERGUSON**—You raised Dr McKenzie; he didn't.

**Senator MARK BISHOP**—Admiral Shalders referred to a civilian psychiatrist. Ms Fahy—

**Senator PAYNE**—And you said, 'Was it Dr McKenzie?' and he said, 'No.'

**Senator MARK BISHOP**—Lieutenant Commander Fahy was referred to the civilian psychiatrist by Dr McKenzie.

**CHAIR**—That is right; we know those facts. So put the question to him about—

**Senator CHRIS EVANS**—Could I just intervene because I found two statements by Vice Admiral Shalders to be conflicting and I want to clarify it. In answer to questions from Senator Bishop, you first said you had not heard of the allegations until *The 7.30 Report* was aired and, then later, you said you were aware of some allegations. I do not think we got a clear answer to the fact that you referred matters to the AFP in 2001. Were those these matters or were those separate matters?

**CHAIR**—He said he had not heard of the specific allegations in *The 7.30 Report*.

**Senator CHRIS EVANS**—That is why I want to clarify it. I was not asking you the question, Chair, with all due respect.

**CHAIR**—I know you weren't, but I want to correct the record so you get it right.

**Senator CHRIS EVANS**—No, I am giving the witness the chance to correct the record because I was confused; you may not be, Chair.

**CHAIR**—No, I was not.

**Senator CHRIS EVANS**—Allow me to ask the question of the witness. I repeat the original question: when did you know of the allegations of the sort made on *The 7.30 Report*? When did Navy or the Defence Force first know of those?

**Vice Adm. Shalders**—In the form that they were made on *The 7.30 Report*, we heard that at the same time as the rest of Australia. In January 2001, those allegations were represented to the then Chief of Navy by Mr Fahy. That was the first formal notification to my knowledge of those allegations having been made.

**Senator CHRIS EVANS**—You use the words ‘in that form’. What does that mean? At one moment you say that you had not heard of them and then you say that in 2001 the allegations were referred to you by her father. I am just not clear what you are saying.

**Vice Adm. Shalders**—What I mean by that is that the statement Lieutenant Commander Fahy made that she could not remember a day when she was not punched, beaten, kicked or spat upon was news. We had not heard that before.

**Senator CHRIS EVANS**—Maybe we should start from the other end. What was the nature of the allegations and concerns raised by her father with the Chief of Navy in 2001?

**Vice Adm. Shalders**—I am not sure that I should go into the detail of that. That has not been revealed by Mr Fahy or Lieutenant Commander Fahy. It was in a confidential submission to the Chief of Navy at the time. It is subject to AFP investigation. But I can say it was of a similar nature to what Lieutenant Commander Fahy revealed on *The 7.30 Report*.

**Senator CHRIS EVANS**—How can you then say to us in one breath that you had a formal complaint of a similar nature in 2001 and then tell me that when the show was aired in 2006 it was the first you had heard of it?

**Vice Adm. Shalders**—No. I said, ‘In the form that it was represented on *The 7.30 Report*.’

**Senator CHRIS EVANS**—What does that mean?

**Vice Adm. Shalders**—The statement that she indicated that she could not remember a day when she had not been beaten, punched, kicked or spat upon—that was not in the earlier complaint.

**Senator CHRIS EVANS**—Did the allegation in 2001 include an allegation of bullying or assault?

**Vice Adm. Shalders**—Yes, it did.

**Senator CHRIS EVANS**—It did. So we are effectively talking about the same sort of matter. Did it allege it at the same time as the allegations on *The 7.30 Report*? Was it referring to the same period—that is, at officer training?

**Vice Adm. Shalders**—It was referring to the period while Lieutenant Commander Fahy was studying at the defence academy, yes.

**Senator CHRIS EVANS**—You say, ‘not in that form’, but we have the same time period and the same sort of allegation being made in 2001.

**Vice Adm. Shalders**—Correct.

**Senator CHRIS EVANS**—What did Navy do in 2001 when those serious allegations—

**Senator FERGUSON**—Took it to the police.

**Senator CHRIS EVANS**—I am happy for Liberal senators to answer the questions if they want to, but I would rather actually ask Admiral Shalders.

**Senator FERGUSON**—We have already had the answers.

**CHAIR**—We have had a clear answer to that question.

**Senator CHRIS EVANS**—That might be right, but it might be only part of the answer, might it not? If we can actually not have a commentary from other senators, we could get to the question. Is that all Navy did in terms of referring it to the AFP or did they take some action given that there were serious allegations against fellow officers?

**Vice Adm. Shalders**—It was referred to the AFP.

**Senator CHRIS EVANS**—Is that all?

**Vice Adm. Shalders**—No, at the same time of course the major adjustments that the CDF spoke about at the defence academy were ongoing which were addressing the same sorts of issues that had been raised by Mr Fahy.

**Senator CHRIS EVANS**—So you just rolled Ms Fahy's father's allegations into the general review of the officer training establishments?

**Vice Adm. Shalders**—Not at all. We referred the allegations to the Australian Federal Police.

**Senator CHRIS EVANS**—I should have said, 'And referred to the AFP.' I meant in terms of your internal response.

**Vice Adm. Shalders**—In terms of the internal response, as it regarded the way ADFA was run, by that stage a major review had already taken place at ADFA. Major changes had occurred at ADFA in the intervening 13 years.

**Senator CHRIS EVANS**—I accept that; I know the history of all that. In terms of the specific allegations against particular members of the Defence Force and the treatment of this particular officer, apart from referring them to the AFP—and you say you have not heard back from them—what else did you do?

**Vice Adm. Shalders**—There were no specific allegations made. Because of the nature of the allegations, there was nothing that we could specifically do against, for example, individuals.

**Senator CHRIS EVANS**—How did you come to that conclusion?

**Vice Adm. Shalders**—By reading the letter that was sent to us.

**Senator CHRIS EVANS**—So there was no investigation initiated?

**Vice Adm. Shalders**—We referred it to the Federal Police.

**Senator CHRIS EVANS**—Obviously, if we want to know what happened there we will have to ask the Federal Police. But, in terms of Navy and Defence Force, there was no internal investigation, inquiry, or officer given the task of checking the circumstances?

**Vice Adm. Shalders**—Not the circumstances as they had been raised in the letter from Mr Fahy, because they were general statements.

**Senator CHRIS EVANS**—General statements of bullying and assault.

**Vice Adm. Shalders**—Without breaching Mr Fahy's confidence in that letter, yes, broadly speaking.

**Senator CHRIS EVANS**—So you sent off to the AFP the criminal question and you have not heard back, it seems, from them. But you took no action in terms of internal discipline or inquiry as to the circumstances surrounding the allegations?

**Vice Adm. Shalders**—Beyond what had already happened at ADFA over the intervening 13 years, yes. The nature of the letter was such that we were unable to take the specific actions that I think you are referring to. It is a general letter of complaint.

**Senator CHRIS EVANS**—But it raises very serious matters, according to your evidence.

**Vice Adm. Shalders**—Of course.

**Senator CHRIS EVANS**—In discussing this earlier, you at one stage referred to 'investigating'. But let me be clear on this: there was no actual Navy or Defence Force investigation on receipt of those allegations in 2001; you simply referred the matter, as you should in matters of criminal activity such as assault, to the AFP?

**Vice Adm. Shalders**—I cannot speak for the officers who dealt with it at the time, but I do know that there were discussions between Mr Fahy, Mrs Fahy and the Chief of Navy at the time in order to try to deal with the matters that he had raised in his letter. I believe those discussions took place in January 2001 and, as I mentioned, in April 2001 the matter was referred to the Federal Police. So there was a deal of investigation done at the highest levels of the Navy between receipt of the letter and referral of the allegations to the Federal Police.

**Senator CHRIS EVANS**—Were they investigations or just discussions with the complainants?

**Vice Adm. Shalders**—I do not know the form of the discussions.

**Senator CHRIS EVANS**—There is nothing on the file?

**Vice Adm. Shalders**—No, not that I am aware of.

**CHAIR**—Do you know whether the Australian Federal Police interviewed Lieutenant Commander Fahy and took a detailed statement of complaint from her?

**Vice Adm. Shalders**—No, I do not.

**Senator MARK BISHOP**—So we have had a number of complaints; a number of bodies doing investigations; a Federal Police complaint inquiry from 2001 ongoing and unresolved; an application to the human rights commission for a form of mediation dismissed by the commission because it was unable to reach acceptable levels of settlement; various discussions, at best, over the years with Ms Fahy and/or her parents; and an inquiry by the Western Australian medical board into matters associated with the dismissal of Ms Fahy, but there has been no inquiry to date as to the allegations raised in the *7.30 Report*, even though Navy has had general knowledge of those allegations for many years.

**Vice Adm. Shalders**—There has been no specific inquiry into those additional allegations made by Lieutenant Commander Fahy on the *7.30 Report*.

**Senator MARK BISHOP**—And there is no intent to have such an official inquiry?

**Vice Adm. Shalders**—In the sense that we would prefer to move ahead with the mediation and also given the fact that Mr Fahy has indicated that he does not wish to proceed with a judicial inquiry—which I think was your call. There are another couple of investigations and procedures that have occurred in addition to those you have just mentioned. The first is a redress of a grievance process, which Lieutenant Commander Fahy initiated. She was seeking redress against the decision to terminate her appointment on medical grounds. That redress has also added to the length of time taken to deal with this case. She was seeking to halt that process—that is, the termination on medical grounds.

**Senator MARK BISHOP**—Was that the psychiatric or the physical?

**Vice Adm. Shalders**—I would prefer not to go into the grounds, if you do not mind.

**Senator MARK BISHOP**—There were two separate attempts to have her removed from service. I am asking which one you are talking about.

**Vice Adm. Shalders**—No, there was only one attempt to terminate her service on medical grounds. There were two parts to that termination, but I would prefer not to go into the details, if you do not mind. One of those parts was subsequently dismissed, but the physical disability remained and that was the grounds that she successfully appealed in March this year.

**Senator MARK BISHOP**—So what was the part that was dismissed?

**Vice Adm. Shalders**—I would prefer not to go into that, if you do not mind.

**Senator CHRIS EVANS**—It is on the public record.

**Senator MARK BISHOP**—You have raised it and it is on the public record.

**Vice Adm. Shalders**—It is not on the public record.

**Senator PAYNE**—Chair, I think this is a particularly difficult process. I understand absolutely the interests of Senator Evans and Senator Bishop in dealing with these matters on the public record through the estimates process, and I also understand the experience that this committee had in 2005 in relation to the extensive bringing together of the report on military justice. But there are ways to deal with these issues. I think Admiral Shalders is in an invidious position trying to deal with some of them on the public record in this way. There needs to be a measure of respect on both sides of the table for the difficulties that pertain to a case like this and dealing with it in this context. I do not for a moment suggest that the senators do not have every right and every opportunity to pursue the questions, but some of them are very difficult to deal with in the public context. There are many I would like to pursue myself—and that will come as no surprise to Senator Evans, in particular—but I do have some concerns about doing it in this process.

**Senator CHRIS EVANS**—I think Senator Payne's intervention is perfectly appropriate, but I think there was a misunderstanding. Senator Bishop was not seeking, as I understand, to go into the details of the matters involved other than to establish that it was the question of psychiatric diagnosis, which Ms Fahy has spoken about publicly, which is on the public

record, and there is a medical board of WA public case that has been aired and decisions have been made. I think Senator Bishop was just seeking to refer to it as, if you like, the psychiatric matter rather than the physical matter—it was that distinction—rather than to go into a discussion about allegations of specific matters.

**Vice Adm. Shalders**—Mr Chairman, I really think that a lot of these issues need to be dealt with within the privacy of a mediation process. I am sure all of the issues will be addressed during that process. What we are doing here is very difficult because there are a large number of privacy issues, and you just cannot have a discussion about this in this forum.

**Senator FERGUSON**—I understand what Senator Bishop is trying to ask, as Senator Evans has said. Lieutenant Commander Fahy can speak as publicly as she likes because that is her prerogative. I am sure that the admiral and the chief would consider that they do not wish to divulge some matters because of privacy issues, whereas she is perfectly entitled to speak about what she wants to.

**Senator CHRIS EVANS**—I think the committee senses that. I think most of the people at the table today actually went through the military justice report. So we are used to dealing with that sensitivity. From that inquiry, I understand the problems that the ADF sometimes faces in that regard.

But I think we have two issues. The CDF made it clear at the opening of this that one of his major concerns was the question of natural justice for not only Ms Fahy but other persons involved, and I must admit that I had some concerns about some of the reporting and the naming of individual officers, one of whom I know to be, in other respects, a competent and dedicated officer. But you say you are concerned about natural justice and allowing those people that justice, and then you say to us: ‘We don’t want to talk about any of this. There is no inquiry but there will be a mediation.’ My understanding of mediation generally, and certainly from the previous mediation during which I had contact and some dealings with the CDF, is that the terms of those mediation settlements are generally kept private. There is no outcome per se. One of the key questions for us is: how do you resolve these issues and provide natural justice to the other officers if the only resolution is a private mediation that never actually goes to those questions?

**CHAIR**—Yes, but the committee will have opportunity in the future to further—

**Senator CHRIS EVANS**—My question was: how do Defence Force think they are going to resolve those conflicting difficulties for them?

**CHAIR**—Can you answer that question, Vice Admiral?

**Vice Adm. Shalders**—I will go to a point that Senator Evans just made. There have been ongoing investigations, and I was just describing the redress of grievance process, which in itself is an investigation at various levels. This particular redress of grievance application by Lieutenant Commander Fahy was based on her belief that we should hold medical termination proceedings pending her application to HREOC, for example, and a number of other issues. She forwarded that redress in 2001. It went right through to the Chief of Defence Force for a decision. A redress was unable to be granted by a commanding officer, by subordinate levels, right through to the CDF. In May 2002, CDF affirmed the decision not to delay that medical

termination. That was a lengthy and extensive investigation surrounding her medical termination.

**Senator MARK BISHOP**—I want to be clear. Was the redress of grievance about medical termination based around psychiatric grounds?

**Vice Adm. Shalders**—It was based on her medical incapacity.

**Senator MARK BISHOP**—Which was, in turn, based upon psychiatric grounds?

**Vice Adm. Shalders**—It was based on two grounds, one of which was subsequently dismissed, but the physical ground that she successfully appealed this year was the ground that was being worked in terms of medical termination.

**Senator MARK BISHOP**—Was the one that was dismissed the same subject matter that was reported extensively in the Western Australian medical board inquiry?

**Vice Adm. Shalders**—Yes.

**Senator MARK BISHOP**—Okay. It is the psychiatric one; thank you. That is all I wanted to know.

**Vice Adm. Shalders**—You have drawn that conclusion, Senator, not me.

**Senator MARK BISHOP**—I will ask the question more exactly, if we are going to play this game—

**Vice Adm. Shalders**—The point I would make is that the Navy is not—

**CHAIR**—Do you really want the information?

**Senator MARK BISHOP**—Yes, I do.

**CHAIR**—I thought you were here to help Lieutenant Commander Fahy.

**Senator CHRIS EVANS**—The senator's question went to whether it was the matter of the psychiatric assessment of Ms Fahy, which is on the public record. He was not asking what the allegations were; he was asking whether that was the matter. He was just trying to be clear about that, and I do not understand the concern about confirming that or not.

**Vice Adm. Shalders**—Navy and Defence Force have never commented on those matters, and I do not propose that we should start to do that now.

**Senator MARK BISHOP**—How do you give natural justice if you will not even confirm what a case was on? That is all you are being asked to do.

**Vice Adm. Shalders**—I can say, because Mr Fahy published this himself in a press article last week, that at the time of Lieutenant Commander Fahy's removal from her position as executive officer she had been diagnosed by a civilian psychiatrist as being manic and bipolar. As a result of that diagnosis, she was removed from her position. I can say that, because Lieutenant Commander Fahy's father has said that in public.

**Senator MARK BISHOP**—And that finding was contested and ultimately dismissed by two other psychiatrists, was it not?

**Vice Adm. Shalders**—I understand that two other psychiatrists had a different opinion. I am not sure whether the original psychiatrist's diagnosis was ever overturned in a medical sense. I do not know that.

**Senator MARK BISHOP**—I do not know whether you can overturn them.

**Vice Adm. Shalders**—I do not know whether you can overturn a diagnosis either, but that was the diagnosis upon which her removal from that position was based.

**Senator CHRIS EVANS**—But we do have some independent assessment of that first diagnosis, don't we, in the decision of the WA medical board, in which it said that the doctor:

... had failed to examine and take an adequate history; had improperly referred her to a psychiatrist "in the absence of any symptoms which justified the referral"; and had failed to act openly and in the best interests of his patient, the board concluded.

**Vice Adm. Shalders**—I think those findings are against Dr McKenzie rather than the diagnosing psychiatrist.

**Senator CHRIS EVANS**—I accept that. I am just saying we do have some independent assessment of the handling of these matters.

**Vice Adm. Shalders**—The Western Australian medical board was not looking at the psychiatric diagnosis, as I understand it; they were looking at the referral process by Dr McKenzie.

**Senator CHRIS EVANS**—I also know that I had to raise at these estimates the question of Dr McKenzie actually fronting up to the WA medical board, because, coincidentally, every time they had a hearing he seemed to get posted away. But eventually we were able to allow those matters to proceed.

**Vice Adm. Shalders**—The proceedings were delayed several times. I am not sure why they were delayed.

**Senator CHRIS EVANS**—He kept getting posted at exactly the same time.

**Senator MARK BISHOP**—Admiral Shalders, this referral to this civilian psychiatrist was made by a serving medical officer, Dr McKenzie, and the Western Australian medical board found, of that referral by Dr McKenzie:

The conduct of the Practitioner has been found to have been unacceptable. There has been identified a number of serious deficiencies in the discharge of his professional obligations and marked departures from the standard of care, treatment and management demanded of a competent general practitioner. Of significant concern is that the proven wrongdoing of the Practitioner is not confined to a single aspect of his care, treatment and management of his patient—

that is, Ms Fahy—

it encompasses a diverse range of failures and multiple infractions. He has acted with a gross want of due care and engaged in conduct of a character reasonably to be regarded as improper by professional colleagues of good repute and competency. The Board considers each of the failures and transgressions of the Practitioner to be serious. That an experienced medical practitioner would write to a colleague about a patient in the terms and manner he wrote to Dr Srna—

**Senator PAYNE**—Now we've got another name on the record—good, excellent!

**Senator MARK BISHOP—**

is almost inconceivable. His repeated and gross breaches of the obligations of confidentiality owed to his patient are especially grave. The nature and broad range of his professional misconduct requires that action be taken by this Board to protect the public interest.

That is the finding of the Western Australian medical board about Dr McKenzie, who referred a complaint from Ms Fahy to this other psychiatrist, who met with her for about an hour, made the findings referred to by her father—bipolar and manic—and was competed with after extensive examination of Ms Fahy by two other psychiatrists. And you rely on that sort of material as justification in this discussion now.

**Vice Adm. Shalders—**No. I rely on the psychiatrist's diagnosis—Dr Srna, I think you called him.

**Senator MARK BISHOP—**Dr Srna, yes.

**Vice Adm. Shalders—**That is the diagnosis upon which we relied to remove the executive officer from her position, yes. So it was the psychiatrist, not Dr McKenzie.

**Senator MARK BISHOP—**Doesn't it concern you, the manner in which that complaint was referred to Dr Srna—those findings of your officer in this matter, Dr McKenzie: a duded referral to another psychiatrist? That is what the Western Australian medical board found of that referring officer.

**Senator Sandy Macdonald—**I think, Mr Chair, that it is hardly fair to ask the chief for an opinion like that. Clearly the contribution that you have read in, Senator Bishop, is just clear evidence that we cannot progress this matter in this forum. The chiefs have indicated a way ahead, and I think we must let the Navy pursue its activities in that regard. I was involved, as all of you were, with the military justice inquiry. These are particularly difficult matters. The Navy—and the ADF generally in these sorts of things—has one hand tied behind its back. It wishes to be fair and appropriate; at the same time, allegations can continue to be made in the public arena. I think that, in the pursuit of natural justice and privacy matters, we just have to move with the program that has been placed by Navy in the way ahead. We can continue to ask questions, but I just think it is an inappropriate forum and doing nobody, including Lieutenant Commander Fahy and her parents and the Navy, any good at all.

**Senator MARK BISHOP—**Thank you, Senator Macdonald. Can I ask one question as to the role of the mediator. The mediator has been agreed to by the parties to engage in mediation proceedings. In due course, he may make a recommendation to the parties for settlement, and that may involve some degree of compensation. It is my understanding, under the regulations that establish this process, that the minister or his delegate is not bound to accept the recommendation of the mediator and can substitute his own decision for that of the mediator. My question in this matter is: will the mediator be granted sufficient power to recommend a settlement and not have his recommendation, whatever it might be, substituted by the minister or the minister's delegate?

**Vice Adm. Shalders—**I am not sure of the technical processes that this particular mediator will use. He is not mediating on behalf of the department or of the minister; he is mediating between the two parties. In terms of reaching a settlement, my understanding of the process—and the process has only just started, as I indicated earlier—is that the terms of settlement will

be lodged, in this case, by Lieutenant Commander Fahy. The two parties will sit before the mediator and we will agree or disagree or modify those terms of settlement. There will be some form of compensation sought; I am certain of that. The level of compensation, the level of authority to agree, will obviously be subject to departmental processes. We have been through this recently in other cases. How we get to the final point, at this stage I am uncertain.

**Senator MARK BISHOP**—Can you take advice on that because the reason I ask is that I am aware of other cases where there have been mediation proceedings between the parties, a recommendation has been made by the mediator to the parties and, when it has gone back to the minister's office for affirmation or referral, the minister or his delegate has substituted an alternative recommendation for that that the mediator made to the parties in some of those other matters. I am concerned here that the mediator may not have absolute rights to make recommendations that will not be overturned at a later stage by the minister or his delegate. Could I ask for advice on the process to be put on the record, so that we know?

**Vice Adm. Shalders**—I can certainly provide that advice once the mediator has been fully briefed—and he will have a different approach, of course, as to how he wants to take this forward; this is the first time we have used this particular Federal Court judge. I do not have the answers that you seek now, but as soon as they become apparent, we will certainly respond on notice to those.

**CHAIR**—Do you have any further questions on this subject?

**Senator MARK BISHOP**—I have questions on matters relating to payment of public funds, legal fees, legal service guidelines and those sorts of issues which are ancillary to the Robyn Fahy case but not part of this instant discussion.

**Senator FAULKNER**—I have some but I am very sensitive to the fact that Air Chief Marshal Houston is with us and, while we have the CDF, I think committee members ought to focus on questions to him.

**CHAIR**—I think that is the way to go.

**Senator FAULKNER**—That is why I have been so quiet—unusually quiet.

**Senator MARK BISHOP**—Chair, I think we should come back to that, because I would like to ask Admiral Shalders about his communication to the Navy as well.

**CHAIR**—The admiral will be with us for most of the day.

**Senator FAULKNER**—That can be done when CDF is not here.

**CHAIR**—Senator Faulkner or Senator Evans, do you have questions for the chief?

**Senator FAULKNER**—CDF, first of all, could you or one of your colleagues explain the time frames in relation to the inquiries into the Kovco matter?

**Air Chief Marshal Houston**—First of all, with regard to the investigation into the circumstances surrounding what happened in Baghdad, that is all subject to a board of inquiry. The board of inquiry has been convened by me. The board has terms of reference. The board has met and is in the process of doing its scoping work. I understand that the first formal meeting of the board of inquiry will be around 19 June, although that might vary depending on the progress it makes during the scoping activity. As Minister Nelson has indicated, the

process will run and we hope to have it complete in less than six months. The board of inquiry will also look at the circumstances of the mix-up that occurred in Kuwait. The Cosson inquiry will be provided to the board as part of the evidence that it needs to consider.

In terms of the Cosson inquiry, that is still being finalised. There are a number of processes that have to be gone through with regard to the report. It is in its final draft format. It is subject to legal review. It is also subject to a process whereby people named in the report have an opportunity to comment on the report. When it is finalised, it will come to me. At this point, it has not come to me. I would hope to get that in the next couple of weeks. Then the report will be provided to the minister for his review and, once that has happened, the report will be released to the board of inquiry.

**Senator FAULKNER**—So, effectively, there are two formal inquiry processes running, but the Cosson inquiry, I suppose, is the best start. It is identified as that. It obviously has very limited terms of reference—is that fair—and that report then goes to the board of inquiry?

**Air Chief Marshal Houston**—The Cosson inquiry is specifically focused on the circumstances of what happened, where the two bodies were mixed.

**Senator FAULKNER**—In relation to the board of inquiry, when did you decide to establish that?

**Air Chief Marshal Houston**—I decided that we would establish a board of inquiry almost as soon as it was apparent that we had had a bad incident in Baghdad. I decided there and then that there would be a need for a board of inquiry to look into the circumstances surrounding the gunshot wound and the subsequent death.

**Senator FAULKNER**—You have indicated what seems to be a very long time frame for the board of inquiry. You might care to comment on what is a likely reporting date and about the reporting process. The board of inquiry, in the first instance, reports to you?

**Air Chief Marshal Houston**—Yes, the board of inquiry reports to me. It is modelled very much on the interim arrangements that we have put in place, before we introduce the commission of inquiry that will be a new feature of the way we do business. The first hearing is likely to be around 19 June. There will be a series of hearings. Once the hearing process is complete the board then sits down and puts its report together. So, depending on the complexity of the issues that come out, I am hopeful that we will have a report within two or three months of the first hearing.

**Senator FAULKNER**—The usual circumstance with boards of inquiry, you might indicate to the committee, is that they go to CDF in the first instance. Is that right?

**Air Chief Marshal Houston**—The board of inquiry can be convened at a number of levels. If we have a look at, for example, the Sea King board of inquiry, that has been convened by the Maritime Commander Australia. This board of inquiry has been convened by me to, I suppose, reflect the fact that we want to start transitioning to what is foreshadowed in the implementation of the military justice report. So I have convened this board of inquiry. We have picked a very experienced former magistrate, a former coroner and officer who is in the Air Force Reserve, and he will be supported by a former police commissioner from Queensland. There is one permanent military member on the board of inquiry.

**Senator FAULKNER**—Has it sometimes been the practice that boards of inquiry reports have been made public?

**Air Chief Marshal Houston**—Yes.

**Senator FAULKNER**—Or elements of those reports?

**Air Chief Marshal Houston**—Let me make one thing clear: subject to my minister's views, my intent would be to make the Cosson report public when it is finalised and cleared by the minister. The process of the board of inquiry will be open and transparent. The doors will only be closed when there are matters of privacy or security that dictate that it cannot be conducted an open forum. At the end of that process, the board of inquiry report will again be considered by me. I will probably forward it to the minister and then we will make a public announcement about the outcome. My expectation is that everything to do with that investigation will end up on the public record.

**Senator FAULKNER**—Appreciating what you have said about making the Cosson report public, this necessarily would seem to mean that the fact that the Cosson report will be formally placed before the board of inquiry will not affect that report being made public while the board of inquiry is dealing with it or examining it in any way it deems fit. Is that right?

**Air Chief Marshal Houston**—I do not believe so. I think we should be able to make that report public. I do not see a problem with that.

**Senator FAULKNER**—In relation to the tasking of Brigadier Cosson, is that quite limited? Can you, just for the record, indicate what the tasking for that report is?

**Air Chief Marshal Houston**—There are terms of reference and the terms of reference focus very much on the circumstances around primarily what happened in Kuwait, what led to the mix-up of the bodies, was the ADF guidance sufficient, were there any shortcomings in the way we do business and were there any problems with the contracting arrangements and so on. It is the sort of detail you would expect in these circumstances and it is contained in a very tight little package that refers specifically to the circumstances surrounding the mix-up of the bodies.

**Senator FAULKNER**—I should know this, but I do not know, so you might assist me. Have those terms of reference been made public? I could not find them—that is more to point. It is probably a commentary on my own competence.

**Air Chief Marshal Houston**—I believe that the terms of reference would have been available to Derryn Hinch, so, in a sense, they are out there somewhere. But they have not been made formally available to the public. I have not released them at this point.

**Senator FAULKNER**—I hear the point you make about a media presenter. That is not what I meant by being made public. I think you would appreciate that. Could the terms of reference for the Cosson inquiry be provided to this committee?

**Air Chief Marshal Houston**—I will take that on notice and have a look at it.

**Senator FAULKNER**—I am also interested in the terms of reference for the broader board of inquiry. Have they been finalised?

**Air Chief Marshal Houston**—Yes, they have been finalised. But what is normal at this time is that the board will scope out what they have to do in accordance with the terms of reference. If they were to find that the terms of reference had overlooked an important part of what they consider they need to inquire into, they will come back to me seeking an amendment to the terms of reference to enable them to pursue that line of inquiry. That is the way it works. I imagine that, when they have their first hearing, the first thing they will do is put the terms of reference on the public record.

**Senator FAULKNER**—Who has drawn up the terms of reference for the board of inquiry? I appreciate the process you have outlined. There might be suggestions that they be expanded. That is true of any inquiry.

**Air Chief Marshal Houston**—I have signed off on the terms of reference.

**Senator FAULKNER**—Would you be able to share those terms of reference with this committee?

**Air Chief Marshal Houston**—Again, I imagine that I can, but I would like to talk to the president of the board to ensure that that will not in any way hinder the process that he has embarked on. I know that he wants to put them on the public record. It is a question of when.

**Senator FAULKNER**—I would appreciate it if that could be chased down. Perhaps some of your staff might be able to make those checks in the near future. In both cases the committee would appreciate it if those terms of reference could be provided to the committee today. I do not think it is too onerous a task for that to be checked.

**Air Chief Marshal Houston**—No, that is fine. I do not think there is a problem. But I will not go direct to the president of the board because I do not think it is appropriate that I do. I will just make sure that he is happy with releasing the terms of reference to you at this time.

**Senator FAULKNER**—Do the terms of reference in any way go to the public statements surrounding this matter?

**Air Chief Marshal Houston**—I would have to have a close look at that. From memory I do not believe so, but I will take that on notice.

**Senator FAULKNER**—Do the terms of reference of the board of inquiry go to the minister's role in any way?

**Air Chief Marshal Houston**—Let me just go back a step. The normal process with a board of inquiry is that, on the first day the board sits, the terms of reference are read out and become a public document. That is the normal process and that is the process that will be followed in this particular case.

**Senator FAULKNER**—Conflicting public statements were made by the Minister for Defence, Dr Nelson, in the days after this tragedy occurred. Are those matters being examined?

**Air Chief Marshal Houston**—Again, I do not believe there are terms of reference that refer the board to that issue. I do not think it is appropriate that we have that particular debate in this forum, because the Kovco family have been greatly hurt by what has happened in this

case. I think we—including you—need to respect their privacy and the sensitivities they have about all of this being out there in the public almost constantly.

There is another aspect to this in that there is a process running. It is very robust and will be a very transparent process. I do not want to undermine that process in any way. I am sure you would respect the process that we are about to embark on. I assure you now that the whole thing will be conducted in the public arena to the maximum extent possible, noting that there are privacy and security issues to be dealt with along the way.

**Senator FAULKNER**—I accept your assurance. I appreciate it and I am sure members of this committee would as well. I also accept the views that you have expressed about privacy in relation to this matter. The problem that we have in this regard is that the issues I am raising are matters of public statements made by the Minister for Defence. I believe it is appropriate for this committee to explore those statements and the basis for them, and I think that can certainly be done without trampling on any privacy concerns, which I certainly respect. I have had a very good record on this and other committees of always making my absolutely best efforts to ensure that no privacy concerns are trampled on in any way. However, to talk about privacy on the one hand and then, on the other hand, statements made publicly by a minister on this matter is a long bow.

As I say, I do respect the privacy concerns. What I am trying to focus on here is: are there any attempts that you as CDF are aware of—and you may not be; I appreciate that—or that Senator Macdonald, representing the minister at the table, can inform us of, that are being undertaken to examine and identify why we had such embarrassing—and, I suspect, damaging—differing public statements from the minister? Air Chief Marshal Houston as CDF has said to us: ‘Well, that is not a matter that the board of inquiry is going to deal with in its terms of reference.’ Who is? How are we going to ensure that Dr Nelson does not do this again?

**Senator Sandy Macdonald**—To take your point on privacy, Senator Faulkner, that is a question of judgment. But on this matter there has been a great deal of media speculation about the precise causes of Private Kovco’s death. Much of it has been deeply distressing to the community. Much of it has been deeply distressing to the family. And a great deal of the media comment has been highly speculative. The position is that we have established the board of inquiry into the causes of Private Kovco’s death. I do not think there would be any dispute that this is the best way to get to the truth of the matter, and I think the best way for that to happen is to now let the board of inquiry do its work.

**Senator FAULKNER**—But the board of inquiry is not examining this issue. We have just been told that. I appreciate the point you make about media speculation. That is right. There has been a lot of media speculation. There have also been conflicting public statements made by the Minister for Defence, so it is hardly surprising that a consequence of that is this sort of media speculation.

**Senator Sandy Macdonald**—I think these are questions of judgment for you, Senator Faulkner. You say that you respect the privacy of the Kovco family, but any further political inquiry in this area is of no assistance to them and—can I say—will be of no assistance to the outcome of the board of inquiry because it will not be subject to political pressure.

**Senator FAULKNER**—Perhaps, then, CDF might detail to the committee whether Dr Nelson was briefed by the ADF prior to his conflicting public statements on this issue. Could we at least understand that? The reason I ask this question is that these matters are not being canvassed in other areas. It is appropriate that they are dealt with here, and I am sure you appreciate that, Senator Macdonald, so could CDF or someone else inform the committee as to whether the minister was briefed before these conflicting public statements were made?

**Air Chief Marshal Houston**—The minister was obviously informed about the circumstances that happened that night, but I cannot go into any detail of that without getting into a lot of things that will be subject to consideration by the board of inquiry. I would like you to understand that. There is no way I can go into that without compromising that process or offending the sensitivities of the Kovco family. I provided advice to the minister after the circumstances that occurred, very late that night. It was very late. Essentially, the minister was broadly aware of what had happened. I will leave it at that.

**Senator CHRIS EVANS**—CDF, there are a couple of public policy issues here that concern us. The opposition have been sensitive to the privacy and sensitivity issues. Mr McClelland, our spokesman, has spoken to the family. We are keen not to politicise the matters and to be sensitive to their needs, as Senator Bishop was saying, but two public policy issues arise. One is the question of the chain of command and advice to the minister as to the public commentary that then occurred, which had to be corrected. Given the history of earlier inquiries, which you are no doubt all too familiar with, that is a legitimate and serious concern for us. We have been down this path before.

One of the key issues is whether the chain of command provided appropriate advice to the minister or whether the chain of command was broken and that led to these things. Senator Faulkner's point is that, if this is not inside the terms of reference of the inquiry, how will we ever get to the bottom of that, and how was it that the minister made such conflicting commentary publicly—which interfered with the sorts of issues that we were all trying to be sensitive to? The question of how and when the minister was briefed is important. That is the first issue.

The second issue I want to explore with you is the powers of investigators. Yesterday you provided your report to the public about the first six months of the response to the military justice inquiry. While the response to the government was not what I wanted, I was pleased to see that, inside the ADF, those matters were being taken seriously. I saw some promising signs of progress and I am pleased with how seriously you have taken that. I would have gone further than the government response, but I am pleased to see that at least the government response is being prosecuted with vigour. One of the things you included in that was the appointment of an investigator to deal with issues in each of the zones in which the ADF is active overseas. I want to explore that and whether it was in response to what seems to have been a rather unsatisfactory handling of the investigation of Private Kovco's death—the failure to secure the scene and how that might interfere with further investigations. Is that announcement in part a response to the concerns that have developed over the handling of the Private Kovco matter?

**Air Chief Marshal Houston**—That is a concern that I had. We were fortunate in Baghdad to have a very senior investigator who happened to be part of the security detachment, and he

took appropriate action to secure the site. However, as you would be aware, one of the outcomes of the implementation of the military justice report is the need to do an audit of our investigative capability. I suppose the two things came together: we had this incident and, almost immediately afterwards, I got the interim report from the team that is reviewing our investigative capability. That team is led by Admiral Adams and includes a very senior retired AFP officer with an extensive investigative background. I talked to them about what they had found. One of the things that became apparent was that we were adopting a policy of reach-back for investigation capability—depending on the circumstances, we would determine whether we would go with an AFP investigator or a military investigator. After discussing it with them, and following their inquiries, I was satisfied that we were exposed unless we changed our process. So it was not what happened in Baghdad that changed that; it was this audit that had been conducted. As a consequence of that, we put investigative capability into all the other major areas of operation. I say again that, as it turned out, we had a very experienced investigator who was acting, I think, as the regimental sergeant major for the sec det. So we had that pretty well covered.

What happened in terms of the securing of the site and so on is a matter for the board of inquiry, and I am not going to say any more about it than that. But rest assured that the investigative capability we have put around the world in the major areas of operation came out of the two things coming together and was primarily a response to recommendations made to me by the team doing the review of the investigative capability.

**Senator CHRIS EVANS**—I do not intend to ask you about the securing of the scene, CDF, but a policy question comes out of this. We were lucky that it was an experienced officer—I presume that means he is qualified in terms of investigative work—but the issue the committee highlighted was the issue of impartiality and independence of the chain of command. As you know, I and other members of the committee had a fairly firm view that, as long as Caesar was investigating Caesar, we had a difficulty. I know that was not adopted in large part by the government's report. But this is a classic case, in the sense that there are serious allegations that the chain of command interfered in the ability of the investigator to do their work carefully. It brings into focus all those issues that we dealt with. I am keen to ask you what powers an investigator has in terms of investigating these matters, whether that has changed as a result of the appointment of these five into the operational areas and whether you can assure me that they now have the powers not to be overruled by a senior officer in the chain of command from carrying out their duties independently.

**Air Chief Marshal Houston** —I can assure you that everything is absolutely as it should be. I am happy to table the directive I have given to the recently appointed Provost Marshal of the Australian Defence Force. The way the system will essentially work is that, if we have a situation, an incident, that is a potential crime scene, we will secure the site with these investigators. As soon as that happens, these investigators become responsive to the provost marshal. In fact, they are under the command of the Provost Marshal of the Australian Defence Force. The Provost Marshal of the Australian Defence Force works direct to me. So we have a very short chain—investigator, Provost Marshal ADF, CDF—which basically completely passes the operational chain of command. So the line you are suggesting does not exist anymore. We have taken the necessary action to fix this problem. Again, it comes from

the creation of the provost marshal position, which, as it happens, was in the process of being created, I think, even before this incident in Baghdad happened. You are welcome to have a look at the directive I have given to him, which I think will allay all of your concerns about the independence of our investigation capability.

**Senator CHRIS EVANS**—If you could table that, that would be helpful. What date was that issued? I guess the question is: was this in force when Private Kovco—

**Air Chief Marshal Houston**—No, it was not.

**Senator CHRIS EVANS**—So the protocol that you have now implemented is subsequent to the regulations and procedures which applied when he was tragically shot in Baghdad?

**Air Chief Marshal Houston**—Let me take you through a couple of things. In the implementation of the military justice inquiry, the report laid out a number of recommendations. We accepted those recommendations. Recommendations are being implemented in a very aggressive way. The head of the military justice implementation team reports to me, the service chiefs and the secretary as part of the monthly Chiefs of Staff Committee meeting. One of the first things we have implemented is the appointment of the Provost Marshal ADF.

That interview process was underway in March or April. I will give you the precise details of that. The selected officer, Colonel Grotzner, emerged and, while all of this was happening in Baghdad, he was in the process of being appointed to the job. Shortly after the incident in Baghdad, I had a scheduled call—and that had been scheduled for a long time—from the Adams review of our investigative capability. We talked about the investigative capability. We talked about the fact that we now had the Provost Marshall identified and appointed. I mentioned that I was going to write a directive to give him powers over our investigation capability that is deployed in the field. I indicated, after discussion with them and on their very strong recommendation, that we put the investigation capability forward into the field. The directive was issued on 15 May.

Was this a consequence of what happened in Baghdad? No. This is all part of our implementation of the military justice arrangements. Everything happened at about the same time. This would have happened regardless. The interviews for the Provost Marshall ADF were conducted on 4 April and the process started back in February and March. This is all part of ongoing business and would have happened regardless of what happened in Baghdad. What happened in Baghdad reinforced the need to have these arrangements in place.

**Senator CHRIS EVANS**—I accept all of that, CDF. I was not seeking to imply anything. I was keen to understand what regulations were in place at the time and what regulations are now in place, because in reviewing the media coverage of all this there are allegations of a dispute between the investigator and a senior officer and a suggestion that the senior officer overruled the investigator. I know you cannot go into that; I do not want to canvass it.

**Air Chief Marshal Houston**—That will be subject to investigation by the board of inquiry. Let me state that that is rumour; that is a press report. It has not made its way to me through the chain of command.

**Senator CHRIS EVANS**—I accept that and I do not want to take you into that. But my concern was raised by those issues because this went to the very heart of the military justice inquiry and to the heart of a very long and at times painful experience for a lot of the people sitting here. It brought into question again this issue of independent investigation. It crystallised the concerns I have about the ability of an investigator to act independent of the chain of command if a colonel or a general has a different view about how they should be going about their work and about what happened. I understand that you have put this in the hands of the Provost Marshal and that there is a shortened direct chain of command. That is obviously a positive step. But I want to understand clearly what that means for the capacity of a person who is senior to the investigator to order or insist on something occurring that might interfere. I am also keen to establish what the protocols were prior to the change. What is the difference?

**Air Chief Marshal Houston**—Let me assure you first of all that there will be no command interference in this process of investigation. If something happens and it is clear that there is a potential crime scene, that scene will be secured and placed in the hands of the investigator. The commander on the spot cannot interfere with that process.

**Senator CHRIS EVANS**—And that is clear in the protocols?

**Air Chief Marshal Houston**—It is as clear as I can make it. In terms of whether the brigadier or the colonel can interfere with that, no, not all. The investigator then reports direct to the provost marshal, who is one of my staff in Canberra, and he reports to me. In effect, if anybody orders anything, it will be me. If there is a problem on the operational side, I will order that through the operational chain of command through the vice chief to the commander of the joint task force. I have the investigation running on a very short leash through the Provost Marshal ADF. I think they are very robust arrangements. They will work well and they are completely aligned with what was recommended in the military justice report.

**Senator CHRIS EVANS**—How does that differ from the arrangements prior to 15 May?

**Air Chief Marshal Houston**—There was no Provost Marshal ADF.

**Senator CHRIS EVANS**—No, in terms of the power of the investigator and their involvement in the chain of command.

**Air Chief Marshal Houston**—First of all, we had a process of reach back. For example, as it turned out, in Baghdad we had a highly qualified investigator who was able to do the necessary securing of the site. But if it had happened, say, in the Solomon Islands, we did not have that capability there. The sealing of the site would have been done by the operational commander.

**Senator CHRIS EVANS**—I know the chain of command has shortened. What has changed in terms of what the senior officer on the scene can and cannot do in regard to the investigator? The investigator had lines of reporting but we have serious concern about how that fed into the chain of command.

**Air Chief Marshal Houston**—The way it was done before was through the chain of command.

**Senator CHRIS EVANS**—So the sergeant major in this sense would have reported to the next up the chain of command, effectively.

**Air Chief Marshal Houston**—He was part of the joint task force and he was performing other duties. It was up to the operational commander to secure the site. We have a huge step forward in terms of having a much more robust and a much more independent process. Simply put, the chain of command or anybody else who is deployed cannot interfere with the process of securing the site and the subsequent investigation of the site.

**Senator FAULKNER**—It is not fair to ask this question with you not present: can you indicate to the committee whether defence has issued an apology or statement of regret to the family of the Bosnian man, I think it was Mr Sinanovic, whose body was wrongly transported to Australia? Has there been any statement forthcoming in relation to that?

**Air Chief Marshal Houston**—A letter signed by Mr Jennings has been sent to Bosnia which expresses regret about the circumstances.

**Senator FAULKNER**—Has Mr Jennings done that on behalf of the ADF?

**Air Chief Marshal Houston**—Absolutely, yes. Perhaps Peter could come to the table.

**Senator CHRIS EVANS**—Who is Mr Jennings?

**Senator FAULKNER**—What has occurred, and when?

**Mr Jennings**—Yes. I sent a letter to the Bosnian ambassador on 27 May expressing the condolences of the defence organisation.

**Senator FAULKNER**—Was it deemed not appropriate to correspond directly with Mr Sinanovic's family?

**Mr Jennings**—We asked the ambassador to pass our regrets on to the family.

**Senator FAULKNER**—Finally, CDF, you have mentioned on a number of occasions the issue of transparency, and I accept your intentions in that regard. Can I stress with you that I think a good first step in that direction and an indication of strong intent would be making available to this parliamentary committee—and in that sense publicly—the terms of reference of those two inquiries. If that could be done later today I, and I am sure other members of the committee, would appreciate it. Thank you.

**Air Chief Marshal Houston**—Could I clarify one thing and reference the way things used to be done in terms of investigative capability—how we used to do investigations before we put the Provost Marshal into play. Essentially the DFDA and the Defence instructions have always had protocols to ensure that there is avoidance of interference or impedance of an investigation. Essentially we have always tried to remove the investigators from the normal chain of command to enhance those protocols. However, what we have done is another step to make the process more robust. Thank you.

**Senator NETTLE**—I want to ask about Timor and specifically the article in the current edition of the *Bulletin* magazine about the role of the ADF in training the East Timorese army. I ask you to respond to that article and in particular to three different parts of it. One part talks about the ADF never being able to impart more than rudimentary skills to the Timorese. Another indicates they were told to take a softly, softly approach to appease

Indonesia. The other part is a quote from a memo to your predecessor which talks about Australia's strategic interests being protected and pursued if Australia maintains some degree of influence over East Timor's decision making.

**Air Chief Marshal Houston**—I have an officer who can respond to this in great depth. I invite Mr Pezzullo to respond to your question. He can cover this comprehensively and completely.

**Senator NETTLE**—Can I ask one more question of you before we hear the answer. It relates to the rules of engagement in East Timor and reporting about the disarming of the East Timorese army and police. The terms of engagement read out to me earlier in the week by Foreign Affairs dealt only with the disarming of rebel forces and did not talk about the police or army. Are the reports about disarming the police and army accurate and do the rules of engagement cover that?

**Air Chief Marshal Houston**—The arrangements for disengagement are not actually in the rules of engagement. We have a policy document which has been signed by the three principals in Timor Leste—the President, the Prime Minister and the President of the Parliament—that enables us to disengage the parties that were having a go at each other about a week ago; the army, the FDTL, who we have got to go back to their barracks, and the police, who we have got to return to the police headquarters and the training centre. The police are being disarmed as they go into the training centre. The FDTL are out in outlying barracks. They still have their arms, but they are staying in their barracks. When we find anybody bearing arms on the streets of Dili we disarm them, and that has happened quite a lot. We have recovered several hundred weapons thus far. That is the way we are doing business.

**CHAIR**—Thank you.

**Proceedings suspended from 11.01 am to 11.17 am**

**CHAIR**—I call Mr Pezzullo to the table, and we will continue with questions from Senator Nettle.

**Senator NETTLE**—Did you want to start by responding to those three issues that I raised?

**Mr Pezzullo**—It might assist me and perhaps others if you could re-encapsulate your questions.

**Senator NETTLE**—Sure. They relate to the *Bulletin* article. The first was the comment that ADF personnel involved in training the East Timorese army were never imparted more than rudimentary skills. The second was that they were told that it was important to take a softly, softly approach to appease the Indonesians. The third issue was the matter of a classified minute to the then Chief of the Defence Force, which goes to the issue of Australia's strategic interests. It states: 'Australia's strategic interests can also be protected and pursued more effectively if Australia maintains some degree of influence over East Timor's decision-making.'

**Mr Pezzullo**—In order to respond to what are three specific questions—though they go to wide-ranging matters, you would appreciate—it is probably going to be necessary to lay out some of the basic history of our Defence cooperation activities in relation to the then non-

sovereign but transitional state of East Timor which became the sovereign state of East Timor in 2002. In order to do that, I will need to reflect on how we prepared ourselves for a Defence Cooperation Program. You will see throughout the course of my remarks that there was a heavy and appropriate involvement of the UN through various missions as the UN changed its political mission configuration on the ground. There were some very important relationships with key interlocutors such as Portugal and others that I will need to cover in some depth in order to give my answers the proper balance.

You asked me about the article and you framed your questions around it. Had the correspondent bothered to check with the relevant agency, in this case the Department of Defence—and I am advised that there was no such checking; no quotes were sought and no reaction was sought in relation to the claims made—perhaps a more balanced piece of journalism would have been published yesterday. I stand to be corrected on that—perhaps he tried to check and we did not get back to him—but I am so advised. That necessitates us going back to the start. We need to take the story back to October 1999 in order to properly answer your three questions.

**Senator FAULKNER**—I am looking forward to this, Mr Pezzullo. I am sorry to say that I will be reading it in *Hansard*—

**Mr Pezzullo**—In all seriousness, if you do not go back through the history you will not get the right balance here between Australia's policies and those of other countries and the UN. When the mandate of the initial UN Assistance Mission to East Timor—the mission that ran the elections—expired, the international community through the Security Council established the United Nations Transitional Administration in East Timor, UNTAET. That body took over from INTERFET when INTERFET went in to address the security situation there in 1999.

In May 2000 UNTAET, which at that stage was led by the late Sergio Vieira de Mello as the UN's senior representative there, commissioned the King's College in Britain—they have a Centre for Defence Studies there—to undertake an independent inquiry. It was based on expert input driven by an academic team with expertise in field and it was commissioned to do a study into the defence force and the security sector needs for East Timor. There was an active debate already at that point about what the future state of East Timor's security sector would look like and how best its security needs might be addressed.

At that time the Australian government began to consider its future position in relation to East Timor's security sector particularly with reference to the sorts of things that we might be able to usefully do as that sector emerged in the soon-to-become independent East Timor. Later in 2000 after the King's College study was commissioned UNTAET hosted an international donors conference where it presented the findings of the King's College study in August of that year. I will not go to the detail of that other than to say that the independent team presented three options for a future defence force of East Timor and option 3 called for a light infantry force of about 1,500 regulars supported by about 1,500 part-time reservists.

At that time the Australian government was internally deliberating and came to the view that any new East Timorese security force could be appropriately assisted by Australia through the Defence Cooperation Program. I will come back to the detail of that. It was announced later that year by then Minister Moore. In September 2000 the transitional

government of East Timor, the National Council of Timorese Resistance, the body of senior leaders who were to become ministers and other officeholders in the independent state, met. In consultation with UNTAET it approved the establishment of an East Timorese Defence Force, the ETDF, as it was soon to be known. At that time the Australian government approved an indicative Defence Cooperation Program for what was going to become the new state of East Timor.

At that time the Australian government approved an indicative defence cooperation program for what was going to become the new state of East Timor. That was announced by then Minister Moore in conjunction with a major donors' conference convened by UNTAET in November of 2000. That was designed to better coordinate donor activities. The Portuguese had an interest in providing assistance and we as a near neighbour had taken a view that there was some defence cooperation assistance that we could provide. The Americans were interested and other parties were interested. New Zealand is another country on my list. Minister Moore announced that Australia would be willing to engage in joint coordination of international efforts to assist in the development of the East Timorese defence force with the Portuguese.

We obviously were in diplomatic liaison with the Portuguese as a key interlocutor. Minister Moore announced that two defence department staff would go into the UNTAET Office of Defence Force Development—the ODFD—which was created just around that time in October, I believe. Defence deployed a financial adviser and a policy adviser right in those early days. The government also announced a defence cooperation program that would be put into effect during the financial year 2000-01. At that stage over the forward estimates period it was announced that the program would consist of \$26 million going out to the end of the forward estimates as they then were.

I will not go into the full rollout of the defence cooperation program because it will take too long and you might have further questions, but I will come to the point of your three specific questions in a moment. Our Australian training support team under the auspices of the defence cooperation program was deployed in early 2000-01. Within Defence the DCP for East Timor was established at that time. Over the years—I will not give you the month-by-month breakdown because I suspect we would be here for a long time if I were to do that—Australia has delivered a whole series of programs. I will just give you the high-level list of them and then, if you want further detail about what was completed in which month and how many people were at which particular point, I would have to take that on notice.

The program consists of things like the construction of a major training facility for what became known as the FFDTL at Metinaro—that acronym is FALINTIL defence forces of East Timor rendered in Portuguese, hence the acronym; the construction of an English language training centre; junior leadership training for FFDTL personnel both in Australia and East Timor; the provision of those civilian advisers that I have already mentioned in the areas of strategic policy development and finance; the provision ultimately of two ADF military advisers to the headquarters; and the provision of six-person battalion advisor detachments, which have been the subject of descriptions in annual reports over the years, to each of the two battalions. I said earlier that the King's College study suggested a force of 1,500 plus 1,500. The sovereign nation of East Timor—I want to keep emphasising that—decided to

structure that force as two infantry-centric battalions and we provided six-person battalion advisory detachments to each of those. We did some other training in communications and a few other bits and pieces.

As to your questions, firstly, you asked whether the training was limited to what the correspondent describes as rudimentary, based on the one or two people to whom he has spoken. They clearly have their own perspectives on the matter. It is not rudimentary if you have a six-person detachment in each of the battalions providing basic leadership and infantry skills and tactics counsel and advice. We were providing leadership courses for their NCOs and junior officers. We had staff development and defence management training both in-country and back here in Australia.

I want to stress—hence the point of the narrative I gave you earlier—that this was done in coordination with other key partners, including the Portuguese, who were doing basic or what might be described as rudimentary training in weapons handling and recruit training. That included other contributors under the auspices of both the sovereign nation of East Timor and those various UN missions that I have articulated.

As to whether there was a direction to ‘go soft’ because of supposed Indonesian concerns: no. As to whether people gibber away, gossip and use those sorts of terms and people with an interest have described that someone once said that to them, I cannot vouch for every conversation that anyone has ever had in Defence headquarters or anywhere else. Was that a conscious policy design?—no.

As to the description in your third question, the unchecked and uncorroborated—as far as I am concerned—article refers to a classified memo addressed to the then-CDF and other senior officers. I think the article says it is dated May 2001. If such a document exists, it is classified and has been leaked. Our general practice is to neither confirm nor deny the existence of classified documents. If there is a question that you want to ask me about what you think is in the document, I would be happy to answer it.

**Senator NETTLE**—Are you saying that you cannot confirm whether or not the document exists?

**Mr Pezzullo**—No, I would rather not. When a document has purportedly been divulged in the press, we do not necessarily confirm or deny its existence. If the government releases it officially, it will be a document known to exist.

**Senator NETTLE**—You said that if I wanted to ask you a specific thing about the memo we could go to that. In the memo there is talk about—

**Mr Smith**—The alleged memo.

**Senator NETTLE**—I am just describing it as the article describes it. It says: ‘Where possible the Strategic International Policy Division will attempt to shape the East Timor Transitional Authority’s policies to suit Australia’s interests.’ What do you understand that to mean?

**Mr Pezzullo**—I have no comment on a statement taken from a purported document. In general terms, our international engagement strategy, which underpins all of our defence cooperation program activities—whether it is in Tonga, East Timor or anywhere else—

unsurprisingly is guided by an assessment of our interests. It is shocking that gambling is going on in the casino.

**Senator NETTLE**—In your chronology of the lead-up to 2000 and 2001 you spoke about the issue being debated internally in Australia about what role Australia may have in training the East Timor Defence Force. The article refers to tensions between the department of foreign affairs and Department of Defence about what level of involvement that might be. Is that what you were referring to when you talked about it being internally debated?

**Mr Pezzullo**—No, I said—and I think the *Hansard* will confirm—that the matter was being considered by the Australian government at the time and that led to certain announcements being made, and I described those announcements, particularly the key one in November 2000 in association with the first of the donor conferences. I said that the matter was being considered by government. Government considers stuff all the time. I think you have heard on plenty of occasions in this committee that we do not go into the internal deliberations between agencies, between agencies and their ministers and between ministers that then lead to an outcome, because that would undermine the confidentiality of how those proceedings are conducted. It would inhibit the ability of officers to give fearless and frank advice if they knew that they were going to be in that goldfish bowl. What I did say was that it was being considered and that different agencies brought their perspectives to bear through the normal cabinet process.

**Senator NETTLE**—I wrote down ‘internally debated’ as the phrase that you used. Did that relate to concerns about the level of training that should be provided?

**Mr Pezzullo**—The interagency process at the time would have looked at all sorts of issues like, ‘What are our own interests in this?’—that is not a surprising starting point—and ‘What do we think the East Timorese might appropriately gain from international defence assistance, be it from Australia or anywhere else? What kind of force do we think, when we go to these donors conferences, might be optimal for their needs?’ But, because we have diplomatic discussions where we impart views, we always recognise that those decisions rest with other people. In this case we had a transitional UN administration and a soon to be sovereign government.

**Senator NETTLE**—You spoke about the defence cooperation agreement starting from sometime during 2001. To what date did that extend?

**Mr Pezzullo**—It has been ongoing. The Defence Cooperation Program with East Timor is ongoing. It has in effect been suspended. The troubles that started with the riots over the weekend of 28-29 April, and the subsequent tensions, led to the most recent assistance mission that we have deployed. There are DCP personnel still in country but they just have not been doing their day job, as it were.

**Senator NETTLE**—So would the training that Major Reinado received in Australia have been under that defence cooperation agreement?

**Mr Pezzullo**—Yes.

**Senator NETTLE**—And do you have any indication of what proportion of the rebel soldiers or the forces that were sacked were involved in the Australian training?

**Mr Pezzullo**—Not readily to hand in a mathematical sense, other than to assume—I will get this checked and if needs be corrected—that our training activities under the auspices of the Defence Cooperation Program would not have sought to distinguish between the battalions on the basis of any kind of communal or political allegiances or the like. We would have been just delivering an apolitical, neutral program to both battalions.

**Senator NETTLE**—I am not suggesting that. I am just looking at the situation now. It might be valuable to be able to assess if there is anything significant in the division amongst those forces. So I suppose I was asking whether that had occurred yet, and, if not, whether there is an intention to look at that later.

**Mr Pezzullo**—It is not data that I have sought. It is not data that is in my brief. I will think about what value would arise out of such an exercise and it is something that I will consult senior colleagues on.

**Senator NETTLE**—Were the ADF, either in Australia or the advisory personnel that were there at the time, consulted with regard to the sacking of the forces that occurred in East Timor?

**Mr Pezzullo**—Were our trainers consulted?

**Senator NETTLE**—Yes.

**Mr Pezzullo**—The trainers themselves for management purposes—not for disciplinary or military management purposes—come under the auspices of my international policy division. Not only in a duty of care sense but also in the sense of providing situational reports as to their activities they report up that chain. In addition, we have a defence attache, as we normally would in a major mission, in Dili. He remains there to this day. So when you ask whether they would they have been consulted, they are actually part of the advisory chain: they provide information and we provide them with guidance.

**Mr Smith**—Would they have been consulted by the command in East Timor though?

**Mr Pezzullo**—Is that your question?

**Senator NETTLE**—Yes.

**Mr Pezzullo**—Not to my knowledge. They might have had a sense of something, because some of the tensions and divisions were not particularly clandestine. There was reasonably open concern about issues to do with pay and conditions—essentially what are industrial matters. I dare say that they would have been aware of them.

**Mr Smith**—But they would not have been part of the decision making. I doubt that, because they would have no reason to expect that.

**Senator NETTLE**—I was thinking more of an advisory role, not decision making. I am not suggesting that. I am wondering whether they would have been consulted about their views.

**Mr Pezzullo**—I might just check that. It is the case that we had the battalion advisers in. There might well have been informal discussions in a social environment or maybe something even more formal might have occurred in which people said, 'Look, these issues of pay are really starting to become a concern.' I will need to check that for you, Senator.

**Senator NETTLE**—How many ADF personnel would have been in East Timor when the recent trouble started?

**Mr Pezzullo**—I will check my notes, but from recollection we had 28 ADF and civilian personnel from Defence.

**Senator NETTLE**—You were talking about the troubles not being clandestine—about people being aware of them. Are you able to put a time frame on when you think Defence would have been aware of the situation reports that there was brewing conflict?

**Mr Pezzullo**—I would not want to venture a guess at that—I would want to check that.

**Senator NETTLE**—If you could take that on notice to give us an idea of when that might have occurred. When the CDF was speaking before about the time frame for the request that Defence got to deploy prepositioned troops, I think he was saying it was two weeks ago. Can you check that?

**Mr Pezzullo**—As I heard the CDF's evidence, and the *Hansard* would obviously need to be checked, I think you will find that the direction from government, based on advice from agencies to commence certain preparations which were publicised at the time, occurred several weeks ago, and I think you find that that is the burden of Air Chief Marshal's Houston's evidence. I think it is now a matter of public record because the Prime Minister and others have publicly put this down, including in the House. The request itself for the assistance was dated 24 May, last Wednesday night, and the team led by General Gillespie, of which I was a member along with Deputy Secretary Ritchie from Foreign Affairs and others, went up to Dili during the course of last Thursday.

**Senator NETTLE**—It was the request from government to predeploy for which I was looking for a date. I thought the evidence was two weeks, and I wondered whether I could get a specific date for that.

**Mr Pezzullo**—It was not so much a request from government. Agencies provide advice to government all the time on certain things, and governments make decisions. I think you will find the *Hansard* has the CDF indicating that as having occurred several weeks ago. I think he said two weeks ago.

**Senator NETTLE**—Can we get a more specific date?

**Mr Pezzullo**—I will take that on notice.

**Senator NETTLE**—Thank you. Going back to the 28 ADF personnel you indicated were in East Timor at the time of the recent troubles, can you give any indication of their roles?

**Mr Pezzullo**—Yes, in broad terms I can. I will correct this statement if the information is incorrect. As at the day that the initial troubles commenced, on 28 April, when the first serious riots occurred, we started to take precautionary measures in terms of what those people were doing and where they were thereafter. If we take that as the dividing line, just prior to those riots the two six-person battalion adviser detachments were with their battalions and the other personnel were dotted around the East Timorese defence ministry and defence force in various roles. As to the precise breakdown on who was doing what just prior to those troubles, I will need to get back to you.

**Senator NETTLE**—That would be appreciated. I want to ask a question in relation to Major Reinado. Are you able to give an indication of when the ADF would have last had communications with him? When was the last time prior to the deployment?

**Mr Smith**—I should say that when he trained in Australia he was Lieutenant Commander Reinado. That is the same gentleman, isn't it?

**Mr Pezzullo**—Yes.

**Senator NETTLE**—I have heard him referred to as both major and lieutenant commander. I am not sure which is right.

**Mr Smith**—We are happy to call him 'major' if that is what he now is.

**Mr Pezzullo**—He went through some various career evolutions. He was a major for a while and he was either appointed to or assigned to—and whether he ever took up the appointment, I do not know—their marine element, where the rank of major became the equivalent maritime rank of lieutenant commander. My latest advice is that his last position prior to these difficulties was that he was back in their military police. Whether he reverted back to major or retains the rank of lieutenant commander I am not entirely sure. I have seen public references to both ranks.

**Senator NETTLE**—Yes, likewise. I am interested in the last communications the ADF would have had with him prior to the recent deployment.

**Mr Pezzullo**—He certainly participated in various seminars and leadership training activity in 2003-04. I think it is publicly known, and certainly the student college would have seen him, that he attended a module at Command and Staff College in 2005. In late 2005 he had some kind of attachment with Navy up in Darwin which I assume was associated with patrol boats, which would make sense.

**Senator NETTLE**—What was the contact in late 2005?

**Mr Pezzullo**—This was presuming that he was in his nautical phase, as it were. He completed a maritime attachment. Depending on your level of detailed interest in this I can come back to you. He completed a maritime attachment with what I am advised are RAN units in Darwin. Whether that was with the patrol boat force element group or some other naval entity up in Darwin I am unsure; it would make sense to me that it was patrol boats, but that needs to be checked. That was in late 2005. I presume that if he had been heading up the Timorese maritime element at that time he would have been having a look at how small boat operations are managed, conducted and led.

**Mr Smith**—I think I am right in saying—Mr Pezzullo will correct me if I am wrong—that what he did in Australia were generally pretty short courses: an emergency management seminar and a defence management seminar—I think that is about 10 days. I do not think they were long.

**Mr Pezzullo**—Yes, the secretary is right. The module he did at the Command and Staff College went for a couple of months and the naval attachment that I have just described went for what appears to have been about a fortnight.

**Senator NETTLE**—Maybe you could take it on notice to provide us with the details of the training that he received here.

**Mr Pezzullo**—Sure.

**Senator NETTLE**—The date that you mentioned in late 2005 was as to the training that he received. I am interested in any ongoing communication, not necessarily formal training, that would have continued beyond that date between the ADF and him—ongoing communication in an advisory capacity or whatever; I am not sure in what capacity. It would be as to what ongoing communication there would have been with him beyond that date.

**Mr Pezzullo**—I would be reluctant to be too precise about that simply because in a defence force of that small size, which is headed by a brigadier, there are a number of lieutenant colonel and major positions, and this fellow is at that rank. There are people that we interact with every day—we have got 28 defence personnel—and you would be having fairly frequent contact with people at that sort of rank, so how many times that happened—how many times do you bump into people in the corridor?—I do not know.

**Senator NETTLE**—Perhaps you could take on notice whether he would have been one of the people who would have fallen into that category of being somebody with whom ADF personnel were likely to have had daily communication.

**Mr Pezzullo**—Sure. Did you say ‘daily communication’?

**Senator NETTLE**—That was your example when you said that with people of that rank you would have been having almost daily communication—I think you said that—so if you could take that on notice.

**Mr Pezzullo**—If they are in a headquarters or if they are in a barracks—it depends somewhat on the circumstances, but we will get that checked.

**Senator NETTLE**—Yes, if you find out whether he would fall into that category.

**Mr Pezzullo**—Sure.

**Senator NETTLE**—Chair, those are my questions on Timor.

**CHAIR**—Thank you, Senator.

**Senator MARK BISHOP**—Mr Smith, I think these questions are probably for you. They arise out of the earlier discussion on military justice. In answer to a question on notice, the department advised that, as at 28 November of last year, legal costs of some \$384,844 had been paid by the department on behalf of Dr McKenzie, who was the practitioner under discussion before. So some \$388,000 had been paid by the department for his legal costs arising out of that matter. Have any additional legal costs been paid since that answer was provided to me?

**Mr Smith**—They have, and I will ask Mr Cunliffe, the head of Defence Legal, to come forward and explain those.

**Mr Cunliffe**—Senator, there has been no additional cost since the answer was lodged to, I think, question No. 16 from the last round of the Senate legislation committee.

**Mr Smith**—Senator, I understood the question that you were working off cited a figure of \$380,000.

**Senator MARK BISHOP**—Yes, I have an answer from Defence, to question on notice No. W16, signed off by the legal services division. It says:

a) As at 28 November 2005, the following amounts have been paid for matters concerning:

(i) Commander McKenzie: \$384,844 ...

Is that now in dispute?

**Senator FAULKNER**—Chair, I am going to suggest that the problem we have here is that effectively we have differing or conflicting evidence on this, so we need to sort out whether there are or are not additional legal fees, because we have both received both answers.

**CHAIR**—Yes.

**Mr Cunliffe**—The material includes two figures which are the total, and the figure is \$384,320.86, for Dr McKenzie's legal and related costs plus the \$60,000 figure, which we have previously talked about which is the amount paid to the Western Australia medical board for its costs.

**Mr Smith**—Let me just correct what I said before: I was looking at the gross figure, which was higher than \$380,000—I apologise for that.

**Mr Cunliffe**—The gross figure is the total of those two numbers.

**Senator MARK BISHOP**—That is right. My discussion at this stage, unless I advise otherwise, is about the legal costs paid to Dr McKenzie and we are now agreed that figure is \$384,000.

**Mr Cunliffe**—Yes.

**Senator MARK BISHOP**—You would be aware that there was application for recommendation to the Western Australian medical board by Dr McKenzie, the practitioner, for payment of costs, and the Western Australian medical board heard submissions and came down with an arbitrated recommendation. Its recommendation was having regard to all the circumstances and particularly to the course of the hearing over eight days. The board is of the opinion that the appropriate order is that the practitioner bear 75 per cent of the reasonable costs of the inquiry. Has that recommendation of the Western Australian medical board on the issue of costs for Dr McKenzie been followed or have you gone down a different path?

**Mr Cunliffe**—My understanding of that recommendation is that a figure derived from that percentage is the number that we have spoken about previously of which we paid \$60,000, so the \$60,000 which has been talked about as being the amount paid to the Western Australian medical board reflects the percentage that has been provided to benefit Dr McKenzie.

**Senator MARK BISHOP**—I also understand from answers to questions of your department that there are directions on assistance to Commonwealth employees for legal proceedings to cover the costs, where appropriate, for Commonwealth public servants involved in legal matters when they act as delegates or agents for respective departments. There are legal service guidelines. Those guidelines are quite specific and they are binding on the Department of Defence. When you look at those guidelines, they say:

Expenditure should normally be approved to assist an employee who is a defendant in a civil or criminal proceedings—

So that applies to Dr McKenzie, and there is a series of procedural matters and they are not in contest. The next paragraph, 5B, is critical and it says:

... the employee acted reasonably and responsibly.

It then goes on in paragraph 6 to say:

The criterion ... is not intended to preclude the provision of assistance to an employee who has acted, or who is alleged to have acted negligently ... Rather, it is intended to preclude the provision of assistance in circumstances where the Commonwealth may seek contribution or indemnity from the employee ... A decision to seek contribution or indemnity will normally be appropriate only where the employee's conduct involved serious or wilful misconduct or culpable negligence.

In this case, bearing in mind those introductory remarks and the finding of the Western Australian medical board about his behaviour and conduct over a period of time in that protracted matter, how is it reasonable for the Commonwealth to have paid \$384,000 of legal costs for Dr McKenzie?

**Mr Cunliffe**—There has been considerable consideration of this not just in this committee but also within Defence and between us and the Office of Legal Services Coordination within the Attorney-General's Department. As you would know, those legal services directions were issued by the Attorney-General and they are binding on agencies, including Defence, as you note.

I think as a result of your raising this on a previous occasion the Attorney-General's Department wrote to us seeking our advice on the basis that these decisions had been made. The advice I had back from the Attorney-General's Department was that they believed our actions complied with those requirements. In a sense we can engage in a discussion about what the requirements mean, but they are, I suppose, the ultimate arbiters.

**Senator MARK BISHOP**—When did you receive that correspondence?

**Mr Cunliffe**—That was 15 May.

**Senator MARK BISHOP**—Do you mind tabling that?

**Mr Cunliffe**—I am happy to table it. I am afraid I do not have multiple copies.

**Senator MARK BISHOP**—Do you think you could have a copy made?

**Mr Cunliffe**—I have a copy. I do not have multiple copies.

**Senator MARK BISHOP**—Regarding that advice you have from the Attorney-General's Department, and we are waiting for a copy, that payment was okay, what do the legal services guidelines say on the considerations that are to be made by a department in giving grants for legal costs?

**Mr Cunliffe**—The legal services directions are, as I think you have just mentioned, the publicly available directions that are on the Attorney-General's Department's website, I think.

**Senator MARK BISHOP**—Do you have a copy of the legal services guidelines?

**Mr Cunliffe**—I have a copy of the legal services directions, bearing in mind that there is actually a new set of directions. They have been remade to take effect with a fresh version from this year. In essence I think in this section there is not substantial change. I think I do have a copy of the previous version as well which was in force at the time.

**Senator MARK BISHOP**—What are the two tests that are to be applied by the Commonwealth in determining to give legal assistance? Can you read them out to us?

**Mr Smith**—Paragraph E of the legal services directions?

**Senator MARK BISHOP**—Appendix E of the legal services guidelines—the one that is binding on all agencies.

**Mr Cunliffe**—There are six pages of directions in appendix E. I am more than happy to read them out if the committee would like that but I wonder whether a better course might be—

**Senator MARK BISHOP**—No. I do not have a copy of the guidelines in front of me.

**Mr Cunliffe**—Would it be preferable, perhaps, to have copies made of the appendix?

**Senator MARK BISHOP**—Yes, if you do not mind.

**Mr Smith**—It is six pages long, though, let me caution.

**Mr Cunliffe**—It is six pages long; that is right. It is the specific appendix which relates to assistance to Commonwealth employees for legal proceedings. It is the relevant material which I think you were quoting in part from previously.

**Senator MARK BISHOP**—I have a copy of appendix E.

**Mr Cunliffe**—That is the material.

**Senator MARK BISHOP**—The form on which the application is made makes reference to the Commonwealth employee being in good standing. What is the form on which—

**Mr Cunliffe**—I am not familiar with the particular form. I do not recall there being a form attached to the legal services directions as issued by the Attorney.

**Senator MARK BISHOP**—I will return to it in due course. I will just get the appropriate document from my office. I would like to ask you a few questions about the comments that Vice Admiral Shalders made concerning Dr Srna, the consulting psychiatrist referred to in the Robyn Fahy case. I wonder if Vice Admiral Shalders might come forward. I inquire, Vice Admiral, whether you have been advised that Dr Srna, the consulting psychiatrist referred to in the Robyn Fahy case and the doctor you referred to earlier after Mr Fahy made some public comments, was the subject of and was found guilty by the Medical Board of Western Australia as a result of gross carelessness in the assessment and management of a patient in the late 1990s, two years before he saw Lieutenant Commander Robyn Fahy?

**Vice Adm. Shalders**—I am not quite sure of the question. Am I aware that Dr Srna was subject to some previous proceedings?

**Senator MARK BISHOP**—Have you been advised that Dr Srna, the consulting psychiatrist referred to in the Robyn Fahy case and the particular doctor you referred to as the subject of comments by Mr Fahy, was the subject of and was found guilty by the Medical

Board of Western Australia as a result of gross carelessness in the assessment and management of a patient in the late 1990s, two years before he saw Robyn Fahy? Have you been advised of that?

**Vice Adm. Shalders**—No.

**Senator MARK BISHOP**—Are you aware also that Dr Srna was fined \$10,000 for this behaviour?

**Vice Adm. Shalders**—Not having been made aware of the case, I was not aware of the penalty.

**Senator MARK BISHOP**—Taking those facts as true, what does this say about the credibility of Dr Srna as a consulting psychiatrist?

**Senator FERGUSON**—Mr Chairman, you cannot ask an admiral to give a personal opinion on an issue like that. This is estimates. If you want to ask those sorts of things, there is another time and place. You cannot ask it now.

**CHAIR**—I think that is right, Senator.

**Senator FERGUSON**—I think you can ask it, but it will not be answered.

**Senator MARK BISHOP**—Are you aware that anyone else in the ADF has been made aware of these developments concerning Dr Srna, Vice Admiral?

**Vice Adm. Shalders**—I am not aware.

**Senator MARK BISHOP**—Is anyone else aware?

**CHAIR**—I think he has just answered that he is not aware of whether anyone else knows.

**Senator MARK BISHOP**—I believe that he said he was not aware. Secretary of the department, are you aware of those allegations concerning Dr Srna?

**Mr Smith**—No, I am not.

**Senator CHRIS EVANS**—I think the key questions that obviously arise out of that, Vice Admiral Shalders, are whether or not you intend to take any action to confirm the suggestions or the comments made by Senator Bishop and whether or not that will lead you to factor those in when taking any action or handling the Fahy case.

**Vice Adm. Shalders**—We will obviously check that statement out, and that will have an impact on the mediation process, which of course is about to get under way.

**Senator FAULKNER**—Is it true, Admiral, that you were responsible for promulgating a message to all naval personnel about the Lieutenant Commander Fahy case?

**Vice Adm. Shalders**—Yes, I was.

**Senator FAULKNER**—Could you indicate to the committee when that occurred, please?

**Vice Adm. Shalders**—At 1700 on 18 May.

**Senator FAULKNER**—Would you be able to table a copy of that? What was it—a message to all personnel?

**Vice Adm. Shalders**—It was an all-ship, all-shore unclassified message that went to all naval units, all naval people.

**Senator FAULKNER**—Would you be able to provide the committee with a copy of that so we might have a look at it? There may be some questions that arise from it, but that would be helpful.

**Vice Adm. Shalders**—Yes, I am happy to table that message.

**Senator FAULKNER**—Thank you very much. Can you briefly explain to the committee why you decided that it was appropriate in this circumstance that such a message be promulgated to all personnel?

**Vice Adm. Shalders**—Yes. I was concerned that we had been unable to comment on the allegations that had been made on the *7.30 Report* that Monday night. I was concerned that Navy people would feel that we were being unnecessarily constrained. I wanted to get a message to Navy people that this was a very complicated, complex matter and that we were constrained by matters before the Federal Court, by matters related to the privacy of the individuals and, quite frankly, by common decency, which prevented me from refuting many of the allegations that had been made which had been represented as factual but which had been untested and which remained to be proven. So I was concerned that the Navy be made aware of the facts as far as we could relate them at that stage. It was a message that I felt needed to be made to putting the facts in front of our people as far as we could.

**Senator FAULKNER**—Did you draft this yourself?

**Vice Adm. Shalders**—Yes, I did.

**Senator FAULKNER**—And it was your decision and your decision alone to send this message to all personnel?

**Vice Adm. Shalders**—Yes, it was.

**Senator FAULKNER**—I am not clear on this—perhaps I should be—but how common is it for the Chief of Navy to send a message of this type to all personnel in the first instance? Secondly, how common is it for the Chief of Navy to send a message relating to personnel issues to all ships and all shore personnel?

**Vice Adm. Shalders**—It is an uncommon event but, given the circumstances at the time, where there had been two what I felt were unbalanced reports in the *7.30 Report*, plus a lot of media coverage on the Tuesday and Wednesday of that week, I felt it was necessary to put this message out. But it is an uncommon event. Chief of Navy messages relating to personnel matters more generally are more common, but this sort of message is rare.

**Senator FAULKNER**—When you say ‘uncommon’, that is helpful, but can you perhaps explain to me in a little more detail how uncommon it is? Have you ever done it before as Chief of Navy, for example? Are you aware of your predecessors ever having done it?

**Vice Adm. Shalders**—Yes, I am aware of my predecessors having done it. In the course of my time as the Chief of Navy this is the second time I have pushed out a message of this nature. The first message was on the assumption of my command of the Navy, in which I relayed to all naval people what my vision for the future was.

**Senator FAULKNER**—I appreciate that and I think I understand that, but I am talking here about a message that deals with a sensitive personnel issue and that really results from what you believe is unfair media coverage. That is pretty unusual, isn't it?

**Vice Adm. Shalders**—It is unusual. They were unusual circumstances.

**Senator FAULKNER**—Are you aware of any similar case or remotely similar case where such an all ship, all shore unclassified message has been sent out?

**Vice Adm. Shalders**—In my naval service, yes, I am aware of messages of this type. I cannot recall the specific circumstances, but very regularly there are these sorts of messages pushed out in message form, in written form or sometimes through the service newspapers. These sorts of messages are part of the leadership function that I think I have.

**Senator FAULKNER**—Are there ever responses from personnel to these sorts of messages?

**Vice Adm. Shalders**—Yes, there are. Once the message is tabled you will see that the last paragraph of it goes to that very point. It says:

I am heartened by the number of calls and emails that I and my team have received from serving and non-serving members of the Navy. I am particularly heartened by the strong reaction of officers and sailors disputing the allegations of a widespread culture of bullying and harassment in Navy.

**Senator FAULKNER**—Yes, but that is obviously not a response to your message because you just said that was in the message.

**Vice Adm. Shalders**—What I am referring to in that final paragraph was a number of messages of support that I had had. Since I pushed this message out, there have been many, many more.

**Senator FAULKNER**—Chair, this might be a matter that warrants some further questioning but if that all-shore-all-ships message could be tabled perhaps we could have a look at it.

**CHAIR**—Do you want to stay on this subject?

**Senator CHRIS EVANS**—I think Senator Bishop has something—or do you want to rest while you are getting the document, do you?

**Senator MARK BISHOP**—I want to have a look at the document.

**Senator Sandy Macdonald**—I agree that it can be tabled.

**Senator FAULKNER**—It has gone to thousands of people. It is hardly a secret document.

**Senator Sandy Macdonald**—I thought I was being very generous, Senator Faulkner.

**Senator FAULKNER**—How many addressees are there, Admiral?

**Vice Adm. Shalders**—That should go to every member of the Navy.

**Senator FAULKNER**—How many thousands is that?

**Vice Adm. Shalders**—Right now, we are just under 13,000.

**Senator FAULKNER**—Yes, so it is hardly a secret document.

**Vice Adm. Shalders**—I should also point out that a report in the *Sydney Morning Herald* obviously had had access to that message.

**Senator FAULKNER**—Yes, and that is how I know about it. But I am making a point, I suppose, to the Minister at the table that he ought not run away with his generosity, given that the 13,000—

**Senator Sandy Macdonald**—I suspect even the Russian Secret Service know about it.

**Senator FAULKNER**—I was just making an editorial comment.

**Senator HOGG**—I have a question for General Leahy in the area of military justice. I flagged with him during the proceedings that I would be raising this issue. It relates to evidence that came before a Senate inquiry in respect of the treatment particularly of Army personnel who were injured during initial training. I thought it might be worth while if we could get General Leahy to give us an update as to what is happening in that area—how these people are now being treated and what action the Army has taken to ensure that the rights of these people are not infringed upon by those who are able bodied.

**Lt Gen. Leahy**—Senator Hogg, thank you for the consideration in mentioning the question. I hope that I am able to provide more substantive information which might give the committee a better view. I will start by talking about the macro approach. In Defence—and I should stress that it is not just in Army; it is the other two services—there is a similar approach. But I will talk specifically about Army.

**Senator HOGG**—That is where the major problems were.

**Lt Gen. Leahy**—We have had some issues, yes. We take a multiple approach to both injury prevention and treatment. It is not just worrying about them after they are injured. Along with Defence, we have, over the last couple of years, enhanced what we call ArmySAFE, which is an enhanced occupational health and safety management system. We have reviewed our systems and our data to ensure that we understand both the cause and impact of injuries that might occur to people in training and also to people in service. That then transfers through a new governance framework and the ability to monitor and analyse these injuries to improvements in our equipment, training and the scheduling of training.

That ArmySAFE committee reports to my Chief of the Army senior advisory committee each month. It is run by the Deputy Chief of Army. He has a dedicated staff of both regular and reserve officers who are increasingly trained in this occupational health and safety area. They have organisations spread throughout the country. As I mentioned, we do this in conjunction with the Defence occupational health and safety organisation. We are trying to ensure that we target the cause of injury and the remediation, training and treatment that we do to decrease our injury rates.

It is in conjunction with an ADF rehabilitation program, which aims to provide multidisciplinary rehabilitation services. There is a focus on the clinical, occupational and psychosocial aspects of a soldier's recovery following injury. Army has also sought to refine our personnel management systems to provide improved occupational retraining opportunities for our injured soldiers. This retraining offers them the ability to obtain additional military qualifications during the period of their rehabilitation. If it is clear the chap will not be able to

get back to the trade that he has been in, we will start him training as soon as we can in conjunction with the rehabilitation that is going on.

**Senator HOGG**—That is well and good but, specifically, the sought of issue that concerned me gravely was the fact that these people—and we had instances at Singleton and I think we also had evidence in respect of Kapooka—were barracked separately and differently and treated differently by those who are more able on the base. One of the tragic consequences of this, of course, was that unfortunately one person did take their life. I am wondering what you have done to change the environment, the circumstances and the arrangements so that these people are not subject to psychological pressures that they were previously subjected to. I have no doubt about the fact that you are remediating these people with the best of intentions.

**Lt. General Leahy**—I will be more specific, if you like. I would take issue in part with your statement, though, that these circumstances caused one person to take his life. I have been on the public record that there were factors of Army service that contributed to the tragic decision of an individual to commit suicide. I would differ to the extent of how much caused that.

**Senator HOGG**—Okay. We have a minor difference of opinion.

**Lt. General Leahy**—You are correct in that the attitude of the well trainees at times, particularly at Kapooka, was less than acceptable. They portrayed some attitudes that would denigrate those soldiers who had injured themselves in training. We have taken very firm steps to wipe that out. We have provided equity and diversity training and a whole series of lessons, lectures, videos and other approaches to both the staff and the trainees to ensure that they all understand that those who might be injured or are having difficulties are not to be denigrated and are not to be belittled. That, I think, is a very extensive program and it occurs now in all of our training establishments. I do not have the syllabus now but, as I have mentioned, there are videos and, what we call in training command, a code of conduct, which is the responsibilities of the leaders and the trainers towards those whom they are training and the responsibilities of those undergoing training towards their approach to the training that is being to them.

**Senator HOGG**—I accept that but part of the problem was organisational: where these people were actually sited.

**Lt. General Leahy**—If I could give you the example of Kapooka. We have there a place called the Digger James Platoon—named after Digger James, who was a great Australian Army soldier and medico. At Kapooka, soldiers who are injured in the course of training are taken to the Digger James Platoon. It is on the same barracks area but is a separate barracks area because different work goes on there. However, it is very much integrated into the barracks and to what happens there.

**Senator HOGG**—Are any of these people actually physically shipped out of the area?

**Lt. General Leahy**—Depending on the nature of their injury, some are moved to a more specialised establishment, which is the Private Williams rehabilitation centre located at Moorebank in Sydney. This is a specialist adjunct to the 1st Health Services Battalion and it works under the training command Army through the School of Military Engineering.

Those soldiers, not only from Kapooka but also from other training establishments—and the majority do come from Kapooka or the infantry centre, because of the nature of the training—who have an injury that we think will probably take more than two to three weeks to rehabilitate are moved to this establishment at Moorebank. That is a specialist area, as I have said, under the wing of the School of Military Engineering. It has a capacity for 47 trainees. There are currently 30 trainees in location there.

At this location they receive individually tailored medical rehabilitation programs. I have visited there, CDF has visited there and I know the minister has recently visited. They are trained in the rehabilitation and physiotherapy wing of the hospital, and it has some very sophisticated and very suitable personnel and equipment available to them. They are given not only the medical rehabilitation but, as I have mentioned, some aspects of what it might mean to their career—some of the psychological and social aspects of an injury and how they would get over it. But at all times our aim is to get them back to training and they are imbued with the thought: ‘We’re going to get you back to training.’

They are given an all-corps military skills program to keep up their interest and motivation, and I think that this is a very well-motivated and well-conducted organisation. Indeed, I think it was last year or the year before last that that wing won a prize in our annual occupational health and safety competition. The staff there work closely to ensure that our soldiers can continue with their rehabilitation—and I mentioned under the preamble remarks that there would be an opportunity to retrain and perhaps to conduct a corps transfer. For those that have been injured to the extent that we cannot rehabilitate them and return them to training, our aim is to enable them to take their discharge, and we do that with a real sense of dignity.

**Senator HOGG**—General, Senator Bishop is anxious to get back to some questioning. I would like to give you a couple of questions to take on notice—and I think you will need to. I would like to know the rate of injury at Kapooka with the trainees over, say, the last three years, so that I can get an idea of whether the rate is increasing or decreasing. Secondly, I would like to know the rate of separation as a result of people suffering injury over the last three years. If you could take that on notice, I would appreciate it.

**Senator MARK BISHOP**—Mr Cunliffe, I would like to return to the issue of the legal service guidelines. You will recall that the legal guidelines said:

5. Expenditure should normally be approved to assist an employee who is a defendant in civil or criminal proceedings if:

... ..

(b) the employee acted reasonably and responsibly.

In light of the very strong findings of the Western Australian medical board as to Dr McKenzie’s professional conduct and professional behaviour, how can you say, or how could Defence Legal have found, that his behaviour in that case was both reasonable and responsible?

**Mr Cunliffe**—I think there are a number of aspects in this, and I agree it is not a straightforward matter, which is one of the reasons why, as well as the communication that we had by writing with the Attorney-General’s Department, we also met with them to discuss some of these issues. But, to do justice to the difficult decision, which can only fully be

applied, obviously, at the end of the hearing—which was the question, at that point, of what part of the award of costs against Dr McKenzie (that is, the costs of the medical board plus the penalty) was appropriately considered—because that is the point at which you are in full possession of the judgment of the board—

**Senator MARK BISHOP**—And the payment of his legal bill of \$384,000.

**Mr Cunliffe**—The payment of legal bills, of course, is in a slightly different category and this is the difficulty of the directions, in a sense, which is that the decision initially is a decision that needs to be made before the full conduct of the matter. It is a question that needs to be considered in advance of the hearing, and the material that was taken into account at that stage, as I understand it, included consultation with both Navy and the medical area of defence in terms of what was known on the facts at that stage. That preliminary decision was not a decision that was taken in isolation but taken in conjunction with those areas, in broad terms, of what they might expect of the behaviour of people in such a setting.

**Senator MARK BISHOP**—Are you saying to me that a preliminary decision was made prior to the case having been argued—

**Mr Cunliffe**—Correct.

**Senator MARK BISHOP**—that legal costs that were incurred by Dr McKenzie would be paid?

**Mr Cunliffe**—In broad terms, effectively there are two broad decisions in this case. The first decision is a decision in advance, because, clearly, once the case has been heard, it is too late to take a considered view that you should or should not have provided legal assistance—the case is finished, and there is no point in providing solicitors or a barrister after the hearing; that is self-evident. So the first question is the question that needed to be taken in advance of the board's proceedings. The second question is a question which is taken in light of the judgment, if I can call it that—not formally but in light of the decision of the board. That decision is the decision which is the question of how much of the board's costs and how much of the penalty that has been levied would appropriately be met.

**Senator MARK BISHOP**—Are you saying to me with regard to that preliminary decision—a decision that was made by Defence Legal prior to the case having been fully argued and the Medical Board coming to a decision about that preliminary decision, made at best on less than full information as to all the activities that were later disclosed—that, no matter how heinous or offensive the conduct of the individual may have been or how bad the findings of the adjudicating body might be, the preliminary decision to award assistance could never be reviewed.

**Mr Cunliffe**—The advice that I understand derives from the Office of Legal Services Coordination is that the choices in broad terms are: do you give the assistance or do you not? Potentially, you could wait until the case was over but for most people that is too late. Most of us are not in a position to self-fund. The circumstances which the Legal Services directions are attempting to deal with are the circumstances of whether an employer supports an employee who, on the face of it, has acted in accordance with the duties and the expectations of the employer. It is no different from a lawyer—

**Senator MARK BISHOP**—I do understand that. I understand your approach to making a decision to award legal assistance. My question is: with that decision having been made, and then Defence Legal becoming fully aware of the most inappropriate conduct engaged in by Dr McKenzie, is there no capacity at any time after the first decision has been made to review it? Is it made once and for all and forever?

**Mr Cunliffe**—Potentially I expect a grant could be made for either a short period or for an amount of money. It was not the way this was done back in June 2002, I think it was, but I suppose, potentially, you could say, ‘We’ll grant assistance for the first week and review it; we could grant assistance for the first day and review it and keep reviewing it progressively.’ But, by and large, the expectation is that the person will have some clarity at the front of the proceedings on the best information that is available, and obviously that is all that is available.

**Senator MARK BISHOP**—But when that information is found to be so comprehensively deficient, so wrong, and the practitioner’s conduct is so bad that the Medical Board makes the type of findings that I read into the *Hansard* earlier, surely at some stage there is capacity in Defence Legal or in the guidelines to revisit what is patently an incorrect decision to award legal costs? Is there no capacity? Are you telling me there is no capacity, period?

**Mr Cunliffe**—As I read the directions, they do not carry with them that potential, on their face. I would suggest that you do not take my final view on that—it is a decision for the Attorney-General and his department, not for me—but I do not read that stage to be in there. I would say that, were there to be proof that support had been induced by fraud, my own view is that there would be scope for recovery, but that is an extreme example which would arise rarely.

**Senator MARK BISHOP**—I accept that. But the test here is that ‘the employee acted reasonably and responsibly’.

**Mr Cunliffe**—Yes, and that is of course expanded on in paragraph 6 of the directions—

**Senator MARK BISHOP**—It is.

**Mr Cunliffe**—which I think is an important distinction, because, by and large, the situation is not going to arise in the first instance where there is absolutely nothing wrong with the step that has happened. Of course there is the occasion when there might be somebody who, for a particular reason, is a troubled soul, and they may take action against somebody who has had nothing untoward occur. But, in general, these directions are going to apply where some form of incident has arisen. It may be an incident of quite a different nature, but there will be something that has gone wrong.

**Senator MARK BISHOP**—So you argue by implication that there is some sort of deficiency in the guidelines, but—

**Mr Cunliffe**—No, I do not think I would wish to be taken to be saying that. I think you asked me the question about whether there is scope in the guidelines to recover the funds. I do not read them to have that scope.

**Senator MARK BISHOP**—No, I did not ask you that. I did not ask that question. I asked: was there an ability for Defence Legal to review a decision to grant legal assistance—

**Mr Smith**—In the light of the outcome of the case.

**Senator MARK BISHOP**—Yes. When it becomes fully aware of the facts.

**Mr Cunliffe**—And what you are putting to me, therefore, in a circumstance where we are applying legally binding directions, is: is there some problem with the directions? It is not clear to me where else that potential would come from, short—as I say—of the one instance that I have tried to suggest, where it is induced by fraud.

**Senator MARK BISHOP**—Listen. Paragraph 5(b) says that the employee, in applying for assistance, had to act ‘reasonably and responsibly’.

**Mr Cunliffe**—Yes, and—

**Senator MARK BISHOP**—The final sentence of paragraph 6 says:

A decision to seek contribution or indemnity will normally be appropriate only where the employee’s conduct involved serious or wilful misconduct or culpable negligence.

When you read the findings of the Western Australian medical board, it says:

Of significant concern is that the proven wrongdoing of the Practitioner is not confined to a single aspect of his care, treatment and management of his patient—it encompasses a diverse range of failures and multiple infractions. He has acted with a gross want of due care and engaged in conduct of a character reasonably to be regarded as improper by professional colleagues of good repute and competency. The Board considers each of the failures and transgressions of the Practitioner to be serious.

It continues:

The nature and broad range of his professional misconduct requires that the action be taken by this Board to protect the public interest.

In the light of those findings, in the strongest language, by an appeal tribunal as to the character of a practitioner, how can it be argued that he at any time acted ‘reasonably and responsibly’? And how can it be argued, in the light of the last sentence of paragraph 6, that there is not a capacity when you become aware of those findings to seek contribution or indemnity from Dr McKenzie?

**Mr Cunliffe**—I will do this in two parts. Paragraph 6 of course is longer than that last sentence—

**Senator MARK BISHOP**—Yes.

**Mr Cunliffe**—and in particular I draw your attention to the earlier elements of it—that is, the criteria in paragraph 5(b) do not preclude the provision of assistance under the directions to:

... an employee who has acted, or is alleged to have acted, negligently (ie failed to exercise the legal standard of ‘reasonable care’ owed in the circumstances.

Rather, the criteria are intended to preclude the provision of assistance in circumstances where the Commonwealth is likely to:

... seek contribution or indemnity from the employee if the Commonwealth were itself sued in relation to the same matter. A decision to seek contribution or indemnity will normally be appropriate only where the employee’s conduct involved serious or wilful misconduct or culpable negligence.

I would look at that paragraph as requiring a decision at the commencement of the proceeding. You need to form a view at that stage as to where the matter will come out. The step is open to you, as I read it. But, as I say—I stress—this is my interpretation. They are the Attorney's directions—

**Senator MARK BISHOP**—But you are Head of Defence Legal, aren't you?

**Mr Cunliffe**—and I suggest to you that their word is the one that you should rely on. But, as I read that, you need to make the decision upfront. Potentially, you can deny the person assistance until after the matter is concluded; potentially, you could grant, initially, on the basis that you will seek a contribution, which may be a percentage or an amount; potentially, you could do it on the basis that the employee indemnifies you—but you need to make that choice in advance of the matter. That is the first part, I suppose, of the answer, which is that the question needs to be framed by reference to the point at which it needs to be determined, and that is in advance of the hearing.

On the second leg—which is then jumping to the end, when we have got the ability to know what happened and what the Medical Board of Western Australia has discerned—I think I would say, in general terms, before deferring to my colleague Dr Lloyd, that the board has a number of conflicting comments, as I read them, in its decisions. Some of the comments that it makes at certain points would seem to lead to one view of the world; some would seem to lead to a different view of the world.

Without suggesting for one moment that I am an expert in the proceedings of medical boards, because I am anything but, it is notable that the penalty the board finally determined was, one would have to say, one of the more minor that, potentially, was open to it. As I understand it, the board had a capacity to remove this person as a medical practitioner. As I understand it, this board had the power to suspend him from medical practice, at least—presumably for Western Australia. It chose to do neither. It chose to impose a fine of \$10,000.

I am not defending Dr McKenzie's behaviour. I have not met him. I know nothing of him. I am not passing a view. But I think that, in terms of trying to characterise the behaviour, it is important to look at the range of penalties that the board had available to it, and that that—together with what are internally conflicting comments, which it made during the course of its decision—led to a decision to pay part of the amount that was ordered to be paid for the board's costs, but none of the fine. If I can, just to be complete—

**Senator MARK BISHOP**—But all of his legal costs?

**Mr Cunliffe**—No, sorry—of the costs of the board. There are two distinct groups of costs; of the costs of the board.

**Senator MARK BISHOP**—No, I am not talking about the costs—I am talking about Dr McKenzie's legal costs.

**Mr Cunliffe**—That decision was taken in advance of the matter. And so, as I say, subject to the advice that you obtained from the Attorney-General or from his department, I do not understand there to be scope—short of the one that I have mentioned before: the one where they are induced by fraud—to recover after the event, if you have specified that, in a case, you will make a decision after the case is over. We have had a case—not a recent case, but a case

in the last few years—where a step along those lines was taken; where the matters, I would have to say, were clearer in advance.

**CHAIR**—I want to break there, Senator. We are over time.

**Proceedings suspended from 12.38 pm to 1.41 pm**

**CHAIR**—I call the committee to order. Senator Bishop has some further questions on reviews.

**Senator MARK BISHOP**—We were going to finish off the discussion on the legal fees. Mr Cunliffe, I just wanted to summarise the position of your department on this issue of payment of the legal fees so that it is accurate. You say that the application by Dr McKenzie for legal assistance was in order, it was made prior to the case before the Western Australian Medical Board being initiated, on the information available to your people at that time a decision was made to award legal assistance, the later findings of the Western Australian Medical Board in part were in conflict, notwithstanding the strong statements made, and there is no capacity in the legal service guidelines as applied at that time for review of the initial decision when new information is brought to your attention as to the merit of the application. Is that the position you have been putting to me?

**Mr Cunliffe**—Can I just perhaps slightly rephrase what you have described? The grant which was done in June 2002 was of assistance limited to the Commonwealth meeting the proper legal costs of solicitors acting for Dr McKenzie and, if necessary, the briefing of counsel to appear for him before the board. I am actually paraphrasing the letter that went to him. Explicitly, the assistance does not extend to any penalty or other payment ordered by the board or to any appeal from the board. Yes, that was a decision made in advance of the hearing of the matter, necessarily, as I tried to indicate before. I read the legally binding legal services directions not to carry with them the ability to call back the grant after it has been granted in those terms. I was not involved in that initial decision but I have no issue with it. I would say, yes, there is the second issue, and the second issue is the one taken after the Western Australian Medical Board made its ruling and findings. Your paraphrase at that point I think I would slightly rephrase. What I say is that within the terms of the ruling there are conflicting statements. There are some statements that might be construed as a particularly serious view and some statements that are at a less serious view, although all of them, I agree, are critical in the particular paragraphs. But, as I say, out of the range of possibilities open to the board, that is the other feature which is important to look at and which the decision maker looking at that point on the question of meeting the costs and/or meeting the penalty certainly gave attention to.

**Senator MARK BISHOP**—I do understand your position. One final issue arises out of that discussion. Is it in your view appropriate for the legal service guidelines to be revisited to take into account such circumstances where such findings by a court of law or a tribunal are so in variance with the information that was available when the decision was made at the first instance? Do the legal service guidelines need to be revisited to take into account that instance?

**Mr Cunliffe**—I have a number of views on a number of matters. I do not believe those are appropriate views to refer to this committee. I believe those are matters that are within the

Attorney-General's portfolio responsibility. They are made by the Attorney-General; they are not made by the Minister for Defence. They affect us, as does the Financial Management and Accountability Act more broadly. I do not think my policy view on what is in the FMA Act or what is in the Attorney-General's legal services directions are properly matters within this committee's consideration. There are a lot of things that I have policy views on. There are a lot of things I have personal views on. However, I do not think this is the proper place to rehearse all of them, if I can put it into those terms—without wishing to refuse to answer your question.

**CHAIR**—I do not think Senator Bishop would want you to do that.

**Senator MARK BISHOP**—I understand that response.

**Mr Cunliffe**—Can I put it slightly differently? If the Office of Legal Services Coordination asks me for some views, I will certainly convey some views to them.

**Senator MARK BISHOP**—You have answered the question. That is fine. That concludes my comments. I have some questions for Navy, which I would like them to answer. Could Navy take this on notice: given the role played by Dr McKenzie in the removal of Lieutenant Commander Robyn Fahy from her position as Executive Officer at Stirling Naval Base in 2000, could Navy advise us how many times a diagnosis by Dr McKenzie has been used to remove a serving member of the Navy from their position or from the Defence Force on medical grounds? If you do not have that information handy, could you take it on notice and give us that advice in due course. Admiral, you may be able to answer this question: who gave the order for the removal of Lieutenant Commander Robyn Fahy from her position as Executive Officer at Stirling Naval Base in October 2000?

**Vice Adm. Shalders**—Her commanding officer.

**Senator MARK BISHOP**—Her commanding officer?

**Vice Adm. Shalders**—That is correct. He was acting on the advice of the medical service.

**Senator MARK BISHOP**—He had advice from Dr McKenzie and he made a decision?

**Vice Adm. Shalders**—No, he did not have advice from Dr McKenzie. He had advice from the consulting psychiatrist, who passed his advice back to the medical system. The fleet medical officer at the time directed the commanding officer to remove Lieutenant Commander Fahy.

**Senator CHRIS EVANS**—The fleet medical officer has the power to direct the commanding officer to have the XO removed?

**Vice Adm. Shalders**—Based on the diagnosis that had been given by Dr Srna, which we spoke of this morning, yes.

**Senator MARK BISHOP**—Can you also tell us who gave the order for Lieutenant Commander Fahy to leave the base?

**Vice Adm. Shalders**—I believe it was the commanding officer, but I would have to check that and get back to you. In terms of leaving the base, can I correct another matter that has been before this committee before in relation to Lieutenant Commander Fahy's access to

naval bases? She was not at the time, nor has she since been, banned from any naval establishment.

**Senator MARK BISHOP**—On what basis was the order for Lieutenant Commander Fahy to leave the base given, and are you satisfied that it was a proper order under Navy regulations?

**Vice Adm. Shalders**—It was given on the basis that a diagnosis had been made that Lieutenant Commander Fahy was not fit to carry out her duties because of a mental illness. Yes, I am satisfied that it was a proper order at the time.

**Senator FAULKNER**—Chair, this might be an appropriate time for me just to conclude that matter in relation to the apology that had gone to the Bosnian ambassador. If I could perhaps ask the relevant officer.

**Vice Adm. Shalders**—Chair, whilst we are waiting for Mr Jennings to come to the table, could I add to a response that I gave this morning?

**CHAIR**—Certainly.

**Vice Adm. Shalders**—The question was asked about what action we would take as a result of information given on Dr Srna. We will take action in relation to the mediation that is coming forward that Senator Bishop spoke of. In the meantime, I have ascertained that Dr Srna was a practising and qualified, certified psychiatrist at the time of the diagnosis that he gave.

**Senator FAULKNER**—Would you mind repeating that—I was speaking to Senator Bishop.

**Vice Adm. Shalders**—I was just adding to the question regarding Dr Srna. You asked what action we would now take as a result of the revelations that you gave us this morning. The answer that I gave remains the same: that will have an impact on the mediation process of course. Over the lunch break, I have been able to ascertain that, at the time of his diagnosis, he was qualified, certified and practising and in fact was a consultant psychiatrist to Stirling.

**Senator MARK BISHOP**—Thank you.

**Senator FAULKNER**—This morning I asked very briefly a question of CDF in relation to whether the ADF had made contact with, apologised or expressed regrets to the family of Mr Sinanovic, whose body was sent to Australia mistakenly. Mr Jennings, you said that, on behalf of Defence, you had written to the Bosnian ambassador?

**Mr Jennings**—Yes, that is right.

**Senator FAULKNER**—Did you tell us the date of that letter?

**Mr Jennings**—Yes, I signed off on 27 May.

**Senator FAULKNER**—Can you explain why the letter went under your signature as head of public affairs, or perhaps Mr Smith could explain?

**Mr Jennings**—I wrote in my capacity as Chief of Staff of Australian Defence Headquarters at the direction of the secretary and the CDF.

**Mr Smith**—From my point of view, that was because Mr Jennings, firstly, had been dealing with the Bosnian ambassador daily on this for some time and was known to her and, secondly, it could have been both CDF and me, I suppose, but Mr Jennings was able to write on our behalf, I thought.

**Senator FAULKNER**—Was the decision made by yourself, Mr Smith and/or CDF to take this course of action?

**Mr Smith**—To write to her?

**Senator FAULKNER**—Yes.

**Mr Smith**—I cannot remember whether we suggested it or whether Mr Jennings suggested it. Anyway, it grew out of a discussion between the three of us. Whose decision it was, I cannot recall.

**Senator FAULKNER**—Did this occur before or after the issue had arisen publicly about whether Defence had so communicated with Mr Sinanovic's family?

**Mr Jennings**—Well before that.

**Senator FAULKNER**—This letter may have been made public. I am not sure if it has. In your public affairs role, has that letter been made public?

**Mr Jennings**—No, it has not.

**Senator FAULKNER**—Parliamentary Secretary, could that letter that was sent from Defence to the Bosnian ambassador be tabled?

**Senator Sandy Macdonald**—I have not seen the letter. Can I take some advice on that?

**Senator FAULKNER**—Yes. I think it is something that would seem to me would be a fairly straightforward matter. By all means take some advice, but I would like to follow this matter through. If you could take some urgent advice and come back to us as soon as possible, I would appreciate it. Depending on whether the letter is tabled or not, I will have follow-up questions. Chair, let us see if we can save some time and deal with them after the parliamentary secretary comes back to the committee on the tabling issue.

**CHAIR**—Okay.

**Senator FAULKNER**—I would hope that that could be done very quickly.

**Senator Sandy Macdonald**—Certainly.

**Senator MARK BISHOP**—Can it be confirmed that, in the case of Air Vice Marshal Criss, the recommended settlement value was rejected and another sum substituted by the minister or his delegate?

**Mr Smith**—I am just hesitating around the word 'recommended'. I know this was mediation, of course. There was no question of arbitration or judgment to be made, and the two sides had to agree a figure. I have no doubt the figure was lower than Mr Criss would have liked. It was higher than I might have liked.

**Senator MARK BISHOP**—My understanding is that a recommendation was made by the mediator and that an alternate value was determined by the minister or the minister's delegate.

**Mr Smith**—Mr Henderson might like to handle it. He dealt with the mediator.

**Mr Henderson**—Me and my colleague Dr David Lloyd, General Counsel, represented Defence at the mediation. The mediator was the Hon. Trevor Morling. The mediator does not bring a view to the table on what the appropriate amount should be. He is simply mediating between two parties that, not surprisingly, do not always start off at the same point as to what is reasonable compensation in these situations.

**Senator MARK BISHOP**—There was no recommendation made by the mediator—is that right?

**Mr Henderson**—No.

**Senator MARK BISHOP**—In terms of the eventual determination of a sum, if the parties are not agreed, how is it then resolved? Is it a decision of the minister in mediation?

**Mr Henderson**—If the parties do not agree, then I guess you just declare the mediation a failure and you return to your corners. The reality is that we did reach an agreement on an amount.

**Senator MARK BISHOP**—The mediation achieved an agreement on an amount?

**Mr Henderson**—Yes.

**Senator MARK BISHOP**—Is it necessary, then, for that amount—

**Mr Henderson**—We reached a settlement in relation to compensation.

**Mr Lloyd**—Perhaps if I could just clarify that point. It was a compensation for detriment arising from a defective administration decision. Having gone through the mediation process, there was still a decision to be made. A decision was made by the authorised decision maker and that was put to Air Vice Marshal Criss. He had a choice: whether to sign a deed of release and indemnity or to not accept the decision. He chose to sign the deed of release and he was paid.

**Senator MARK BISHOP**—Is the authorised decision maker the mediator or someone else?

**Mr Lloyd**—No, the authorised decision maker is the person authorised by the minister, which was in fact the deputy secretary, corporate services.

**Senator MARK BISHOP**—It was the minister's delegate—is that right?

**Mr Henderson**—No, not the delegate as such.

**Mr Lloyd**—It is actually an authorised person. You stand in the place of the minister. You are not a delegate of the minister.

**Senator MARK BISHOP**—Who was that person?

**Mr Henderson**—I was.

**Senator MARK BISHOP**—Sorry, I did not hear that. Could you briefly explain the mediation processes under the act.

**Mr Henderson**—There is no legislation relating to mediation as such, but the Department of Finance and Administration is responsible for the CDDA scheme.

**Mr Lloyd**—To confirm that, there was no legislation; that is correct. There is a series of guidelines put out for effective administration by the Department of Finance, which we have to follow, but they do not prescribe any role for a mediator. Essentially, the role of the mediator here was to facilitate the discussion between the parties, but at the end of the day it was for the parties to reach their positions and reach agreement. The mediator's role was purely facilitation, not a decision-making role.

**Senator MARK BISHOP**—Can you advise what is the current position with respect to the ex-gratia payments sought by the parents of suicide victims Hayward, Satatas, Shiels and Williams and when a decision is likely?

**Mr Cunliffe**—My division has prepared material, which I believe is with the minister. I cannot answer beyond that which is considered the issues of possible approaches in this matter.

**Senator MARK BISHOP**—I am not asking for policy advice, I am just asking about the status. Are there applications for ex-gratia payments sought by the parents of those suicide victims that I named?

**Mr Cunliffe**—I would express it best as there is correspondence to us from a legal firm on behalf of the families connected with those four.

**Senator MARK BISHOP**—That correspondence is seeking payment of an ex-gratia amount?

**Mr Cunliffe**—It raises that prospect.

**Senator MARK BISHOP**—It raises that prospect?

**Mr Cunliffe**—It identifies that as the resolution that is sought.

**Senator MARK BISHOP**—Understood. Is there any precedent in Defence for such ex-gratia claims to be allowed?

**Mr Cunliffe**—The ex-gratia process is not a process that we own or have a decision-making role in, unlike the defective administration scheme that Dr Lloyd was just outlining. It is a scheme, which is more or less at large and rests with the Prime Minister or the collective ministers—the government—as one which is not trammelled by a particular set of guidelines or otherwise. I am told, although not relevant to Defence directly, that those people who suffered in the Canberra bushfires, for instance, in 2003 were awarded funds through the ex-gratia scheme. I am going back a long way in time to be aware of other payments. But to some extent the process now, broadly, apart from settling matters that are the subject of legal claim, which need to be done in accordance with the legal service directions, and the options open to government include an act of grace, which again needs to be done by a delegate of the Minister for Finance, the finance minister or a minister assisting. There is the CDDA scheme, which we have talked about, where the minister has authority and the minister has authorised officers within the Department of Defence, which again needs to be exercised in accordance with the act of grace scheme guideline that the Department of Finance has issued, and/or one which I suppose I would see as being somewhat more at large as a policy decision of government, which is the category that we are talking about, where there are not particular rules and processes involved. I am unaware of and we have been unable to find particular

cases that have arisen within the Department of Defence in this structure, and it is an issue that we have looked at in fact in a number of cases in the last little while, including this one.

**Senator MARK BISHOP**—In the category that we are talking about, category C, does this become a decision for your minister or for another minister?

**Mr Cunliffe**—It is a decision for the Prime Minister formally.

**Senator MARK BISHOP**—You give advice to Dr Nelson and he has to refer it to the Prime Minister?

**Mr Cunliffe**—If Dr Nelson is of the view, then it is a decision that, as I understand it, is taken as a whole-of-government decision. Dr Lloyd points out to me that the F111 matters did have some ex-gratia characteristics, but I think that was done then as a formal scheme somehow with an announcement. I am not an expert on that, but that may be something in the nature of it.

**Senator MARK BISHOP**—Let me just be clear on this. In terms of the category that we are talking about, you provide advice to your minister?

**Mr Cunliffe**—That is correct.

**Senator MARK BISHOP**—Your minister is Dr Nelson?

**Mr Cunliffe**—That is correct.

**Senator MARK BISHOP**—Dr Nelson then has to make a decision for himself as to whether the matter is referred to the Prime Minister or a higher body for determination or the matter ends with him?

**Mr Cunliffe**—It may in fact be Minister Billson in some cases, because personnel matters, arguably, are where we are looking. But if the minister is of the view that it is a case which is worthy of further consideration then the minister would need to take that matter up with the Prime Minister. Whether the Prime Minister chose to exercise that step or not is a matter that would be dealt with there.

**Senator MARK BISHOP**—You have provided that advice to the minister and the minister is in the process of considering your advice?

**Mr Cunliffe**—I am not clear on exactly where the matter has reached since the provision of some advice.

**Senator MARK BISHOP**—All you know is that you have provided advice to your minister?

**Mr Cunliffe**—Yes.

**Senator MARK BISHOP**—Mr Smith, can you add anything to that?

**Mr Smith**—No, I cannot.

**Senator MARK BISHOP**—So we do not know whether it is in Dr Nelson's office or Minister Billson's office, whether it has been considered or whether it is yet to be considered?

**Mr Smith**—I do not know.

**Senator MARK BISHOP**—Can I ask you to take that on notice?

**Mr Smith**—Certainly, yes.

**Senator MARK BISHOP**—On 20 February, on page 7, the *Financial Review* reported that Minister Nelson was appalled at the extent and cost of litigation between ADF personnel past and present and so has asked for a review. Have the terms of that inquiry of review been settled, who is conducting it and where is it at?

**Mr Smith**—There is no formal review process in train. Mr Cunliffe, others and I met with Dr Nelson shortly after that.

**Senator MARK BISHOP**—After 20 February?

**Mr Smith**—Yes. We ran through a number of cases that were outstanding and he asked for advice on some of those, which we have given to him. We are considering our position on a number of others, but there is no formal review process with terms of reference and so on.

**Senator MARK BISHOP**—Simply arising out of the newspaper article, you had discussions with Dr Nelson, you briefed him on the detail of a number of cases and there has been no request or instruction to you to proceed further in terms of review?

**Mr Smith**—The middle part of that is correct, but the meeting and discussion did not arise out of the newspaper article. It arose because he wanted to talk to us about that.

**Senator MARK BISHOP**—Was it routine?

**Mr Smith**—Secondly, he has given some direction and guidance on some cases, which we are taking, and he is seeking further advice from us on some others.

**Senator MARK BISHOP**—Minister Nelson was reported by Mr Barker from the *Financial Review* on 20 February as questioning his department's often remorseless pursuit of expensive legal actions against service personnel. That was a report in the *Financial Review*. Has that matter been raised with either yourself or the legal services division?

**Mr Smith**—Not precisely in those terms, but this was the broad subject of the discussion we had with him on whatever date it was—perhaps early March or late February. I do not precisely recall.

**Mr Cunliffe**—I have nothing further to add to that.

**Senator MARK BISHOP**—Can I ask you in that context on what issues Dr Nelson sought advice?

**Mr Smith**—I cannot go into that matter. That is for the minister to announce if he wishes to. In this case we gave him some advice, he gave us some direction and we are getting on with it.

**Senator MARK BISHOP**—We might then take that as the appropriate time to have a discussion on the various reviews that have been reported in the press in more recent times. My understanding is that there is a review going into the DMO combat clothing inquiry, a review into Seasprites, a review into defence industry policy—you have answered the question on the review into military justice; that is not occurring—a review into foreign fishers and, more latterly, there has been a review requested into the management and administration of the Department of Defence, as I understand the press reports. Do you mind going through the reviews seriatim and advising us, firstly, are there reviews being instituted,

whether they are public or private, who is conducting the reviews, the terms of reference, if any, of the reviews and the report dates of the reviews? This is so that we have a picture of what is going on.

**Mr Smith**—The review of the combat clothing area of the DMO has been undertaken by three people, led by Mr Mike Harding. They have, as I understand it, completed their review and transmitted it to Dr Nelson. I expect that he will give me and/or Dr Gumley some direction in the very near future about what we should do to follow that up.

**Senator FAULKNER**—When did that combat clothing review kick off?

**Mr Smith**—It was in February. As to the Seasprites—we spoke about that at some length yesterday.

**Senator MARK BISHOP**—Yes, we did.

**Mr Smith**—General Hurley explained the approach to that.

**Senator FAULKNER**—What was the approach to that?

**Mr Smith**—To the Seasprite?

**Senator FAULKNER**—When did it start?

**Mr Smith**—We did a quick review in May and, arising out of that, the minister has directed some further work be done looking at three options. I believe General Hurley said yesterday that that would be completed over a period of three months. If that timetable can be held to, that would mean June, July and August.

**Senator FAULKNER**—Effectively, one review commenced in May?

**Mr Smith**—We did a quick review for the minister of where it is up to, what has happened so far and so on. He took that advice and said, ‘On the basis of that, I want you to do these things.’

**Senator FAULKNER**—Is the follow-up a further review?

**Mr Smith**—It is an extension of the first one, if you like.

**Senator FAULKNER**—You concluded the first review and now you have started a second one?

**Mr Smith**—Yes. He said, ‘Now carry it on through to this.’

**Senator FAULKNER**—Who is that headed up by?

**Mr Smith**—General Hurley is doing much of the work with Dr Gumley, but obviously Chief of Air Force and Chief of Navy are both involved—Chief of Air Force in his capacity as the airworthiness adviser for Defence and Chief of Navy as the owner of the capability. Just to correct an earlier point, I said the combat clothing review was launched in late February. It was in fact Friday, 3 March that the minister put out a press release on that.

**Senator CHRIS EVANS**—When did that go to the minister?

**Mr Smith**—I believe in the last few days.

**Senator HURLEY**—It went to the minister at the end of last week and he is considering it currently.

**Dr Gumley**—The minister has announced that he is reviewing industry policy. To initiate that he convened a roundtable meeting of defence industry leaders, managers and so on and some defence commentators, like Professor Dibb, Mr Neil James and some relevant government officials, including, for instance, the Secretary of the Department of Industry. That was held in Sydney on 17 May. I believe there were a total of 30 industry representatives and observers involved. Arising out of that a group of four people will be writing a discussion paper. The four are Dr Henry Ergas, Mr Mark Thompson from ASPI, Mr Lucio Di Bartolomeo, currently at ADI but in this case I believe representing the Australian Industry Group, and Mr Kerry Clark, formerly Air Vice Marshal Kerry Clark, who is currently working in the DMO. Those four people will prepare a discussion paper with the intention being to present that at the Defence and Industry Conference—the annual conference which is to be held on 20 June this year.

**Senator MARK BISHOP**—Industry policy is such a wide term. I presume there is a discussion paper around a theme or a concept?

**Mr Smith**—We had a roundtable on 17 May, which was a very full discussion of all of the issues, from the very high end about whether the defence industry should be treated differently from any other industry and why and what the strategic interests are, right through to what I call the low end, about the nature of Defence's dealings with companies and the nature of our contracting processes and so on. As I said, that discussion was very full, with a lot of different headings. The writing team listened in to all of that and is taking the key points away to turn them into a discussion paper.

**Dr Gumley**—Effectively, the discussion paper is a scoping paper, putting out ideas defining the questions. The next stage of it will be conducted by the minister assisting, Mr Bruce Billson, and that will be to interview a large number of people in the industry, commentators and so on and explore and seek their views in and around the issues identified in this scoping/discussion paper.

**Senator MARK BISHOP**—The discussion paper is trying to reduce to black and white the key issues raised by the participants in the conference?

**Mr Smith**—Yes.

**Senator MARK BISHOP**—Arising out of that we will get a scoping paper?

**Mr Smith**—That will be a discussion paper, which will be presented to this Defence and Industry Conference. The Minister Assisting the Minister for Defence, Mr Billson, will begin a more detailed consultative process over the next couple of months and he will lead that process, from which it will be intended to develop a policy paper.

**Senator MARK BISHOP**—The discussion process, which is to be pursued by Minister Billson, will derive from the scoping paper delivered at the conference on 20 June?

**Mr Smith**—That is correct.

**Senator MARK BISHOP**—As yet, we do not really have a defined terms of reference for the parties to inquire into, do we?

**Mr Smith**—No, I would not call it an inquiry.

**Senator MARK BISHOP**—What would you call it?

**Dr Gumley**—It is a review, not an inquiry.

**Mr Smith**—It is a review.

**Senator MARK BISHOP**—What is it a review of?

**Mr Smith**—Defence industry policy. What are the present perimeters of industry policy? What areas might need to be adjusted? This is a very significant period for Australian defence industries. There are very big contracts out there and some big issues, like those being dealt with in the ship building inquiry you have here.

**Senator MARK BISHOP**—Does it cover things like national interest strategy?

**Mr Smith**—Yes. The last defence industry policy statement was made in 2001. Obviously, a lot has changed since then. Our capability plan has continued to grow—firstly, there has been some reshaping of it; secondly, we now have better definition around the nature of, among other things, the big ships projects; and, thirdly, the structure of defence industry in Australia has changed a little, with companies having been bought out, merged and so on. It is five years on. It is timely to review it.

**Senator MARK BISHOP**—Is this really another way of doing the necessary work for a new defence capability plan?

**Mr Smith**—I would not see that.

**Senator MARK BISHOP**—You do not see any relationship?

**Mr Smith**—No. The defence capability plan is a separate process.

**Senator MARK BISHOP**—Does it bear any relationship perhaps to a need for a new white paper in terms of defence industry policy?

**Mr Smith**—I do not believe so. Periodically over the last 20 years, defence industry policy statements have been made. I think I am right in saying that there is always a chapter in white papers about this subject, but it is also the practice for statements to be made periodically. That is not unique to us; the British government released a defence industry policy statement late last year. Defence industry companies are always very sensitive to directions of government policy and spending. There is a particular relationship with Defence and with the government that they are always seeking definition around, and we are simply trying to update the current parameters.

**Senator MARK BISHOP**—You said earlier that it covered the national interest strategy and major acquisitions, but it does not go into the area comprehended by the defence capability plan.

**Mr Smith**—The defence capability plan is a given; it is there. I expect the new capability plan to be released between now and then and that will be on the table. The defence industry policy statement will follow from that.

**Dr Gumley**—It becomes a question of how we do it. It is a 'how' statement as much as anything else. We have a defence capability plan, we have to deliver a lot of capability to the ADF and then it becomes a question of how we do it. It includes things like the relationship

between the prime and large companies and the small and medium enterprise companies. It includes things like how defence companies are going to be exporting and, if so, should we be helping them. They are the sorts of issues that we hope will be exposed through this paper.

**Senator HOGG**—Does it also look at skills needs and the types of skills that will be necessary into the future and the type of labour market?

**Mr Smith**—That subject was certainly a lively one at the round table that we had on 17 May. I expect that will be addressed in the initial discussion paper.

**Senator MARK BISHOP**—Does it cover matters relating to intelligence?

**Mr Smith**—I do not believe so.

**Senator MARK BISHOP**—Does it cover matters relating to force structure?

**Mr Smith**—Only to the extent, as I say, that the DCP is a given. There have been many of these. When I say ‘many’, we have counted 20 various kinds of policy statements over the last 30 years. As I said, there was one in 2001, one in 1998 and one in 1993, if I recall rightly.

**Senator MARK BISHOP**—Is the final product intended to be a policy statement by government in the area of defence industry?

**Mr Smith**—If the minister decides that the outcome of the discussions around the discussion paper give enough clear definition and interest, I expect that is what he will do. That will be his call.

**Senator CHRIS EVANS**—That is what you said earlier.

**Mr Smith**—Yes.

**Senator CHRIS EVANS**—You said that Mr Billson was going to have a detailed consultative process leading to a policy paper.

**Mr Smith**—Yes.

**Senator CHRIS EVANS**—The policy paper is the government’s policy paper or Mr Billson’s further discussion paper?

**Mr Smith**—It will be a government policy paper, if that is where Dr Nelson decides to take it. I do not think this is unusual at all. I think industry welcomed it. It grew partly out of some interest on behalf of industry leaders in this.

**Senator MARK BISHOP**—I am just trying to find out the details. There has not been that much put out in the public domain.

**Mr Smith**—There was a press release on 17 May, I think, and there have been some press articles.

**Senator MARK BISHOP**—When is Mr Billson tasked with concluding his end of the bargain?

**Mr Smith**—I think he will probably have about three months after the Defence and Industry Conference. I do not know whether he has been given a precise timetable, but I believe that Dr Nelson intends to complete the process before the end of the year.

**Senator MARK BISHOP**—When those four eminent persons have drafted the paper deriving from the round table and that paper has been delivered to the conference on 20 June, is their task then concluded or will they be retained to assist Mr Billson?

**Mr Smith**—I expect that at least some of them will assist Mr Billson in the consultative process.

**Senator MARK BISHOP**—That decision has not yet been made?

**Mr Smith**—I suppose formally not.

**Senator MARK BISHOP**—Informally then, who will be involved?

**Mr Smith**—I expect some at least of Mark Thompson, Henry Ergas, Lucio Di Bartolomeo and Kerry Clark; but, whether all four of them are available and can stay through it, I am not certain of.

**Senator MARK BISHOP**—Is it your intention to publicly release any of the submissions that have been made or the transcript of the various forums that have been held and will be held?

**Mr Smith**—I am not aware that any submissions have been received. We certainly did not have a transcript of the round table, but the discussion paper that is being prepared for the meeting on 20 June will be available to people at that meeting, and that is effectively public.

**Senator MARK BISHOP**—Yes, it is.

**Dr Gumley**—As a matter of practicality, some companies will put in confidential submissions.

**Senator MARK BISHOP**—Yes.

**Dr Gumley**—They would not want to disclose their commercial information to their competitors, and it would not be expected that those submissions would be published.

**Senator CHRIS EVANS**—What is the relationship between this one and the Defence Business Improvement Board?

**Mr Smith**—Sorry, I was moving through those reviews.

**Senator CHRIS EVANS**—I am just trying to understand the relationship.

**Mr Smith**—They are not connected.

**Senator CHRIS EVANS**—Carry on.

**Mr Smith**—Foreign fisheries, I believe, is a review being done internally in Defence by which the minister is seeking advice.

**Senator FAULKNER**—I did not get the name of it?

**Mr Smith**—It is what Senator Bishop said, foreign fisheries, as I understand your question.

**Senator FAULKNER**—Is that the actual name of that review?

**Mr Smith**—It is not a review with a capital 'R'. The minister has asked us to have a good look over everything that we and others are doing.

**Senator FAULKNER**—It is a review with a lower case 'r', is it?

**Mr Smith**—That is right.

**Senator HOGG**—You have learnt something new, Senator Faulkner.

**Senator FAULKNER**—So it is a review with a lower case ‘r’.

**Mr Smith**—He has asked us to have a good look at everything that is going on in this area—what we are contributing, what others are contributing and how they are working together.

**Senator FAULKNER**—When did that kick off?

**Senator MARK BISHOP**—Is it a review of Defence’s role in respect of entry of maritime surveillance?

**Mr Smith**—Admiral Shalders may be able to add to what I have said.

**Vice Adm. Shalders**—It is not a review; it is an ongoing operational analysis of the procedures that we currently use. Our weapons, our procedures—are the tactics we are using sufficient, adequate? It is an ongoing operational analysis, rather than a review.

**Mr Smith**—Admiral Shalders has put it in a good way—ongoing operational analysis.

**Senator MARK BISHOP**—Ongoing operational analysis into what? The only thing I know is that the AAP press report from Minister Nelson asked the Navy whether new measures are needed for dealing with foreign fishing vessels and whether there needs to be a different graduated level of response. He says that he has asked the Chief of Navy to give advice as to the graduated nature of our response, et cetera. We have termed it a review but you say it is not a review?

**Vice Adm. Shalders**—The Minister has sought advice on those issues, and we are providing that advice. It will go to the tactics, the techniques, the procedures, the weapons and the sensors that we use in that role.

**Senator MARK BISHOP**—When will it be concluded?

**Vice Adm. Shalders**—We have completed some weapons firing trials this week and some trials of some other non-lethal force measures that we have. That trial was conducted this week. As I say, there is some further analysis around those trials, so I would think within the next two or three weeks.

**Senator MARK BISHOP**—You would think that between the next two or three weeks you would have a final set of recommendations for the minister to consider?

**Vice Adm. Shalders**—Yes.

**Senator MARK BISHOP**—In terms of the foreign fisheries ongoing operational analysis?

**Vice Adm. Shalders**—Yes.

**Senator MARK BISHOP**—It is quick and effective?

**Vice Adm. Shalders**—I hope it is effective and it will be quite quick.

**Mr Smith**—The business improvement board—

**Senator MARK BISHOP**—Before you go to the business improvement board, can we discuss the public reports on the independent management review of the department?

**Mr Smith**—Yes. I raised the business improvement board in that context. I do not know whether you have seen or are aware of what Dr Nelson said at the National Press Club yesterday, but he explained his approach there, and the review work that he wants in the department and the business improvement board are related. When he came to office in January, I had before him some recommendations about some changes in the organisation, and one of them was the business improvement board. We have been talking about that since and just shaping its direction. We have been talking about possible participants in it, and we are about to act on that. This is a very big organisation, and we will not go through all that again, as we have been through it often enough, but its business processes are very complex and a lot of transactional work goes on. I want to try to find ways of simplifying a lot of our process work, simplifying the transactional work that occurs within our walls, and try to make us not just more efficient in terms of saving money and people but more effective at delivering services for our own people internally, as well as services outside the organisation. What we are envisaging here is a board of seven members—some external people that we will invite in and some of them in house. We would have our Deputy Secretary, Corporate Services, our CFO and our CIO, Chief Information Officer, and then we would have three or four people from outside the place. There are some businesspeople who have worked in that kind of area before, in areas of big organisations with a lot of transactional activity, and hopefully we will get some ideas and some energy into how we can do some of those things better. I do not shy away from the reality that in administrative terms we are a pretty clunky organization, and it has just been immensely difficult at times for me to create the space to address some of that clunkiness. I hope this board will give that endeavour some focus and some new ideas.

**Senator FAULKNER**—Who is conducting this business improvement review?

**Mr Smith**—The board will be chaired by a person whom we have not yet named, and it will report either to the CDF and me or to the minister through us. We have yet to resolve that, but that is the intention of it. In addition, the minister wants a higher level view.

**Senator MARK BISHOP**—Could you summarise that discussion on the business improvement board. The decision has been made to establish the Business Review Board?

**Mr Smith**—Yes.

**Senator MARK BISHOP**—It will have a board of directors from both inside and outside the department?

**Mr Smith**—Yes.

**Senator MARK BISHOP**—It is going to be looking at volume process and transaction work within the department?

**Mr Smith**—In the Corporate Services area and support areas in Defence.

**Senator MARK BISHOP**—Does that Business Review Board have any other role?

**Mr Smith**—No.

**Senator MARK BISHOP**—That is a limited defined role?

**Mr Smith**—It is not too defined. You can define that pretty broadly because it will look at the adequacy of corporate IT systems and so on. We have not determined how many times a year the board will meet, but it might be seven or eight times. It is modelled, to some extent, on the Procurement Advisory Board that was established post Kinnaird, which is for private sector and for Public Service or ADF members, and that has been tremendously helpful to Dr Gumley and me in implementing the Kinnaird reforms but also bringing new light on ways in which we can do business. In part, my thinking was that if I can get that kind of help to look into our corporate processes that would be good.

**Senator MARK BISHOP**—That is understood. Could you now move on to talk about—

**Senator CHRIS EVANS**—Before you do. The board, then, is to be a permanent ongoing structure?

**Mr Smith**—Yes.

**Senator MARK BISHOP**—I also understand there to be another review?

**Mr Smith**—Yes.

**Senator MARK BISHOP**—That was described in the press reporting of Dr Nelson saying that his intention is to engage a complete, independent management review of the department?

**Mr Smith**—He said more about that yesterday at the National Press Club, and I do not have the transcript of what he said exactly. But what we have talked about is a higher level review of the organisation. It is a very different place as a result of it being very operationally focused these days. Firstly, it is very operationally focused by comparison with, say, 10 years ago. Much of what we do is now focused around our many operations overseas. Secondly, corporate standards and the expectations of us in regard to corporate performance, in particular in the area of accounting, are very different from what they have been in the past. Finally, for instance, the workforce circumstances are different. We had, as I mentioned yesterday, a situation in which some 12 per cent of staff in our non-service groups were military people, and now the services, because of shortfalls in military numbers and the numbers of deployments that we have and other demands on them, are not always able to meet those requirements. We just want some high-level advice on broader management direction. I would see that review linking into the business improvement board, which would be the delivery arm, in a way.

**Senator CHRIS EVANS**—Does Dr Nelson see it that way?

**Mr Smith**—As I understand it. I do not have the transcript of what he said yesterday. We had a discussion about it on Tuesday evening and he spoke yesterday. Regrettably, I am blind-sided here as I do not have the transcript.

**Senator CHRIS EVANS**—We are all restricted by the fact that we have been locked up for some days. I have been here for two weeks so World War III could have started and no-one would have told me.

**Senator FAULKNER**—It feels like a life sentence.

**Senator CHRIS EVANS**—Do I take it that Dr Nelson’s formal announcement of this higher-level review was contained in his speech yesterday? Is that the first formal announcement?

**Mr Smith**—He foreshadowed it a couple of weeks ago, as you know, and he took it a little further yesterday. He has a little more to do on it before he makes a formal statement about what he is going to do.

**Senator FAULKNER**—Is it best described at this stage as a high-level review of Defence organisation and corporate standards? I am just trying to sum up what you have said.

**Mr Smith**—I doubt that we would use exactly that language.

**Senator FAULKNER**—I doubt it, too.

**Mr Smith**—It would be high-level management processes, or something like that.

**Senator MARK BISHOP**—Is it intended to address the diarchy of control after this?

**Mr Smith**—I believe not. Dr Nelson said yesterday that he regarded the diarchy as a given.

**Senator MARK BISHOP**—That is not going to be subject to the investigation at all?

**Mr Smith**—Not as I understand it. If you give a review team a broad enough mandate they might come up with anything.

**Senator MARK BISHOP**—Is this high-level review just looking at the Department of Defence per se?

**Mr Smith**—I prefer to use the Defence organisation.

**Senator MARK BISHOP**—When you say ‘Defence organisation’, does that include the services and the DMO?

**Mr Smith**—It means the way in which the Defence department and the ADF relate with each other. The organisation is the total of those two things, including the DMO.

**Senator MARK BISHOP**—It is a total management review of all aspects of the Defence organisation, including DMO, the department and services?

**Mr Smith**—The higher level management of Defence, yes.

**Senator MARK BISHOP**—But not addressing the issue of the diarchy of responsibility?

**Mr Smith**—That is as I understand it.

**Senator MARK BISHOP**—How long do you anticipate this will take?

**Mr Smith**—We have not defined that.

**Senator MARK BISHOP**—Who is going to conduct it?

**Mr Smith**—That is to be decided, too.

**Senator FAULKNER**—Was it discussed with you?

**Mr Smith**—I have had a couple of discussions with Dr Nelson, and I expect I will have more over the next couple of days.

**Senator MARK BISHOP**—The terms of reference are still being developed?

**Mr Smith**—Yes.

**Senator MARK BISHOP**—The personnel who will conduct the inquiry are yet to be considered?

**Mr Smith**—Yes, they are yet to be finalised.

**Senator MARK BISHOP**—Yet to be decided?

**Mr Smith**—Correct.

**Senator MARK BISHOP**—You have probably got a short list of names in the back of your mind?

**Mr Smith**—Yes.

**Senator MARK BISHOP**—Will it be a public inquiry or a private inquiry?

**Mr Smith**—I expect private. That is not to say its outcomes will not be public, but I do not know about that.

**Senator MARK BISHOP**—The thinking at the moment is to do an internal inquiry?

**Mr Smith**—Yes, in the manner that a big corporation might have done of itself periodically.

**Senator MARK BISHOP**—Are you considering outsourcing that internal review to a consultancy firm?

**Mr Smith**—Whether to a firm or to an individual or to a group of individuals, I think the minister has in mind perhaps three.

**Senator MARK BISHOP**—What I am driving at is whether this is really Caesar reviewing Caesar's role and Caesar's work or whether it is to be done at arm's length, if you grasp my point.

**Mr Smith**—No, it is not us reviewing ourselves. These will be people external to Defence, though I hope they will speak to me.

**Senator MARK BISHOP**—Yes.

**Mr Smith**—They will.

**Senator HOGG**—Will the ANAO be consulted, given that they seem to do an enormous number of reviews of Defence processes?

**Mr Smith**—I would recommend that to whoever is leading this review, yes.

**Senator HOGG**—Dr Gumley is having a smile.

**Senator CHRIS EVANS**—He will be on first names basis with most of the ANAO staff, I suspect?

**Senator FIERRAVANTI-WELLS**—He is even taking notes.

**Mr Smith**—Pretty well all of them.

**Senator MARK BISHOP**—He is invited to their weddings, I believe. So it is to be a private review, with three people yet to be decided. We would assume it will be some considerable length of time?

**Mr Smith**—Considerable.

**Senator MARK BISHOP**—Six to nine months?

**Mr Smith**—I would expect a couple of months. I really do not know. That is to be determined when we settle the team and the terms of reference. If you get good-quality people, firstly, they are not available necessarily for a year and, secondly, they might not need that long. In the case of the Kinnaird review, which I think is an outstanding example of its genre, that took the best part of a year. It was nine months after the team was consulted and it came in at what I thought was just the right level of management. It did not prescribe detailed things that needed to be done but just set some broad principles to administer, and I thought that was a good example of a review of this kind.

**Senator HOGG**—Is there going to be a review of the relationship between the department and the parliament as part of that? You and your confreres appear before not only estimates committees but a large number of parliamentary committees and so on, so I am just wondering.

**Mr Smith**—That is an interesting thought. I said that the world has changed a lot, and one of the ways in which it has is in this broad area of accountability. Whether you start at the ANAO end or reach into the parliamentary end, there is just an enormous amount more of it now than there has been in the past. Most of my 14 predecessors as Secretary of the Department of Defence never appeared before a parliamentary committee. I now spend many days a year here. That is part of the change.

**Senator HOGG**—We welcome your presence, I can assure you.

**Mr Smith**—And I enjoy every moment of it.

**Senator HOGG**—I know you do. The feeling is mutual.

**Mr Smith**—It is part of the changed environment in which we are working.

**Senator HOGG**—That is why I made the suggestion to you, or asked the question.

**Mr Smith**—It is a constructive thought, thank you. The whole issue of accountability is part of what we are doing.

**Senator HOGG**—We will see you some more, then.

**Senator CHRIS EVANS**—The details of this higher level review are not yet finalised and you do not know any more than what was in the speech yesterday from the minister?

**Mr Smith**—No.

**Senator FAULKNER**—That gets us up to the high-level review of management processes. Can we go to the next one please?

**Mr Smith**—I ran out at that point.

**Senator CHRIS EVANS**—You have only just started. What about the Podger review?

**Mr Smith**—Yes. As to the Podger review of culture in the Defence Force and training organisations, I am not sure that I am competent to speak about that.

**Senator FAULKNER**—When did that one kick off?

**Mr Smith**—I will ask one of my service chief colleagues to remind me if they can.

**Senator CHRIS EVANS**—I think it was the start of the year.

**Mr Smith**—Yes. Earlier this year is all that I can recall of it; quite early in the year, I believe.

**Senator FAULKNER**—Was Dr Nelson the initiating minister?

**Mr Smith**—I believe that Air Chief Marshal Houston initiated it.

**Senator FAULKNER**—Without reference to the minister?

**Mr Smith**—It is something that CDF is very much running, and I believe it had its genesis before Dr Nelson became minister. Perhaps Admiral Shalders can address that.

**Senator MARK BISHOP**—It arose out of military justice inquiry.

**Mr Smith**—Yes, it does. It arises from your military justice inquiry and a number of things that were flushed out in there. Admiral Shalders may know more about this.

**Vice Adm. Shalders**—It did arise from the military justice inquiry and I recall that it started late last year, rather than this year. We can check the date but I think it was October.

**Senator CHRIS EVANS**—When is it due to report?

**Vice Adm. Shalders**—It is imminent.

**Senator CHRIS EVANS**—Is that to the chief or to the minister?

**Vice Adm. Shalders**—No. It was commissioned by the chief and it will report to the chief.

**Senator CHRIS EVANS**—Didn't we have a previous review into military training establishments and the culture? It was at Singleton, I think.

**Vice Adm. Shalders**—I am sure we have, but I cannot recall the one that you are thinking of.

**Senator CHRIS EVANS**—There have been a couple. I will check my file. That is the Podger review. What else have we got happening?

**Senator FAULKNER**—We have these two reviews that we received earlier evidence on today—that is, one from Brigadier Cosson and a broader board of inquiry into the circumstances surrounding the death of Private Kovco.

**Mr Smith**—Yes.

**Senator FAULKNER**—There are two of those. I think we are clear that Brigadier Cosson's relates to the repatriation of Private Kovco's body.

**Mr Smith**—Correct.

**Senator FAULKNER**—The second one is the broader board of inquiry?

**Mr Smith**—And, of course, we have the board of inquiry on the Sea King accident. We have two particular inquiries: one by the JCPAA on Defence accounts and acquisition and where we have got to with the reforms there, and we have the inquiry on the naval ship building industry.

**Senator CHRIS EVANS**—That is the parliamentary inquiry?

**Mr Smith**—Yes.

**Dr Gumley**—Yes.

**Senator MARK BISHOP**—On the naval ship building inquiry, we received a 30- or 40-page submission from Defence very early on and we had a half day or a day's hearing one time in Canberra. At that hearing, Rear Admiral Ruting came along to give evidence. I made some very critical comments as to the content of the submission by Defence, essentially saying that the submission did not address the terms of reference. However interesting the submission might have been on the dynamics of the ship building industry, it did not address the terms of reference. Can we expect, independent of those comments, a further submission from Defence that exactly addresses the terms of reference?

**Mr Smith**—I was aware of your comments. You have not agreed with our submission and I would have to say that I did not agree with all of your comments. Many questions were put to us and we have provided responses—I am not sure whether they have arrived yet—which together constitute, in effect, another submission. It is very comprehensive.

**Dr Gumley**—The answer to the committee's 62 questions was lodged this Monday.

**Senator MARK BISHOP**—I was not aware of that. So, having answered the questions you were asked to answer, does Defence intend to put in a further submission?

**Mr Smith**—Not at this stage. We have done the initial submission as well as answers to 62 questions. Of course, our people stand ready to appear again when you call them.

**Senator MARK BISHOP**—I read a press report that said that the submission put in by Defence had not been approved by Dr Nelson; it was the views of Defence. Can you comment on that?

**Mr Smith**—Dr Nelson certainly agreed that it should be sent on to the committee; otherwise, it would not have been sent. Apart from that, he has conveyed no view to me about that report.

**Senator MARK BISHOP**—Does the government endorse the thrust of that submission?

**Mr Smith**—You would have to ask the minister that.

**Senator MARK BISHOP**—Do I ask that via Senator Macdonald?

**Mr Smith**—I think it is self-evident that some of the issues that are canvassed there overlap with some of the work that is being done on industry policy.

**Senator MARK BISHOP**—Could I then ask Senator Macdonald to ask the minister whether the submission provided to the naval ship building inquiry reflects the minister's view and government policy in that area, or is it simply a submission prepared by Defence that has been passed on to the committee?

**Senator Sandy Macdonald**—We will certainly take your question on notice.

**Senator MARK BISHOP**—Thank you, and I would ask whether we could have a written response.

**Mr Smith**—There was a further review, which was the Ministerial Directed Review into Recruiting and Retention. That began in September 2005 and was delivered yesterday, 31

May, to the Minister Assisting the Minister for Defence. Again, Dr Nelson spoke about some of the recruiting and retention issues in his speech yesterday. There are a lot of reviews going on.

**Senator FAULKNER**—Two reviews have been mentioned in relation to Private Kovco. Has there been a review into the accidental or early release of part of Brigadier Cosson's report into the public domain? I had read some suggestion in the media—I do not know whether it was accurate—that such a review was taking place.

**Mr Smith**—Normally in such an instance the CDF would direct some form of inquiry in accordance with the Defence Force regulations, and he has done that. That is not to say that it is a long or detailed inquiry; it is just an investigation made of the circumstances and what action he should take.

**Senator FAULKNER**—In relation to Private Kovco's death, we have been saying there are two reviews. I think it is probably proper to say that there is this third inquiry or review on that matter.

**Mr Smith**—'Investigation' is probably the term.

**Senator FAULKNER**—Investigation, yes.

**Senator CHRIS EVANS**—Was the review into the Australian Defence Headquarters undertaken on the initiative of CDF Houston?

**Mr Smith**—Yes. I believe that the review you are referring to was directed by Major General Wilson. I will quickly get out of depth and into trouble with my service colleagues. I will ask them to correct me if I am wrong, but that review has been completed and, as a result, some reductions have been made in headquarters, totalling 241 personnel. In addition, some transitional arrangements are being developed for the transition from the dislocated headquarters in Sydney—Glenbrook and so on—to the co-located joint headquarters at Bungendore.

**Senator CHRIS EVANS**—You had a plan for the co-located headquarters, which is now being reviewed?

**Mr Smith**—That is being revisited in the light of General Wilson's review of headquarters and staffing; it is being tailored to that.

**Senator CHRIS EVANS**—Has that been finalised?

**Mr Smith**—Yes.

**Senator CHRIS EVANS**—You know exactly how you will run Australian Defence Headquarters now?

**Mr Smith**—They are nodding their heads. I believe so.

**Senator FAULKNER**—When did that commence?

**Mr Smith**—That action by General Wilson was mid last year, not long after Air Chief Marshal Houston assumed his position.

**Senator FAULKNER**—This may be one of the things that you have already canvassed and, if so, please let me know. There is some suggestion that some management experts were reviewing non-operational decision-making within the department.

**Mr Smith**—That goes to the higher level review and the business improvement board that we spoke about earlier.

**Senator FAULKNER**—That is part of that, is it?

**Mr Smith**—That is part of all that, yes.

**Senator FAULKNER**—Is that a separate element of it?

**Mr Smith**—No, that is part of the work of that high-level review and flowing through the business improvement board.

**Senator FAULKNER**—What are you having there, management experts?

**Mr Smith**—People who know something about the practice of management at higher levels in very big and complex organisations. Whether they are management gurus of the consultant type or people who have practised the management of large and ugly organisations, I do not know.

**Senator FAULKNER**—You are saying that that is an element of the higher level review that you spoke about in relation to management processes?

**Mr Smith**—Yes. I now have the transcript of Dr Nelson's statement yesterday, in which he spoke about those reviews. He said:

I've also announced that we will be applying a Business Improvement Board to the department and, in fact, I can inform you that that will include seven people. I haven't yet determined who the chairman of that will be but it will be a person from the private sector who has some understanding and experience with public service.

It will be basically looking at continuous productivity improvement in the department, and that's about personnel and organisational productivity; about the use of technology; and also if there are ... areas which might reasonably be undertaken by the private sector and services provided, in other words freeing up existing defence personnel to undertake other challenges and jobs within the Department of Defence.

He then said:

That Business Improvement Board will report to the Secretary and the Chief of Defence, and through them to me. And I will also be inviting probably three high-level management analysts to work with the Business Improvement Board to also look at the non-operational procedures and management processes within the department, across the defence organisation.

**Senator CHRIS EVANS**—Can I just take you back to the Australian Defence Headquarters. The last material that I saw said that you had the broad structure agreed but there was still sort of an implementation review going on. Is that a fair description of where we are at? I saw the staff announcements.

**Mr Smith**—I quickly stumble into heresy in this matter. Could I beg one of my service chief colleagues to help me out.

**Air Marshal Shepherd**—I assume you are talking about the Wilson review again?

**Senator CHRIS EVANS**—You had the Wilson review. You then had the minister announce the broad structure back in February, was it not?

**Air Marshal Shepherd**—Yes. The Wilson review was set up, as the secretary said, to examine and rationalise with a view to co-locating the command of war fighting elements at the operational and strategic levels. He came up with his findings late last year. We will now go through an implementation phase, an experimentation phase to some extent, as the new headquarters gets built at Bungendore. We will set up transition arrangements in Sydney and here in Canberra and we will experiment with those arrangements over the next couple of years to get the best models so that when we finally move into the building at Bungendore we will be moving in there ready to hit the ground running.

**Senator CHRIS EVANS**—There was some concern about how it would all work when they all went over to Bungendore?

**Air Marshal Shepherd**—Not a concern, but we need to make sure that we move into Bungendore in a crisp manner to make sure that we are not experimenting out there. We have the opportunity of a couple of years while the building is built at Bungendore to make sure that our doctrine, our practices and processes for commander control of war fighting levels at the operational and strategic levels of war are done to the best effect.

**Senator CHRIS EVANS**—I appreciate that you have been given plenty of time to move into Bungendore. Is there a committee or group doing the implementation phase?

**Air Marshal Shepherd**—It is under the tutelage of the vice chief and it reports regularly to the Chiefs of Service Committee. We review progress in that forum and that committee meets every month.

**Senator CHRIS EVANS**—What do you call that?

**Air Marshal Shepherd**—The Chiefs of Service Committee.

**Senator CHRIS EVANS**—Yes, but who is doing the work underneath there?

**Air Marshal Shepherd**—It is under the tutelage of the Vice Chief of Defence Force.

**Senator CHRIS EVANS**—Is there a structure beneath him as well?

**Air Marshal Shepherd**—Yes. There is an implementation team, a team to refine it and the bodies of people who will start moving into these transitional arrangements at the end of this year. Some smaller movements have already been made within the Canberra environment.

**Senator CHRIS EVANS**—The first output of that was the reduction in the proposal for the number of people to be at the headquarters.

**Air Marshal Shepherd**—That is true.

**Senator CHRIS EVANS**—What has that meant for your capacity to fill Bungendore as it were? I understand the original design was based on a much higher staffing level.

**Air Marshal Shepherd**—The original building was based on around 1,100 or 1,150 people. The current building will be based on around 750 people. One of the great desires of the Wilson review—one of the outcomes that we were looking for—was to rationalise our

command processes to make them more integrated, more efficient and more effective, and we think we have been able to achieve that.

**Senator CHRIS EVANS**—Does that mean the Bungendore headquarters will be smaller than originally planned?

**Air Marshal Shepherd**—It will be around about 750 people.

**Senator CHRIS EVANS**—In terms of the building?

**Air Marshal Shepherd**—That is affirmative. It will be a building for 750 people now.

**Senator CHRIS EVANS**—I am just trying to ascertain whether you have redesigned the building based on the smaller number or whether you are going into the building on the old size and filling it up with other people.

**Air Marshal Shepherd**—I would ask Air Commodore Plenty, who is the project manager for the Bungendore project, to explain that in detail.

**Air Cdre Plenty**—Are you asking whether the facilities themselves have been reduced in size?

**Senator CHRIS EVANS**—Yes.

**Air Cdre Plenty**—Not significantly. The reduction from 1,185 to 750 staff does not reduce overall the size of the facility. It has come down to a degree but not significantly.

**Senator CHRIS EVANS**—Why not, if you have cut a third of the people going into it?

**Air Cdre Plenty**—A lot of the facilities are required whether you have 500, 750 or 1,100 staff there. For example, the messing needs to be there along with the fitness centre, some of the support facilities and the headquarters itself.

**Senator CHRIS EVANS**—The building will actually be custom made for the smaller number effectively now?

**Air Cdre Plenty**—The headquarters building will be, yes.

**Senator CHRIS EVANS**—Thank you.

**Senator FAULKNER**—It strikes me that there is a huge number of reviews going on in Defence. Is there not a real risk here that Defence is in review turmoil?

**Mr Smith**—I would not say that we are turmoil. They are quickly changing times. I am not a Maoist. You would be surprised to hear me say if I were, but there does need to be a constant process of change. I believe in that.

**Senator CHRIS EVANS**—It is a question of whether it is a constant process of change or a constant process of review.

**Mr Smith**—Yes.

**Senator CHRIS EVANS**—There is a difference, is there not?

**Mr Smith**—There is, but when you look through those activities they are all of a different type, reflecting the quite different nature of our organisation.

**Senator CHRIS EVANS**—They have all been done before.

**Mr Smith**—There are a couple of a management kind. There is an operational kind, the fisheries one. There is a policy kind, that is industry. There is a very particular administration type of one, the combat clothing one. There is a capability one, Seasprite. These things are not overlapping.

**Senator FAULKNER**—Surely you do not have reviews if things are going well, do you? You have a review when there is a problem, and there must be a lot of problems to have this many reviews.

**Mr Smith**—I do not know that, if you do not have a problem, a review is a problem. I have initiated reviews at different times for some things because I think it is time.

**Senator FAULKNER**—Be fair, most of these that you have outlined—

**Mr Smith**—Some of these are in response to problems, yes. Combat clothing and Seasprites, certainly.

**Senator FAULKNER**—This question is best directed to Senator Macdonald. I do not want to ask a question that might be considered to have a political spin to you, so I will ask it to Senator Macdonald. From the evidence that we have just heard before this committee, Parliamentary Secretary, we have heard that since Dr Nelson has been sworn in as defence minister—you can confirm for me first of all what that date was, Parliamentary Secretary?

**Senator Sandy Macdonald**—27 January.

**Senator CHRIS EVANS**—I was going to say it was the same date that you got the parliamentary secretary—

**Senator FAULKNER**—27 January 2006, and you could confirm for me that that is 126 days.

**Senator Sandy Macdonald**—If you say so.

**Senator FAULKNER**—You can confirm that it is 126 days.

**Senator Sandy Macdonald**—I can confirm it. I will take it on notice.

**Senator FAULKNER**—If you cannot do the maths, I can. It is 126 days. The key point here is that Dr Nelson has been defence minister for 126 days and in that time we have got a review into combat clothing; a first review and then a second review into Seasprites; then a review, review number four, into industry policy; then review number five into foreign fisheries; then review number six into the higher level review of management processes; and then three reviews in relation to the death of Private Kovco, the board of inquiry, Brigadier Cosson's report and then an investigation of how material went into the public arena. There may be more reviews, but I have heard evidence given of all those nine inquiries or reviews that have been established since the time Dr Nelson became defence minister. I am sure that your maths is as good as mine. That says that every 14 days since Dr Nelson has been defence minister we have had a new review announced. Why?

**Senator Sandy Macdonald**—You can make the political point if you like but you are dealing with a community of 90,000 people. You are talking about an organisation that has a budget of \$20 billion a year. We have had the highest operational tempo in recent times. I think that the determination of the new minister to meet the expectation of the administration

of his department has been well satisfied by his particular interest in the efficiency of that organisation. I do not think that there can be any criticism, except on a political basis, of the review process. I think that people are interested in seeing value for their money and as an organisation we are determined to get the biggest bang for our buck that we possibly can. So you can make the political point if you like. I was going to congratulate you as we approached the end of the day saying how valuable I thought this last two days of estimates had been, because I thought you had been very constructive and had used the estimates processes as they should be used. I think you have elucidated a great deal of information that has been very interesting to me as well. You can make the political point if you like, but I cannot say that this department is reviewed out. I can see no evidence of that. I think the review processes are quite appropriate.

**Senator FAULKNER**—You do not have reviews when things are going well, do you?

**Senator Sandy Macdonald**—You do have reviews when things are going well.

**Senator FERGUSON**—Yes, you do.

**Senator FAULKNER**—These are all reviews into problem areas, are they not?

**Senator Sandy Macdonald**—Maybe.

**Senator FAULKNER**—Not maybe—they are, are they not?

**Senator Sandy Macdonald**—I do not think that you can have a blanket comment that you never have reviews when things are going well.

**Senator FAULKNER**—In the case of the nine reviews that Dr Nelson has announced, they are all reviews into problem areas, are they not?

**Senator Sandy Macdonald**—That is your assertion.

**Senator FAULKNER**—Do you accept that situation or do you think all those matters are going well?

**Senator Sandy Macdonald**—That is your assertion.

**Senator FAULKNER**—Do you think the Seasprites are going well? Combat clothing and so on?

**Senator Sandy Macdonald**—These are judgmental matters. You are entitled to your view.

**Senator FAULKNER**—They are not. They are facts. These things are not going well. They are having these reviews because these elements of administration or policy are unwell.

**CHAIR**—That is your opinion. You can put questions to the minister and formulate your opinion but do not advance your opinion as fact.

**Senator FAULKNER**—It is not your job to protect the parliamentary secretary when he is in a hole.

**CHAIR**—I am not protecting anybody. I am protecting the record.

**Senator FAULKNER**—We know that, since Dr Nelson has been defence minister, debacle after debacle, every 14 days he has announced a new review. We have got more reviews since Dr Nelson has been defence minister than you can poke a stick at.

**Senator FERGUSON**—Make your statements in the chamber, not here.

**Senator FAULKNER**—I am asking questions.

**Senator FERGUSON**—You are not.

**Senator FAULKNER**—You are just interrupting because you do not like the obvious.

**CHAIR**—It is not obvious.

**Senator FAULKNER**—That is just the point.

**Senator FERGUSON**—You are making statements.

**CHAIR**—You are making statements of opinion and fact that are not borne out by the answers that you are elucidating.

**Senator FAULKNER**—Have there been nine reviews and inquiries, and at least nine, announced since Dr Nelson has been defence minister?

**Senator Sandy Macdonald**—I understand so.

**Senator FAULKNER**—Does that represent a review of inquiry every 14 days of his incumbency?

**Senator Sandy Macdonald**—If you say so.

**Senator FAULKNER**—Are you seriously suggesting to this committee that in any of those cases they are reviews into areas where policy is working well or administration is working well?

**Senator Sandy Macdonald**—I have every confidence in the minister's performance and the administration of his portfolio.

**Senator CHRIS EVANS**—The question is that you have reviews sometimes to spread success. You have reviews to learn about success.

**Senator Sandy Macdonald**—That is right.

**Senator CHRIS EVANS**—Which of these nine fit into that category, if they are not reviews of system failure and serious concern? Each of Dr Nelson's press releases seems to highlight concerns.

**Senator Sandy Macdonald**—What are you wanting me to say? You are stating the obvious in your own mind. If there are problems that have been identified, clearly the minister is of a like mind to yourself, I suspect; he wants to improve the system as well, but are you asking me to make a blanket comment that every process is right in Defence? Clearly it is not, but you do not necessarily have a review just because things are not going well. That is a stupid thing to say as well. Let us move on. You are not going to get me to concede anything apart from what you have determined is the outcome that you think is appropriate.

**Senator CHRIS EVANS**—There are issues here. The first thing it brings up is obviously whether Dr Nelson has any confidence in the way Senator Hill used to administer the portfolio because, since he has come in, he has felt it necessary to review nearly every part of the Defence organisation—apart from the DMO, and no doubt we will get back to them in due course.

**CHAIR**—Now you are verballing the minister.

**Senator Sandy Macdonald**—You are just not going to draw me on these sorts of matters. You can muse away, but I think it is best to move on.

**CHAIR**—Have we got any further questions on this subject or can we move on?

**Senator CHRIS EVANS**—I would like to ask Mr Smith to take on notice how many reviews of Defence operations were completed in 2003, 2004 and 2005, because I think there was a sense of *deja vu* as we moved through a lot of these review processes that somehow we have been here before, that a lot of the functions and issues that we are addressing have been the subject of earlier reviews. It makes you wonder whether we are making progress or whether we are treading water and reviews are becoming a defence for failures of leadership, failures of direction or failures to take decisions. There is some concern in the community and in the parliament about whether or not the Department of Defence is being efficiently run, and clearly the ANAO reports cause great distress.

Mr Smith, I know you have been in a difficult position in terms of not being able to sign off on Defence accounts for the last few years. According to the ANAO you would basically be removed from the stock exchange if you were a public company because of the credentials. I understand the difficulties in that, and we have been through them at length, but these things all undermine confidence, particularly at a time when you make the point about high operational tempo. I know that puts stresses on but it also demands greater support for those defence forces in a sense that things are happening in an efficient and timely manner. The impression of these constant reviews is that is not the case. Can we get any assurance that there is not root and branch decay that continually gets reviewed?

**Mr Smith**—I am a humble administrator. I do not want to buy into the political debate here.

**Senator CHRIS EVANS**—We directed our political questions to the parliamentary secretary. If they are considered political, fair enough. That is why that question was to Mr Smith.

**Senator FAULKNER**—I never ask public servants political questions, you know that. I do not.

**Mr Smith**—I am aware of that and I respect that. I thought that was a continuation of that debate.

**Senator FAULKNER**—No. I moved to you because you carry the can at the end of the day.

**Mr Smith**—The purposes for which the organisation exists, it continues to serve really well: obviously, the delivery of very effective deployments to where the government wants the force to go, which is very effective, efficient and successful; the definition of capability and acquisition—and acquisition is in much better shape than I think is represented; and, thirdly, the development of policy advice. Those are the reasons. They are our core business and I think we do them well. You make the point about the audit findings, or my findings in relation to our financial statements. You are right: if this was a company in the private sector that was listed then it would probably be de-listed, and we would have ceased to operate. The

irony is that we have continued to operate very effectively, notwithstanding the qualification on the audit reports. It suggests some sort of irony about the application of those financial statements to the nature of the business that we do. Our funding is guaranteed.

**Senator CHRIS EVANS**—Not necessarily. There has also been a lot of extra taxpayer money poured in.

**Mr Smith**—The funding of our operation is assured and the delivery of our operational requirements is assured.

**Senator CHRIS EVANS**—Part of the equation, though, is whether we keep pouring money in and getting value for money.

**Mr Smith**—A comparison to the private sector in that sense is not relevant.

**Senator CHRIS EVANS**—I do not want to take it too far, but it was an interesting observation from the ANAO that in fact you would be de-listed because of the inability to verify the accounts.

**Senator FAULKNER**—With respect, you have expressed an opinion, and that is fair enough, but it is only an opinion. I think it is fair enough to express it, too, but I would not put it at a higher level than that. One thing I would ask you though, which is a perfectly proper question to ask you—I do not expect you to have the answer with you, but you could take it on notice for the committee please—relates to this financial year, 2005-06. What was the cost of reviews being conducted during the period of that financial year—either commenced, ongoing or concluded—and the staff resources that have been utilised in them? If I could ask you to take that on notice, that would be helpful.

**Mr Smith**—Yes.

**Senator FAULKNER**—This is a question, Parliamentary Secretary, that may well best go to an ADF officer. In relation to the investigation/review into that matter that I raised before—the misplacement of a draft of a report into the matters relating to the repatriation of Private Kovco's body—could I just understand what the processes are in relation to that investigation please? Could we just ask a witness to assist us with that, if you do not have that information?

**Senator Sandy Macdonald**—Yes, I certainly will. In the broad, my response to that is that I understood that all questions about the Kovco matter were to be directed to the CDF or the Chief of Joint Operations when they were here.

**Senator FAULKNER**—Yes. As much as we can, I have certainly tried to do that.

**Senator Sandy Macdonald**—If there is an officer here who can add to the report.

**Senator FAULKNER**—I think you would appreciate, Parliamentary Secretary, that there is no criticism intended here—none.

**Senator Sandy Macdonald**—Is there somebody here?

**Senator FAULKNER**—The CDF have not had their usual availability before this committee. Not I or any of my colleagues, responsible shadow ministers and other colleagues, have been critical of that, but unfortunately, because of the limitation of time, it means that some of these things have not been able to be asked. I think the chair tried to be fair in these matters, so we just do our best.

**Senator Sandy Macdonald**—I appreciate that.

**Senator FAULKNER**—We did not get to that matter so we are getting to it now.

**Mr Smith**—I may be able to say a little about this and I hope I do not give my friend and colleague Air Chief Marshal Houston difficulty, but what he did was to have undertaken what is called a quick assessment of the circumstances of the disk being mislaid and then he obtained a statement from Brigadier Cosson. Together they constitute the investigative activity that is necessary and it remains now for him to act upon those in whatever way he chooses.

**Senator FAULKNER**—You may not be in a position to answer this. What I wanted to ask is whether that matter is concluded and, if not, where the process is up to.

**Mr Smith**—I am not able to say that, no.

**Senator FAULKNER**—I appreciate that. To be honest, I did not expect you to be able to say that, but I wondered whether there is a witness that is able to assist us in that regard.

**Mr Smith**—I think it has been directed very personally by CDF. I will defer to any of my military colleagues but, that is correct, he is handling it himself in his office.

**Senator FAULKNER**—You might be able to take on notice, for a quick response, that question of whether that matter has been concluded and, if not, where the process is up to and whether there is any action pending. I will try to confine my questions to just that area and hope for a quick response, as I hope we might be able to be provided on the issue of terms of reference for the two inquiries that I asked about earlier and also in relation to the tabling of the letter to the Bosnian ambassador. I might say in relation to that, there are further questions. I will flag those. I will leave them until we at least have a clear response one way or the other as to whether that material will be tabled.

**Senator Sandy Macdonald**—The first two matters we can take on notice. On the matter of the third, I was intending to advise just before the close of play at smoko that the minister has directed that the letter should not be released on privacy grounds, that is the letter from the director of public affairs to the Bosnian ambassador.

**Senator FAULKNER**—I am very disappointed to hear that. Can you explain to the committee please, Parliamentary Secretary, why that decision has been made not to release the letter?

**Senator Sandy Macdonald**—I cannot argue the case except to say that the decision has been made by the minister on privacy grounds.

**Senator FAULKNER**—I am not asking you to argue the case; I am asking you if you can explain why that decision has been taken.

**Senator Sandy Macdonald**—I cannot explain why the decision has been taken, but I can explain that a decision has been taken. That is what you have asked me to do and I have extended that courtesy to you.

**Senator FAULKNER**—Is there an issue of compensation involved in relation to this matter?

**Senator Sandy Macdonald**—I am not aware.

**Senator FAULKNER**—If you are not aware. Let us see if someone who is aware might be able to answer this question.

**Mr Smith**—As far as I know, neither the Bosnian government, nor the Sinanovic family, nor the late Mr Sinanovic's employer, have raised any questions of compensation with us.

**Senator FAULKNER**—Can you explain to the committee why a decision was made to contact the ambassador in this instance and direct contact with the family was not made?

**Mr Smith**—We were dealing all through with the ambassador here. As I understand it—perhaps I am wrong—her ministry back home was dealing with the family, so from our point of view that was a good way of communication.

**Senator FAULKNER**—I do sometimes worry when you insert those words 'perhaps I am wrong' into an answer. It always leaves a slight lack of confidence. If you or Mr Jennings could give a more precise answer, that would be appreciated.

**Mr Jennings**—The secretary is right. We were dealing with the Bosnian ambassador really from the day of the arrival of Mr Sinanovic into Australia and I understood, through her, that the Bosnian government and Mr Sinanovic's employers, KBR, were dealing with the family.

**Senator FAULKNER**—I am extremely disappointed, Parliamentary Secretary, that when we have been assured by witnesses at the table today there would be transparency in these matters, the first and I think very, very easy test to meet has been not met as a result of a decision by Dr Nelson, a decision that you are not able to justify at the table. That is a very bad sign in relation to transparency on these matters. I note what CDF, Chief Air Marshal Houston, has said. I accept what he has said about transparency, but here is a decision that could have been made by Dr Nelson, the defence minister, to table that letter that was provided to the Bosnian ambassador in relation to the death of Mr Sinanovic, and that has not been done. That is very disappointing and a very bad sign.

**CHAIR**—I would like to go to afternoon tea. It is 3.30. Hansard and other witnesses and people need a bit of a break.

**Senator Sandy Macdonald**—Before we break can I just make the point that Mr Smith will be here when we reconvene at quarter to four, but he has to leave by four o'clock, so there will only be a short period for further questioning of Mr Smith.

**CHAIR**—Are there any matters that we want to put on the record?

**Mr Smith**—There are a couple of matters to catch up on.

**CHAIR**—We will do those immediately on return.

**Mr Smith**—There are answers to questions that you left with us.

**Proceedings suspended from 3.31 pm to 3.47 pm**

**CHAIR**—Mr Secretary, I believe there are some issues that we want to put on the record to clarify some of the questions that have been answered or go some distance towards answering some of those questions. Do we want to start with Major General Evans?

**Mr Smith**—No, I will start by responding to some questions that you left with us in the last hour or so, in case I have to leave. On the Podger review, CDF signed the terms of

reference on 2 November 2005. The review commenced in January 2006. The report will be due with CDF on 30 June 2006. Secondly, in regard to the investigation into the circumstances of the disc being lost, CDF has confirmed to me that he has received the quick assessment and Brigadier Cosson's statement. He is reviewing those but has not yet made a decision. Thirdly, you asked if we would table the interim directive from the Chief of the Defence Force to the newly appointed Provost Marshal, Colonel Grutzner. I am able to do that here now. Major General Evans left a question unresolved yesterday evening about the Military Superannuation Benefits Scheme, and he has the answer.

**Major Gen. Evans**—In response to a question raised yesterday by Senator Bishop regarding retention benefits illuminated in table 5.71 of the PBS, outcome 1, the MSBS commenced as the Open Defence Superannuation Scheme in 1991. The MSBS retention benefit was created concurrently to create a balance with the immediate pension entitlement in the DFRDB scheme after 20 years. It was intended as an incentive for members to transfer from DFRDB to MSBS and redress a potential increase in separations resulting from the non-availability of an immediate pension on separation. The retention benefit provides one year's salary for a major and sergeant who have 15 years of service and make an undertaking to remain for a further five years. It also applies for some members at lower ranks in specified categories where structural impediments have prevented their reaching that major or sergeant equivalent.

In 2001 the review of the annual Defence Force remuneration, the Nunn review, proposed that access to the retention benefit be discontinued, noting that access would continue for a 15-year period—

**Senator MARK BISHOP**—When was that?

**Major Gen. Evans**—in 2001—but not be available for new members joining the ADF after the date the MSBS Act was amended. Concerns that Nunn raised on that retention benefit included that it did not facilitate the ADF making the best choices in relation to managing its personnel, that it overlapped in its application to those in critical employment categories who were also eligible for targeted retention and completion bonuses, with consequential return of service obligations implications, and that it had the potential to interfere with other targeted measures that I spoke about yesterday and send conflicting messages to ADF members, cause friction with the remuneration system and complicate the delivery of measures to address retention. Nunn proposed that the service chiefs be given full authority to determine payments, loadings or bonuses for employment categories to address the problems of attraction and retention. The government response to Nunn went to cabinet on 24 February 2004. Included in that was the recommendation to CCMSBS retention benefit, and this was agreed at that time. The MSBS Act was amended accordingly on 5 October 2005. The benefit was preserved for currently serving members for as long as they remain eligible but would not be available to new members joining the ADF after that date of commencement of the amendments. In effect, this means that the retention benefit continues for 15 years from 2005.

With regard to funding, which I am not an expert on, the discontinuation of the retention benefit was not a savings measure. There will be a requirement to continue to fund the benefit for existing members in October 2005 until all those members have accessed their benefit or

done otherwise—that is, separated from the ADF. Our best estimate, based on current data, is that this would cost \$46 million per annum through to 2020. These costs are funded from administered appropriation in addition to the \$194 million in recruitment and retention initiatives, which are funded by defence from its departmental appropriation. All new members of the ADF since 1991, when DFRDB was closed, must join MSBS. Therefore, by 2006—that is, 15 years—the pool of eligible members has reached its peak. The variables in deriving the number who will be eligible to accept the provision each year from now until its cessation in 2020 include the number of major equivalents and sergeant equivalents who reach 15 years and, of those, how many decide to make an undertaking to remain a further five years, whether they are medically fit, and how many specified categories of members of lower ranks make that same decision. Other than by complex modelling, taking account of intakes in each year, wastage each year and historic trends on personal choice, the flat line that you saw in that table seems an appropriate provision methodology for an administered item.

In contrast, current targeted retention and completion bonuses are identified through the defence workforce and people plans and considered through the Defence Committee, which is what I was saying yesterday. We are developing a targeted approach to those retention bonuses. The MSBS system, which you see in that table, will run on until 2020.

**Senator FAULKNER**—I think that is clear.

**Mr Smith**—There will be an examination on it at the end of the day!

**Senator MARK BISHOP**—You have read from a prepared statement?

**Major Gen. Evans**—Yes.

**Senator MARK BISHOP**—Do you mind tabling that statement?

**Major Gen. Evans**—Not at all.

**Senator MARK BISHOP**—Thank you very much for that work.

**Mr Smith**—Dr Gumley and Rear Admiral Ruting have some clarifications as well.

**Dr Gumley**—I have a short clarification from last evening on Mulwala. Last night Ms McKinney advised that the profit share arrangement for commercial sales from Mulwala was around 50 per cent to the company and 50 per cent to government. The profit share is actually 75 per cent-25 per cent in favour of ADI up to a threshold of \$7.8 million and then it reverts back to a 60-40 split. To clarify the Mulwala redevelopment schedule, the construction work should be complete in 2010 and the plant commissioning in 2011.

I would like to clarify the question on the lead-in fighter we had yesterday. Yesterday we mentioned that the availability is required to be 19 aircraft per day under the performance contract, but in actual fact the current contracted target is a monthly average of 26 aircraft per day out of a fleet of 33, with 15 of these to be in Williamstown and 11 in Pearce. This availability supports an annual rate of effort of 8,000 hours. The number of aircraft required to be available on any given day is allowed to fall within an agreed band of the contracted average availability. The RAAF has the ability to negotiate increases or decreases in availability and associated rates of effort if required.

**Senator MARK BISHOP**—Understood; thank you.**Mr Smith**—Last night, Brigadier Patch presented some advice on helicopters and took one question on notice. We have the answer to that through Mr Lewincamp, and there are two small matters that Brigadier Patch wants to clarify.

**Mr Lewincamp**—Brigadier Patch took on notice yesterday a question about liquidated damages on the MRH contract. On the acquisition component of the contract it is \$40 million and on the sustainment part of the contract it is \$60 million. I have two small corrections of fact on Air 87. He said that the Air 87 tenders closed on 30 March 2001. It was actually 30 April. He also was talking about the emergency locator transmitter on the helicopter being required to operate at a certain temperature. He said 63 degrees yesterday; it is actually 69 degrees. He just did not want to mislead you on those facts.

**Senator MARK BISHOP**—We would not want that, would we?

**Mr Smith**—Air Marshal Shepherd has a response.

**Air Marshall Shepherd**—In response to your question last night about a junior RAAF officer who was in breach of Sea King employment approval while that person was on leave, I correct myself from last night; that person was allowed to remain on the tender. There was an investigation done by the Inspector-General's group as well as a separate investigation done by the probity advisor for that tender. The person had not been employed in any area of defence that tender was going to apply to, and in working on the tender that person was only using the IT skills the person had, not actually working for the tender. It is a junior rank, a flight lieutenant. That tender is still outstanding and has not been given yet.

**Senator MARK BISHOP**—Thank you for clearing that up.

**Mr Smith**—Mr Sharp has a correction to a date he gave you on a Defence Instruction (General) relating to conflicts of interest on separating officers, and then Rear Admiral Ruting has a clarification point on the FFG.

**Mr Peter Sharp**—Yesterday I indicated that the Defence Instruction (General) on post-separation employment was a revision from October 2005. That was not correct. The DI(G) is dated 2000 and it is under revision as we speak.

**Senator MARK BISHOP**—Yes, it is still under revision.

**Rear Adm. Ruting**—From the AAP newswire reporting last night of quotations from Senator Bishop's media release of 31 May, it appears that I may have misled the committee yesterday regarding the capability of the upgraded Adelaide Class FFGs. Whilst the first ship, HMAS *Sydney*, has been handed back for defined Navy use from 28 April this year and does have some deficiencies at this stage, the prime contractor has not yet offered the ship for provisional acceptance and has firm plans to remedy these deficiencies by the end of this year. It is noteworthy that a number of the combat system upgrades installed in this first ship are already performing better than the equipment in the non-upgraded FFGs. The contractor confidently plans to deliver the contracted capability progressively as allowed by the contract. When upgraded, the ships will be considerably more capable than the current FFGs and hence much more suitable for deployment to operational risk areas, such as the Middle East. Even HMAS *Sydney* at software baseline build 1, after provisional acceptance, as I mentioned,

planned for the end of this year, will be more capable in terms of operational deployment than current FFGs.

I have the answers to a number of the other questions I took on notice. You asked what had been the cost of the legal advice to date for the renegotiations. The total to 29 May 2006 for the current negotiations is \$348,101.46, excluding GST. There are some minor disbursements related to travel and accommodation in the period of May that are still to be finalised on that. I commented on the training for the software upgrades between the various baselines. They are, as I mentioned last night, included in the scope of the prime contract for the first two ships. That covers the delivery of the full contracted scope of upgraded software for those first two ships. You also asked about the milestones to go and their value. As a result of the renegotiation, we now have a total of 110 milestones for the FFG upgrade contract. Some 45 of those have already been paid to ADI and total \$184.6 million, of which the first milestone, the mobilisation payment, was \$125 million. There are then some nine software milestones still to go; eight for provisional acceptance and then acceptance of each of the four ships; three for provisional acceptance and then acceptance of the facilities; 17 for testing and trials; five for the equipment for ships 5 and 6; nine for acceptance of data and drawings; 10 for integrated logistic support documentation; then three for hand-back of the next three ships; and one for final acceptance. Those 65 remaining milestones total \$100.5 million in base date terms. They simply cover the range from June this year through to December 2009, when final acceptance after delivery of all of the ships, the software, the facilities and all of the documentation is complete.

You also asked how long ships 1 to 3 will be taken off line to download the software updates. This is for baseline builds 2 and 3 to complete the full capability. As the software is now delinked from the actual ship installation and production work, as I mentioned yesterday, it allows for that software to be tested in the land based test site and then installed in the ships relatively easily. This will be incorporated at times that are mutually convenient with the Maritime Commander for access to those ships and could be included during scheduled maintenance activities that those ships would have anyway. After installation there will be a degree of in-ship testing and then at-sea acceptance tests for those. It is anticipated that the elapsed time in the order of six to eight weeks, including the conduct of that scheduled maintenance, will be sufficient for those further updates.

**Mr Smith**—Mr Chair, Senators, I wonder if I might be excused now. I have to go to that NSC meeting. I am sorry to do that. I will ask Mr Henderson to sit in the chair in my place.

**Senator FAULKNER**—Parliamentary Secretary, has there been a response yet to the terms of reference for the two inquiries into the death of Private Kovco? Are you able to provide those?

**Senator Sandy Macdonald**—I am not able to provide them at this time? I will make further inquiries.

**Senator NETTLE**—I might start off with a question about depleted uranium. I am not sure to whom it should be addressed. I note in the portfolio budget statements on page 120 there is mention of an exercise Golden Eagle with the United States in June and July of this year. Is there somebody who can clarify whether or not there will be any depleted uranium used in

that exercise? It does not need to be answered just in relation to that exercise; that appears to me to be the next one on the books of the joint exercises with the United States.

**Lt Gen. Leahy**—Can I confirm that it is page 120 of the statements?

**Senator NETTLE**—Yes.

**Lt Gen. Leahy**—I am looking at Golden Eagle in June to July 2006, listed as Army. It says:

To develop interoperability between the Australian Army and United States Marine Corps.

I cannot think of any reason why there would be depleted uranium on that exercise.

**Senator NETTLE**—What about more generally in joint exercises with the United States carried out in Australia?

**Lt Gen. Leahy**—The same answer would apply. I cannot think of any reason why any depleted uranium would be used on the exercises.

**Senator NETTLE**—Can you rule out the idea of it being used?

**Lt Gen. Leahy**—As a munition, yes. We have a policy that we do not use depleted uranium in ammunition. I should take that on notice, because I am not confident about it. I am quite sure, but I think that, to pay respect to your question, I should take it on notice. That is in respect of broader exercises. But for this one I would be quite confident that the answer is that it will not be used.

**Senator NETTLE**—I understand that you are in a better position to make a statement in terms of the Australian Defence Force using it, but because it is a joint exercise—

**Lt Gen. Leahy**—That is right. That is why I am being a little conservative.

**Senator NETTLE**—I am interested in that angle. I do not know whether or not you can answer this now. Is there any environmental impact assessment made of the site prior to and after a joint training exercise?

**Lt Gen. Leahy**—There are other people who are responsible for this, including Mr Henderson.

**Mr Henderson**—I will have it confirmed, but the answer is, yes, on both counts. That is my understanding. There is quite a deal of work involved for the environmental staff, both in the lead-up to and following exercises, but let me confirm the detail.

**Senator NETTLE**—If you could take on notice some of that detail about how that process occurred, who carries that out and whether there is any public consultation component to those EISs, that would be appreciated. I have a series of questions that relate to Operation Relex with the Navy on the northern border. Some of them relate specifically to the recent announcement by Minister Nelson with regard to border patrols between Australia and Indonesia. I want to ask whether that recent announcement by Senator Nelson, which I think may have been made in the context of the new migration legislation, changes any of the operating procedures for the Navy. Is it any different from what is currently done?

**Vice Adm. Shalders**—The announcement that Dr Nelson made was made in the context of a visit by my Indonesian counterpart here to Canberra. The announcement, as I recall, was

that we would work with Indonesia to see whether we could arrange to have a coordinated patrol program. At that time, the next exercise, which was coming up, where we might have put those arrangements in place, was going to happen between 19 and 29 May. As it eventuated, the exercise did not occur and therefore we have not been able to take the initiative further forward. It remains an aspiration that we can do that, but we have not been able to achieve it yet.

**Senator NETTLE**—Are there any details about how that would occur?

**Vice Adm. Shalders**—Not yet, because we have to talk through those issues with the Indonesians, and we have not had a chance to do that in the sense that the exercise where we might have had a chance to do it was cancelled.

**Senator NETTLE**—Was that exercise cancelled by the Indonesians?

**Vice Adm. Shalders**—Yes, it was.

**Senator NETTLE**—Is that a result of the current tension between Australia and Indonesia?

**Vice Adm. Shalders**—I am not certain why they were unable to participate.

**Senator NETTLE**—I want to go to the existing process on the northern borders. I want to ask these questions in the context of the new migration legislation. At the Senate inquiry into this last week, a number of lawyers who were witnesses raised some concerns about whether the Navy would be breaching international conventions, in particular the refugee convention, if they were turning back people who may be asylum seekers. Has the Navy sought any legal advice about whether turning back boats of people who are asylum seekers would breach the refugee convention—in particular, the component of the refugee convention that says you cannot return people to places where they face persecution?

**Vice Adm. Shalders**—I am sorry; I cannot answer that question. I will have to take it on notice. That operation, of course, is conducted by our Operations Division, and the Vice Chief of Defence Force controls those issues. Whether or not that advice has been sought I do not know, but I will take it on notice and get back to you.

**Senator NETTLE**—Could you explain for me the procedure that is followed in those instances—for example, who makes an assessment of whether somebody has an asylum claim? Is that part of the decision making in turning people back? Do you have DIMA people on the boat in respect of that procedure? How does that operate?

**Vice Adm. Shalders**—Again, I am sorry; I am not the competent authority to respond properly to that question. That is an operational question and I am not in the operational chain for those sorts of issues. I do not mean to duck the question, but I do not want to give you information that is out of date. My knowledge of that subject is some months out of date. Can I take it on notice?

**Senator NETTLE**—Is there anyone else here who might be able to help with that question?

**Vice Adm. Shalders**—Unfortunately, it is the Vice Chief of Defence Force who is responsible for those matters or the Deputy Chief of Joint Operations, and neither are here today.

**Senator NETTLE**—I have quite a lot of questions on that, but I might need to put them in—

**Vice Adm. Shalders**—I am sorry; I could give answers but I am not in that space any more, and I am afraid that the vice chief would have to correct me if I were to give you the wrong information. Could I take those questions on notice?

**Senator NETTLE**—I can put some of those on notice. Going back to the issue of joint cooperation with Indonesia, can you outline at all what that cooperation may mean? There was some discussion at the time about whether it meant joint patrols or whether it meant designating areas for patrolling. How would that work?

**Vice Adm. Shalders**—We had brief discussions on how that might occur. There is a continuum, of course. At the right-hand end of the spectrum it could be completely integrated patrols, whereby we had Indonesian Navy crews on our boats and similarly we had people on their boats. At the left-hand end of the spectrum, which I think is probably where we might have to start, it would be more a coordinated patrol activity, where we share the information that might be gained as a result of that patrol activity. It could be working in adjacent areas, passing contacts from one route to another. There are many different ways to do this and we have not got beyond those first exploratory discussions.

**Senator NETTLE**—There is not a preference in regard to which avenue would be pursued at this stage?

**Vice Adm. Shalders**—No, I think that, as we do in all of these things, we have to work at a pace that is comfortable to both sides. But we have not got beyond those exploratory discussions at this point.

**Senator NETTLE**—Is the equipment that both navies use compatible? Does that have any influence on the likelihood of what level of cooperation would occur?

**Vice Adm. Shalders**—In general terms, yes, it is compatible. Communication is the key, of course—to be able to communicate between one platform and another. Procedural interoperability is also important. That is the reason we conduct these exercises, not only with Indonesia but with other nations. None of these things just happens. You have to work at them. That is not to say that we cannot make them work. We can make them work, but we have not had a chance yet to go beyond that first step.

**Senator NETTLE**—As I say, I have some other questions in respect of that answer, but I can leave it there. This might be an operational question as well. Do you know how many boats are currently patrolling in that area?

**Vice Adm. Shalders**—For Relex, yes. It varies, but the average would be five to six patrol boats and a major fleet unit on any one day, in addition to the Customs patrol boats and, of course, the Air Force. The Chief of Air Force has something to add.

**Air Marshall Shepherd**—You would be aware that a P3 Orion is permanently assigned to Operation Relex and Relex II and has been so since August 2001. On a very small number of

occasions we have had Indonesian senior officers undertake a mission with us there to show them how we do our business.

**Senator NETTLE**—I will need to put my other questions that relate to those issues on notice. I might go now to one question that I had that related to the Defence Signals Directorate. I am getting half an hour, so I am going to jump around.

**Mr Henderson**—Mr Carmody will be able to help you.

**Senator NETTLE**—The question relates to the cooperation between the DSD and the NSA and whether Defence is able to indicate whether the DSD or any DSD facilities have played a role in the NSA's surveillance of American citizens. That is currently a source of tension in the United States.

**Mr Carmody**—The Defence Signals Directorate does have a relationship of course with the US National Security Agency. As far as I understand it, the issue regarding surveillance within the United States is an issue for the US National Security Agency, not one for Australian agencies.

**Senator NETTLE**—Do you mean by 'as far as I understand it' that Australia is involved in activities with the NSA that mean they could be involved or do you not think they are?

**Mr Carmody**—I can say that Australia would not be involved in activities in the United States.

**Senator NETTLE**—Is there a ban specifically barring the DSD from being involved in any similar activities here in relation to Australian citizens or indeed in relation to American citizens based in Australia?

**Mr Carmody**—The way that the Defence Signals Directorate operates and the way that the US National Security Agency operates are fundamentally different, because the legislative frameworks are different. The Defence Signals Directorate is a foreign intelligence collection organisation. As a foreign intelligence collection organisation, it operates under particular rules. In terms of the practical effect of those, the Defence Signals Directorate can undertake activities under ministerial authorisation, which is very different in fact from the situation in the United States. I will talk to the situation in the United States for a moment. I cannot find the bit that I am looking for in my notes, but I know the legislation well enough. It is unlikely that a similar situation would arise in Australia, because the rules in Australia are different. There is provision under the Intelligence Services Act in Australia for the Defence Signals Directorate to produce intelligence on Australian citizens in particular circumstances. But in the first instance in any of those circumstances the Defence Signals Directorate must have authorisation from the Minister for Defence. In each case the minister must be satisfied that the intelligence collected on Australians relates to persons or organisations outside of Australia. The minister must also be satisfied that the Australian person is involved in a particular range of activities. The circumstances in terms of management and ministerial oversight in Australia are very different from the circumstances that are being covered in the press in the United States.

**Senator NETTLE**—It does not sound that different to me, other than you require the sign-off of the President in the US and here it is the Minister for Defence.

**Mr Carmody**—In that broad sense, yes, but in a practical sense, in terms of direct ministerial oversight, the Intelligence Services Act 2001 makes the roles and responsibilities of the Defence Signals Directorate and a range of other intelligence agencies particularly clear and outlines with great clarity what those organisations are allowed to do and what they are not allowed to do.

**Senator NETTLE**—I will leave my questioning on that issue there. The next area that I wanted to go to is about joint training exercises with the Indonesian military. I am not sure to whom I would be addressing that issue.

**Mr Henderson**—Mr Pezzullo, Deputy Secretary Strategy, would be the appropriate person to answer that question. As explained at the opening yesterday, he, along with General Gillespie and the CDF, could only come for a limited period. I am sorry, but you will have to put those questions on notice as well. The Chief of Air Force and Chief of Army may wish to add to this.

**Lt Gen. Leahy**—There may be aspects of the joint training as it relates to the individual services that we can answer. There are some training aspects and some minor other things. If you would like to ask your questions, we will see what we can do to help. If we cannot answer it, I am sure we will be able to take those on notice and the Vice Chief of Defence Force will be able to assist.

**Senator NETTLE**—I can put some on notice. Can I have an outline of the joint training exercises conducted with Kopassus earlier this year, what was involved in that and the cost and number of personnel involved in that?

**Lt Gen. Leahy**—I will have to take the detailed information on notice but, in outline, they were staff talks as part of multilateral discussions with regional special forces. I think it is best that I take the detail of your question and get back to you.

**Senator NETTLE**—I wanted to go to the issue of what Defence is able to do to ensure that such training or other equivalent training is not used to perpetrate human rights abuses in particular provinces of Indonesia—for example, West Papua.

**Lt Gen. Leahy**—It is very clear that defence training would not be involved in those sorts of activities. We have government guidelines on the type of training that can be conducted. The type of training that is done with Kopassus relates directly to counterterrorism hostage rescue and things that are in the realm of special forces and their responsibility to rescue citizens rather than the types of activities that you have talked about.

**Senator NETTLE**—That is exactly why I asked the question. As I understand it, according to the Indonesian government, they consider the independence movement in West Papua to be terrorists. Training in relation to counterterrorism—

**Lt Gen. Leahy**—I said quite carefully that it relates to hostage rescue rather than other forms of activities.

**Senator NETTLE**—That is in relation to the latest round of training done with Kopassus; it related to hostage training?

**Lt Gen. Leahy**—That is correct.

**Senator NETTLE**—What other activities is the ADF involved in in relation to counterterrorism training with the Indonesian military?

**Lt Gen. Leahy**—It is only related to our special forces in those multilateral forums. There have been some visits with an Indonesian special forces unit that are related directly to hostage rescue. It is very specifically defined to that unit only.

**Senator NETTLE**—Can I just ask: in answering that question, how far back are you going in terms of the cooperation agreements/the training exercises that you have had with Kopassus?

**Lt Gen. Leahy**—Again, to the best of my knowledge, I am talking about the last four to five years—of course, recognising that until recently there have been very limited activities with the Kopassus and the Indonesian Army. But, over the last four to five years, it has been directly confined to those areas that I have spoken about.

**Senator NETTLE**—In the PBS on page 122 there is reference to a planned exercise with the Indonesian military called Kartika Exchange. Can somebody outline some more details about that?

**Lt Gen. Leahy**—I can help you with that. Kartika Exchange is a low-level small exercise where junior officers from the Indonesian Army and the Australian Army exchange for a period of about a month and they go and work inside different units in the different armies. It is designed to try and develop the professional knowledge both of our own officers and Indonesian officers and the personal relationships with each other, the understanding of their ways of operation and, in many cases, to assist in language training. We have decided that junior officer exchanges are valuable. They are a way of building for the future so that patterns of cooperation, patterns of personal knowledge of each other's cultures and societies and ability to work with each other are developed over a longer period. We have been doing on and off Kartika Exchange for, to my knowledge, about a decade. I would consider this to be quite a successful exercise of building trust and patterns of cooperation at low levels between the two armies.

**Senator NETTLE**—I do not know if this is to you or to somebody else. Can somebody outline what, if any, impact the recent diplomatic rift between Australia and Indonesia over West Papua has had on defence cooperation?

**Lt Gen. Leahy**—A number of visits have been postponed. We are at a stage, though, where I think we would expect that those visits may be resumed. I think there have been some short-term impacts, but in terms of the long-term relationship I do not anticipate that there would be much of an impact.

**Air Marshall Shepherd**—I was in Jakarta on the weekend of the cartoon issue. I was received on the Monday by my counterpart warmly with all his senior officers. He made it very clear that we needed to put the politics behind us, as military men, and that the fundamentals of our relationship were very sound and would remain so and they look forward to regrowing the relationship back to the level it was at before 1999. Unfortunately, not long after that, they had to cancel a visit to Australia for an exercise that we were regenerating, Rajawali Ausindo, which is a sharing of information between Hercules C130 operators.

I think that was as much an issue of technical matters and the serviceability of their aeroplanes as it was about any politics.

**Senator NETTLE**—Thank you.

**Air Marshall Shepherd**—I should add that I have recently rung my counterpart, as recently as late last week, over the issues with Timor to assure him that our flights would not be straying anywhere near Indonesian territory, and we had a warm conversation over the phone.

**Senator NETTLE**—The next area of questions that I wanted to ask you relate to Iraq. I am not sure exactly to whom those issues should be addressed. Some of them I will ask on notice. They relate to the number of troops there and the roles being undertaken. But specifically I wanted to ask about what I understand to be the 90 or so staff allocated to the Multinational Command Headquarters. These are following from previous questions I have asked. Is there any update on whether that is still the case?

**Lt Gen. Leahy**—I think it is best that, in the absence of the Vice Chief of Defence Force—and certainly because of my lack of knowledge of the previous line of inquiry—we ask you again to put those on notice and we will ensure that the vice chief provides you with answers in due course.

**Senator NETTLE**—Do you want me to give you an idea of the sorts of questions so that you can say whether you are able to answer them?

**Lt Gen. Leahy**—Certainly, if you would like.

**Senator NETTLE**—There was an Australian officer, as I understand it, who was working as the deputy commander for operations and planning of operations within the Multinational Command Headquarters. My understanding was that a number of people have filled that role and that has been an ongoing position that Australia has had. Is that continuing?

**Lt Gen. Leahy**—Because these are questions of detail, and it is the business of the vice chief to conduct the operations, I really do not feel confident in answering that question for you.

**Senator NETTLE**—The other question that I wanted to ask in relation to Iraq was to find out when Defence became aware of the activities of the US marines in the Iraqi city of Haditha on 19 November that have been the focus of the recent Pentagon report. When did Defence become aware of that?

**Lt Gen. Leahy**—That is best taken on notice for the vice chief, because he handles these sorts of matters in detail.

**Senator NETTLE**—I will keep asking the questions and see how I go. Has there been any planning done in relation to what the impact of any military attack on Iran would be on not only Australian Defence Forces currently in Iraq but those more generally in the region, such as in the Persian Gulf? Has that thinking or planning been undertaken?

**Lt Gen. Leahy**—Again, I will ask the vice chief to provide an answer in detail on that. But I would say that, as a member of the Strategic Command group in Defence, we consider the range of planning contingencies. They are matters that I think it is prudent for military

planners to conduct. I think I would characterise our discussions to say that that is a possibility/contingency that we have not discussed.

**Senator NETTLE**—Perhaps I could draw your attention to a report that has been done on this issue by a group called the Oxford Research Group, which is an academic think tank. Because most of my questions need to go to others—

**Lt Gen. Leahy**—I am sorry that I could not help you, but I think in the interests of getting you the detail and accuracy it is best that we do take them on notice. I will encourage the vice chief to provide you with full answers.

**Senator FAULKNER**—I wish to raise a matter that I flagged in F&PA estimates with DOFA and also a little earlier in the hearing with Defence. This relates to some act of grace payments that have been paid—one of March 2005 for two people, one in December 2005 for one person and one in March 2006 in another instance. These have been described by another department as the death of an individual and injury to others. Could the appropriate Defence officer assist me with a little more information in relation to these incidents, please?

**Mr Henderson**—I will see whether the head of Defence Legal is aware of this.

**Senator FAULKNER**—Did you hear my question, Mr Cunliffe?

**Mr Cunliffe**—It has been relayed to me. I am afraid that my ability to assist you is only partial, because the role that we have in relation to that series of act of grace payments is only partial. In effect, we are—

**Senator FAULKNER**—Let me just stop you there, if you do not mind. I appreciate that your role is partial and I appreciate that these payments are made by DOFA. You might appreciate also that DOFA was very keen to refer me to Defence for—

**Mr Cunliffe**—I did notice their generosity in that area.

**Senator FAULKNER**—I hope we do not have too much buck-passing between departments.

**Mr Henderson**—Perhaps the buck-passing is finished; I have a brief in front of me. In Iraq, act of grace payments arise because order 17 of the Coalition Provisional Authority provides immunity to the ADF claims. To date, the ADF has received three approvals from the Department of Finance for payment of three act of grace payments in Op Catalyst. One of these payments was for two individuals, a mother and son, injured in February 2005. The other two payments were made to an individual injured in November 2004, and the widow of an individual who was fatally injured during an ADF engagement in January 2005. The amounts paid are consistent with the injuries sustained and are commensurate with the amounts paid by other coalition forces. The individual injured in November 2004 received \$6,618.13. The two individuals injured in February 2005 were paid \$6,390 and \$3,850 respectively. The widow of the individual who was fatally injured during an ADF engagement in January 2005 received \$53,128.85. The total amount of act of grace payments was \$69,986.98. There have been no act of grace or compensation payments made for any activities in connection with Op Slipper in Afghanistan.

**Senator FAULKNER**—Thank you very much for that information. I can say that it confirms the information that I received in the estimates hearings of the Department of

Finance and Administration. You can confirm for the committee, of course, that the determining department is not Defence but it is in fact the Department of Finance and Administration? They determine it; that is correct, isn't it?

**Mr Henderson**—It is subject to their approval, yes.

**Senator FAULKNER**—It is subject to their approval. However, the moneys come from the immense amount of money that you have in your own department.

**Mr Cunliffe**—That is also correct.

**Mr Henderson**—We have immense responsibilities as well as an immense amount of money.

**Senator FAULKNER**—I do not want to take a lot of time on this—in fact, very little. The reason that DOFA referred me back to this department is that they believed it appropriate that these matters be dealt with by Defence—that is, the reasons for the compensation claims. I appreciate that what you have given me, Mr Henderson, gives that in broad brush. Are you able to provide any further detail in relation to the three instances involving four people? I was particularly interested in relation to the payment of \$53,128 as a result of a fatality. Are you able to provide the committee with more detail about the background to these instances?

**Mr Henderson**—I am not able to; I am just skimming the brief here. I will have to take that on notice. There is no additional detail in here in respect of the particular—

**Senator FAULKNER**—Is anyone else able to? That is disappointing, Mr Henderson. I flagged this issue earlier in the hearing. I certainly flagged it last week at another committee's hearing. It is disappointing if there is not someone who is able to inform me about this. I do not want a great deal of detail. But there has been a fatality; that is correct, Mr Henderson, isn't it?

**Mr Henderson**—Yes.

**Senator FAULKNER**—Commonwealth moneys have been paid in the case of this fatality—\$53,128. It is reasonable for the committee to expect an indication of the reasons for the payment of that sum of money. As I say, it is not a bolt from the blue. It is not a surprise. This has been flagged now for a two-week period on two occasions. I ask you again: can we not do any better than this?

**Mr Henderson**—I will see whether we can locate somebody before the close this afternoon. But right now I do not have the material in front of me, I am sorry.

**Senator FAULKNER**—As I say, I am very disappointed in that. In the circumstances I think that is an inadequate response. However, I do not want to delay the committee. Senator Macdonald, in relation to the matters pertaining to the two terms of reference, are you able to provide answers to those issues?

**Senator Sandy Macdonald**—I am not able to give you advice on that at this stage.

**Senator FAULKNER**—I hope that that can be concluded also in the next hour and a half. We have had commitments before this committee today in relation to transparency on these issues. That is accepted. They are commitments from the ADF. They are acknowledged and they are accepted. The first matter in terms of government transparency related to the letter to

the Bosnian ambassador. This was the first test where Dr Nelson had to provide transparency—namely, on matters relating to the circumstances surrounding the death of Private Kovco. That test was not met. That test was failed. There is an opportunity here to provide the terms of reference for these two important inquiries. To my mind, that is a minimum requirement in relation to transparency. The hearings will conclude soon. I request, Senator Macdonald, that as the parliamentary secretary you press this issue with the minister before the committee concludes its business. I will not waste any more time on it, but I ask you to press that issue. Just a modicum of transparency is required here.

**Senator Sandy Macdonald**—Thank you, Senator Faulkner. You of all people would be aware that these matters require a determination by the minister. I have sought his determination. You would also be aware of the very busy program that the minister has this day. I can say no more other than to make the comment in response to your commentary that I will seek his advice and come back to you before the close of play.

**Senator FAULKNER**—To you, Parliamentary Secretary, let me say this: it is a very poor effort so far. I have asked for a letter to be tabled from a senior officer in Defence to the Bosnian ambassador about the death of Mr Sinanovic and the mix-up in relation to his body. It seemed a minimal level of transparency was needed to meet that test. It was not met. It ought to be met in relation to these two terms of reference for these two important committees. It is one thing for CDF and others in Defence to commit themselves to transparency, and I accept their commitment in that regard. But it is a very poor effort if the minister will not comply in any way, shape or form with a minimal amount of transparency on these important issues.

**Senator Sandy Macdonald**—As in all things, Senator Faulkner, you are entitled to your view. People can disagree with you and it is for other people to make a judgment about these things, and they will.

**Senator FAULKNER**—You have an hour and three-quarters to fix it. I hope you can. I hope you can strike a blow.

**Senator Sandy Macdonald**—You do not threaten me at all.

**Senator MARK BISHOP**—We might turn to the M113 armoured personnel carrier upgrade and get an update on that. Dr Gumley, there was a press report in the *Weekend Australian* last weekend that the upgrade of the M113 APCs has been put on hold because late in the process some problems were encountered with the braking system. Was that report accurate?

**Dr Gumley**—The press report is accurate. There is a delay of approximately six months in the M113 program, with a technical difficulty in the braking system. I would offer Mr Sharp, head of the Land Systems Division, to give more detail.

**Mr C Sharp**—Senator, you are correct. We were going through reliability qualification testing. It was 2,800 hours of testing of three vehicles at the Monegetta testing range. This was the test that would lead to the next and most critical stage, which is the production-ready review, which would be both a payment to Tenix and approval to go into full production rate and delivery of the M113s. You would remember that, at that stage, we were counting on the delivery of about 14 M113s, and concurrent production had been going on and Tenix was

doing that at their risk. That would have led us, I briefed last time, to an in-service schedule of a squadron group at around about December 2006.

About 280 hours into this 2,800 hours testing, Tenix withdrew from the testing of their own volition, based on brake problems. There were two problems, and perhaps I will go to the end result at this stage. That resulted in Tenix estimating that there would be a 12-week slippage in their schedule. We put some contingency, put our own judgement, on the 12-week slippage in their schedule and took it out to probably another month. But, in any event, that would mean that the vehicles would not be available for training and introduction of interservice. So that resulted, in our view, of missing the training window and delaying the introduction by six months. There is some contingency in there but we are anticipating now that the in-service delivery date of 16 vehicles is June-July 2007.

**Senator MARK BISHOP**—Yes.

**Mr C Sharp**—There are two aspects to the specifics of the braking problem as identified so far. I will say that, at this stage, the contractor has not reached probably the root cause of it all yet. There are a number of theories involved and I can say that Tenix, as the prime, is working very hard with its subcontractors from Germany to get this fixed. But the symptoms at the moment are that the handbrake does not hold; it does not pass the handbrake test. There are two tests on that: firstly, there is a stall test, in other words the vehicle with the engine going is not to move when the automatic transmission is engaged and the handbrake is on; and, secondly, if it is on an incline of 60 degrees it is to hold in a static position. That is why they have voluntarily stopped the reliability qualification testing.

**Senator MARK BISHOP**—They discovered that 280 hours into a 2,800-hour testing program?

**Mr C Sharp**—Testing regime, yes.

**Dr Gumley**—That is a pretty severe test. If you think of an 18-tonne vehicle on a 60-degree slope, having a handbrake to hold it is a pretty severe test.

**Senator MARK BISHOP**—Nonetheless, it was the specification in the contract, and you put it in there for sound reason and you intend to hold them to it.

**Dr Gumley**—Yes, we do. I would also point out that it is a fixed-price contract and so the financial risk on this belongs with the contractor.

**Senator MARK BISHOP**—The downside to us is the, at this stage, six-month delay.

**Dr Gumley**—Schedule delay and the consequent knock-on impacts to Army and its training.

**Senator MARK BISHOP**—Everything has to be subsequently reorganised?

**Dr Gumley**—Yes.

**Senator MARK BISHOP**—How many of these are we upgrading? Is it 350 or 513?

**Mr C Sharp**—I will just go through with some of the figures. The whole project is: 171 armoured personnel carriers to A4 standard; 38 armoured fitters vehicles to A4 standard; 12 armoured recovered vehicles to A4 standard, armoured recovery vehicle light; 15 armoured ambulances to A3 standard; 21 armoured mortars to A3 standard; 43 armoured command

vehicles to A3 standard; and 50 armoured logistics vehicles to A4 standard. That makes a total of 350.

**Senator MARK BISHOP**—The problem with the test vehicles applies to all 350 vehicles?

**Mr C Sharp**—There are consequential knock-ons. Yes, they all need the brakes.

**Senator MARK BISHOP**—You have a range of different vehicles there. I thought you might have different specifications, for example, for ambulances as opposed to troop carriers.

**Mr C Sharp**—There are slightly different specifications but this has a knock-on effect to all of them, and certainly in the delay of production schedules.

**Senator MARK BISHOP**—Of the 350 vehicles in the process of being upgraded, how many do we have that are serviceable at the moment?

**Mr C Sharp**—I do not have right in front of me the sustainment figures of the A1 vehicle, but I can take that on notice for the current fleet.

**Senator MARK BISHOP**—These 350 vehicles are part of the current fleet, aren't they?

**Mr C Sharp**—No, they are not. No, they are part of the M113 upgrade project. The hulls will be sourced from the current fleet but this is 350 new variants.

**Senator MARK BISHOP**—I beg your pardon, yes.

**Mr C Sharp**—So the A1 is in service at the moment.

**Senator MARK BISHOP**—Does the same problem apply to the other vehicles in service?

**Mr C Sharp**—No, it does not.

**Senator MARK BISHOP**—It has no effect on current operations of current fleet?

**Mr C Sharp**—No. I do not want to be glib about this but it is a bigger vehicle. It is a metre and a half longer, it is a heavier vehicle and, depending on the variant, it goes from 15 tonnes to 18 tonnes; it is a completely different vehicle.

**Senator MARK BISHOP**—In terms of current APCs, they are unaffected at all by this problem that is emerging in the new product?

**Mr C Sharp**—That is right.

**Dr Gumley**—There are 766 vehicles in the fleet.

**Senator MARK BISHOP**—Does that include the proposed 350?

**Mr C Sharp**—No.

**Dr Gumley**—No.

**Senator MARK BISHOP**—None of those 766 are affected?

**Dr Gumley**—No, they are the old vehicles that passed through testing some years ago.

**Senator MARK BISHOP**—I just want to get it exact, that is all.

**Mr C Sharp**—Senator, nothing is ever clean in these answers. I should just elaborate that in the upgrade program the hulls will be drawn from the existing fleet, but I just wanted to differentiate for simplicity that there is an upgrade program, which is the 300 vehicles which

will put out a completely new vehicle. At the same time we are running A1 vehicles and repairing those, but the two problems are completely distinct. There are no problems in the A1 fleet regarding brakes.

**Senator MARK BISHOP**—Why does Tenix hold the view that it would only be a 12-week slippage yet you are of the view that it would blow out to a six-month slippage?

**Mr C Sharp**—The 12-week slippage is an estimate by the contractor at the moment. Given the fact that they have not quite reached a root cause to this, we believe, and that they are working through that with their German subcontractors, their estimate to us is that this would take of the order of 12 weeks to fix. We applied our own schedule contingency to that and said that it was so close to the training window—in other words, the vehicles had to be available for training so that the vehicles could be brought into service in December 2006—that we would not take the risk. We would rather declare a six-month delay in schedule and start working to that.

**Senator MARK BISHOP**—I understand. If they have not diagnosed the root cause of the problem and simply have noted the symptoms, for want of a better description, is it possible that the delay could be longer than six months?

**Mr C Sharp**—When you have a technical problem and you have not quite reached the end and you have not implemented it, I would say that there is always a possibility of it being delayed. However, I have gone over to Adelaide myself and had a look at the problem with the brakes. Not that I am an engineer, but I got some idea of what Tenix were doing in assuring themselves that they were looking at the engineering solutions and testing their subcontractors for their advice. I was confident that they had identified the problem correctly and that they had three options that they would work through with their contractor. In technical terms, it is to do with the brakes overheating. They are designed to run hot at 350 degrees Celsius. When I say ‘run hot’ I mean that you apply the brakes—and the brake pads are like a normal disc, pad and rotor system in a car, only a lot bigger—and within seconds the rotor heats up to 350 degrees. Normally the heat dissipates, but there is an accumulation in the rotor which is showing what is called a ‘leopard heating pattern’ on the disc rotor, and that is the cause.

We do not know if that is a failure or not but it is certainly a cause for concern because it looks like there is uneven heating in the rotor. It is probably because of rotor drift along the spline. The rotor is supposed to move along the spline a bit so that the brake pads come in and centralise it and lock it in. It may be that the actuators are moving too far and not applying enough pressure to the rotor to hold the handbrake on. The handbrake is hydraulically actuated, whereas in the M1 it is a mechanical system—that is, lever and cable. So if the actuators move too far they cannot apply the right pressure. What is being seen at the moment with the overheating of the rotors is disintegration of the brake pads under the heating.

**Senator MARK BISHOP**—Are they too hot for too long?

**Mr C Sharp**—Yes. There are a number of fixes being looked at with trying to constrain the movement of the rotor and stop the gyroscopic wobble in it. That is something that they have to work out with their contractors, but I am confident that Tenix is not sitting there watching the problem, and neither are we.

**Senator MARK BISHOP**—When was the problem first brought to your attention?

**Mr C Sharp**—It was first brought to my attention on 14 March this year.

**Senator MARK BISHOP**—Are you surprised that it is now some seven weeks on, and they have not yet concluded their diagnosis of the problem and do not have a firm view as to what the problem is?

**Mr C Sharp**—No, I think they have a good diagnosis of what is going on. As I said, they have a—

**Senator MARK BISHOP**—I will rephrase that: they do not as yet have a final or firm view?

**Mr C Sharp**—In my view they have not. I think in Tenix's view they have not, either. They are working it through again with their subcontractor. The subcontractor might think they have a view but they have to test that at the moment; they have to implement it first of all, and then test it.

**Senator MARK BISHOP**—As Dr Gumley said, this is a fixed-price contract.

**Mr C Sharp**—Yes, it is.

**Senator MARK BISHOP**—So Tenix bears the cost and we bear the delay and inconvenience.

**Mr C Sharp**—Yes.

**Senator MARK BISHOP**—In these types of contracts, when there are considerable delays in delivery and it does have knock-on effect to the respective service in terms of dislocation, training and delays, do you have to bear the cost or can that be part of a damages claim? Who bears that cost?

**Dr Gumley**—In contracting in general you can put liquidated damages clauses in. Liquidated damages are a genuine pre-estimate of the cost to the client of things going wrong. It cannot be an ambit claim; it has to be a genuine cost—so many hours per week of so many people's time at so many dollars per hour. You have mathematical formulae to get it. It becomes a negotiation in each and every contract you go into as to what is the level of liquidated damages that should apply to a contract.

**Senator MARK BISHOP**—Is this instance one that is appropriate for a liquidated damages clause to be called in?

**Mr C Sharp**—Yes, it is, and in fact we applied liquidated damages on two packages of this contract so far: \$23,000 on the integrated logistics support package which is late, and \$1.46 million on missing milestones as a result of not being able to get to milestones. They are applied on the basis of there being a 90-day grace period, and then there is a percentage of the milestone cost for every week missed. In this case it is 0.1 per cent.

**Senator MARK BISHOP**—Are you giving consideration to invoking the liquidated damages clause in the current instance?

**Mr C Sharp**—We have.

**Senator MARK BISHOP**—So for every week of delay what is the cost to Tenix?

**Mr C Sharp**—It depends on the milestone. I have the accumulated figure; it is \$1.46 million to date plus \$23,000 on another package.

**Senator MARK BISHOP**—But that \$1.46 million does not arise out of this problem with the brakes here, does it?

**Mr C Sharp**—Yes, it does. It is an accumulation. It is a number of milestones they have missed consequentially because of problems in the past that we briefed the last senate hearing about—we were still on schedule but there were overheating problems. There was a brake lining problem and a vibration problem that have been fixed. That then allowed them to get to reliability qualification testing. Now this brake problem, which is different from previous ones, has arisen.

**Senator MARK BISHOP**—If Dr Gumley is right and it does go for the full six months, what is likely to be the liquidated damages invoked?

**Mr C Sharp**—I do not have the calculation here, but I can get it for you.

**Senator MARK BISHOP**—But for six weeks it is \$1.4 million?

**Mr C Sharp**—No, sorry. The accumulation so far of all of the missed milestones is \$1.5 million.

**Senator MARK BISHOP**—It would be helpful if you could give us a rough calculation.

**Dr Gumley**—I think there is enough there to give the contractor ample motivation to put their best efforts into fixing the problem.

**Senator MARK BISHOP**—It sounds like there actually is, yes.

**Mr C Sharp**—They are not getting paid for anything at the moment. That is more of a hit than paying liquidated damages. Liquidated damages are an estimate of our costs, but unless they meet the milestones they do not get paid.

**Senator MARK BISHOP**—They do not get paid at all. How much is the next milestone payment?

**Mr C Sharp**—It is the production ready review. I am not sure what the payment is. It is substantial payment because it is a substantial project.

**Senator MARK BISHOP**—Because this is a big project.

**Mr C Sharp**—Yes, it is. I could guess, but I will not.

**Senator MARK BISHOP**—All right, that is fine. Maybe you could take some advice and give me that ballpark figure on that as well.

**CHAIR**—Can I interpose Senator Adams here on a relatively short matter about workplace safety in contracting.

**Senator MARK BISHOP**—I have finished this issue apart from those two minor questions for Mr Sharp.

**CHAIR**—Senator Adams has some questions. Chief of Navy and Mr Gumley, I believe this is relevant to both of you.

**Senator ADAMS**—I would like to thank the department for their answer to my questions on notice regarding guidelines which were applicable to contractors and civilians employed on naval bases. I asked a question on employment of contractors and the cost in lost working hours in the Royal Australian Navy establishments caused through personnel being affected by drugs and alcohol. I have just been sent an answer from the Alcohol and Other Drugs Council of Australia, which gives a glowing report of the Australian Defence Force alcohol and other drugs program. Under 'data' it says:

Statistical data on drug involvement in the ADF is not currently being collected, recorded or analysed in any thorough and co-ordinated way. The lack of available qualitative and quantitative data from which to determine most appropriate/effective resource allocation and base improvement targets places pressure on sound data collection practices in service delivery.

My first question to the department is: has anything been done about looking at the lost hours due to absenteeism from either drugs or alcohol problems?

**Mr Henderson**—I am not aware of any change in respect of monitoring contract staff, if that is where you are directing your questions. No, we have not.

**Senator ADAMS**—Will any changes be made?

**Mr Henderson**—There is no plan to change the arrangements we have with our contractors. I think we have indicated previously that as a contractual condition the contractor staff are employed on the basis that they refrain from inappropriate behaviour whilst at work, which includes contractor staff operating under the influence of drugs and alcohol. Contractors are obliged to perform their duties within the guidelines of local, state and federal legislation and Defence instructions. The prime contractors engage their employees and subcontractors under similar conditions. In other words, they are employed by our contractors and the same rules and regulations apply to them as they do to any private sector employees.

**CHAIR**—That is not exactly right, is it? That policy is about 15 or 20 years old. The fact is that most industrial—

**Mr Henderson**—It is much older than 15 years. It is the basis on which we have addressed this issue since wide-scale contracting out commenced in the early nineties.

**CHAIR**—No, the problem I am highlighting is that that stance, that disposition, is not in line with contemporary private contractual relations for employees on industrialised sites, particularly where there are munitions and heavy engineering, namely in naval bases. Contractors in the mining industry classically are not permitted to operate machinery without undergoing random drug and alcohol testing and submitting to a protocol that ensures that there is a duty of care across worker to worker, from worker to employer, and from worker to invitee and/or other licensee on the premises. I expected that we would have a policy that is looking ahead to try to meet and match the sort of standards that are being set out there by private industry.

**Mr Henderson**—We are employing the private sector. If you are referring to differential industrial circumstances in which state and local regulations vary according to those circumstances, then those differential circumstances will apply to the people we are employing.

**CHAIR**—Let me give you an example. If I go aboard HMAS *Newcastle* and I go through the mess at a particular relevant time, there is all the ship's company lined up having their breath and alcohol test. What is the difference between the operation of a vessel like that, where the crew are being scrutinised and everybody is of peak operational effectiveness, not affected or diminished in any way by drugs or alcohol, and contractors who are working in and around a base? I do not see any distinction at all. In fact, I would have thought that there was an imperative to have those people of a similar standard.

**Mr Henderson**—What are you suggesting, that we commence—

**CHAIR**—I am suggesting we need a regime and a protocol that protect our servicemen and women and ensure that Australian military properties have the confidence of saying any contractor, worker, employee of a contractor, prime, sub or whatever, is aware of a rigid drug and alcohol policy.

**Mr Henderson**—But you want random testing?

**CHAIR**—I think random testing is one of the means of ensuring that the duty of care and the risk is being managed, given machinery, electrical goods, driving, vehicles and all this sort of thing on military bases.

**Mr Henderson**—In respect of driving heavy vehicles, the minimum standard for all of us driving around in ordinary vehicles is 0.05. For heavy vehicles, in some states the minimum standard is 0.02; in other states it is zero. For drivers of heavy Defence vehicles it is zero across the nation.

**CHAIR**—That is service personnel you are talking about?

**Mr Henderson**—No.

**CHAIR**—Are you talking about contractors?

**Mr Henderson**—I am talking about anybody driving—

**CHAIR**—On Commonwealth land?

**Mr Henderson**—Anybody driving Defence vehicles.

**CHAIR**—But what we are talking about is someone driving a truck—

**Mr Henderson**—That is just what I was talking about.

**CHAIR**—on behalf of a prime contractor.

**Mr Henderson**—A Defence truck.

**CHAIR**—No, a prime contractor's truck on a Defence establishment.

**Mr Henderson**—I will have to check.

**CHAIR**—All I am asking is that we look at the contractual terms by which we administer that, because I think it is important.

**Mr Henderson**—If that truck driven by a private contractor was in Victoria, for example, the private contractor would be subject to the Victorian law, which says zero alcohol. If it was the ACT or New South Wales—I am familiar with those three jurisdictions—it would be 0.02.

**CHAIR**—In Western Australia it is 0.05 and 0.08.

**Senator ADAMS**—Can I just come back to the reason that I am raising these issues—that is, I visited a base in New South Wales: HMAS *Albatross*. I was on an Australian Defence Force parliamentary program and, because of my interest in this area, I was asking questions at each base. At HMAS *Albatross* you have a number of navy personnel, you have quite a large number of contractors and you have a small number of civilians. The question I asked was: who is the drug and alcohol policy applicable to? Do you actually test everyone on your base or is it only Navy? I was told the Navy had no jurisdiction to test anyone else on the base.

This has gone on through November estimates, February estimates and now we are here, and you have replied to my questions and stated that under the contract the contractors have to obey occupational health and safety rulings but there is no specific drug and alcohol clause in that. Having been to a number of mining companies where I have a lot of contacts, I will just read what Woodside are saying right at the end: ‘The bottom line is Woodside accepts a responsibility to ensure all workers are safe.’ I asked this question last time and said, ‘Can you guarantee a safe workplace?’ Well, you could not. To do so means that we have to accept the responsibility to protect drug or alcohol impaired persons from putting themselves and others at risk, and this is really what I am driving at. You have three different types of people working on the establishment there and only one group have to be clear of drugs or alcohol, so the whole thing to me does not make any sense.

Then I get this journal from the Alcohol and Other Drugs Council of Australia, with an article holding the Defence Force up as a great program. It is a great program for rehabilitation and all the other things that go with it, but that is only for Defence personnel and, I notice, people in the reserves. There is nothing about your other workforce. A question I would really like to put on notice is: how many contractors and civilians do you have working in the Australian Defence Force? These people obviously do not come under any sort of policy. I know I keep on going on about it, but I really do think somewhere along the line the policies have to catch up with the times, as the chair has already said. These policies are adopted by other industries. You have contractors coming in from other industries but there is nothing there to say that these people are competent, unimpaired people working with your personnel. It is really starting to concern me.

**Mr Henderson**—I am well aware of your concern in this area. In fact, I made a staff member available. I thought we were going to try and narrow down exactly what your concerns were at a meeting that the minister’s office was trying to arrange for us with you yesterday morning. I am well aware of your concerns. We are trying to narrow down just what you want us to change. I do not want you to have the impression that this is not a matter of concern to us. There was a recent incident in which Defence staff breached an alcohol limit. They are being subjected to a code of conduct inquiry, at which the range of penalties, if it is confirmed that they did breach the regulations, would range from counselling through to the loss of their employment. So I do not want you to be left with the impression that we are not concerned about these issues.

As to whether there are a lot of contractors: we have thousands of contractors. In the 1980s there used to be 40,000 civilians in the Defence organisation. There are now about 18,000. A huge proportion of the support for the Australian Defence Force now is provided by the

private sector as a result of decisions by both this government and its predecessor government. But the basic approach has been that those private contractors operate under state and local safety provisions. I do not want to leave the impression that those provisions just apply regardless of the activity that people are undertaking, whether it is lawn mowing or much higher risk activities.

**Senator ADAMS**—I am looking at workforce safety. I will just say again that Woodside are saying that they are ensuring that all their workers are safe. They have an enormous number of contractors there. They are trying to prevent anything happening to either somebody that has a problem or someone else. I will just give you an example. My son has been working up in one of the mining companies on a drilling rig and with the shot firers. He is absolutely petrified when some of these people come back from a week of recreational leave. It takes them a week to become normal people again and he is putting his life at risk. These companies are really addressing the situation. They randomly test 25 people every day and every 40th person—whether it be you, me or any subcontractor that comes through their gate—has to be tested. When you go onto a mining company site, you have to have a safety briefing first up and you have to sign a form to say that you will be randomly tested no matter what, and you do not go on to the site unless you have. It really is about the safety of our people. I just do not see why one group of people should be subject to random testing and the others are not. They are all working together. I have a press release which I probably should not read out because I do not know that I want it on the record, but it is in the public arena. It says that there is a lack of morale in worrying about maintenance and these people are working on your aircraft and doing a lot of your technical work. It is the safety of the defence personnel at stake if something goes wrong. I do not want to go on to that because there are problems, but it really is something I would like you to look at and to address. I am going to keep coming back here and drive you all mad until something changes. I know that the minister is looking at reforms. I will certainly be putting a submission in to his reform agenda.

**Mr Roberts**—I have a couple of points. I think that you are talking about a few different things. The first one is the reason why the non-ADF people are not drug tested when the ADF is; I will not address that. I guess the people in the ADF are better qualified to talk to why they do that to their people but, from the point of view of the contractors, the first distinction I would make is, when you talk about Woodside, that analogy does not necessarily flow across to all of the contractors that work in defence. I mean it is a heavy industry and it is designated as such.

**Senator ADAMS**—I am just using it as an example of a safe workplace.

**Mr Roberts**—I know, but the distinction I am making is that my understanding in the industry is that heavy industry does go to that level because of the level of risk, because of the investment involved and because of the implications if something does go wrong, whereas in much of what the corporate services group certainly does, it is not heavy industry and it is not industry practice that the people who are working in the kitchens or are doing the grounds maintenance undergo that sort of drug testing.

**Senator ADAMS**—The people from Woodside, BHP and Rio Tinto sitting in St George's Terrace have to undergo exactly the same things.

**Mr Roberts**—That might be the case, but I am saying that that firm is in a heavy industry. I am trying to draw the distinction about when you say that everybody, every contractor in Defence, should be tested. You would have to then ask the question: what is the rationale for going down that path?

**CHAIR**—Mr Roberts, why would you not require a person working in a commercial kitchen producing 150 hot lunches to be at their optimum performance and not impaired by a substance? All we are saying is that what is happening out there as a matter of good business practice is that no contract for maintenance work or for civilians to come onto Commonwealth land—be they military bases or not—is written, signed and executed without the contractor disclosing an awareness and a protocol on the way they relate to their workers concerning drug and alcohol such that we can have confidence that those workers, those contractors, are fit for their purpose.

**Mr Roberts**—Fine. The second point I was going to make is on the responsibility for ensuring the contractors are complying. As you have said, Woodside does it with its contractors, and so we would expect our contractors to do the same. If what you are advocating is that we insist that our contractors do that testing, that is fine and I am sure we could do that.

**Senator ADAMS**—That was not what I was saying.

**Mr Roberts**—What are you proposing—that defence does the testing?

**Senator ADAMS**—What I am proposing is that they are coming onto your area and why cannot the drug policy for the navy—or any other defence personnel; it is just that I have been on naval bases—be extended to everyone that goes through their gate? Can someone tell me, as far as going on a navy base, who is in charge of the people who work as security on the gate to stop people who do not have a pass going through?

**Mr Roberts**—Security is a different issue to drug and alcohol testing. All the people who come on the base are checked and they either have a pass or, if they do not have a pass, they have to apply for one and are escorted if they are there for a short-term visit. I do not think that case is quite the same.

**Senator ADAMS**—I do, because one part of the base is controlled by navy regulations as to who can go on and who cannot. For the rest of the base there is only one lot who have to be under the alcohol and drug guidelines and the rest of them do not. Who is in charge of the base? These are the things that I am trying to get to the bottom of.

**Mr Roberts**—I accept Senator Johnston's point that in the ideal world that would be the case. I am just trying to make the point here that I am uncertain whether the Commonwealth could just declare that everybody who comes onto Commonwealth property is to be drug tested. I do not know the answer to that question. The second point is that, under our contracting, the prime contractor is responsible for the compliance, behaviour and performance of its people. If defence takes that responsibility on, then I guess the extent to which we get it right or wrong, we will have to wear that risk. I might also say that in a lot of the contracts that I am talking about that are not heavy industry, there is insufficient evidence to suggest that people are not doing the right thing.

**Senator ADAMS**—We are at cross purposes.

**Mr Henderson**—The thing that neither Mr Roberts nor I have mentioned so far is the fact that the companies we are talking about are major Australian or international companies. I am sure that if they were here they would be able to explain in some detail and would be proud of the sort of policies that they have in place. You have been referring to particular companies that operate in the Pilbara. The companies we are dealing with are not Johnny-come-lately, fly-by-night operators; they are major service providers and construction companies in Australia that have their own policies in this area. They are not the sort of enterprises that tolerate drunks and addicts on the job. You are portraying the impression that there is a serious problem here. The fact is that the roles and responsibilities of civilians providing support services to the ADF are different to those of members of the ADF. It is not only in respect of drug and alcohol testing in which the terms and conditions of employment of civilians, contractors or APS staff in defence are different to what applies in the ADF. They are an integrated workforce but there are many ways in which their employment conditions differ, and this is one of them.

**CHAIR**—But as the owner and controller of the property—

**Senator ADAMS**—That is right.

**CHAIR**—the Commonwealth is liable for people who are injured by reason of the conduct and activity of people who are so affected. All I and Senator Adams are suggesting is that when we empower people, be they licensees, subcontractors or invitees, to come onto a military base, there needs to be a threshold issue that that person is fit and not affected and their capabilities are not reduced by reason of drugs or alcohol. As a contractual term, it is fundamental in most industrial sites in Australia that contractors and subcontractors coming onto the premises sign on to ensure that the risk and liability stays with the employer of those people. At the moment, from what we understand of the situation, the risk is all with the Commonwealth.

**Senator ADAMS**—There is nothing in your answer that states that any contractor has anything specific to ensure compliance with defence OH&S requirements on drug and alcohol use. What I am asking is whether you have thought about changing the policy? I asked you this in February and you are still saying there is nothing there. Is there ever going to be a change?

**Mr Henderson**—I explained before that, in respect of some of our own staff who breached what is the toughest test you can have in respect of alcohol and the driving of large vehicles, namely—

**Senator ADAMS**—Keep going.

**CHAIR**—Please continue. Had you finished what you were saying?

**Mr Henderson**—No. I was explaining that there is a code of conduct inquiry in respect of—

**CHAIR**—Sorry. There is a code of conduct for your people for all government service—

**Senator Sandy Macdonald**—I think Mr Henderson would like you to listen.

**CHAIR**—Mr Henderson, please continue.

**Mr Henderson**—There is a presently code of conduct inquiry in respect of three APS personnel who breached the minimum standard or, in other words, had a positive alcohol content whilst in charge of a large vehicle. The consequences for those people could range from counselling through to losing their job. You are leaving me with the impression that we are doing nothing about these issues. Where these issues arise, they are addressed. What I am not quite clear about is how you want the government to change the policy. Do you want us to do random testing of civilian contractors? Is that what you are suggesting?

**Senator ADAMS**—That certainly is. That is what I started with in February—trying to get that message through. As far as the Defence Force goes with rehabilitation, penalties and the way that you deal with people with counselling, that is not the issue. The issue is: we have our defence personnel working alongside other people. One group have to be drug and alcohol tested; you have no idea what the rest of the people are doing. If you would put something in your policy, as the mining companies do, to ask all these contractors to ensure that their people coming into the workplace are not affected by alcohol or drugs so that the defence personnel are safe. That is what I am getting at.

**Mr Henderson**—All right. We will have the minister, or the parliamentary secretary, respond to your suggestion for a change of policy in respect of drug and alcohol testing for contract staff on defence estates.

**Senator ADAMS**—Thank you very much.

**Senator MARK BISHOP**—Did we just have a change of policy announced then?

**Senator ADAMS**—No, not at all, Senator Bishop.

**Senator Sandy Macdonald**—Can I—

**Senator MARK BISHOP**—I have a few issues I want to raise, then.

**Senator Sandy Macdonald**—Can I make a comment, please?

**CHAIR**—Can I go to Senator Macdonald?

**Senator Sandy Macdonald**—Thank you, Chair. There were a couple of things I just wanted to raise, it being 5.30 pm. A number of people have to leave at 5.40, which is 10 minutes away, to attend a meeting in Defence on operational matters, which is quite understandable—the Chief of Navy, the Chief of Army, the Chief of Air Force, the deputy chief of intelligence and security, the commander of joint logistics and the head of defence personnel. I apologise to the committee but that is the position, so the committee has 10 minutes it may use to direct questions to those senior Defence personnel. The other thing that I have is a response concerning the release of the Cosson inquiry material and the proposed terms of reference for the board of inquiry into the unfortunate death of Private Kovco. I had best wait, I think, until Senator Faulkner is back in the committee room, but I am in your hands, Chair.

**Senator MARK BISHOP**—Are you proposing to table the terms of reference of the board of inquiry?

**Senator Sandy Macdonald**—Senator Bishop, I may take the opportunity to read into *Hansard* what my advice is. With respect to the request to release the draft Cosson inquiry material, regulation 63 of the Defence (Inquiry) Regulations requires the approval of the minister for the release of any documentation. The minister advises that he wishes to consider this request in accordance with the usual processes. The defence department will take the necessary action as quickly as it can to enable the minister to consider this priority, but, as you are aware, the minister is going overseas. I think it is tonight—I am not quite sure. Obviously, the operational tempo is very demanding on his time.

In connection with the proposed terms of reference for the board of inquiry into the death of Private Kovco, the CDF indicated earlier today that he wanted to have the views of the president of the board of inquiry. The president of the BOI, Group Captain Warren Cook, has indicated he does not want the proposed terms of reference released at this time. I note that work is still being undertaken which may well lead to the BOI requesting changes to the proposed terms of reference. I note also that it is customary that completed terms of reference become public, obviously, as part of the board of inquiry processes.

**Senator MARK BISHOP**—Senator, if you have read from an entire document—

**Senator Sandy Macdonald**—I have not; I have adlibbed.

**Senator MARK BISHOP**—So you cannot table the document?

**Senator Sandy Macdonald**—No, I cannot table that document.

**CHAIR**—Can we move onto the next—

**Senator HOGG**—I am aware that some people are leaving and this may well need to be taken on notice, but I think it goes to Dr Gumley's area. During an inquiry that another committee of the parliament is participating in, it has been drawn to my attention that some of the contractors and subcontractors who are doing work for the Department of Defence in bringing the platform along are having delays in getting skilled workforce clearances to work on some of the projects. Some of those delays are six months and are proving to be an obstacle in achieving the requirement of the Department of Defence. Can I get some idea—Mr Carmody is coming to my assistance—of the delays that are occurring and whether Defence is aware of these delays? I know the processing is not necessarily done by the Department of Defence, so I am not laying the blame on you, but are you aware of these delays, and what steps are you taking to try to overcome the delays?

**Mr Carmody**—I presume you are referring to delays in security clearances?

**Senator HOGG**—Yes.

**Mr Carmody**—We do a lot of work in security clearances in Defence and it is quite a challenge for us. We have higher numbers of clearances to process than any other department of government. We had on our records at the end of April 156,000-plus security clearances. We completed last year more than 16,000 security clearances within the Department of Defence. The first point I make is that it is not as though we are not doing what we can.

**Senator HOGG**—No, I have never said that.

**Mr Carmody**—I realise that.

**Senator HOGG**—It is just that it has been drawn to my attention that there are significant delays in some of the contractor and subcontractor areas where those contractors and subcontractors are seeking to accelerate or keep up the tempo of the project to deliver on time to Defence and that cannot be done.

**Mr Carmody**—Within that number of clearances we have in excess of 30,000 industry clearances. That means it is contractors and personnel employed in industry who have security clearances. That is quite a significant amount. But most of the contractor related security clearances are in the negative vetting domain—they are not in the most difficult security clearances—and we have a lot of clearances to clear in that area. I must say that, in a priority sense, by and large in the negative vetting domain clearances are actioned as we receive them. There are instances where that changes in operational requirement and operational necessity, but they are actioned pretty much as we receive them. We have still quite a significant backlog.

**Senator HOGG**—What is a significant backlog? What is the turnaround time?

**Mr Carmody**—If I may give you a comparison, the negative vetting backlog in May 2006 was 3,937 initial and upgrade clearances and 3,300 re-evaluations, so that is a total of 7,200-plus clearances. That is as of May 2006. As of May 2005, going back 12 months, we had 1,800 initials and upgrades and 11,000 re-evaluations, so we are 6,000 clearances better off this year than we were last year in reducing the re-evaluation backlog. So we are starting to make progress.

**Senator HOGG**—Yes and no. Yes, in terms of those that are re-presenting; no, in terms of those that are there for the first time.

**Mr Carmody**—Correct.

**Senator HOGG**—That is the area where the problem is.

**Mr Carmody**—Correct. But, as I said, we have a lot of clearances to get through. We had a very large backlog of re-evaluations and we have requirements under the Protective Security Manual to reduce the number of re-evaluation backlogs we have. We have a waiver up until the end of the year to reduce those backlogs to zero. My task is not to be adrift in that regard and to get those re-evaluations down. By the end of 2006 my effort is to try and reduce those re-evaluations and remove them and get to the point where all of those re-evaluations are in process.

That does not help reduce the initial demand, so if I can move to the initial demand and that other part of the process that might help answer the question. Late last year we established a national coordination centre in Brisbane. We also established a national centre in South Australia so that we can look at the after care. So we have an after-care centre, managing all of our after care, and we have a coordination centre managing all of the new clearances as they come online. But I must say that we are constrained by a number of activities.

In a generic sense, ASIO does some basic clearance work for us. It takes between 14 and 16 weeks at the moment to get a response back from ASIO on the initial clearance request because they are also pressed. So, at the bottom line, at the beginning of this, aside from somebody sending in a security clearance requirement and presuming all the documentation is

correct, it frequently is not. In other words, the application would frequently say something like, ‘Yes, I am married. I also have five brothers and sisters but I do not know where any of them live.’ That means that we cannot progress the application until we go back. Presuming we get the application correct, it is still 14 to 16 weeks before we can turn around the basic amount of data.

**Senator HOGG**—All right. I am very much aware of the time and that others might have other issues to raise, but is it a problem in terms of the resources that you have at your disposal? I heard what you said about ASIO. Is there a need for an increase in the resources in your area, and is a 14- to 16-week turnaround time from ASIO acceptable? I know it is not within your purview or capability to do anything, but does this mean that the resources given to ASIO need to be increased to assist in having the skilled staff that are necessary in some of the areas that are emerging?

**Mr Carmody**—We have, at the moment, about 170 staff allocated for positive and negative vetting. I am not convinced, therefore, that we are going to add very many more to that process. I do not actually think that adding additional staff in ASIO is the answer, either; I think there is a process problem. To resolve the issue we are reviewing our clearance processes at the moment to see how we can streamline them, to see if we can find ways to tighten this process. We cannot change much in terms of demand, but we can certainly change a lot in terms of process. I think, in the first instance, it is up to us to see whether we can tighten up this process and move it forward.

**Senator HOGG**—It just seems to me that there are major projects coming on line, such as the AWDs, for example. I would imagine that, as that gathers momentum, that of itself will see a number of skilled people going into that area in a whole wide range of commitments to that project.

**Mr Carmody**—In trying to manage this element of demand, we are also starting to work with the DMO to see whether we can work with DMO on some resources from that end—to see whether we can bundle the industry security clearances in a slightly different way or DMO can assist us. We are still in discussion in that regard, but that also might help us.

**Senator HOGG**—I know Mr Lewincamp is bursting at the seams to say a couple of words, and I thank you for your comments, Mr Carmody. You are saying that these things are under review and so on, but when are you likely to have the review process put behind you and to have refined the processes internally, as well as your process relationship with ASIO, to ensure a speedier operation?

**Mr Carmody**—Before Mr Lewincamp jumps in, I will answer that question. The review process that I have under way is due to finish in September. We are trying to pick the low-hanging fruit as we go this year to see whether there are things that we can improve on the way through. Some of this started before I took over last year; hence, the National Coordination Centre was an initiative from late last year which has already been put in place this year and has significantly helped to reduce the backlog. We will continue to work that this year, but my review is due to be finished in September. I am hoping that the things that we pick up along the way, plus the practices we put in place, will really start driving the issue forward towards the end of the year.

**Senator HOGG**—The things that you bring into play will be as a result of your discussions with Dr Gumley and his organisation and ASIO?

**Mr Carmody**—It will certainly be with Dr Gumley and his organisation. It will also be with the security community generally across government to see whether there are ways that we can refine the security clearance process—whether there are elements in this process that we can reduce, whether there are ways that we can tighten it up and close down any gaps that we have. So, certainly it will be with DMO and with ASIO. In terms of the review process that I am undertaking at the moment, I have written to all of the agencies which are involved in the security clearance business and told them that we will be in touch with them when we are trying to tighten this up.

**Mr Lewincamp**—As Mr Carmody says, the policy and process issues are a matter for him to refine and to try to speed up. But, in the short term, we are discussing with the head of the Defence Security Authority about giving them DMO resources to employ staff specifically to deal with the backlog for our contractors and the workers that we need cleared. We are just waiting for advice on precisely how many dollars and whether he has the skilled staff available to employ to do that type of work. That will happen very shortly.

**Senator HOGG**—What is the extent of the feedback that you are getting from industry on the difficulties that I have outlined?

**Mr Lewincamp**—There has been a constant refrain from industry over the past five or six years or probably longer than that.

**Senator HOGG**—I accept that. I know that it has been brought up before, but it just seems to me now, as we move around, that it is getting worse.

**Mr Lewincamp**—The difficulty is the short notice we have of their clearance requirements. You cannot predict who is going to win a contract or a tender and, of course, once they have won, they then want to start work immediately and it does not fit in with the lead times that we have for the clearances. Also, because of the backlog, we cannot afford to have a whole bunch of industry people cleared just in case they win business with Defence. We are in a bit of a quandary here and we are trying to find some ways through that.

**Senator HOGG**—Thank you.

**Senator PAYNE**—With the chair's permission, I have one question I want to ask before we go back to Senator Bishop. I want to follow up on some issues which we discussed—and which have been discussed on an ongoing basis at the legal and constitutional estimates hearings—about domestic security and counter-terrorism issues. I think the person to ask this of is Dr Lough, if he is still here. The question is really about how Defence supports with science—technical and technology—the non-Defence agencies in their engagement in domestic security and counter-terrorism. The estimates hearings I chair work with the Attorney-General's department, the AFP, Customs and so on. I am interested in your engagement in that whole process.

**Dr Lough**—We have a number of engagements with the non-Defence national security community in Australia. The areas that we work in are those that we actually leverage off the Defence sunk investment and we leverage those into the national security domain. For

instance, the obvious one that we have been engaged with for a very long time is in chemical and biological warfare agent defence. We have been doing that sort of work for the best part of 25 years. Effectively, in DSTO we have the only chemical warfare agent laboratory that is able to do the full analysis on these pieces of kit. But we do other things as well. A lot of it is in the intelligence support area, which is really in information and communication technologies, and the protection of critical infrastructure—the electricity grids and the water power.

**Senator PAYNE**—Would you be working with police? Is that the engagement?

**Dr Lough**—Absolutely, we work with the AFP and the state police forces in that particular area and also in the Attorney-General's national security area, which is doing the policy for critical infrastructure protection. We also do some work under the guidance of PM&C with MANPADS protection—Man Portable Air Defence Systems. These are the shoulder-fired missiles that you see. We have been doing that for Defence for a long time. We are transitioning some of that technology into the national security space for protection in airports and things like that.

**Senator PAYNE**—How do you make your arrangements for engagement with the states? Is that done through the National Counter-Terrorism Committee or in a different way?

**Dr Lough**—It is guided by the National Counter-Terrorism Committee, but there is an organisation that is located in PM&C which is called the National S&T Unit for Counter-Terrorism—NSST—which was set up about three years ago. Its role is to coordinate the requirements for science and technology, or R&D support, to the national security agencies. It has been around now for, as I said, about three years. It has a little bit of money to put in, but it is the one that brokers the relationship between the science and technology delivery agencies and the user agencies. On top of that, we also have regular alliances, as well as strategic alliances, with the AFP, Customs and DIMIA for the supply of all those sorts of technologies.

**Senator PAYNE**—On one more area, on an international level, particularly engagement with the US and where their science and technology is taking their treatment of counter-terrorism and national security issues, how do you run that engagement through DSTO?

**Dr Lough**—We run it mostly through Defence, because the relationship between the US DoD and their Department of Homeland Security is where they get most of their activity. We tend to work through those. Having said that, we still do work directly with some of the Department of Homeland Security areas in the US. But they are, in an R&D sense, still coming up to speed in the same way that many of the agencies in Australia are coming up to speed. Since 9/11 they have figured out what technology can do for them.

**Senator PAYNE**—In terms of our science and technology engagement with the United States, is it an expensive process? What does it cost us?

**Dr Lough**—In the counter-terrorism area?

**Senator PAYNE**—Specifically.

**Dr Lough**—Not much in the counter-terrorism area, because it is hard to actually get an idea of the exact dollars. As I said, most of it is leveraged off the straight Defence

relationship, especially in things like chemical and biological warfare. But, overall, in the Defence relationship, we probably put in about \$5 million a year in terms of that relationship. We get a payback of somewhere between five to one and 20 to one, which is very good value.

**Senator MARK BISHOP**—I would like to return to the issue with the Victorian combat clothing section. I see that Dr Gumley is coming in the gate now.

**CHAIR**—Dr Gumley, is Victorian combat clothing within your bailiwick?

**Dr Gumley**—Yes, it is a DMO issue.

**Senator MARK BISHOP**—Last time we met, Dr Gumley, we had a discussion about some problems at the time in the DMO. There were allegations of some degree of corruption and some degree of improper practice. It involved three employees. My memory is that you said you had become aware of it in very early January, you regarded it as very serious and you went down to Melbourne yourself and conducted an inquiry. That ended up resulting in two inquiries. There were associated issues with staff in DMO being part of bodies that awarded contracts or considered tenders and having interests in the companies that received, eventually, the tenders. You were going to do an inquiry. If my memory of it is right, could you update us on that situation.

**Dr Gumley**—The organisation actually started the inquiry into the activities of two individuals before I went down there on 9 January. There was a series of administrative proceedings. One of the individuals has since left the APS. The other individual is under administrative review by the ADF.

**Senator MARK BISHOP**—Is it two or three individuals who were to be moved?

**Mr Colin Sharp**—There was one APS individual and an ADF individual—the two who were directly under investigation. There were questions about a third, the timing of the resignation and involvement in a tender. That may be the third one.

**Senator MARK BISHOP**—That is right; resignation and tendering involvement. Do you mind going through what has happened, if anything, with each of those three people?

**Brig. Welch**—Adverse findings were made against two individuals, one APS and one ADF, in relation to the combat fleece jacket investigation. The Australian Public Service employee was subject to an APS code of conduct investigation and that person's employment was terminated.

**Senator MARK BISHOP**—He was dismissed?

**Brig. Welch**—Dismissed. The ADF member who was involved was subject to ADF administrative action and was presented with a notice to show cause for censure. The person responded to that and the delegate decided that there was no case for that person to answer so that action has ceased. Following on from that, there were further inquiries into individuals who were supervising that activity, so going one level up from those two—that is, an ADF member. Adverse findings have been made against a member. Quite recently, a notice to show cause for censure was presented to that ADF officer. The due date for his response has not yet arrived.

**Senator MARK BISHOP**—Can you tell us what a notice to show cause for censure is and how serious it is?

**Brig. Welch**—I do not regard myself as an expert on the intricacies of that, so I will give you an explanation as best I can. Where an adverse administrative action is proposed against an ADF member, the process to ensure natural justice is that the person is presented with a notice to show cause in which the evidence against the person is laid out and the intended proposed sanction is outlined. So for both of the two individuals whom we are talking about here, the sanction at the beginning that was regarded as appropriate, were the allegations found to be proven, was a censure. So the evidence is presented, they are made aware of the sanction and they respond. It is then considered. That censure, if one were to be issued to an ADF member, goes onto their personnel file and would be taken into account by personnel managers in their future employment.

**Senator MARK BISHOP**—So it is a serious matter?

**Brig. Welch**—It is a serious matter.

**Senator MARK BISHOP**—The ADF person was given notice to show cause and the delegate determined that there was no case to answer. ‘No case to answer’ in the legal world is a very strong statement. Does it have the same meaning in this set of proceedings? ‘No case to answer’ in the legal world means what it says: there is just no case at all. What does it mean here?

**Brig. Welch**—Perhaps you will allow me to amplify that. I am not reaching for a precise legal definition. What that person found is that the allegations were not proven—substantiated—and that there would be no progression in that action towards the issuing of a censure.

**Senator MARK BISHOP**—‘Allegations not proven’ is a different thing. Is that what the finding was?

**Brig. Welch**—Yes, it was.

**Senator MARK BISHOP**—I understand now. With respect to the APS employee, an inquiry was conducted; it was thought that there were sufficient grounds, he was dismissed and he left the APS. I understand that he pursued unfair dismissal with the Industrial Relations Commission in Victoria?

**Brig. Welch**—That is correct.

**Dr Gumley**—That is correct.

**Senator MARK BISHOP**—I am not interested in the man’s name, but what was the outcome?

**Dr Gumley**—The individual and the department settled the matter before it went to a full hearing.

**Senator MARK BISHOP**—Did they?

**Dr Gumley**—The gentleman no longer works in the APS.

**Senator MARK BISHOP**—Was his application for reinstatement in his position or for compensation?

**Dr Gumley**—I believe it was primarily about compensation.

**Senator MARK BISHOP**—Was he alleging denial of due process or natural justice?

**Dr Gumley**—I am not aware of the exact grounds of it. It was conducted by the union that represented him and a settlement was reached.

**Senator MARK BISHOP**—But you are still of the view that your grounds for dismissal were sufficient to warrant that heavy action?

**Dr Gumley**—Absolutely, otherwise we would not have taken that approach.

**Senator MARK BISHOP**—What was his breach of APS practice or rules?

**Dr Gumley**—I do not know the exact language and one needs to be very careful here because you have to be able to express it very carefully. It would be dangerous to put on the record anything other than the exact language.

**Senator MARK BISHOP**—All right, then. In terms of the unfair dismissal application, was it more about unfair process in the way he was terminated or the actual reasons for his dismissal?

**Dr Gumley**—I think it was more about the reasons. But inevitably when these cases get put forward it seems to be standard practice that they bundle up the reasons and the process and intertwine them so that they have multiple reasons for putting forward a case.

**CHAIR**—An ambit claim.

**Senator MARK BISHOP**—That might be right. It was an ambit claim, but the parties negotiated a settlement, I understand, in the Industrial Relations Commission.

**Dr Gumley**—Yes, it was a modest settlement.

**Senator MARK BISHOP**—Yes, it was settled. In respect of the ADF employee, for the first person the notice to show cause was dismissed; at supervisor level, it is still proceeding. Is there any further investigation at supervisor level on the APS side?

**Dr Gumley**—No, at this stage we have reviewed the individuals involved.

**Senator MARK BISHOP**—Reviewed the?

**Dr Gumley**—We have looked at the APS member who has been dismissed, we have had a look at the more junior member of the ADF and now there is the process with a more senior member of the ADF.

**Senator MARK BISHOP**—Will that be the end of it?

**Mr Colin Sharp**—I would be reluctant to say that this is the end of it. I do not anticipate, though, at this stage—there is nothing in the pipeline, if I could say—that we have got proceedings against anyone. But when you are reviewing, restructuring and looking at processes, things come up and we will proceed with them as they come up.

**Senator MARK BISHOP**—Dr Gumley, in your introduction you said that there was a question about the third resignation and its relationship with tender involvement. Where is it at with the third person?

**Dr Gumley**—That gentleman had left the APS and you might recall that he went to work with a contractor probably a bit too quickly after he left the APS. We went through a lot of this yesterday, of course in a different sort of format, with a more junior employee. Once they leave the APS they are no longer subject to a code of conduct so, therefore, the perception of a conflict has no basis in law and really you have got to prove almost a criminal level of misuse of information—all the work we went through yesterday—and there was never the evidence there against that person.

**Senator MARK BISHOP**—At that level?

**Dr Gumley**—At that level. In fact, Senator, I think it is important that we assume the person is innocent, because nothing has been shown to be otherwise. We would not want it on the record that there is any taint there.

**Senator MARK BISHOP**—In terms of that third person?

**Dr Gumley**—Yes.

**Senator MARK BISHOP**—That is fine. Could I turn now to the Joint Operations Command Headquarters at Bungendore. That concludes my discussion with the DMO, Dr Gumley. Thank you for your assistance, and I thank your officers.

**CHAIR**—Thank you very much.

**Senator MARK BISHOP**—Welcome, Mr Beck. In the minister's press statement that went out yesterday or the day before, with respect to the announcement of the JHQ over there at Bungendore, it said:

The selection of Praeco Pty Ltd as the preferred tenderer is conditional on the consortium reaching agreement with Defence on a number of matters during contract negotiations. This is not unusual for a project of the scope and scale of the Headquarters project.

The selection of Praeco Pty Ltd as the preferred tenderer is conditional on the consortium reaching agreement with Defence on a number of matters during contract negotiations. What are the conditions that need to be met between Defence and Praeco?

**Mr Beck**—This is not an uncommon thing. We are about to start contract negotiation. I might just pass to Air Commodore Brian Plenty, who has the details of those.

**Air Cdre Plenty**—As just mentioned, contract negotiations, when entering into them, are generally conditional on a number of matters being agreed between the two parties before signing off. A lot of these matters are procedural and drafting matters within the project documentation. There is nothing at the moment that will stop the project going ahead or prevent agreement on the matters that are to be negotiated. It is just sorting out those matters between the parties. You do not have a chance to do that as part of the tender process. You give them project documentation that has the Commonwealth's position within it. The tenderers come back with a position that they think is more appropriate for their circumstances; you do not have a chance to engage with them as part of the tender process before they are selected as the preferred tenderer, so it is done during contract negotiation.

**Senator MARK BISHOP**—So the key issues of consequence or substance involved in the construction of the headquarters out there, they are all agreed? We are just talking about the drafting?

**Air Cdre Plenty**—No, they are not all agreed in that sense. If I can also say, it is not necessarily just the construction, it is the construction and operations for the 30-year contract term.

**Senator MARK BISHOP**—I will come to the 30-year term later on. What are those conditions that need to be met between you and Praeco before we have got a firm contract as opposed to a conditional contract?

**Air Cdre Plenty**—I cannot go into the details here, because we will take them through to negotiations.

**Senator MARK BISHOP**—No, I am not interested in the detail, I am just interested in the headings.

**Air Cdre Plenty**—They range from matters to do with where liability will fall, approvals and through to certain sets of abatements that will apply if the level of service that is to be provided during the operations period is, for some reason, not provided.

**Senator MARK BISHOP**—Anything else major?

**Air Cdre Plenty**—No.

**Senator MARK BISHOP**—All right, so it is liability, approvals and levels of service?

**Air Cdre Plenty**—Yes.

**Senator MARK BISHOP**—Will those contract negotiations that have to be conducted impact in any way on the time frame for the construction and completion of the new joint headquarters?

**Air Cdre Plenty**—No, they will not. They are built into that time frame.

**Senator MARK BISHOP**—All right. What is the new time frame for construction to commence and be completed?

**Air Cdre Plenty**—We see the first earthworks starting to be undertaken in the September-October period of this year and being completed in mid-July of 2008. That is when the facility is complete and our command and control systems people will be able to get into the facility and install the command and control systems.

**Senator MARK BISHOP**—After July 2008?

**Air Cdre Plenty**—Yes. And then the entire facility complete by November 2008 for Defence staff to start moving into.

**Senator MARK BISHOP**—So the command and control, you think, will take only four or five months to install?

**Air Cdre Plenty**—That is correct, four months.

**Senator MARK BISHOP**—What type of building is Praeco going to build?

**Air Cdre Plenty**—If we talk not just of ‘building’ but of a facility—because there is a range of buildings there—there is a headquarters building, and it will be no more than three stories high. It will house the 750 staff. We have, at the moment, about a 10 per cent concept design. After contract signature we move into very detailed design. That is a period that will take about six months, where we move through the greater detail of what is within that facility. There is also a range of ancillary buildings: messing, support buildings for the contractor, a fitness centre and other buildings to support engineering services that will be provided on the site.

**Senator MARK BISHOP**—What is the financial cost of the construction?

**Air Cdre Plenty**—That, at the moment, is part of the negotiations. So if I can leave that until the next Senate estimates hearing—

**Senator MARK BISHOP**—All right. Without in any way committing yourself, are we around the \$300 million mark for the whole project, or further on?

**Air Cdre Plenty**—We are around the \$300 million mark for the entire project. That is the capital cost of the project. That is in 2003-04 dollars, as approved by government at that time.

**Senator MARK BISHOP**—Yes. So that includes the command and control as well.

**Air Cdre Plenty**—It does.

**Senator MARK BISHOP**—So around \$300 million in 2004 dollars, all up.

**Air Cdre Plenty**—That is right, capital cost.

**Senator MARK BISHOP**—Does this contract with Praeco involve any ancillary costs such as road upgrades, road construction on the site, those sorts of things?

**Air Cdre Plenty**—It includes the intersection on the Kings Highway, to Austroads standards and agreed by—because it is in the ACT section of the Kings Highway—ACT authorities. It includes all the road and infrastructure leading onto and on the site itself.

**Senator MARK BISHOP**—All the road on the site?

**Air Cdre Plenty**—Yes, from the Kings Highway intersection, including that intersection, which takes up some 400 to 500 metres of the Kings Highway in space, through to all the roads leading onto the site itself.

**Senator MARK BISHOP**—I take it that those negotiations, if any, with the shire are not part of this exercise at all?

**Air Cdre Plenty**—That is correct.

**Senator MARK BISHOP**—In the media release from the minister, he also stated:

Praeco Pty Ltd will be required to build, operate and maintain the new headquarters facility for the 30-year contract term.

What is Praeco’s maintenance role?

**Air Cdre Plenty**—Essentially any building maintenance. You would have staff on hand to be able to fix light globes through to water breaks—any sort of ongoing maintenance that might occur in any facility.

**Senator MARK BISHOP**—Or wear and tear?

**Air Cdre Plenty**—Indeed.

**Senator MARK BISHOP**—What is meant by the term ‘operate’?

**Air Cdre Plenty**—The ‘operate’ is the period from when the facility is finished and Defence staff move in. If I use a very broad date: November 2008 through to the end of the term—which really depends on the exact date of contract signature—in the year 2036. In ‘operate’ there, they have to operate the facility; they have to provide the services, and that ranges from admin services, to waste services, to access control services, to ground maintenance, to catering, and through to messing staff. All those are services and a range of others. That is in the term of ‘operate’.

**Senator MARK BISHOP**—Are they entitled in the contract to subcontract that operation work out to a subcontractor?

**Air Cdre Plenty**—Yes, and they have. They have Spotless as their subcontractor for most of those services. They also have some specialist subcontractors who provide some of those other services.

**Senator MARK BISHOP**—They will be subbing out all of that operational work?

**Air Cdre Plenty**—Yes, they will.

**Senator MARK BISHOP**—That is a cost they have to pay pursuant to the contract?

**Air Cdre Plenty**—Yes.

**Senator MARK BISHOP**—The minister announced in an earlier media release on 7 April that he will shortly call on specialist IT companies to register interest in C4I systems—

**Air Cdre Plenty**—It is C4I: command, control, communications, computing and intelligence systems.

**Senator MARK BISHOP**—Is that timetable on track or what is the timetable?

**Air Cdre Plenty**—The team have just finished the assessment of the responses to that invitation to register interest. From that, we will select three to five companies to go out with the request for tender. That will be issued in August of this year. It will close in October. We will do the assessment and, in November, have a contract signed with an entity called the prime system integrator. That entity will then be responsible for designing and installing what we are calling the active command and control systems, or C4I systems, into the facility. That entity will come and do that work in the facility after July 2008 when the facility itself is complete.

**Senator MARK BISHOP**—The PSI will have essentially from November of this year until the early part of 2008 to have the CMC fully designed and ready to go in July?

**Air Cdre Plenty**—That is correct.

**Senator MARK BISHOP**—You have already signed a contract with the PSI for \$7 million, have you not?

**Air Cdre Plenty**—No. That smaller contract was for a project manager to assist us in writing all of the documentation to tender for the PSI.

**Senator MARK BISHOP**—What is the estimated cost of this component of the JHQ?

**Air Cdre Plenty**—The C4I?

**Senator MARK BISHOP**—Yes.

**Air Cdre Plenty**—Having not gone to tender, I do not want to give a figure, because someone will tender to it. But it is in the range of around \$55 million to \$65 million.

**CHAIR**—But we are happy to take less.

**Air Cdre Plenty**—Indeed we are.

**Senator MARK BISHOP**—In the PBS at page 252, against the entry for the DMO it shows savings of \$183 million attributed to this project. Can you just explain to me why expensing out \$300 million, plus \$50 million to \$60 million, results in savings of \$183 million? Is that related to the downsizing of the project some years ago?

**Mr Henderson**—No. Mr Veitch may well explain that, but it is related to the fact that this is going to be a private financing arrangement where the actual payments that the Commonwealth will make in due course are a lease payment and not capital cost up front.

**Senator MARK BISHOP**—Yes.

**Mr Veitch**—When we originally set money aside for this project some years ago, we set the money aside on the basis that it would be a capital construction and that we would build the facility ourselves. When the government decided to move to a private financing arrangement, what we do under those arrangements is to return the capital money to the budget; in return the government provided us with a lease stream that will stretch over the 30-year period of it. What you will see in the budget papers is the reduction in both the capital area, which is shown against DMO, and also against the capital facilities area that is shown in the capital facilities area. There is a reduction in those areas and we have got some money tucked away in the budget for the lease but, because of the commercial-in-confidence nature of the lease, we did not want to disclose that number while the tendering process was going on.

**Senator MARK BISHOP**—Is that why you had ‘NFP’ in the budget papers.

**Mr Veitch**—In the budget papers, yes.

**Senator MARK BISHOP**—I wondered why. In future years you would be disclosing the lease payments?

**Mr Veitch**—Yes.

**Senator MARK BISHOP**—I presume it would be a line item in the PBS?

**Mr Veitch**—It will be buried in the leases part of the thing but at the appropriate time we would be happy to make those numbers available. All I can say at this stage is that I can confirm that there is money in the budget and the forward estimates to cover both the capital and the lease payments—the operating payments—that are consistent with the sorts of numbers that Air Commodore Plenty just mentioned a while ago.

**Senator MARK BISHOP**—You will be paying—

**Mr Veitch**—We will start paying a lease stream from about 2008-09 onwards.

**Senator MARK BISHOP**—The payments that you make to the project manager to prepare the tender specs and the PSI: do you regard them as capital payments?

**Mr Henderson**—No. They will be operating expenses. It is just equivalent. Consider the choice of buying a car for \$40,000 capital up front, or going and leasing it. We will not make any lease payments until we get the key in the door.

**Senator MARK BISHOP**—Then would you propose to have a separate line item that discloses the annual lease payment for the building in the future, or will that be part of another group of costs?

**Mr Veitch**—It will be part of the lease's line generally in the budget, which is a supplies expense but, at the appropriate time and given the interest of the committee, I think we would be prepared to show that or at least disclose that to you at the appropriate estimates hearing following the thing being tied down.

**Senator MARK BISHOP**—Explain to me why the government, in a period where there is such surplus capital around, has made a call to go into a situation where the private operator provides the capital and the government pays a fee. It is called a lease payment and there is a premium involved, of course, over the 30 year period. Why has that been determined to be a more preferable option as opposed to just taking capital out of the budget?

**Mr Henderson**—The benchmark to go the private financing route was in fact what we would call the traditional approach, which would be to let a contract to a construction company to build the building. We would then take possession of the building and appoint garrison support contractors to maintain that property. Some of the advantages of going the private financing route in this case would be, for starters, there is an incentive for them to construct this on time—or even ahead of time—because, as we mentioned, they are not going to get any payments until we get the key in the door.

The second factor is that, even though when we are managing our own contracting people to construct facilities, we try to have them working with our maintenance contractors to ensure that the building is designed in a manner in which it is easy to maintain. But where you have got the same company, or a consortium of companies, they will most certainly make sure that it is designed in a way that, through the life of the building, it is easier to maintain; it is easy to ensure that the air conditioning is kept up to scratch, for example.

**Senator MARK BISHOP**—So that it saves them money.

**Mr Henderson**—There are those additional attractions. Air Commodore Plenty might have some additional factors to bring to bear, but they are a couple of practical examples. If the Corporate Services and Infrastructure Group are managing a contract to construct a building that is late, all we can do is try to encourage them. But, if it is late, the service chiefs are just grinding their teeth waiting to get access to that property. In this case, they have a very significant financial incentive to have it completed on time because no payment is made until it is available for our use.

**CHAIR**—Thank you. Do you have anything to add to that?

**Air Cdre Plenty**—In the assessment of the tenders under the Commonwealth private financing guidelines, we are required to develop what is termed 'a public sector comparator'

or, as we have termed it—to be a little different from some of the other public sector comparators that are out there—a project cost benchmark. As Mr Henderson has just mentioned, that contains the costs of a direct procurement through the 30 years. It includes the build part of it, the normal contracting for the 2½- or three-year time, and then the delivery of all the services as if we were doing it under garrison support and maintenance. We disclosed what we call the raw cost of those to the tenderer. The tenderer then had a view about how much it might cost so that they could look at it and make sure with benchmarking their own costs. We then assessed their tendered bids against that benchmark. They had to do better than the benchmark—so, in essence, better than the Commonwealth could deliver it over those 30 years.

**Senator MARK BISHOP**—When you say ‘better than the Commonwealth could deliver it over those 30 years’, do you mean the Commonwealth build, own and operate its own facility?

**Air Cdre Plenty**—That is right.

**Senator MARK BISHOP**—That is the benchmark?

**Air Cdre Plenty**—That is the benchmark, yes. The tenderers had to achieve better than that for value for money, and the tenderers did.

**Senator MARK BISHOP**—Have you used this system before?

**Air Cdre Plenty**—No. This is the first Commonwealth project where that system has been used. The same concept has been used on a number of New South Wales, Victorian and, very recently, the Brisbane City Council tunnel project.

**Mr Henderson**—We do have out for tender some other public-private partnership, or private financing—whatever jargon you want to use—in respect of living-in accommodation.

**Senator MARK BISHOP**—Defence has other proposals?

**Mr Henderson**—We are evaluating tenders now for accommodation at Holsworthy, Amberley and Enoggera. They are bases of about 1,300 beds.

**CHAIR**—But the pre-condition to that is that the tenders will beat the benchmark?

**Mr Henderson**—Yes.

**Mr Beck**—That is correct. That project has some 500 rooms at Holsworthy.

**Senator MARK BISHOP**—I am sorry, but we only have a few minutes. As interesting as that might be, I might return to that at another time.

**Mr Henderson**—If it goes wrong? It is going very well.

**Senator MARK BISHOP**—Do you want to come to opposition?

**Mr Henderson**—It is looking good at the moment, so we probably will not discuss it.

**Senator MARK BISHOP**—A factor out of that conversation is the cost over 30 years in terms of the comparator and going with this private financing initiative, but it was only one of a number of factors; or was the only factor that it was cheaper to do it that way?

**Air Cdre Plenty**—No, it was the significant factor.

**Senator MARK BISHOP**—It was the significant factor?

**Air Cdre Plenty**—Yes, it was. There are some other value-for-money areas that we look at; for example, how long it will take to get into and clear negotiations with a tenderer. If a tenderer has provided documentation that is very clear and precise on the matters that are certain to them, you would at least have a good understanding of how quickly you could move through negotiations. If a tenderer provided documents back that were not as clear, you might think it might take six weeks, eight weeks or 10 weeks to get into the contract. Those sorts of things add to value for money. The extent of the design and how much the design meets the output specifications is another matter in your consideration of value for money.

**Senator MARK BISHOP**—The most significant factor in government decision making was that this particular method of financing provided a cheaper alternative over a 30-year period than the public sector comparator?

**Air Cdre Plenty**—That is correct.

**Senator MARK BISHOP**—Have we made a decision about what we are going to do with the three operation command centres for each of the services as yet, once they vacate?

**Air Cdre Plenty**—The three operation command centres, in the sense that you are describing, are not vacating directly. In fact, joint operations command at the moment is headquartered in a building in Sydney. Those staff in their entirety will move to the new headquarter. There is some maritime staff in maritime headquarters, which is a separate facility.

**Senator MARK BISHOP**—How many people in joint command headquarters in Sydney will have to relocate to Canberra?

**Air Cdre Plenty**—The entirety of the staff. I am not sure of the exact number. It is between 100- to 120-odd staff, but we can confirm the numbers for you.

**Senator MARK BISHOP**—That is all right. Will all the staff from the three separate service headquarters—I am advised that two are located in Sydney and the third is in the Blue Mountains—also have to relocate to Canberra?

**Air Cdre Plenty**—No, because they do a range of other tasks as well. Some of the operations staff from those headquarters will move to this new facility, but those headquarters also carry a range of other functions across supporting areas and staff will remain in those locations to carry out those functions.

**Senator MARK BISHOP**—Each of those separate command centres will continue to be used by the respective services?

**Air Cdre Plenty**—Although they will not be a command centre directly. The joint operations headquarter will be the ADF's operational level command centre—one command centre only. Those headquarters will remain in a headquarter function but not in a command centre function of a headquarter.

**Senator MARK BISHOP**—The existing command centre function for each of the services in New South Wales will be transferred to Bungendore?

**Air Cdre Plenty**—That is correct, for those components of the services—maritime, air, land and special operations.

**Senator MARK BISHOP**—Where is the Chief of Army generally located?

**Air Cdre Plenty**—The Chief of Army is here in Canberra.

**Senator MARK BISHOP**—Yes.

**Air Cdre Plenty**—You are talking, I think, about the Land Commander, General Kelly.

**Senator MARK BISHOP**—Who is the senior officer in charge?

**Air Cdre Plenty**—General Kelly. He and his staff are located at the moment in Victoria Barracks at Paddington in Sydney.

**Senator MARK BISHOP**—Can you take on notice to provide us with the details of the function, position and numbers of the people from the three command centres in Sydney and the Blue Mountains who will be required to relocate to Bungendore? Can you also advise us of the functions, positions and numbers of those who will remain in the existing command centres in those three sites?

**Air Cdre Plenty**—Yes, we can. I will add a caveat to that, if I can, in the immediacy of the response. There was discussion earlier today about the implementation team for the command and control review, resulting out of the Wilson review.

**Senator MARK BISHOP**—Yes.

**Air Cdre Plenty**—As that is being refined, they are determining in their workings the very final numbers, which will take most of this year. So any response we give in the shorter term will certainly have a caveat that this is subject to change at the margins.

**Senator MARK BISHOP**—What area of floor space will be available for the Commonwealth to use in the facility?

**Air Cdre Plenty**—That will be decided in the final detailed design. The gross floor area is around 27,000 square metres, but again that is to be refined when we get into the detailed design process.

**Senator MARK BISHOP**—Can you give us an idea of the cost benefit of the PPP compared with the straight-out build?

**Air Cdre Plenty**—I could, after negotiations are complete.

**Senator MARK BISHOP**—Can you take that on notice and provide us with the total cost over the 30-year period to build, operate, own and maintain to be paid for by the Commonwealth, the annual payments that will be made to the parties and the alternate public sector comparator cost, when it is appropriate for those figures to be released?

**Air Cdre Plenty**—Yes.

**Mr Veitch**—Could I suggest that we provide that information at follow-up estimates some time rather than taking it as a question on notice as part of this hearing, because we would not have that process complete in the next month or so?

**Senator MARK BISHOP**—All right.

**Mr Veitch**—Probably the next time we sit for estimates we could provide that sort of detail.

**Senator HOGG**—There is a difficulty with that. It would be helpful if we had that information before the next estimates rather than have to go to them without it. Can we put it on notice with the understanding that, when the information becomes available, you will provide it to us?

**Mr Veitch**—Yes.

**Senator HOGG**—We would accept that that would be before the next estimates.

**Mr Veitch**—Yes.

**Senator MARK BISHOP**—That is fine. I am quite happy with that. I would refer briefly to additional estimates question W2. The answer to H(iv) and (i) indicates that Defence has undertaken to pay unsuccessful tenderers' costs in the current process, given that tenders were re-issued for a smaller project. Firstly, what is the estimated cost of that contribution; and, secondly, will Baulderstone also be eligible, given that it withdrew after spending, I am advised, some several millions of dollars only to see the project re-tendered?

**Air Cdre Plenty**—The tenderers entered into the RFT process on the basis that all costs were at their risk. That is standard for entering into a tender process.

**Senator MARK BISHOP**—For both stages?

**Air Cdre Plenty**—I will pass through that one. When we downsized the headquarter and re-issued the RFT, we made an offer to the tenderers that we would contribute up to one half of \$1 million to their tender costs for that segment only, not for the initial RFT process.

**Senator MARK BISHOP**—For the new sector.

**Air Cdre Plenty**—That was only for those tenderers who had submitted a tender. There were only two tenderers who had submitted a tender at that time, and Baulderstone was not one of them.

**Senator MARK BISHOP**—Right.

**Air Cdre Plenty**—So Baulderstone will not be entitled to put in a claim for that one-half of \$1 million.

**Senator MARK BISHOP**—Right.

**Air Cdre Plenty**—The unsuccessful tenderer out of this process will be entitled to do so after we have reached financial close, the contracts have been signed and we are in that part of the process.

**Senator MARK BISHOP**—The unsuccessful tenderer will be able to make a claim of up to half a million dollars?

**Air Cdre Plenty**—That is correct.

**Mr Beck**—Subject to a number of conditions.

**Senator MARK BISHOP**—That will be subject to negotiation. Baulderstone is not able to make any claim at all on Defence?

**Air Cdre Plenty**—That is correct.

**CHAIR**—I want to go to dinner. How are we travelling? Can the rest be put on notice?

**Senator MARK BISHOP**—Yes, they can go on notice.

**CHAIR**—Thank you very much, Senator. Mr Henderson and all Defence organisation personnel present, thank you for the length of time and the manner in which you have participated in these estimates. I thank you very much. Please extend my thanks to the chiefs.

**Mr Henderson**—I certainly shall.

**Senator MARK BISHOP**—Just before you finish, Chair, I would also like to thank both the Secretary of the Department and the Chief of the Defence Force in their absence—

**CHAIR**—And the Minister.

**Senator MARK BISHOP**—for their patience and assistance over the last two days. It has been somewhat trying at times.

**Mr Henderson**—I will pass those sentiments on, except perhaps for the latter bit.

**CHAIR**—Before I close, could senators have their questions on notice in by tomorrow?

**Senator MARK BISHOP**—Monday night.

**CHAIR**—Yes, Monday night. We stand adjourned until 7.30 pm this evening, at which time we will go to Defence Housing.

#### **Proceedings suspended from 6.33 pm to 7.31 pm**

##### **Defence Housing Authority**

**CHAIR**—We now move to consideration of the proposed budget expenditure for the Defence Housing Authority, and I will include the Department of Veterans' Affairs in that. I welcome from Defence Housing Mr Richard Bear, the General Manager, and John Kitney, the Chief Finance Officer. I welcome also Mr Mark Sullivan and officers of the Department of Veterans' Affairs.

The committee has before it the particulars of proposed budget expenditure for the year ending 30 June 2007 documents A and B, and the portfolio budget statements for the Department of Veterans' Affairs. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee will begin with the portfolio overview and then consider the outcomes. When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions. The questions will be forwarded to the department for answer.

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 Senate as a contempt. The giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of departments and agencies which are seeking funds in the estimates are relevant questions for the purposes of estimates. The Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. An officer of a department or of the Commonwealth or of a state shall not be asked to give opinions on matters of policy. He or she 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 how and when 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 which is claimed. Any claim that it would be contrary to public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis for the claim. When officers are first called upon to answer a question, they should state clearly their full name and the capacity in which they appear and speak clearly into the microphones. The committee will be pleased if everyone would turn off their mobile phones. Does the parliamentary secretary to the Minister for Defence have an opening statement with respect to the Defence Housing Authority?

**Senator Sandy Macdonald**—No.

**CHAIR**—We will go straight into this. I thank you, Mr Bear and Mr Kitney, for being interposed. I think you will appreciate that you will not be here until 11 o'clock. Senator Fierravanti-Wells has some questions for you.

**Senator FIERRAVANTI-WELLS**—Thank you very much, gentlemen, for appearing today. I wish to take you to your overview at page 301, where you state that over 18,000 ADF families are being housed by the authority in service residences or through rental allowance arrangements. I note that about 2,000 are located on defence bases. Can you give me a breakdown of where those 18,000 are?

**Mr Bear**—The 18,000 are spread right across the country. The largest majority are in the Sydney metropolitan area, followed by places like Darwin and Townsville. It might be best if I could give it to you by state or—

**Senator FIERRAVANTI-WELLS**—Can you give it to me by state and take on notice the breakdown of where they actually are.

**Mr Bear**—There are 1,267 in the ACT; 5,913 in New South Wales; 22,215 in the Northern Territory; 3,822 in Queensland; 655 in South Australia; 61 in Tasmania; 1,991 in Victoria; and 900 in Western Australia

**Senator FIERRAVANTI-WELLS**—Could you read the New South Wales figure again?

**Mr Bear**—It is 5,913. Those are stock numbers managed.

**Senator FIERRAVANTI-WELLS**—I notice that in the additional estimates budget papers last time there were the same figures quoted—18,000 and 2,000 located on defence bases. Does that mean that there has been marginal movement only?

**Mr Bear**—The changes from year to year are marginal.

**Senator FIERRAVANTI-WELLS**—Could you give me some information about trends in demand for Defence housing? Do you monitor those trends? Is it increasing or decreasing?

**Mr Bear**—We monitor the trends of housing in the community. Our efforts are around providing defence families with community-standard housing. We are continually monitoring what is going on in the community. We are also frequently surveying defence families to see what they want. As you would imagine, defence families have some differences to what may be in the general community. For example, defence families tell us they like additional storage in a house to what you get in a normal project home. They like security, so we provide security. Basically, we are providing a community-standard modern family home.

**Senator FIERRAVANTI-WELLS**—Obviously poor quality housing affects morale especially for personnel, so in terms of retention—

**Mr Bear**—We are continually monitoring the members' satisfaction with their housing so that we can make sure we are meeting their needs. As a general rule, in excess of 85 per cent of families are very satisfied with the housing being provided. We work through a program. As houses are getting older, we replace them with new houses. Defence has advised us—that is really a matter for Defence—that of the issues for members leaving the services, the state of housing or the quality of housing is very low down on the list, which was not the case many years ago.

**Senator FIERRAVANTI-WELLS**—In fact, your budget papers make the point that when the authority was established poor quality housing was very much an issue, but it certainly does not seem to be an issue now.

**Mr Bear**—Our efforts are around making sure that it is community-standard housing.

**Senator FIERRAVANTI-WELLS**—I now wish to focus on the Sydney metropolitan area. Your budget document repeats the comment that was made in the previous papers about the slowness in the residential property investment market in Sydney, Canberra and other places, and that that has put pressure on you to meet your capital program. I note that 1,000 new properties are to be acquired or constructed in 2006-07 at a cost of \$470 million. Can you tell me where those properties are to be acquired or constructed?

**Mr Bear**—They are across the country.

**Senator FIERRAVANTI-WELLS**—We might now focus on the Sydney metropolitan area, given that that is an area that I have a particular interest in.

**Mr Bear**—The defence requirement for housing in the Sydney area—and that takes in Liverpool, Richmond, Sydney and Glenbrook—is for 4,200 houses. We will be endeavouring to meet that requirement with new housing this year in those combined areas. We will be looking to construct or directly acquire about 130, and we will be looking to lease about 230, bringing us up to our needs for next year.

**Senator FIERRAVANTI-WELLS**—Is the demand in the Sydney metropolitan area directly correlated to the number of postings in the Sydney metropolitan area or is the demand reflective of a combination of personnel needing accommodation in Sydney or personnel who had a posting in Sydney but are moving on to another posting and leaving their families in Sydney?

**Mr Bear**—All of that. The defence department comes to us at the beginning of each year and says that it believes the housing requirement for the coming year and the following three years is in a certain range. They then tell us what that range is and we begin to provision within those numbers. Obviously, it is made up of new units coming to an area or families being posted somewhere else and other families moving into the area. There is a continual turnover. We also have leases expiring from time to time. They have to be replaced.

**Senator FIERRAVANTI-WELLS**—You mentioned that a lot of the defence postings in Sydney, particularly the Navy postings, are obviously close to and in the city, and the travel requirements getting backwards and forwards. Most of the housing for personnel, particularly the naval personnel, would be in the outer Western suburbs?

**Mr Bear**—Yes and no. I am afraid I do not have the numbers by service; we have them by defence family. When we get notice of a family moving to Sydney, as we do in other areas, we provide them with a pack of material about what they are going to expect, what sort of house are they going to have to expect to live in, where that house might be, and then a little bit further down the track we have specialists who begin to talk to them to understand what their specific needs might be. Do they have a pet, do they have children with special schooling requirements, and do they have other extended members of the family who may need to be accommodated? Then we try to match their need with the housing that is available.

**Senator FIERRAVANTI-WELLS**—All over Sydney?

**Mr Bear**—Yes, all over Sydney.

**Senator FIERRAVANTI-WELLS**—Given the distances between different places in Sydney, when you are looking at your housing options do you confine it just to those areas that you mentioned, or will you be looking at other options, say, to the north of Sydney and to the south of Sydney?

**Mr Bear**—It is a Defence requirement that a member be housed either within a 30 kilometre radius of where they are posted or within 90 minutes' travelling time. We have to work within that scale as a requirement.

**Senator FIERRAVANTI-WELLS**—Given the travelling time to, say, places in the northern Illawarra and the quality of life difference to, say, northern Illawarra as opposed to outer Western Sydney, it would not take that long for people to travel that distance. Does that come into your equation in terms of looking at driving your \$470 million further?

**Mr Bear**—As I say, we sit down with the families. I might add that we do have 15-odd houses in the Illawarra to service the Navy Hydrographic Unit. But we do not have housing in that area servicing members who might be posted to Holsworthy; they look to live close to the base.

**Senator FIERRAVANTI-WELLS**—Also, the average rental cost that Defence has estimated now is \$376 per week per house. Could you give me a breakdown of the ranges of the Defence allocation for housing? Does it still differ according to rank?

**Mr Kitney**—The range for rentals depends on the classification of the house. The range is approximately \$300 per week up to about \$750, depending on the facilities in the house and its location.

**CHAIR**—How does the Uhrig report affect your status as an authority? Are there steps to bring you into the department?

**Mr Bear**—The DHA is governed by the Defence Housing Authority Act. Under that act, the government has taken a decision to constitute it under a commercial board with two shareholders. DHA is governed by a chairman and a board of directors reporting to two shareholder ministers.

**CHAIR**—Excuse my ignorance; I should know more about the Defence Housing Authority. Is there no mooted change or proposed change to that? You are going stand alone as you have under your legislation?

**Mr Bear**—New legislation just went through changing our name from the Defence Housing Authority to Defence Housing Australia, and a number of other changes that reinforce that corporate structure.

**Mr Kitney**—The number of directors will reduce under the new legislation. The board of DHA will be primarily a commercial board. In addition, there will be an advisory committee made up of advisers from the services.

**CHAIR**—Where is your principal office, head office? Canberra?

**Mr Bear**—26 Brisbane Avenue, Canberra.

**CHAIR**—Canberra?

**Mr Bear**—A beautiful place.

**CHAIR**—One day we might come down and have a look at what you do down there. You obviously have a large number of assets to manage.

**Mr Bear**—We have offices across the country generally related to where the major defence bases are.

**CHAIR**—You have an office in each of the capital cities?

**Mr Bear**—Each place where there is a defence base, we have what we call a housing management centre.

**Senator Sandy Macdonald**—They have a big and growing business.

**Senator FORSHAW**—One way to learn more about the Defence Housing Authority is to be appointed to the Joint Public Works Committee, of which, as Mr Bear knows, I am a member. I am not going to ask you any questions tonight, Mr Bear.

[7.48 pm]

**CHAIR**—I thank officers from the Defence Housing Authority. I call officers from the Department of Veterans' Affairs to the table.

**Senator FORSHAW**—I want to ask some questions, particularly to Mr Sullivan, with regard to the Gallipoli Peninsula. It is good to see you again, Mr Sullivan.

**Mr Sullivan**—It is good to see you, too.

**Senator FORSHAW**—I am sure you will recall—how could you forget—the inquiry that was conducted by the Senate Finance and Public Administration References Committee which led to the report on matters relating to the Gallipoli Peninsula. Indeed, we canvassed this at the last estimates hearing. At the hearing that took place on 17 June 2005, which was a one-day public hearing, you undertook on notice to approach the Commonwealth War Graves Commission in London to ask it to provide documents for the committee's inquiry. Do you recall that?

**Mr Sullivan**—Yes, I do.

**Senator FORSHAW**—As the *Hansard* shows, the committee was seeking information on field reports, or copies of field reports or other documents relating to the statement that had been made by the commission in March 2005 that its representatives had done an extensive examination of battlefield areas affected by roadworks. Can you advise me when, Mr Sullivan, did you or the department approach the War Graves Commission to seek that information, those documents?

**Mr Sullivan**—I can. It became clear to me that we did not approach the commission until March this year.

**Senator FORSHAW**—Can you explain why that did not occur?

**Mr Sullivan**—Simply, I thought officers would pursue it and they probably thought I was pursuing it. We are aware the commission was aware of the hearing. But in terms of our formal request for that information, it did not go until March. As I am aware now, the commission has responded to the committee.

**Senator FORSHAW**—The commission has responded to the committee and that is what has no doubt, as you would appreciate, prompted my attendance tonight. I had hoped that, this inquiry having finished and the report being tabled, we would not be having further matters arise. You have received a copy of the letter from the War Graves Commission to the committee, have you?

**Mr Sullivan**—I have.

**Senator FORSHAW**—You would agree that it is somewhat critical of my committee for not approaching it during our inquiry? Indeed, it also complained that we had not provided them with a copy of our report.

**Mr Sullivan**—I am aware of that. And they were critical of some of your findings, too—and quite rightly, too.

**Senator FORSHAW**—I did not ask you for that, but I am not surprised. I note that we discussed once before that the House of Lords committee, which has a similar responsibility

in this area, was very complimentary of our findings. We dealt with that last time. Firstly, as we know, it is not competent for the committee to provide an advance copy of its report before it is tabled—so I put that to one side. It is quite clear that the commission had not been approached, as you have just acknowledged. Therefore, it put the committee in a very bad light and we were somehow identified as the guilty party for not approaching them when in fact we had requested the department to do so, and you had undertaken to do that.

**Mr Sullivan**—I acknowledge that and I apologise. If you go back to the transcript of the committee, I think you will find that I did question the committee as to the appropriateness of a department approaching an international organisation on behalf of the committee. But I committed to do it and I should have done it.

**Senator FORSHAW**—You undertook to do it.

**Mr Sullivan**—I undertook to do it. I am just giving the background. I did not say, ‘You’ve asked me but I won’t do it.’ It was unfortunate.

**Senator FORSHAW**—It was extremely disappointing. You will also recall, will you not, Mr Sullivan, that there were outstanding questions that had been taken on notice from the department up to the time of the finalisation of that report and that the committee had in fact approached your department and the Department of Prime Minister and Cabinet seeking the outstanding answers to questions on notice?

**Mr Sullivan**—I do recall that.

**Senator FORSHAW**—When we do not get those answers back, it is difficult for committees when there is a deadline to table a report in the Senate. But now we find that the questions were not even passed on. The only way we can now follow up this issue is through this estimates committee, because that inquiry has finished. The committee does not have any reference from the Senate to pursue it.

**Mr Sullivan**—I will be writing to the committee secretary asking what they really want me to do now. I saw the commission’s answer as containing the answers requested, other than explicitly saying whether a work report existed or whether we would provide a work report. But it comprehensively provided details of the survey undertaken and the experience of the personnel who undertook it, which I think confirmed exactly what I said at the committee hearing. The committee secretary has written to me—and I will write back to him and seek clarification—that they are now expecting a further approach to the committee. I think the answer will be that the committee should approach the commission directly. I think the commission has answered the questions.

**Senator FORSHAW**—We will wait for your response. So you approached the War Graves Commission in March?

**Mr Sullivan**—Yes.

**Senator FORSHAW**—Have you received a response—

**Mr Sullivan**—We got a copy of their response to the committee.

**Senator FORSHAW**—Sorry?

**Mr Sullivan**—We got a copy of their response to the committee. They wanted to deal with the committee; they did not want to deal through an intermediary, the department.

**Senator FORSHAW**—But you actually approached the War Graves Commission—

**Mr Sullivan**—With the request of the committee. It was not our request. It was a request of the committee that we conveyed to them, and they responded to the committee.

**Senator FORSHAW**—I appreciate that. Certainly, that was the approach that was taken by the committee. But, of course, the appropriate protocol for our committee—

**Mr Sullivan**—It was the approach but I am not sure it is the appropriate protocol. It was the approach decided by the committee. As I said at the time at the committee, I felt it unusual to be seeking a department of state in Australia to be approaching an international organisation.

**Senator FORSHAW**—I do not want to spend all night debating this, but the reason that was done was that Australia is a member of the War Graves Commission. For us to bypass our own departments, our own government and our representatives, we felt was not appropriate, because we would then be criticised by the department here.

**Mr Sullivan**—You would not be criticised by me.

**Senator FORSHAW**—You may say that now.

**Mr Sullivan**—I said at the time that I thought it was appropriate, but you chose not to—

**Senator FORSHAW**—In any event, has the War Graves Commission officially advised you that the letter they have sent to our committee is a response to your request?

**Mr Sullivan**—No. I received a copy of that from the committee secretariat this week, and I have asked that the committee contact the Commonwealth War Graves Commission specifically with the question: is this the response to the committee or are you providing further response through us?

**Senator FORSHAW**—The point is that the letter from the War Graves Commission that was sent to our committee—one can only assume—was written before you had approached them. So it is a bit hard to argue that their letter to us, which was a letter of complaint, is somehow a response to the request that you made after we informed you of their letter.

**Mr Sullivan**—It was both a letter of complaint and a clarification of the information sought. It certainly complained. It certainly took exception to their inspection being described by the committee on the evidence presented as ‘cursory’. It then went through the background of who undertook the inspection and what it was.

**Senator FORSHAW**—Mr Sullivan, you are trying to rely upon what they said. I do not want to debate the findings of the committee’s report. The committee unanimously resolved to write the letter, once we received the letter from the War Graves Commission, because as a committee we felt that we had been attacked and criticised by the War Graves Commission unfairly, because we had expected the department to do what it said it would do. Any way, I am going leave it at that, because I do not want to take up the committee’s time. I will await your correspondence to the committee, Mr Sullivan.

**Mr Sullivan**—Thank you, Senator. I do apologise. I am not attempting to excuse that lack of follow-through.

**Senator FORSHAW**—I appreciate your apology. I will not reflect upon whether or not it had any other implications upon consideration of the issues that were before the committee.

**Senator FIERRAVANTI-WELLS**—Mr Sullivan, I would like to put on the record that I think part of the reason we are having correspondence with the commission is the misunderstanding about a majority and a minority report. For the record, Senator Watson also wrote to clarify that. It would be appropriate if perhaps you might comment on that as well in light of what Senator Forshaw has just said.

**CHAIR**—I think Mr Sullivan understands what is required.

**Mr Sullivan**—Clearly, the Director of the Office of War Graves in Australia visited the Commonwealth War Graves Commission to cover a number of matters incorporated in that discussion around the committee, and he made it clear in terms of the committee's reports—both the majority report and the minority report. They understand the context of the committee.

**Senator FORSHAW**—If they had read it, I am sure they would have worked that out for themselves.

**Senator HURLEY**—Mr Sullivan, I want to first deal with TPI pension indexation and the division of the pensions into two parts, the general rate and the above-general rate, which are now indexed differently. When was the decision made to split the special rate pension into the two economic and non-economic components?

**Mr Sullivan**—It was effective from 20 March 2004.

**Senator HURLEY**—Who made and announced that decision?

**Mr Sullivan**—It was a government decision.

**Senator HURLEY**—Was it announced by the minister?

**Mr Sullivan**—I am not sure whether it was announced by someone more senior in government or the minister. We could check who made the announcement.

**Senator HURLEY**—If you could check that and give me a copy of any declaration outlining that announcement I would appreciate it.

**Mr Sullivan**—Yes.

**Senator HURLEY**—What powers exist in the Veterans' Entitlement Act or any other act that allows the Department of Veterans' Affairs to separate the special rate pension into these two components, given that the whole of the special rate pension is counted as income when determining how a veteran is to be assessed, for example, for child support and Centrelink payments?

**Mr Sullivan**—I would have to take that on notice. The power to index pensions is not in the VEA; it is a power of the government. I would have to check again the act in which Finance does it. The government makes all sorts of decisions as to how it will index all sorts of payments. It is those powers as to how it will index a payment. The choice of a

combination of rates, a rate, an index like one of the wage cost indexes, a CPI index or a MTAW index is up to the government. As to the technicality of that, I will give you an answer in terms of the power. But these are cross-government payments and it is for the government to determine how it indexes those payments.

**Senator HURLEY**—I just want to make it clear that I am not asking under what power the government determines what index it will use; I am asking under what power the rate was split into those two separate areas.

**Mr Sullivan**—I think it is the same question. The rationale of an index as to whether it is components of a payment or whether it is a combination of indexes is the same question. I will check that, take it on notice and get back. I understand your question.

**Senator HURLEY**—I understand a number of veterans have been making complaints about this payment and the way it is indexed. I am a bit surprised that you are not—

**Mr Sullivan**—The TPI payment was indexed to CPI for most of its existence—only CPI. You have to understand that the announcement of 20 March 2004 was a move towards the claims made by some veterans' organisations and veterans for a different form of indexation. But it was more generous than had been the case for many decades beforehand. While some criticise it for not going as far as they wish, there was not criticism that it at least addressed the issue in part. In terms of government's attitude to TPI indexation from the introduction of the TPI through to 2004, it was always indexed on the basis of CPI. That is the context of the argument. The argument is that this was not as far as it should have gone; it was not that this was a bad decision—because it was better than the previous decision.

**Senator HURLEY**—As I understand it, people are grateful that it has gone as far as it has, but there is a lack of understanding about why it is split into the two components. I am sure you would have answered questions about this from veterans. I do not know how it is that you are not aware of the powers under which the decision was made?

**Mr Sullivan**—That is different from understanding the argument. You asked me a very formal question about powers. I appropriately took that on notice and said that, to get the powers issue and to see whether there is any impact of that, I will take advice. The arguments behind it were put forward to government then. You remember a typical TPI is in receipt of a number of payments from government, some of which are indexed against MTAW—particularly in respect of service pensions—some of which are indexed against CPI, and some of which are indexed partly against CPI and partly against the higher of CPI or MTAW. There is a basket load of indexes against the payments that a TPI recipient will generally be in receipt of from government.

**Senator HURLEY**—I look forward to the response. I have been following for some time now a couple of health study reports. What is the progress of the children of Vietnam veterans' health feasibility study report?

**Mr Sullivan**—The feasibility study report prepared by the scientific advisory committee and a consultative forum has been completed. That report has been discussed with the minister and will be printed and provided to the minister. The minister will formally consider the response to it. I think it is general knowledge that the feasibility study has proposed

further work in the form of a pilot study to test methodological difficulties, which the scientific committee acknowledge are quite considerable.

They are considerable in that they do not believe it possible to cover all arms of the services in respect of their Vietnam service. They think they can restrict their study to only Army, and they believe that you cannot draw conclusions from a study of Army to the other services. They do not believe they can cover women veterans in Vietnam and the children of women veterans, of which there were not a considerable number, but there were women veterans from Vietnam. It is a methodological study that may take three years to complete, and at such time we would say, 'Is there a basis for a study?' The minister has asked the department to do some work on whether that period can be shortened and for us to talk to relevant experts in the field as to whether we can overcome some of the questions of methodology in a shorter time frame. We are working through whether or not that is possible.

At the same time, the minister has made announcements that he intends to pursue a continuing study of the international research and Australian research on intergenerational effects of warfare to alert him as to whether any new evidence emerges. The feasibility study has found that there is not a lot of evidence in international research to support an intergenerational impact of warfare. He will commit to creating a panel of experts to assist him in doing that. He has announced that he has plans to continue access to the Vietnam Veterans Counselling Service for all children of Vietnam veterans and he has asked the Repatriation Commission to do what it needs to do in respect of a determination to put in place those arrangements, and we are working as a commission to do that.

The minister has to formally respond to the report, but he has made it public, in terms of his address at the Vietnam Veterans Association of Australia congress and a press release of this week, his desire for the department to pursue whether we can get these methodology issues sorted out sooner than three years and whether we can overcome the difficulties—and this is no reflection on the scientific advisory committee—in respect of studying children of Vietnam veterans, particularly across all services, including women, as well as the difficulties of separating out stressors other than war service, which may be war service now of 40 or 30 years ago. He wants us to talk with research bodies in the field to see whether some of the more recent work on such methodologies could be used and whether we could shorten that period. He has announced the intention to create a panel to look at the research in Australia and overseas and he has announced his intention—and he has sought the Repatriation Commission to act on his view—that there be no age restriction on children of Vietnam veterans accessing the Vietnam Veterans Counselling Service.

**Senator HURLEY**—Can I explore the pilot study that you mentioned and that was mentioned in the minister's media release of 31 May. When will that pilot study begin?

**Mr Sullivan**—We have started working with some bodies around veterans' health issues and have asked them to commence thinking through and giving us advice on whether we can short-cut some of the methodology issues, and that would include the Centre for Military and Veterans' Health and other bodies. We have commenced that immediately on the minister asking us to do it. That is an initial contact and there is clearly some work we would like done.

If we could, for instance, halve that three years, it would mean that we could see by the year after next a decision as to the form and context of an actual study taking place. If the government accepted the current advice of the Scientific Advisory Committee, it would know in three years and, at major expense, whether it could conduct logistically such a study. That is all that the pilot would do. The pilot is not about determining the question of policy or research; it is about questioning and determining whether we can logistically do a study now. Our aim is to talk to the appropriate bodies about whether or not, with some of the work that has been done—particularly in Britain, I think—around some research methodology, we could see them improve that time line so that, if a study was progressed, it could be progressed more quickly than if the recommendation of the Scientific Advisory Committee was accepted as such. There is no doubt from my discussion with the minister that a study that did not seek to cover the veterans of all services in Vietnam would have diminished value. It would certainly have value—and, as I say, there is certainly an understanding of where the Scientific Advisory Committee came from on that—but to exclude Navy and Air Force and even the smaller number of women veterans from such a study would diminish the value of such a study.

**Senator HURLEY**—The initial contact, if made, you would regard as the start of the pilot study?

**Mr Sullivan**—I think it is the start of addressing the issues of how to reduce the time. Whether we come up with an answer that requires a very large-scale pilot to determine whether the methodology is legitimate or whether we can come up with a framework of methodology that will not require a great pilot is a question that we want put. At the moment, the question is that we need several millions of dollars to undertake a pilot study to understand whether we can conduct a study.

**Senator HURLEY**—So the final form is not entirely determined yet. You were talking about a panel. Has that been determined?

**Mr Sullivan**—Again, the minister has indicated that, while the Scientific Advisory Committee reviewed the international research that was available, he is keen to ensure that we have no gap by basically having eminent people review and report to him if there is any development or change in the research material that comes from international and Australian sources. He wants to immediately put in place a mechanism that would advise him if there were something emergent from international research in respect of intergenerational impact of war.

**Senator HURLEY**—That panel is basically a scientific expert panel?

**Mr Sullivan**—It would be scientifically based.

**Senator HURLEY**—Because the exact scope of the pilot study is yet to be determined, is there a figure in the current budget to get that going?

**Mr Sullivan**—No, the budget figure would come from within the Department of Veterans' Affairs research budget. We have a considerable research budget. We certainly believe that we can kick-start this study from within our resource.

**Senator HURLEY**—You do not yet have a copy of what the parameters of the pilot study are?

**Mr Sullivan**—No, this is what we have to discuss and determine.

**Senator HURLEY**—The emphasis in our discussion so far has been more on the scientific evidence. Is there any plan to consult with veterans along the way, or will it be a scientifically based pilot as well?

**Mr Sullivan**—I do not think the veterans, particularly the Vietnam veterans, would allow us to do this work without consulting them. The minister has shown already that he wishes to consult with them by engaging them with his thinking on this matter. I think the Scientific Advisory Committee and the consultative forum have done their job in respect of the work they have been asked to do. But I am sure that, as we understand and engage in the work that we are going to do, we will be consulting with Vietnam veterans.

**Senator HURLEY**—Once the pilot study is put in place and the results are determined, whether you need to proceed to a full study will be a decision not of the expert panel, obviously, but of government.

**Mr Sullivan**—That is a decision of government. The real question in this matter is: is a study feasible? The Scientific Advisory Committee struggled with this and has said there are several impediments to a feasibility study, including locating children of Vietnam veterans, and making the study sensible from a research perspective. That still has to be answered. As I said, the minister would have heavily qualified support to a study that excludes Navy and Air Force veterans. So we are attempting to overcome something that the Scientific Advisory Committee believed you could not overcome. The Scientific Advisory Committee did battle on with their work to come up with a way of determining whether a study was feasible through their pilot study in respect of Army—and we are indebted to them for that—but it will be a question for government.

This basically says that there is a continued commitment to understanding and testing the feasibility of such a study—three years is too long—and let us work through whether we can address these issues of time and of service coverage and any other issue for government to answer the question of whether it will then proceed into a full study of children of Vietnam veterans. In the meantime, a number of initiatives that were announced address some of the needs of the children of Vietnam veterans and some of the needs of Vietnam veterans themselves.

**Senator HURLEY**—Is that what the minister in his press releases refers to when he is talking about a staged approach? It states:

Although the report proposes a pilot study that will take some years to complete, I am keen to pursue a staged approach to see work commence this year ...

**Mr Sullivan**—This is to address the issue of the study but, at the same time, start with those needed initiatives which address some of the needs of Vietnam veterans. That includes, as I said, the expert panel being formed and the extension of services to the children of Vietnam veterans regardless of age. I think you will see the minister wanting to incorporate other initiatives around Vietnam veterans into what he calls that staged approach.

**Senator HURLEY**—Are there any identified priorities, or are they going to be developed?

**Mr Sullivan**—The identified priorities are the ones that were announced—that is, researching the study and cutting the time lines, indicating a decision to create an expert panel and indicating the desire and request of the Repatriation Commission to allow the continuation of access to the Vietnam Veterans Counselling Service for children regardless of age. They are the first announcements of this staged approach. I am suspecting, or suggesting, that there will be more as the minister seeks to address the needs of Vietnam veterans.

**Senator HURLEY**—A staged approach refers to announcements rather than actual—

**Mr Sullivan**—It an announcement generally of a further piece of work in the approach. One result of looking at the report would have been to say: ‘Yes, we agree to a pilot study. It will take three years and in 2009 or 2010 the pilot study will give some further advice to the government of the day as to whether it wants to make a decision to progress to a full study’, which would then take another five to 10 years. That would seem to be not the wise way to go.

**Senator HURLEY**—You mentioned the extension of services to the Vietnam Veterans Counselling Service. Is that an indefinite extension? Has the minister announced detail around that?

**Mr Sullivan**—When the government opened up the Vietnam Veterans Counselling Service to the children of Vietnam veterans, it was limited to children under 35. The Repatriation Commission took a decision, almost five years ago, to extend that service provided by the Vietnam Veterans Counselling Service to children of Vietnam veterans regardless of age. They did that through a determination, which is a disallowable instrument, and it expires on 30 June this year. The Repatriation Commission will make a new determination. I suspect that new determination will be time bound like the old determination, only because I think non-time-bound determinations are frowned upon these days. It will just say that another decision needs to be taken in another five or so years to say, ‘Where do you want to extend this?’ But that is the process that we need to go through. It is not something about which the minister says, ‘This will happen.’ The commission will need to make a determination.

**Senator HURLEY**—The commission’s decision will be made fairly soon?

**Mr Sullivan**—It must happen before 30 June. We are very comfortable with the fact that the minister is telling Vietnam veterans groups, including the Vietnam Veterans Association, that that is what is going happen. It is a matter of process now to go through, assuming that that determination is not objected to, which I doubt it would.

**Senator HURLEY**—I doubt it. What is the funding for that?

**Mr Sullivan**—The funding is within the current budget of the Vietnam Veterans Counselling Service. We have funded children of all ages through that service. In respect of the total workload, we do not expect that that will cause a new funding pressure on the Vietnam Veterans Counselling Service.

**Senator HURLEY**—The funding from last year has continued at the same level?

**Mr Sullivan**—It will cost money, but it will be within the framework of the budget for the Vietnam Veterans Counselling Service, and we will not see any group disadvantaged because of it.

**Senator HURLEY**—Going back to the health study feasibility report, you mentioned a copy would be going to the minister. Is that going to be a public copy?

**Mr Sullivan**—The minister will need to formally respond to it. The general practice has been that with the formal response is the release of a document. I would expect the document would become a public document. It is a semipublic document now. It is not hard to find.

**Senator HURLEY**—The other study that we have been following is the atomic veterans health study and Vietnam Veterans Cancer Incidence and Mortality Study. Could you give an update on both of those studies and where they are?

**Mr Sullivan**—The atomic testing participants report has been concluded and has been printed. The department is preparing advice for government on it. That will be considered in the next reasonably short time by government, who will determine a response to the committee's findings or, again, to the study's findings. The Vietnam veterans counselling studies are three studies. One is a cancer incidence report, one is a mortality study and one is a comparative study between national service persons who served in Vietnam and national service persons who did not serve in Vietnam, particularly around cancer incidence. Those reports have been printed. There was a recommendation of the Repatriation Commission, which was accepted by the minister, that the three reports should be released as one, and an executive summary of the three reports has been printed.

That report is actually the subject of a discussion by the Repatriation Commission. I need to separate that from the department, even though it is the same people. It is me, Mr Killestyn, who is the deputy president, and Rear Admiral Simon Harrington, who is the services commissioner. We will be having the commission look at that report as early as tomorrow. The basis of that will be to provide information to the minister on any response to it, and again I expect that the minister would release the report concurrently with a response to the report. I think it might have been at the Tasmanian RSL congress that the minister suggested that that process would take between two and three months from then. Within a couple of months, it should be expected, that report will be available and released.

**Senator HURLEY**—Both of those reports will be released within a month or two?

**Mr Sullivan**—A couple of months, yes. I think that time frame for both is reasonable.

**Senator HURLEY**—A significant announcement in the 2006-07 budget measures was the mental health funding. The government announced an extra \$20 million over four years for mental health needs of veterans and Defence Force communities. The budget in 2006-07 is \$7.289 million, in the following year it is \$7.477 million, in 2008-09 it goes down to \$2.377 million and in the following year to \$2.577 million. I want to explore a bit how this \$20 million is broken down and what the allocation will be over the next four years. What specific programs are being funded out of this amount and how much are they being funded over the next four years, given that the first two years have the biggest allocation?

**Mr Sullivan**—I might ask Ken Douglas to help on this. He will take you through it. What we are hoping is that we will demonstrate in these early years the success or otherwise of the initiatives we are taking, and it may form the basis of further decisions. So you should not see tailing funding as necessarily saying, 'We will do it then get out of it.'

**Mr Douglas**—There is quite a long list of largely small initiatives that go to a number of different categories. The first of them would be a series of communication type initiatives, basically working with bodies like the Divisions of General Practice to develop educative programs and self-help tools that would improve mental health literacy amongst general practitioners. Similarly, we would be developing self-help tools along the lines of The Right Mix website, which is developed for alcohol management purposes. Once we have developed a lot of those self-help type tools in the first couple of years, you do not need that high cost associated with their development to continue beyond the period of development.

The next major component is the decision to extend some of the lifestyle management programs that have been made available to the Vietnam veterans cohort to the post Vietnam War cohort—the peacemaker, peacekeeper type cohort. That includes heart health and lifestyle management type programs, which have traditionally been made available through the VVCS. That is probably the two biggest categories. There is quite a broad array. Having said that, what we also want to do is maintain as much flexibility as we can within the decision to explore alternatives in terms of communication, education and self-help type initiatives, which might be available through other sources—for example, in a mainstream context that we could develop to make more applicable for the veteran context.

**Senator HURLEY**—Would you be able to table that list of programs?

**Mr Douglas**—I will take it on notice and see what we can give to you that is particularly helpful, without of course constraining us in terms of what negotiations we might need to have with providers once we put on the table the amount of money that we might have for a particular purpose. Strangely enough, that seems to dictate the price that is charged.

**Senator HURLEY**—You are unable at this stage to say what amount of money is allocated?

**Mr Douglas**—I would like to take on notice what we can give you that would be helpful without boxing ourselves into a corner.

**Senator HURLEY**—Could you put in any funding allocations if you are able to at the same time?

**Mr Douglas**—I hope you might appreciate that I might be a little bit more circumspect in terms of indicating ranges of funding rather than precise components.

**Senator HURLEY**—Yes. That \$20 million is, from the sound of it, going to veterans only, not current serving ADF personnel?

**Mr Douglas**—For example, the VVCS already provides counselling services to currently serving members under an MOU with the Defence Force. To the extent that a counsellor might decide that there is some benefit that would come from that person being counselled and accessing some of those tools, we would of course make it available to him or her. Because it develops a range of self-help tools, it has a wide—

**Senator HURLEY**—A wide range, yes. The total government mental health package is \$1.9 billion. Will some of that flow through to the veterans' mental health area as well?

**Mr Douglas**—Indeed. For example, take the decision by the government to allow Medicare funding in relation to psychologist servicing. Our veterans of course see local

medical officers who might refer them to psychiatrists or psychologists for mental health conditions. The funding associated with that would be picked up as part of that \$1.9 billion. Similarly, in terms of the decision to extend the availability or range of access to things like community based mental health care treatment, veterans who are citizens would be able to avail themselves of that treatment as part of a whole package. We recognise that access to health professionals in the mental health arena just as in any other health arena is difficult, and there is a high demand with low supply. We are hoping that we can benefit as part of that. We have been part of the interdepartmental committee that is working through the arrangements for the \$1.9 billion.

**Mr Sullivan**—It gives some options to some of the other groups that we help, including partners and children of Vietnam veterans. While our surveying of veterans and Vietnam veterans in particular suggests that they prefer the specific services that the Vietnam Veterans Counselling Service provides them, sometimes partners and children will now have the option of community based psychological care, which they may prefer. It will be open to them to pursue that with the improved access to such care in the general community. It does provide more options, but we are certainly working hard with Health and Ageing to make sure that the needs of veterans and the veteran community are specifically recognised in the development of the package. The \$1.9 billion, of course, is the Commonwealth contribution to that package. At the COAG meeting we will see announcements by state governments, of course, that will see that overall package of community services grow quite considerably if everyone sees its importance.

**Mr Douglas**—We estimate that of our total—and it is an estimate—amount of health expenditure we spend at least in the order of \$130 million on mental health components. That is an estimate based on 2003-04 data. That includes access to hospitals, access to counselling and access to mental health drugs. So there is already over \$130 million a year.

**Senator HURLEY**—Out of the total spend?

**Mr Douglas**—From the total Veterans' Affairs expenditure on health care, at least \$130 million is on mental health care, as an estimate.

**Senator HURLEY**—In the minister's press release of 31 May, which we have already referred to, there was a reference to a standing committee on intergenerational health impacts on veterans' children. Could you tell me a bit more about that, who is on that committee and what its role is?

**Mr Sullivan**—We will quickly research that and answer your questions. It is probably to do with the terminology, and we will just work out who it is.

**Senator HURLEY**—I am just trying to find a reference myself.

**Mr Sullivan**—I do not see a reference to it.

**Senator HURLEY**—No, I do not see it, either.

**Mr Sullivan**—We do have a number of forums. The most important forum in respect of the mental health of veterans is the Mental Health and Wellbeing Forum, chaired by Major General Bill Crews, the National President of the RSL, on which there are representatives of many of the veterans' organisations, including the VDA, the VDF—

**Senator HURLEY**—I have found it. It was one of the dot points. He says that the government has increased mental health funding by \$20 million and that counselling and support services include the formation of a standing committee to examine research on the intergenerational health impacts—

**Mr Sullivan**—That is the eminent persons committee I talked about in respect of the response of creating that committee to look at the research internationally and in Australia on the intergenerational impact of war. That is what I referred to as an eminent persons panel.

**Senator HURLEY**—It is not really related to the—

**Mr Sullivan**—They are all interrelated. I think the minister's decision to outline a number of initiatives around Vietnam veterans together was to make the point that there is an interrelationship between these things. To use this year as the particular and special anniversary of the Battle of Long Tan as a year to ensure that the community has no lack of understanding of the regard that Australia, through its government and others, has for the work and effort of our soldiers in Vietnam is important. It links into all of these things. To a degree, commemoration links into health, it links into our compensation systems and it links into Vietnam veterans' genuine fears of the impact of the war on their children. There are linkages all through it.

**Senator HURLEY**—What percentage of Australians with mental health problems do veterans comprise? Is there any estimate of that?

**Mr Sullivan**—I think we would have to take that on notice. Anecdotally, I would say veterans are probably a slightly higher percentage than of the overall population. I think mental health amongst veterans is probably more of an issue than general community standards, but we will look at what research there is in that field.

**Senator HURLEY**—Funeral benefits was another budget announcement. The minister said that benefits available under the Military, Rehabilitation and Compensation Act and the Safety, Rehabilitation and Compensation Act for the cost of funerals has been increased to \$9,000. Why is it that recipients receiving funeral benefits under the veterans' act have their funeral benefits capped at \$1,000, while those that come under the MRCS can claim up to \$9,000 in funeral benefits?

**Mr Sullivan**—I think it is largely to do with the eligibility under the MRCS, which is quite narrow and compensation based. The increase in the funeral benefit allowed under the MRCA followed a decision by the Minister for Employment and Workplace Relations to improve the funeral benefit available under the Safety, Rehabilitation and Compensation Act. The funeral allowance under the VEA was more a repatriation based benefit, which was a contribution towards funeral expenses. For a long time it ran at about \$400. I think after the Clark review it was increased to \$1,000, which is where it is now. But under the VEA it is not meant to fully cover the cost of the funeral, it is meant as a contribution to the costs of a funeral of a veteran with qualifying service. The benefit under the MRCA, reflective of the benefits payable under the SRCA, is compensation based and basically reflects the fact that we are paying for a funeral of a person who is deceased as a direct result of their service.

**Senator HURLEY**—Another budget item was the \$12 million listed for the health and social services access card introduction, and \$3.435 million for the health and social services

access card introduction and capital. This is clearly the contribution to the so-called smart card introduction. As we all know, veterans currently have health cards, the gold card, the white card and orange cards. There are a lot of questions within the veterans' community about what will happen as a result of the changes with the access card. One of the chief ones is what physical changes will be made to those cards with the introduction of the health and social services access card?

**Mr Sullivan**—It is possible now of course for a veteran to have a white or a gold card, a pensioner concession card and a Medicare card. They would all be replaced by one access card. That access card will retain the appearance of current DVA cards. We would anticipate a veterans' access card would be a gold card or a white card, but it would serve the purpose of the veteran as a pensioner concession card and as a Medicare card, but would have the distinctive branding of a veterans' card. It would also differentiate, even within the gold card group, as to whether a veteran was a totally and permanently incapacitated veteran or not, because some veterans' concessions are linked to that status in the access card. It would change in nature in that obviously it would have a chip in it and it would have a photograph on the front, but it will retain a DVA look about it. It will be a gold card or a white card. It will have DVA branding.

**Senator HURLEY**—Is that separate appearance one of the reasons for the allocation of money in the budget?

**Mr Sullivan**—Veterans' Affairs deals with veterans. For us to be party to the smart card, the access card, we had to ensure that our budgetary needs to incorporate veterans in that scheme were met. It is not the responsibility of the Department of Human Services to cover our needs in respect of veterans. They have some needs of their own with some of their agencies, such as Centrelink, Medicare Australia and others. That is an appropriation to us to ensure that we are there. Our early consultation with veterans indicates that this card holds some attraction. It holds attraction to us as a portfolio, because we are unique in that we pay for a lot of services. We are certainly keen to understand and examine the potential of the card in respect of helping cut down the red tape in the provision of services to veterans from ranges as far apart as being able to go to the optometrist for glasses to being able to utilise transport and pay for travel. This is an opportunity that we must pursue. The major issue for veterans has been to retain their identity as a veteran. That is something which will be achieved.

**Mr Killestyn**—A large part of the costs are to do with systems work and integration of systems across our systems and those to be developed by the Department of the Human Services as well as the systems from Centrelink and other agencies, including Medicare Australia.

**Senator HURLEY**—Is that software?

**Mr Killestyn**—Yes, it is software in the vernacular, but systems integration to ensure that systems across the various agencies that are involved can talk to each other.

**Senator HURLEY**—The actual printing of the card, I presume, will be done centrally? It is just that DVA will put in a requirement for so many gold cards, so many white cards or whatever?

**Mr Killestyn**—I think those arrangements are still to be sorted out as to who is doing the printing, but you would expect a central agency would be doing that.

**Mr Sullivan**—There is precedent for that now. Our cards are basically produced by Medicare Australia. They have a large card production facility. We provide the blanks and they produce cards for us.

**Senator HURLEY**—You did seem to indicate there was some preliminary or maybe not formal consultation but feedback about the cards, how veterans would use them and whether they would welcome them. Is there going to be any formal consultation with veterans about what they want with the card?

**Mr Sullivan**—We have flagged with veterans, largely through the peak congresses that they are holding now, that we would seek to be consulting them on the progress of the smart card.

**Mr Douglas**—Several years ago we participated in a trial, conducted at Brisbane Waters on the Central Coast of New South Wales, of a smart card arrangement. That was done in conjunction with a number of agencies. One of our responsibilities in that trial—because veterans participated in it—was to be the consumer evaluation component. There was an overwhelmingly positive response from the veterans who participated in that trial. In fact, their most frequent complaint was, ‘Why won’t more providers take this smart card?’ That is the benchmark upon which we are saying that there has been strong support for that. We have also been discussing both that trial and the potential prospect of the broader smart card through the National Treatment Monitoring Committee, and we would continue to take developments back to that monitoring committee as a sounding board for particular developments. In addition, we are aware through our connection with the Department of Human Services, which is coordinating the development of the card overall, that there is quite a degree of consumer relations being managed as part of the smart card’s development. You would have seen, for example, the appointment of Professor Alan Fells as part of that. There will be engagement with other groups.

**Senator HURLEY**—When will these consultations occur?

**Mr Douglas**—That is a matter for the Department of Human Services to determine in conjunction with the other stakeholders, but the smartcard is due to be rolled out progressively from 2008. It is likely, therefore, that they will occur between now and the beginning of 2008.

**Senator HURLEY**—Will the Department of Human Services be doing the consultation or will Veterans’ Affairs do the consultation with veterans?

**Mr Sullivan**—There will be broad consultation by the Department of Human Services with all stakeholder groups. There will be specific consultation with the Department of Veterans’ Affairs with its veterans stakeholder groups. As Mr Douglas has said, it has started already. We have an exhaustive framework of consultation. I would like to endorse your comments that the consultation has been informal now. I am not claiming any statement by veterans organisations that they are supportive of or opposed to the code. I am saying my impression is a response to it other than the formal evaluation that Ken Douglas talked about has been quite positive.

**Senator HURLEY**—I would like to move on to part of the budget I find a little amusing: funding for announcements yet to be announced. The department has two entries titled ‘Decisions taken but not yet announced’. One of them is for \$4.56 million over four years, in outcome 2, and the other is for \$5 million, in outcome 3, which is for commemorations. What areas are those two unannounced decisions allocated for?

**Mr Sullivan**—They are allocated for decisions yet to be announced by government.

**Senator HURLEY**—They are costed and funded but the government has simply not bothered to announce them yet?

**Mr Sullivan**—Basically, the need for these decisions was identified at the time of the preparation and production of the budget and, in line with the Charter of Budget Honesty, they should be incorporated into budget figures. But, for a range of possible circumstances, the government has not announced what these measures are. This is not new. I would refer you to a good discussion of it between the keepers of the budget, the Department of Finance and Administration, and Senator Sherry during an estimates hearing on 24 May. Dr Watt and Phil Bowen of the department of finance went through this. It is the prerogative of government, and it is not my job to pre-empt the announcement.

**Senator HURLEY**—It is interesting, though, that the government chooses to withhold its announcements.

**Mr Sullivan**—This is not the only portfolio where these descriptions are used and it is not the first year or only year that they are being used. As I say, if the government has recognised in a budget context the need to make allocation, the Charter of Budget Honesty suggests it should. There can be very good reason why an announcement cannot be made.

**Senator HURLEY**—The lead-up to an election maybe?

**Mr Sullivan**—For the budget this year? I am not sure that is the reason. But I am not going to even get into why governments do this; they can.

**Senator HURLEY**—I will move off strict budget allocations at this point and talk about the provision of district nursing services to veterans. I will give you a little background to this. In August last year the providers of district nursing services were advised that Veterans’ Affairs was going to advertise a request for tenders for the provision of this service. Contracts with the then providers of these services were due to end on 30 April. So we were going from a contract based arrangement to tenders. A number of the providers at that time were small regional community health and independent nursing services. I am advised that at least two of these small health services providers—one in Tasmania and one in Victoria—were advised by Veterans’ Affairs personnel that they would be notified when the request for tender was to be advertised. Although the request for tender was advertised nationally on 5 November 2005, with tenders closing on 19 December 2005, neither of these two service providers received advice that the tender had been advertised.

**Mr Sullivan**—I think you should say they ‘allege’ they received no advice. We will answer this question very thoroughly. You can take a horse to water, but they have to drink.

**Senator HURLEY**—I will take your advice about that—‘alleged’.

**Mr Sullivan**—Alleged.

**Senator HURLEY**—Obviously you know of this case.

**Mr Sullivan**—I know it very well.

**Senator HURLEY**—Neither service submitted a tender. I gather there was no redress or provision for appeal for either of these services, and the tenders could not be reopened. Given that you obviously know about the case, could you explain what happened?

**Mr Sullivan**—Mr Douglas knows even more than I do, so I think I will leave it to him. You were apprised of this matter some time ago. We have provided advice back to particular members of parliament, to their satisfaction, we felt. It is now raised again, so it is probably good to put on the public record the efforts made to ensure that these providers were aware of the tender process.

**Mr Douglas**—We had been in discussion with the community nursing providers for some considerable period about the procurement process, and we told the industry that, in undertaking the tender, we would be bound by the Commonwealth Procurement Guidelines, that those were strict guidelines and that we could only act within the provisions of those guidelines. In relation to the specifics of the tender, there were several delays to the tender and, as a consequence, there were some extensions of the existing contract, together with notification of the reason for the extension and the fact that it was down to the tender. There are at least six precise occasions, ranging from 16 December 2004 to 5 December 2005, in which all providers were given progressive notification about the tender arrangements, including a letter to all existing providers on 16 November 2005 advising that the request for tender had opened. On 5 December 2005, a letter of notification of the schedule of fees for 2006 was sent, stating that the current deeds expired on 30 April 2006 and services after that date would be provided by those organisations successful in the current tender process.

At least one of the two providers you mentioned returned the offer of extension of his agreement, in which the notification of the tender was contained. One can presume that, because all of the correspondence was sent to the same address and the provider actioned one of the requests, the whole of the notification was read, which included specific advice of the opening and progress of the tender. There is no provision to make any further adjustments to the tender process. We are bound by the Commonwealth Procurement Guidelines and we feel confident that we would record a significantly greater number of protests from those organisations which had submitted tenders within the time frame allocated as advised by the tender.

**Mr Sullivan**—I think it is important that we recognise that these efforts were above and beyond what were required by the procurement guidelines, which is to advertise such a tender in a way that it would be reasonable—

**Senator HURLEY**—But not above and beyond an undertaking given to the two providers.

**Mr Sullivan**—It was in line with the undertaking; it was above and beyond procurement guidelines.

**Senator HURLEY**—There were two separate letters—if I can just get this straight—one on 16 November, after the tender was advertised nationally. Is that right?

**Mr Douglas**—Advising that the request for tender had opened.

**Senator HURLEY**—That was 11 days after the tender was advertised. The tenders closed on 19 December and there was a further letter sent on 5 December advising that the tender was still open.

**Mr Douglas**—That is correct. There were at least four separate occasions prior to that in which communications had been sent to tenderers advising of what arrangements would apply because of the upcoming tender.

**Senator HURLEY**—Communications, not a letter?

**Mr Douglas**—Yes, a letter on each of those occasions, on 16 December 2004, on 22 March 2005, on 22 August 2005 and on 21 October 2005.

**Senator HURLEY**—They would not have been notifying the actual time that the tender opened, just that it was going to be a tender process?

**Mr Douglas**—Advising information about the upcoming request for tender. At that stage, of course, we could not notify the precise date because we did not know the precise date. But certainly on 16 November we did write and inform organisations that the tender was open.

**CHAIR**—Can we break for 15 minutes for some sustenance and to give the witnesses a bit of respite? The committee will stand adjourned until 9.15 pm.

#### **Proceedings suspended from 9.03 pm to 9.16 pm**

**CHAIR**—I call the committee to order. We will continue with questions from Senator Hurley.

**Senator HURLEY**—Thank you. I think the issue here is that the service providers in question are very small providers who, I suppose, believed that they had a good relationship with Veterans Affairs and expected to be given prompt notification and assistance with the tender process, believing that they had done a good job on the ground. I think that they felt let down during the process. Given that there was a change from a contract arrangement to a tender arrangement, maybe they expected to have, to some extent, their hand held during the transition arrangements. I wonder if, in retrospect, the department might not have done that transition a bit better.

**Mr Douglas**—We have some 247 community nursing providers. As you have indicated, something like two might have missed it.

**Senator HURLEY**—Yes.

**Mr Douglas**—We believed, in good faith, that at least six separate pieces of correspondence that we had entered into progressively with these providers was pretty strong hand-holding. On top of that, one of the agencies concerned had demonstrated strong awareness of this process by communicating with us in advance, indicating its concern that the process was likely to be biased against it. We had replied, both directly and through the minister, with an assurance that we believed that the process would not do that at all, that we were cognisant of the heavy use of the 247 predominantly community based nursing providers. We believe that we acted in the best faith possible. Clearly, at least, more than 240 of those agencies also believed that they had good advice from the department in advising them progressively, throughout that tender process, to the extent that we could under the

Commonwealth procurement guidelines. We had also to be conscious, for example, that there were providers who did not have contracts with us who were seeking to enter into this business and who were watching our actions from the perspective of the possibility that we might be giving greater favour to those already with contracts with us and not allowing potential new players in the marketplace.

**Senator HURLEY**—For example, I am advised that that the Maryborough, Victoria, service actually had a letter from the branch head of Aged and Community Services stating that he would confirm the actual advertisement date at the time.

**Mr Douglas**—As I said to you, we wrote on 16 November 2005 advising of the tender.

**Senator HURLEY**—Eleven days after. Can you give me a list of the organisations that were providing that nursing service prior to the tender and a list of the organisations that now provide services following the tender?

**Mr Douglas**—Which services?

**Senator HURLEY**—The nursing services that we are talking about.

**Mr Douglas**—The list of the 247 before and the number subsequently contracted?

**Senator HURLEY**—Yes.

**Mr Douglas**—I believe we can do that.

**Senator HURLEY**—Right.

**Mr Killestyn**—On notice, not now.

**Senator HURLEY**—Yes, certainly.

**Mr Sullivan**—One matter that I saw in some of the exchanges of correspondence here was a concern by one of these providers that this exchange with the department, be it through local members or otherwise, would in some way create a bias against that service provider in future tenders. I would like to take the opportunity through this committee to say that we respect the right of any service provider, any disgruntled veteran or anyone else to utilise the services of local members or of whomever else they want to test the processes that we have engaged in, and in no way ever will that create a positive or negative bias in respect of our future dealings with them. They will be most welcome and able to tender and bid for other contracts. I understand that at least one of those providers is proposing to do so but was expressing some concerns as to whether he would get a fair go. He will get a very fair go.

**Senator HURLEY**—Can you also confirm whether the letter I referred to from the branch head—I understand the name was Wayne Penniall—was actually sent. Was there such a letter?

**Mr Douglas**—To Maryborough?

**Senator HURLEY**—Yes.

**Mr Douglas**—I will take that on notice.

**Senator HURLEY**—The total cost of providing community nursing services, how did that vary after the tender process?

**Mr Douglas**—That is a function of demand for the service. Under this business type, we do not offer any guarantees of business to any provider. We simply, in effect, provide a form of licence that allows those providers to be referred patients by local medical officers or by hospitals on discharge. It depended upon those providers developing relationships with both the hospitals and the local medical officers for those referrals to occur. So it is purely a function of demand.

**Senator HURLEY**—The tender, actually, did not happen until 19 December 2005, so you would not have the financial year—

**Mr Sullivan**—The biggest impact, of course, is that this contract started from 1 May 2006, but of course, in the budget, the government did announce an increase in community nursing fees by 5.7 per cent. So the biggest impact in terms of our expenditure on community nursing is the decision of government to increase the funding—increase the price paid—for community nursing by the 5.7 per cent. We will see, then, a full-year impact of that decision in this financial year, but the new contract arrangements started from 1 May 2006.

**Mr Douglas**—The current usage of community nursing services by veterans means that expenditure is of the order of roughly \$50 million per annum.

**Senator HURLEY**—There is an issue with the Vietnam Veterans Counselling Service and a particular service that is funded, the Devonport Stress Management Group. The VVCS has funded two separate counselling groups in Devonport. They have an average of about 12 members per group, they meet fortnightly and there are two psychiatrists present who moderate the meetings. I understand that VVCS recently advised these groups that the format is incompatible with VVCS guidelines and that the groups must change to a self-management system, that is, not having the two psychiatrists present during the discussions. This is causing some problems for the group, who feel that they have been doing a very good job. They would like the funding to be continued and to continue in their present structure. Can you advise if the Devonport Stress Management Group will continue to be funded in their current form?

**Mr Sullivan**—Yes, they will.

**Senator HURLEY**—For how long?

**Mr Sullivan**—Indefinitely.

**Senator HURLEY**—Indefinitely?

**Mr Sullivan**—Until we understand and develop any longer-term policy around them. Clearly, it is an exception. The background of this is that it was what we developed as a 12-week service, which is to treat PTSD sufferers immediately after hospital-based treatment and, for whatever reason, that 12-week service has continued for nine years. So they have got many hundreds of weeks of service out of it. If it was not existent, it would not be there, because the policy and delivery fundamentals of it were that there is great value in immediate post-treatment support of this nature involving professionals. I do not think anyone would argue the same need nine years later for the same involvement of professionals at this level. Forget all that; it has happened and it is there, and we have no question that these services are useful for the participants in both Launceston and Devonport. We are looking at a broad

review of health and lifestyle programs for veterans. That is not a short-term review, it is something which we are looking at over time.

**Senator HURLEY**—Right.

**Mr Sullivan**—If we get to a conclusion on that, we will look at the issues around these services. But, as was conveyed to them as soon as it was raised in front of the shadow minister, these services will continue. Why it continues to bubble along with some uncertainty, I am not sure, because it was categorically stated at the Tasmanian RSL conference, in front of the man who still writes me letters and the shadow minister for veterans affairs, that the service would continue. The shadow minister had asked me to confirm to him that that was the case, and it was confirmed.

**Senator HURLEY**—I suppose you are saying—

**Mr Sullivan**—I am confirming it again.

**Senator HURLEY**—Thank you. But you are saying that it will be reviewed.

**Mr Sullivan**—At some time in the future.

**Senator HURLEY**—Do you have no time line whatsoever for that review?

**Mr Sullivan**—I am saying that an accident of fate has seen a 12-week service continue for nine years. I acknowledge that it has provided services and benefit to the veterans involved. It occurs nowhere else in the country. But I am not going to say, on the basis of it being outside our policy framework, that I will cease it, arbitrarily or otherwise. I will not do that. It will continue and we do have a long and major review of the interaction between treatment, health and lifestyle programs. When we conclude that review, I have no doubt that there will be other services around the country that are also slightly quirky in respect of how they have developed and what they are doing.

**Senator HURLEY**—Yes.

**Mr Sullivan**—We will then look properly at their future. But this is not something where I am saying that they are okay for three months, six months. They are okay until that review is done and developed.

**Senator HURLEY**—Not three months, not six months—can you give me any hint how long the review might be?

**Mr Sullivan**—No. I do not want to create speculation that there is any short- to medium-term threat to these services. There is none.

**CHAIR**—It has been going for nine years.

**Senator HURLEY**—Until now.

**Mr Sullivan**—At 12 weeks at a time, I think we will run it at least several more. It has been beneficial. I think it is a limited number of people, at a cost, but it has worked for them and we will not take it away from them like that.

**CHAIR**—Mr Sullivan, this *Hansard* will be used as some sort of indicator and satisfier of the query. You are happy and fully intending your words to be used to allay the fears of the people who use that service?

**Mr Sullivan**—I hope it reinforces the assurances that they have already received.

**CHAIR**—Right.

**Senator HURLEY**—Thank you, Chair. I was just making the point that, if we do not know how long the review is going to take, I guess that does not allay the fear.

**Mr Sullivan**—I think that creates a speculation that is not necessary.

**CHAIR**—It is not as if we are going to have Vietnam vets forever. There is a time, as with World War I vets, services must change.

**Senator HURLEY**—This is a long review.

**CHAIR**—But the point is that the thing is not static. There are reviews, changes of government and all sorts of policy changes. But you are saying for the second time that the fears with respect to this service in the near future are unfounded and that you are going to continue the service.

**Mr Sullivan**—That is right.

**CHAIR**—I do not think you can do any better than that, Senator.

**Senator HURLEY**—I think we can get a timeline. Obviously, I am not going to get one, so I will move on to another issue in a slightly similar vein. This is in my own home state of South Australia, where veterans have been denied access to the provision of hydrotherapy unsupervised.

**Mr Sullivan**—No, they have not been denied access.

**Senator HURLEY**—They have been denied funding for unsupervised aquatic physiotherapy. I understand that it is causing some concern. There was a case aired publicly in the *Bulletin* of 9 May concerning Mr Edward Czerwinski from South Australia, who had been funded to do exercises recommended by a physiotherapist and found that this was no longer being funded. Why did Veterans' Affairs cease providing funding for this non-supervised physiotherapy?

**Mr Sullivan**—We provide funding for hydrotherapy treatment if that treatment is referred by a medical practitioner and is supervised by a physiotherapist who accepts the referral. If a veteran has such a referral and has such supervision as part of their treatment they will be funded. If a veteran does not have that referral or supervision as part of their treatment, it falls into a different category. We will and do fund initiatives that we put under the banner of 'lifestyle'. It upsets some people that we call it lifestyle, because people do see it as being very connected to their health, which we also do. Through initiatives like the Heart Health program we will fund exercise regimes, hydrotherapy regimes and so on. As a result of the experience of a number of veterans who felt that the services that they, or the group that they formed, at Daw Park undertook were helpful—the unsupervised hydrotherapy—we did, in consultation with the veterans organisation and some specific veterans who were using the service, develop a further pilot process in South Australia, which is the Health Integration Support program. That program is basically aimed at health and wellbeing through some fitness training, including hydrotherapy training. It is not conducted at the Daw Park pool or gymnasium, it is conducted at another facility. I think about 12 veterans will form the group

who commence that pilot study. That will run for some time and, again, will contribute to the review of this combination of lifestyle versus health. It is regretted that Mr Czerwinski has declined participation in that program. It is open to him. Under the criteria of the program, we believe he would benefit from it. It will remain open to him, but it is not at Daw Park. I think the issue in this debate is not unsupervised hydrotherapy, it is what is at Daw Park.

**Senator HURLEY**—It is not the funding available, it is that some veterans prefer to use Daw Park—is that what you are saying?

**Mr Sullivan**—In the transfer of Daw Park from the Commonwealth to the South Australian government over a decade ago, the South Australian government took a policy decision that Daw Park would remain a repatriation hospital. There is a very close relationship between the veterans of South Australia and that hospital. There are some who believe that all veterans activities should be conducted at the Daw Park hospital.

**Senator HURLEY**—Where is the pilot being conducted, then?

**Mr Douglas**—It is being made available in locations that are close to where the veterans live, in their own communities. So that depends on each of the individual participants. We are trying to minimise the extent of travel that is needed and to make sure that the facilities are close to where people interact in their own communities.

**Senator HURLEY**—To my knowledge, there are not many hydrotherapy facilities in Adelaide.

**Mr Douglas**—There are certainly more than just Daw Park.

**Senator HURLEY**—How far is the pilot from Mr Czerwinski's house?

**Mr Douglas**—Mr Czerwinski has elected not to participate in the pilot.

**Senator HURLEY**—There is a closer hydrotherapy facility for him than Daw Park?

**Mr Douglas**—I believe so.

**Senator HURLEY**—People who are participating in this pilot, are they getting travel allowance to get to these facilities?

**Mr Douglas**—I do not know the answer to that.

**Senator HURLEY**—Could you find out for me.

**Mr Douglas**—I will find out for you.

**Senator HURLEY**—How many veterans were receiving unsupervised aquatic physiotherapy before the funding for it ceased?

**Mr Douglas**—There was quite an extensive number around the country. The issue arose where it was clear from our regular review of the sorts of treatment arrangements that people were receiving that there was a very high risk that the funding of unsupervised activity did not guarantee an appropriate quality of care against appropriate health care standards and that it was questionable whether or not authority existed under the legislation to provide that treatment. As Mr Sullivan has said, there is a difference between direct overseeing of treatment by a recognised, qualified health professional who is licensed and accredited and activity undertaken on one's own recognisance, simply by means of general maintenance of

fitness or maintenance of health. At that stage the department was of the view that the former easily could be funded, as Mr Sullivan has said. There is a referral from a health care practitioner to a physiotherapist recommending hydrotherapy treatment and the physiotherapist accepts that referral and directly oversees the treatment to appropriate standards and quality of care—there is full payment made for that. But there is a difference between that and a general health and fitness maintenance regime which might include access to gyms, hydrotherapy or normal swimming centres, which the department is not authorised to pay.

**Senator HURLEY**—But I understand that veterans under MRCS are funded for unsupervised hydrotherapy, so what is the difference there?

**Mr Douglas**—As Mr Sullivan was saying before in the discussion on the funeral benefit, one is a repatriation issue, a general access health care arrangement; the other is a direct compensation system directly relating to a particular injury arising from service which the compensation scheme is responding to.

**Mr Sullivan**—Most commonly part of a formal rehabilitation program.

**Mr Killestyn**—Importantly, it is not open-ended. It is reviewed every three months based upon a clinical assessment that the program is doing the veteran a particular benefit.

**Senator HURLEY**—Were these hydrotherapy exercises not part of a program by a physiotherapist that was then carried through?

**Mr Douglas**—The program was called the day club. I have no doubt that there were benefits and that some of the benefits were associated with social interaction between veterans. It also included a number of activities which included hydrotherapy, you can call it, or swimming. I think we have to make the statement time and time again: there is no doubt that it would have been beneficial to the participants. But in the end it is a question of waiting until we get a policy review which government considers; then, if the government wants to take us into the lifestyle programs further for veterans, we will go into those programs. But treatment principles are a quite simply based thing. They are determined by medical practitioners and covered by licensed practitioners, supervised. The day club was something that developed and, like the previous case, continued. Partly, our response is to make sure that we can continue some of the benefits that are flowing from it with our new integrated support program.

**Senator HURLEY**—So if there are benefits and you are hoping to continue them—

**Mr Douglas**—Some of the benefits. I did not say the ‘benefits’ and ‘hoping to continue them’. We do not have a basis to support the day club. We said to the Daw Park hospital that they needed to focus their programs on the treatment, particularly the treatment of a group of veterans who were suffering from mental illnesses, including PTSD. The Daw Park hospital responded to that. There is a very good treatment regime at Daw Park, which we fund and will continue to fund. We encourage people, if they believe that activities and treatment by health professionals are required as part of their treatment, to go to their doctor and to be referred to a professional and we will fund it. There is never a question about it. But if it is something outside of the treatment regime, we have to work out a way to fund it. Mr Czerwinski puts up a strong argument to us. I do not think that he contests that issue; what he contests is whether

or not the activities are treatment. He puts a case, and argues it strongly, that the hydrotherapy is within our treatment principles. Our view is that it is not within our treatment principles. I have every—

**Senator HURLEY**—But it used to be.

**Mr Sullivan**—We paid Daw Park for a general program, which was treatment based. We had a concern that the general program was not treatment focused, that it had become a social interaction focused group. We asked them, and they responded, to ensure that the programs which we funded were treatment based programs. Daw Park now has a suite of treatment based programs available to veterans, which we fund. Our level of funding through Daw Park is probably higher than it ever has been. But Daw Park does not now offer non-treatment based programs. It is not just us doing this; this is the treating professionals who have said, ‘It is a treatment program; this is what it should entail.’ We have now gone looking elsewhere. A little bit of it, again, is the fact that we have a group of individuals who have come to rely on such interaction and hold a view that such interaction is good for them. Therefore, we have developed this pilot program in South Australia, which is the extended program. We will evaluate that. Unsupervised hydrotherapy or swimming is not an issue that I am aware of—it certainly is not an issue that has come to my attention as Daw Park has come to my attention—anywhere where else in the country. Veterans are involved in day clubs, hydrotherapy sessions and other activities everywhere else around the country.

**Senator HURLEY**—So Daw Park was not the only one running a kind of day club.

**Mr Sullivan**—As a treatment process, they were the only one. Day clubs are quite familiar and are run all around the country. We provide assistance to day clubs, in terms of their establishment, to achieve their ends. We do not provide sessional fees. You raised the issue of transportation. When we send a veteran on a heart health program, we do not generally provide government funded transport to go to that program. If you go to treatment, we provide government funded transport. I think the extension of treatment to the provision of transport is a long-standing and reasonable, but generous, provision. It would be another policy decision to start saying that, if we extend to lifestyle programs, let us extend to transportation to lifestyle programs. Most veterans I know are involved in some form of lifestyle program. We would encourage every veteran to be involved in some form of that. We do not fund very many of them, and we certainly do not fund transportation to and from them. It might be lawn bowls, exercise of the mind, activities or social interaction—they are all very good. Sometimes this debate paints the department as being opposed to such programs. We think they are tremendous but they are certainly not within the ambit of our policy at this stage to fund.

**Senator HURLEY**—Let us get back then to not talking about day clubs or other clubs, but unsupervised hydrotherapy. That was carried out all around the country?

**Mr Sullivan**—That goes on all around the country. Wherever there is a gym with a swimming pool, you will generally see unsupervised hydrotherapy.

**Senator HURLEY**—That was previously funded?

**Mr Sullivan**—No.

**Senator HURLEY**—Nowhere else except Daw Park?

**Mr Sullivan**—At Daw Park it was because it was under a treatment regime.

**Senator HURLEY**—Nowhere else was that the case?

**Mr Sullivan**—I am not willing to say nowhere else, but nowhere on my radar has it been an issue like it is at Daw Park.

**Senator HURLEY**—Was that situation unique to Daw Park, South Australia?

**Mr Sullivan**—Again, you are using the word ‘unique’ and I have qualified my response. To my knowledge, Daw Park was the most manifest example of it being in the guise of a treatment program being unsupervised hydrotherapy or swimming.

**Senator HURLEY**—Under the VEA that was not a treatment regime? It is under MRCS?

**Mr Sullivan**—It is part of a rehabilitation regime because there is compulsory rehabilitation under the MRCS. Under the MRCS if you gain compensation you must commit to a rehabilitation program which is monitored every three months. Part of that rehabilitation program could be unsupervised activity. It could be training. It could be all sorts of things; if it is part of a rehabilitation program as opposed to a treatment program, we will pay.

**Senator HURLEY**—So, even if it could lead to a cure, if treatment is under the VEA, it does not get funded.

**Mr Sullivan**—A treatment that leads to a cure is funded by the VEA. You are using the word ‘treatment’. Treatment is treatment. Our definition of ‘treatment’ is something that is referred by a medical practitioner to a professional. If it is treatment, we will pay, but there is no compulsory rehabilitation under the VEA. There is an encouragement in rehabilitation and until, for instance, a permanent impairment is decided, you can go through all sorts of processes, but treatment is always funded by the department. If someone is referred by their medical practitioner to a professional for a series of supervised hydrotherapy exercises, they are accepted automatically in respect of a veteran.

**Senator HURLEY**—Are there veterans getting supervised hydrotherapy?

**Mr Sullivan**—Yes. All around the countryside there are veterans who have supervised physiotherapy and hydrotherapy through registered physiotherapists.

**Mr Douglas**—Including Mr Czerwinski.

**Senator HURLEY**—For supervised hydrotherapy.

**Mr Douglas**—He has a referral, as I understand it, to a physiotherapist for hydrotherapy. The physiotherapist has accepted that and we are paying that.

**Senator HURLEY**—Could you then advise me of the cost of that supervised—

**Mr Douglas**—It is a sessional fee paid according to the—

**Mr Sullivan**—I do not think that we would want to disclose how much money we pay in respect of an individual, but we can certainly tell you the sort of fee that we pay to a physiotherapist for a session.

**Senator HURLEY**—That is all I am interested in: the sessional fee. You referred to a health and lifestyle review as part of this. Could you expand a bit on that.

**Mr Sullivan**—In the normal policy development framework of the department and discussion with the minister, clearly we are seeing, particularly amongst younger veterans, issues developing. The younger TPI population cannot be ignored by the department. It is not the answer to say: ‘You are TPI; go home and receive your \$800 TPI.’ We want to encourage veterans to engage in programs that are good for them, be they lifestyle programs or other activities. We have a number of focus programs which go around health/lifestyle. I think you have heard of the Right Mix. You have heard of healthy heart programs; you have heard of extended heart programs. We do a range of these programs which have largely been focused around the Vietnam veteran population and in the recent budget announcement have been extended to the younger veteran population.

We are wanting to understand more as to how do you encourage engagement in good and healthy lifestyle, without becoming the constrictors of veterans’ inter-lifestyle programs or the crutch upon which any lifestyle engagement is based. What I have asked the policy development group to do, with input from our service delivery people, is to start developing for consideration by government ideas around these connects between treatment health programs, lifestyle programs, activity programs and interaction. One of the concerns that the minister has, which is shared by me, is that a great majority of veterans on TPI do not access even our health programs, let alone departmentally promoted lifestyle programs. He, I think reasonably so, wants me to say why and then wants me to say how do I ensure that we improve that. I think that it is a reasonable premise to say that a healthy and well veteran helps address many of the issues of social interaction, family interaction and other issues that are present in our community. That is the task. It is not a review like, ‘Let us in the next six months do this review.’ It is a task which he has set me and which we are starting to think about.

Now the Mental Health and Wellbeing Forum, which I talked about before, which is chaired by Major General Bill Crews, our younger veterans forums and our own task force that we have engaged inside the department that is looking at our access for younger veterans in services provided by the department, will all contribute to where we can possibly take this issue. It is not something where I can say I have got the answer in mind; it is basically saying that we can certainly understand the value of engagement with veterans in such programs and we can certainly understand the potential that we have to encourage that. The times that we have done it so far—if we look at programs like Right Mix and we look at programs like Healthy Heart—they have come back to us with very strong performance in respect of outcomes. They are time limited at the moment. Healthy Heart runs for 12 months. The Right Mix is a continuing program of mostly education, but issues such as the programs in Devonport and Launceston were designed for 12 weeks. We do a lot of these short-term programs, which basically get people started. Clearly there is a question being put to us by veterans saying that you need to do more and we are looking to provide advice to government on that policy question.

**Senator HURLEY**—Again getting back to specifics, Veterans’ Affairs changed the treatment principles in 2004 that ended funding for unsupervised aquatic physiotherapy—

**Mr Sullivan**—They reinforced the treatment principles. The treatment principles did not change. The onus was put on the hospital to ensure that what they were doing was treatment, so that we could fund it.

**Senator HURLEY**—Is there any impediment now that will prevent the Department of Veterans' Affairs from reversing that decision and regarding unsupervised hydrotherapy as treatment?

**Mr Sullivan**—You are basically asking: is it possible for the department to ignore that a treatment regime was not in fact a treatment regime. No, it is not. We would need authority, as we have with respect to Healthy Heart and as we have with respect to the extended program, to fund programs which were outside of the treatment regimes. It is possible to do but it would require authority of government and funding of government to do it.

**Senator HURLEY**—Authority of the minister?

**Mr Sullivan**—Of government, generally the minister.

**Senator HURLEY**—How are the treatment principles decided? Who decides them? Can they be changed?

**Mr Sullivan**—As I say, they have a very basic, fundamental thing behind them. Treatment is determined by medical practitioners and supervised by professionals. If you walked into a place and said, 'I will have a pair of spectacles,' we will not fund them. If you go to your doctor and you are referred to an optometrist and go and get your glasses as prescribed, we fund them for a veteran.

**Senator HURLEY**—We were just talking about—

**Mr Sullivan**—The fundamental basics of the whole treatment process is saying—

**Senator HURLEY**—the Devonport group, which has two psychiatrists. Another group that we were talking about, in the context of that, is a self-management group that does not have a professional—

**Mr Sullivan**—They are not funded under treatment principles; they are funded with authority as clearly separate programs. Treatment principles are an open-ended special appropriation in outcome 2, generally, which are related to the 90-year tradition that the government will pay for health services of veterans as a result of war caused injuries. Special programs are things that can come and go under successive governments or can be expanded or otherwise, but with separate authority.

**Senator HURLEY**—If a doctor says that a veteran would need hydrotherapy treatment but that it is not essential to have a physiotherapist there all the time—

**Mr Sullivan**—That is not treatment.

**Senator HURLEY**—it would be cheaper not to, so why not?

**Mr Sullivan**—If you went to your doctor and asked, 'Would it be beneficial for me to go to a gym and a swimming pool,' that doctor would in 99½ times out of a 100 say, 'Yes, it would.' That does not make it treatment. That is not treatment. If the doctor said, 'Go home and have one of your family members massage your legs,' that is not treatment. You are referred to a masseur and you have treatment. We pay for treatments.

**Senator HURLEY**—Only by professionals?

**Mr Sullivan**—That is the whole basis of the health system in this country—professional licensing and standards protection and things like that. You do not say, ‘Just go and do your own.’ We do not have a lot of do-your-own medicine in this country. You either have drugs prescribed and administered by pharmacists or you have treatments administered by registered professionals.

**CHAIR**—You are insured.

**Mr Sullivan**—You are generally insured. That is one of the principles, but it would generally come with a standard.

**Mr Douglas**—And regulated.

**Senator HURLEY**—Moving along from health issues, I want to talk about claims for DVA entitlements and checking for historical accuracy of statements, particularly in relation to a company called Writeway Research Service.

**Mr Sullivan**—Yes.

**Senator HURLEY**—I understand that this is one of the research companies that can be called in when the DVA assessors cannot determine the accuracy of statements with their own internal procedures. The researchers are given strict parameters and not permitted to provide anything other than historical facts in answers to specific questions. There have been some concerns expressed by veterans on the manner of Writeway’s research and reporting methods, and I would like to ask: is the department aware of the investigation by the Queensland Office of Fair Trading into the practices of Writeway Research Service in relation to the Security Providers Act 1993?

**Mr Sullivan**—I am aware generally of that inquiry. I am aware of the hypothesis that Writeway in fact operate as private investigators, which I do not agree with.

**Senator HURLEY**—Sorry?

**Mr Sullivan**—I do not agree with or accept that at all. There is nothing like private investigation that Writeway does for the department under its contract.

**Senator HURLEY**—It does not perform anything of that kind of function for the department?

**Mr Sullivan**—No.

**Senator HURLEY**—It specifically works on historical verification?

**Mr Sullivan**—Exactly.

**Senator HURLEY**—Obviously, then, DVA is not involved in that investigation by the Queensland Office of Fair Trading?

**Mr Killestyn**—It is a matter that is separate from the work that the company does for DVA.

**Mr Pirani**—I am aware that we have been contacted by the Office of Fair Trading. They asked for a copy of the contract that we have with Writeway and a description of the legislative power that the secretary has to conduct investigations to assist delegates at the

Repatriation Commission in dealing with claims. I understand, but I have not seen it, because I did have some input into the response, that a response has been sent to the Office of Fair Trading in relation to a particular complaint that they have received and our minister has received.

**Senator HURLEY**—Did you get any legal advice?

**Mr Sullivan**—Mr Pirani is the head of our Legal Services Branch normally.

**Mr Pirani**—I am also the principal legal adviser to the department, so that was the reason why I was consulted.

**Senator HURLEY**—And that was written formal legal advice?

**Mr Pirani**—It is.

**Mr Sullivan**—I think it is important to put on the record a few things about our engagement with Writeway. Nothing Writeway produces for the department is kept from the veteran involved. A veteran is invited to rebut anything that Writeway puts, so there is no report for the department which is not shared with the veteran and the chance is always offered to a veteran to rebut anything that Writeway has put. It is correct to say that there have been complaints made about Writeway and the way they conduct their business. Rear Admiral Simon Harrington, the services member of the Repatriation Commission, has taken principal responsibility to address those complaints as they occur. There are complaints the other way, and that is that Writeway has been in receipt of abusive emails from veterans, and again Rear Admiral Harrington has taken it upon himself to discuss with veterans' organisations the need to maintain a proper relationship in what can be a difficult situation. There is nothing provided by Writeway to the department that is not given to the veteran and their advocate, and they are then offered the opportunity to rebut what Writeway has concluded with respect to facts, and that is taken into full account with respect to the decision making.

**Senator HURLEY**—How many contracts for research into claims has the DVA referred to Writeway over the past four years?

**Mr Sullivan**—If that is possible to collect, I will have to take it on notice. I am not sure. We can certainly give you details of how much we have paid Writeway. Whether we can get down to numbers of instances that we have requested their services, I will see what I can do.

**Senator HURLEY**—Thank you.

**Mr Sullivan**—Are you after the last four years?

**Senator HURLEY**—Yes. In doing that, would you be able to provide me with information about how many claims have been found in favour of the claimant?

**Mr Sullivan**—I do not see that there is a connection there and I do not think I could collect it. I can see the hypothesis that you are trying to establish, but often Writeway will report to us in complete agreement with the veteran's statement. We do not go looking and saying, 'Prove them wrong,' but if someone says, 'I was in an armoured personnel carrier in this province of Vietnam in 1969 when this occurred,' in a claim made in 2005, you have to go and see if you can verify the incident 30-something years ago. Often it will come back saying the records establish that that serviceperson was in an APC in that province at that time and an incident

occurred. That is what we use Writeway for. If Writeway comes back to us and says we can establish no record of an APC being in that province at that time, we put that to the veteran or their advocate, and the veteran and their advocate need to consider whether it was an issue of memory, and after 30-something years it could be, or something else. So you may see a modified claim; you may see an agreement. I do not think we could in anyway try and see what the correlation between the contracting of Writeway to a case and its outcome would be. I will have a look, but I would reject any hypothesis about it.

**Senator HURLEY**—I am not really trying to make a hypothesis; I am just responding to complaints that have been received, and I think there is a bit of a perception that the response to investigations has been more negative than positive in the case of Writeway, and that is what I am trying to see—whether there is any basis for that claim.

**Mr Sullivan**—I think there is no doubt that in an assessment process where conflict emerges in the facts of the case there is more noise than in an assessment process where there is no dispute in the facts. It may go through a decision process, it may go through an internal review process, it may go through a VRB process or it may go through an AAT process if there is dispute. Clearly the cases that a lot of people hear of are the cases that involve disputes about facts. The other way we use Writeway is in the investigation of cases of alleged fraud. The greatest source of cases of alleged fraud that we have is veterans, and they generally go to establishing the facts around an incident and we use them there.

**Senator HURLEY**—If they are investigating cases of fraud, they are required to be private investigators in that instance?

**Mr Sullivan**—No. Again, all we ask them to do is investigate the facts of an incident.

**Senator HURLEY**—Can I get a copy of the legal advice?

**Mr Sullivan**—We will take that on notice. It is internal commission legal advice but, if we can release it—

**Senator HURLEY**—Why would you not be able to release it?

**Mr Sullivan**—I am not saying that I cannot release it, I am just saying that I am taking it on notice. I am not saying yes.

**CHAIR**—There are good reasons why you probably could not release it, because in this area there are parameters and you would not want to establish what the parameters are because very shortly thereafter they will start to be met.

**Mr Sullivan**—Again, we are very open about the instruction that we give them. Clearly what we want the community to know is that you can generally establish facts and that we will pursue the establishment of facts. We want people to know that. I do not think there are many out there but, if there is anyone out there who believes that you can invent a story, it is likely that it will be disproved. At one level I understand what you are saying, Chair, and at another level I am saying that I want people to know that all we want to do—we do not want Writeway to get involved in the decision—is ask them to investigate a fact.

**Senator HURLEY**—That is precisely what I am asking—whether you can provide me with the number of instances where Writeway said, ‘Yes, the facts are proved,’ and the number of instances where they say, ‘No, the facts are not proved.’ That is all I am asking for.

**Mr Sullivan**—I do not think I can do that—not through a desire not to do it—but I will check.

**Senator HURLEY**—That is not recorded?

**Mr Sullivan**—We do not have a score rate for them. We do not contract them on the basis of any success rate; we contract them to establish facts and we do not then say, ‘That is different to what the facts were,’ because it may be a difference in interpretation or it may be a very slight difference in fact. It may be the difference of a month where someone can very reasonably come back to us and say, ‘It was not August 1969, it was September 1969. I have checked with my mates. I got that wrong.’

**Mr Pirani**—Often, the decisions might not be based just on whether a particular occurrence took place; a claim could be rejected because of medical evidence even though we might have a Writeway report. There may be no correlation at all.

**Senator HURLEY**—I am not asking for the total claim.

**Mr Sullivan**—That is right. That is why I am saying I do not believe I can do it, because that is not the decision.

**Senator HURLEY**—You were saying that Writeway are asked only to establish historical facts one way or the other. Are you aware of any complaints from individual veterans that that is in fact not what is happening with Writeway—that they are venturing opinions and that their research has been quite poor?

**Mr Sullivan**—I think there is a combination of things there. I am aware of complaints that research has been poor, yes. I am aware of those complaints.

**Senator HURLEY**—About Writeway?

**Mr Sullivan**—That they are poor fact gatherers on instances, and we have pursued those claims where they are made. The fact that they are influencing a decision—

**Senator HURLEY**—Offering an opinion?

**Mr Sullivan**—offering an opinion—would require them to have the detail of the application made, and we do not give them the detail of the application made; we give them the fact that we need validated. It is not of any consequence to Writeway that someone, for instance, is claiming that their injury or disease is connected to their service and it may be connected to an incident in their service. They would not be aware of the full circumstances of the claim; they are aware of the fact that we are seeking to verify. If an opinion is that we are certain something occurred, as opposed to being confident it occurred, lacking confidence that it occurred or the extreme of being certain that it did not occur—if that is what you are referring to as an opinion—yes, they give us an opinion, but it is about the fact. A lot of these facts are not black and white facts. It can be the case that they say to us, ‘We have confidence that this occurred,’ ‘We cannot be certain that it occurred but there is enough of a basis to accept the facts as stated in the claim,’ through to the extremes of saying, ‘Yes, it did occur,’ or, ‘No, it did not occur.’

**Senator HURLEY**—You have had complaints about poor research? Has the department investigated those claims?

**Mr Sullivan**—We look at complaints and, again, part of the reason we transmit to the veteran the results of the fact search by Writeway is to exactly cover any issue the veteran, perhaps through their advocate, has with the facts as determined by Writeway. We invite them to come back and say: ‘This report is rubbish. If you go to these company records and you go to here, here and here, you will find the evidence.’ Clearly, if someone believes that a Writeway report jeopardises a claim and they believe that their claim is not flawed, we would expect them to rebut the Writeway report. That means that every time they are rebutted there is a suggestion of somewhere between, ‘You are mistaken,’ or, ‘It is poor research.’ We do not then challenge Writeway.

**Senator HURLEY**—I will rephrase that then. Have you had any specific complaints about Writeway? If so, how many?

**Mr Sullivan**—We have had specific complaints about Writeway. I do not know how many. I can, again, endeavour to see how many we have had.

**Senator HURLEY**—Thank you. Are you aware at all of the results of those investigations or of those complaints?

**Mr Sullivan**—I do not think that I could give you a generalised statement of the results of those complaints. I will take it on notice. Rear Admiral Harrington could not be here tonight, unfortunately, and I will ask him if we can compose a response in respect of a generalised answer. I am tempted to say that, generally, we do not find many claims well founded, but I will not say that.

**Senator HURLEY**—If those complaints are investigated, is there a report done or how would that—

**Mr Sullivan**—If a veteran, directly or through their advocate, disputes a report, we will ensure that what goes before the decision maker is a considered view of the incident. It could result in further research by Writeway or in acceptance of the research presented by the advocate or veteran. But this process is all about ensuring that, in respect of that part of the decision in which the decision maker relies on events, they have the best information to make an informed judgment. We make sure that that gets to them, that is our primary focus.

**Senator HURLEY**—Perhaps I will put some of the rest of my questions on notice around how many other researchers are used and that kind of issue as well. They might be more easily answered that way. Just one more question, then. Do researchers contracted by DVA require investigation licences in accordance with the Security Providers Act 1993 in order to perform research into claims for DVA in Queensland and, if so, what assurances does DVA require to ensure that their researchers are compliant?

**Mr Pirani**—Contracts that we have with our researchers require them to comply with all applicable territory and state laws. If they were to be required by the relevant state authority to be licensed, we would require them to be licensed. However, at this stage our department has no advice from the Office of Fair Trading in Queensland or from any other state or territory body. All states, except for the ACT, require the registration of private investigators; if that is the issue that is being raised, we are not aware of a requirement by any of the state or territory authorities that require people like Writeway be licensed.

**Senator HURLEY**—I want to leave outcome 2 and talk about the Australian Memorial at Le Hamel in France. The minister announced on 6 May that \$7.9 million was to be spent on rebuilding the memorial. It was built in 1998 at a cost of \$1.3 million. Over the last eight years, apart from some ongoing problems with vandalism and the need to replace a number of tiles, there have been no real reported problems with the memorial that would have required a rebuild. What circumstances have led to the need for the allocation of \$7.9 million to rebuild the memorial, which cost \$1.3 million to build?

**Mr Sullivan**—If I can lead, then I will ask Major General Paul Stevens, the Director of Australian War Graves, to provide some further information. You are right to say that it was built in 1998. I do not agree with the statement that problems were not evident. Tiles falling off were not generally the result of vandalism; the vandalism was generally around graffiti and other things. Tiles falling off were fundamental to the problem. It is a complex matter, which we are happy to go into. The current memorial has three major parts; the thing they have in common is that they are a mural based on individual tiles. The original plan for those tiles, which came from Australia, was that they would be individually drilled and pinned in place to the memorial. The tiles were delivered to France without the individual holes drilled in them to allow pinning and the advice received was that an alternative method of construction and placement of the tiles would work, that is, basically, the placement of the tiles on mortar. I believe there has been evidence for some time that that method of construction did not work.

If you visit the memorial now it is covered in protective netting basically to ensure the safety of tourists and others who visit the memorial from the potential of a falling tile. Large elements of the memorial have extensive missing tiles. This is a very important Australian national monument. It commemorates the army. The battle it commemorates involved Australian and American forces under the Australian command of General Monash and was one of the first and early significant victories on the Western Front for the allies. It was a very swift victory which saw the incorporation of artillery, air force and infantry. It is a very important memorial.

Having established that it is in disrepair, which reflects badly on Australia, and having established that it could not be repaired, the proposition put to government was that this must be replaced. The amount allocated in the budget is based on the costings developed between us and the department of finance as to what the replacement cost of a monument would be. Whether that works out in fact and in practice to be exactly right remains to be seen, but we can only work on the estimates provided. It is clear that we need to move reasonably quickly. The focus on the Western Front will be considerable over the next few years. We want Le Hamel to reflect the achievements of the Australian Army and of General Monash in time for the major commemorations of the 90th anniversary of the late battles and Armistice of the First World War. The only option to achieve that was to replace the memorial.

**Senator HURLEY**—Thank you.

**CHAIR**—Thank you for that answer.

**Mr Sullivan**—Major General Stevens can provide whatever detail you want.

**CHAIR**—I do not think there is much more he can say, after that answer. That was very fully answered.

**Senator HURLEY**—Not about the memorial, perhaps. It was a very interesting answer. As to the circumstances that led to the rebuild, in a number of Office of Australian War Graves publications, between 2001 and 2004 reference was made to the tiles and to vandalism, but was there any subsidence or more serious problems and, if so, when did the department become aware of these?

**Major Gen. Stevens**—I am not aware of any reports of subsidence around the memorial. It is basically to do with the tiles. There have been repair problems with the memorial; we had to refurbish it in 2001. That was a method-of-construction problem, again. But in the reading I have done I have not seen any reports of subsidence, no.

**Senator HURLEY**—I will just get tell you where that came from. It was a report by a journalist, John Hamilton, in the *Herald Sun* on 24 May. He talks about the memorial and says:

Surrounded by warning signs, the three curved walls of the memorial are now shedding big, black Australian granite tiles. Rope netting has been thrown over the whole structure to try and hold the rest together. Whole sections have subsided, a walking trail has been roped off because of a collapsed trench and rain has seeped into the display panels. A separate toilet block has plumbing problems.

**Major Gen. Stevens**—Yes. The memorial in its grounds contains, I think, two sections of trenches which are in the open air. They are not covered by anything, so would be subject to rainfall and things. So I suspect that he is saying that the sides of the trenches have washed in a bit and that a section of a walkway near one of those is probably affected. But I am surmising that that is what he is saying.

**Mr Sullivan**—The memorial is on quite extensive grounds. The centrepiece of the memorial is the monument and it utilises remaining trenches and there is quite an interpretative path now. We think the interpretative path has been good and will be incorporated in a future design. Our concern is the actual monument. I have certainly read somewhere that the toilets did have some plumbing problems at some stage and have been repaired.

**Senator HURLEY**—But part of the funding for the rebuild will include, I presume, if part of the trench has collapsed or subsided, rebuilding that?

**Mr Sullivan**—It is going to be a design issue. Personally I am not in favour—I have seen rebuilt trenches. I do prefer trenches as they now stand. I do not like seeing copper logs on trenches and saying that is a trench. But, certainly the maintenance of the memorial in every respect and the safe conduct of people around the memorial will be a key design criterion.

**Senator HURLEY**—Since the dedication of the memorial, what reports have been commissioned to investigate the problems?

**Major Gen. Stevens**—There was a refurbishment in 2001 and then, when this latest problem became more manifest, there was a report. The then Director of War Graves at the time went over to France and took with him a company that deals in stone to have a look at the memorial and the stone. I think the company's name was Stoneplus. They did a report for

him which said that the way the tiles had been mounted—the closeness of them, the way they were cut—they were not suited to be on a curved surface, so the problem was not one you could just repair. That was then followed—

**Senator HURLEY**—Was there any recommendation out of that report?

**Mr Sullivan**—I think there persisted a hope of repair at that time.

**Senator HURLEY**—Right.

**Mr Sullivan**—That was my reading of things, that there was further examination of whether we could see a repair conducted.

**Senator HURLEY**—So that was the recommendation from the company?

**Major Gen. Stevens**—I think that was the conclusion. They said that there were problems, but I do think the Director of War Graves at that time had a belief, at least heartfelt if not science-based, that there must be a way to repair this. I do not think anyone takes lightly a decision to pull a monument down which is of great sensitivity. We took care to make sure that, before this announcement was made in the budget, the family of General Monash, and the Returned and Services League of Australia, were consulted to ensure that we did manage the sensitivities of a decision to pull something down. I do believe that previous Director of Australian War Graves was hopeful that there must be a way. I think there was then consultation with the Commonwealth War Graves Commission and others about the question: can we preserve?

**Senator HURLEY**—What was the cost of that report in 2001?

**Major Gen. Stevens**—I just do not know, so I would have to take that on notice.

**Mr Sullivan**—Several thousands of dollars, but not much at all.

**Senator HURLEY**—Has the Commonwealth War Graves Commission made any reports to OAWG on the condition of the memorial? If so, what recommendations were made in those reports?

**Major Gen. Stevens**—Following the Stoneplus report, there was a report by an engineering firm that is commonly used by the Commonwealth War Graves Commission, but which did the work on our behalf on this occasion. They looked at the structural soundness of the monument. That report also indicated that there were problems with the memorial, so it is my reading of the file that the two reports put together showed us that the concept of repairing the memorial probably was not going to work, that we had to go to the next stage, which was to demolish it and rebuild it.

**Senator HURLEY**—When was that engineering firm report done?

**Major Gen. Stevens**—In 2004, from memory, but it might have been early 2005.

**Senator HURLEY**—So the recommendation from that engineering firm was along the lines that repair was getting increasingly unlikely?

**Major Gen. Stevens**—When I read them both the findings of them are: look, this monument unfortunately has some deficiencies which are probably not reparable and the better solution would be to start again.

**Senator HURLEY**—In 2001, Stoneplus were saying that there were significant problems, and 2004—

**Major Gen. Stevens**—Stoneplus were not involved in 2001.

**Senator HURLEY**—Oh, right.

**Major Gen. Stevens**—The reports of difficulties with the monument at that stage probably came from the Commonwealth War Graves Commission, which maintains it on our behalf, and from reports of people visiting it. A repair program was put into effect. Then, as I believe, there was another repair program in 2003 and then, when my predecessor received reports in 2004 of further problems, he went there with Stoneplus. Stoneplus gave him a report, that report was followed by the engineering report and, on the grounds of those two reports, a decision was made that we would have to rebuild it.

**Senator HURLEY**—So a series of reports in the OAWG journal through 2000, 2001, 2002 and 2003 said that basically, apart from some minor vandalism and problems with tiles, everything was in order. So, up until then, the reports were that there were not any problems. Even in 2004 they said that extensive repair work was done and completed to a good standard. It was not really until 2005 that the department admitted that there were significant problems with it?

**Mr Sullivan**—I think ‘concluded’, rather than ‘admitted’.

**Senator HURLEY**—Sorry, yes. Bad choice of words.

**Mr Sullivan**—Paul Stevens took you through the chronology; I think it was as a result of the two inspections in 2004 and 2005 and, of course, we took action in terms of this budget process, which started at the end of 2005.

**Senator HURLEY**—How much has been spent on repair since the memorial was dedicated in 1998?

**Major Gen. Stevens**—I can find out for you. I do not have that figure with me at the moment.

**Senator HURLEY**—Thank you. If you could, it would be good. In terms of costs, is there any possibility of action against the original designers and builders of the memorial?

**Mr Sullivan**—This is where it gets complicated. The original design, of course, was not followed. So you then had the secondary decision, which was that an alternative method of attaching the tiles to the monument would work. You then had a contractor who followed that decision and then there was a failure of that decision. My reading is that there was, and possibly is, a course of action against someone. Identifying who that someone is is difficult and I think pursuing it would involve a decision that would mean that nothing would happen to the monument for several years. I do not believe that the prospects of success against someone whom we could identify would be strong because, as I said, the original design had a different method of attachment of the tiles.

There appears to be consensus between the contractors, the funding agency—DVA—and others that an alternative approach to construction would work. It does not appear to have been a decision taken by someone unilaterally and who then thought they would see how it

happened; it seems to be a decision that was taken by consensus, but it failed. I think if we said that the purpose here is to find someone to litigate against, we might have trouble identifying who they were and we would be involved in a very lengthy process of litigation during which time, of course, the memorial would have to stand as is, as evidence. That is where, in our advice to government, we said, 'This was got wrong. It is no longer a credit to Australia and you need to fix it.' That is the advice that government has accepted.

**Senator HURLEY**—Is there any documentation on that decision not to proceed with the original design?

**Major Gen. Stevens**—When I look at the files I can see from the documentation that the tiles did not arrive drilled. They cast around then to see whether they could be drilled in France, and that did not seem to have a practical outcome. I did not find a document which said, 'We all got together on this day and made a decision on how we were going to do it.' There were documents indicating that you have alternative courses open to you and there are documents saying, 'This is what we will do: we will fix them directly to the monument structure,' but there was no document that I saw which was the minutes of a meeting with various people. On the reading the files as they are, all I could assume was that discussions were held, consensus was reached and on they went.

**Mr Sullivan**—Nor does there appear to be any record of warranty that it will work.

**Senator HURLEY**—There was no instruction to the contractors, no signed instruction to fix the tiles in a different manner?

**Major Gen. Stevens**—I do not recall seeing one on the file. I can have a look, but I do not recall seeing one on the file.

**Senator HURLEY**—Would I be able to get copies of the documents that you do have discussing the alternative?

**Mr Sullivan**—Again, I will take it on notice. I do not see any problem with that. Clearly, in the end there was a direction to proceed. Whether it was oral and not recorded on the file, I do not know, but clearly—and this is what I get on the issues around any potential litigation—there does not appear to be a safe history with respect to decision-making processes. We would have to identify very clear decision processes if we were thinking of taking action.

**Senator HURLEY**—I presume that there is general ongoing monitoring of other Australian war memorials under the care of OAWG and CWGC. Are there problems with any of the other memorials?

**Mr Sullivan**—We have maintenance issues with every one of our memorials. Some of them are very old. Some we inherit and we have to do major work on. For instance, Major General Stevens and I were present at El Alamein for the rededication of the 9th Division Memorial. The 9th Division Memorial was constructed by the 9th Division Association, with some government assistance, but it was their memorial. It had foundation problems and it had to be demolished and rebuilt after about a 10-year period.

**Major Gen. Stevens**—It was built in 1989 and it was refurbished last year. It had a 15- or 16-year lifespan in Egypt.

**Mr Sullivan**—We have some complex memorials. London is a good example where we have a memorial which incorporates water and light. That is a dangerous combination for memorial builders and we have had maintenance issues there. It is right; it works now, but we certainly had some issues about getting that right. If you look at Lone Pine and memorials on the Western Front, there is a big maintenance job for the Office of War Graves, and often through the Commonwealth War Graves Commission. An unfortunate example is one which I said that we inherited, the 9th Division Memorial at El Alamein, which basically said, ‘If you do not get the base of a memorial on Egyptian desert right, the desert will eat it.’ This one is different to most memorials on the Western Front. It was innovative and it failed.

**Senator HURLEY**—You mentioned El Alamein. We have Le Hamel. Are there are no other memorials that require a rebuild—they just require ongoing maintenance?

**Mr Sullivan**—I do not think there are any risks like this one. We have an active program of maintenance and it is costly to maintain memorials. They are not cheap.

**Senator HURLEY**—Speaking of maintenance, I would like to go back to Anzac Cove.

**Mr Sullivan**—Yes.

**Senator HURLEY**—I would like an update on what is happening there. Can you advise me on what the current status is of the roads and car parks at Gallipoli and whether there has been any further deterioration or subsidence since February, when we last discussed it?

**Mr Sullivan**—Since February, when we last discussed it, we of course conducted a very successful Anzac Day commemoration, which I know you are going to want to ask me about because it was so successful.

**Senator HURLEY**—I would, if I had been there.

**Mr Sullivan**—To conduct that commemoration, we had to work—

**Senator PAYNE**—I am keen to know about it.

**Mr Sullivan**—It was fantastic. The young people who were there, the commemoration, the result of planning, the cross-government work from Australia and the interaction with New Zealand and Turkey produced a memorable Anzac Day service and really set the stage for Anzac Day commemorations in Gallipoli, which is at one level the cornerstone of our commemorations.

**Senator PAYNE**—I have heard very good things about it.

**Mr Sullivan**—The road was an issue leading up to that. It had deteriorated over winter and we did have significant concerns about the capacity of the road to support the commemoration. The Turkish government stepped in and gave us assurances that the road would be suitable for use on Anzac Day for the commemorations. That involved some significant repairs to subsidence around culverts, to major potholes and to blisters in the road surface itself. It involved the monitoring of subterranean water drainage through some of the cuttings and the monitoring of some potential subsidence along Anzac Cove and Brighton Beach. The road was suitable for use on Anzac Day and fulfilled its role in that it was able to support the hundreds of buses and trucks that were part of the Anzac Day commemoration.

It did suffer some distress as a result of Anzac Day. They were temporary repairs and the road has deteriorated since. I think it would be fair to say that the current state of the road is fair to poor. In the meantime, the Turkish government are working with their agencies and at a government level through their response to the review that they have conducted as to the future of the road within the Gallipoli Peace Park, particularly the road around Brighton Beach and Anzac Cove. I will be travelling to Turkey on Monday and we are hopeful that we will see an outcome next week which will initiate, if necessary, design and re-design work, repair and construction work and cove protection work which will be sustainable. We will be able to report on that more fully after we are advised by the Turkish government as to what they are doing in respect of the road. As the Turkish government fulfilled their assurances about the temporary repairs works for the Anzac Day commemoration, we believe that they are committed to a long-term solution for the protection of this part of the cove.

**Senator HURLEY**—Would you be able to provide me with reports and correspondence provided to DVA on this subject?

**Mr Sullivan**—What sort of reports and correspondence?

**Senator HURLEY**—About the roads and the conditions of the roads.

**Mr Sullivan**—The reports have basically been from our embassy and are based on Turkish government assurances in respect of the temporary repairs for Anzac Day. They were reporting what the Turkish government were telling us and they were delivered upon. As I anticipate, next week the Turkish government will tell us what they have determined to do. Australia has always provided advice, when invited to, on engineering and other aspects of the roadwork but, while the Turkish government has conducted its review, we have not been required or asked to submit further advice. They did permit Australian engineers to provide advice with respect to the temporary repair work, and that worked well. I will be taking a senior Australian engineer with me to Turkey in an expectation that there will be some invitation for us to provide some advice.

**Senator HURLEY**—Perhaps if I could be more specific. Could the committee receive copies of any reports and written communications between the Australian embassy and consulate in Turkey and the DVA over the last year concerning road construction damage and repair at Anzac Cove, the historical and archaeological survey and all correspondence from Arup Australia.

**Mr Sullivan**—I think in asking for correspondence between the department and its commercial contractors, the answer would be ‘no’. But I will take that on notice.

**CHAIR**—Thank you.

**Mr Sullivan**—I will look at the exchange of information, which includes government-to-government communication, which is generally also not released by a government. But I will look at how we can respond to that.

**Senator HURLEY**—I would appreciate any correspondence that the committee can get. Was any further engineering work carried out by Arup?

**Mr Sullivan**—No. The work conducted in recent times by Arup has been on-the-ground geotechnical advice to the Turkish authorities. We were invited to have on-the-ground

observation of the repair work around Anzac Cove up to Anzac Day, and we accepted that invitation. Where invited, we were able to provide advice on the nature of repairs that needed to be addressed. That was all done on the ground in Turkey. Basically, there was a very effective working relationship between the governorship, which has got responsibility for the road, the road contractor and Arup engineers, some of whom were from Arup Turkey and some were from Arup Australia.

**Senator HURLEY**—Could you provide a brief update on the archaeological and historical surveys that are being carried out?

**Mr Sullivan**—As I said last time, Australia has selected a historian and some archaeologists to participate in a joint archaeological, historical engineering review. The Turkish government have not yet provided us further criteria or information as to how this review is going to be conducted. It will be an issue I will be taking up with the Turkish government next week as to how we can progress it. We are ready and we are ready to go. The archaeologists are very keen. We have been doing research, including the access of maps and materials from the Imperial War Museum and other sources, and they are doing a lot of desk based work around the site at this time.

**Senator HURLEY**—Have the Australian nominees been accepted by the Turkish government?

**Mr Sullivan**—We have notified them but, as I say, we have not yet seen a response from the Turkish authorities as to what they have determined to be the scope and nature of the study. That work has got to come from the Turkish authorities.

**Senator HURLEY**—Is the corollary of that that we are not quite sure when the survey will begin?

**Mr Sullivan**—No. We cannot be certain of that, although we have started some work ourselves and we are positioned to go.

**Senator HURLEY**—What are the proposed arrangements for appointing Australian members to the survey team? Was it a tender arrangement?

**Mr Sullivan**—We selected Dr Richard Reid, who is the senior historian within the department, as our historian element to the Australian contribution. We had a limited tender to Australian universities to provide archaeological input to the review, and the successful tenderer was the University of Melbourne.

**Senator HURLEY**—Is that a person or a group of people?

**Mr Sullivan**—They have two people.

**Senator HURLEY**—Who are they?

**Mr Sullivan**—I will give you their names. I should know them off the top of my head, but I just forget their names.

**Senator HURLEY**—Has a financial commitment been given to the survey yet?

**Mr Sullivan**—We will fund whatever the Australian commitment is and our commitment to Melbourne university.

**Senator HURLEY**—Is it just salaries?

**Mr Sullivan**—And expenses.

**Senator HURLEY**—I might put the remainder of the questions on notice.

**Mr Sullivan**—Don't you want to ask me more about Anzac Day? You asked me so much about Anzac Day last year that I thought you must want to talk about Anzac Day a lot longer tonight. I could stay until midnight.

**Senator HURLEY**—I would be delighted to hear about Anzac Day.

**CHAIR**—What can you tell me about Anzac Day?

**Mr Sullivan**—It was a very positive experience. If we looked at the issues of last year in respect of the entertainment component of the event last year—litter, crowd behaviour, at a whole-of-government level measures were taken to address each of those issues and the overnight program, which was a combination of documentary, personal interest stories and live interviews conducted by Andrew Denton, that really did hold the attention of the people there for the many hours they wait until the dawn service. The dawn service was at its traditional best. The crowd then moved to Lone Pine and we have made an effort to make sure that the crowd in Lone Pine were again informed. The measures taken there to ensure that the Lone Pine had its ground protected and to ensure that people did not in any way show any disrespect to the grave markers in Lone Pine were successful, but what was most important was that the formal surveying we did, as well as the informal surveying we did, was that the people there really thought it was a moving occasion and they were extraordinarily happy. That included the Australian media, who were overwhelmingly positive about the conduct of the event.

**Senator HURLEY**—Indeed. I happen to have met the Turkish Ambassador to Australia last night and he confirmed that it was an extremely well run event and very impressive. As you said previously, it was a marker for things to come.

**Mr Sullivan**—The site was sparkling by the next day. I must mention the contribution of people like the Conservation Volunteers Australia, which are a group of 23 people who paid their own fare to Gallipoli and assisted us in the management of the event in all sorts of ways. They came from all walks of life and paid their way. That was tremendous. To watch the university students from the Canakkale University fill the bags which we gave out to people was tremendous. To see the volunteers from the various embassies in Ankara come down and see their contribution and to see a very large contingent of young Turkish people who appreciated the fact that all the material was subtitled in Turkish and really did get some level of understanding of what this thing was about for Australia and connected to it. It was very professionally and very personally satisfying just to see what, as a group of agencies from Australia with some commercial partners and with the partnership of the governments of Turkey and New Zealand, we could do. So thank you for that opportunity.

**Senator HURLEY**—Thank you.

**CHAIR**—Thank you, Mr Sullivan. I do not believe that we have any further questions. Can I thank you and all of your officers for attending at this late hour upon the committee? It has been a long week for us and I am sure at this hour of the night that it has also been a long day for you. Can I also thank Hansard and the Sound and Vision people and particularly the secretariat for all of your hard work and for what has been a very strenuous four days, and thank you, Minister.

**Committee adjourned at 11.00 pm**