



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION  
COMMITTEE

**Consideration of Additional Estimates**

FRIDAY, 23 FEBRUARY 2001

CANBERRA

BY AUTHORITY OF THE SENATE



**SENATE****FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE****Friday, 23 February 2001**

**Members:** Senator Parer (*Chair*), Senator Murray (*Deputy Chair*), Senators Brownhill, Conroy, Lightfoot and Ray

**Substitute members:** Senator Lundy to substitute for Senator Ray for the committee's hearing on the 2000-01 additional estimates on Friday, 23 February 2001

**Senators in attendance:** Senators Mason and Lundy

**Committee met at 9.09 a.m.**

**FINANCE AND ADMINISTRATION PORTFOLIO****In Attendance**

Senator Abetz, Special Minister of State

Office of Asset Sales and Information Technology Outsourcing

**Outcome 2: Cost effective and operationally satisfactory outsourcing arrangements for Commonwealth budget-sector IT infrastructure that enhances industry development and employment opportunities particularly in regional Australia and satisfactory implementation of Commonwealth competitive tendering and contracting.**

**Output 2.1. IT infrastructure initiative**

**Output 2.2. CTC implementation**

Ross Smith

David Yarra

Julia Cowling

Trixie Mackay

Rod Whithear

**CHAIR**—Good morning, everyone, and welcome. I declare open this third day of the public hearing of the Finance and Public Administration Legislation Committee's examination of the additional estimates for 2000-01. The hearing today will continue the committee's examination of the Office of Asset Sales and Information Technology Outsourcing. The committee is required to report to the Senate on or before 27 March 2001. The committee may also examine the annual reports of departments and agencies at this time, even if no additional appropriations have been sought. Agencies which are not listed on the program may have written questions on notice directed to them. I remind you that the committee has set 23 March 2001 as the date for the submission of written answers to questions taken on notice.

**Office of Asset Sales and Information Technology Outsourcing**

**CHAIR**—Are there any opening statements?

**Senator Abetz**—No. Let us get into it.

**CHAIR**—We are still on general questions.

**Senator LUNDY**—I want to apologise for being a few minutes late this morning. The Friday morning traffic was a nightmare.

**Senator Abetz**—Peak hour in Canberra is like peak hour in Hobart. The peak hour is what, five minutes?

**Senator LUNDY**—It can get up to 20 minutes.

**Senator Abetz**—It must be worse than Hobart, then.

**Senator LUNDY**—Do you have any information about the budget estimates and additional estimates figures—whether they were six-monthly or as advised on Tuesday night?

**Mr Smith**—We took that on notice. We do need to do this more thoroughly, but I have been referred to the portfolio budget statement of 1999-2000, page 111, which says:

This measure revises the funding for the IT Outsourcing programme in line with the decision to extend the IT Outsourcing programme to 31 December 2000.

So our funding was noted as being to 31 December 2000. But let me do a more thorough check of that and get you a written response, as we promised.

**Senator LUNDY**—Thanks for that. It was a bit of a mystery at the time. The other evening, we also discussed the new role of OASITO. Do you have any written information, particularly guidance notes, et cetera, on the government's current policy on IT outsourcing—so, post-Humphry policy statements?

**Mr Smith**—There would be guidance in the Prime Minister's letter to ministers. As I indicated the other night, we will check that out and see what we can give to you for that. As I understand it, the core policy remains unchanged, except that the management of the program is now with agencies.

**Senator LUNDY**—Following the Humphry review, did the Prime Minister write to all ministers again?

**Mr Smith**—To my recollection, he did, but I would have to check that to be absolutely sure.

**Senator LUNDY**—Minister, can you help me out here at all? Being a minister, you may have got a letter.

**Senator Abetz**—No.

**Mr Smith**—We believe we did, Senator Lundy, but we can check that out for you.

**Mr Yarra**—He wrote once. The Humphry review came out, the government considered the response and the Prime Minister, as I understand it, wrote once to all ministers.

**Senator LUNDY**—Did the minister for finance write to all ministers as well?

**Mr Yarra**—No.

**Senator LUNDY**—Can you provide a copy of the letter from the Prime Minister to ministers?

**Senator Abetz**—We will take that on notice and see if we can.

**Senator LUNDY**—Yes. If the appropriate claims you make about keeping all that stuff secret apply, I am sure you will let us know.

**Mr Smith**—It is probably more that it came out of the Prime Minister's office. It is a question of whether we can release it. But we will check that for you.

**Senator LUNDY**—Sure. I cannot get back to PM&C now. That would be terrific. Also, could you tell me whether anything accompanied that letter—in other words, was it circulated with a copy of the Humphry review or an explanatory statement relating to the changes?

**Senator Abetz**—We will take on notice to see if we can provide letters and attachments.

**Senator LUNDY**—What responsibilities are described in your performance agreement as CEO?

**Mr Smith**—Generally?

**Senator LUNDY**—Yes, generally.

**Mr Smith**—I do not have that with me, unfortunately, but it is essentially to fulfil the obligations of the office under the minister's directions, be it in asset sales, IT outsourcing or market testing. I have a detailed breakdown of that, and I will see whether I am able to provide you with it.

**Senator LUNDY**—Has that changed at all with the changes post the Humphry review?

**Mr Smith**—No, I have not been able to discuss that with the minister. He has not been available, as you know. But it is a matter that I would have to discuss with him or discuss shortly with the acting minister. To the extent that it needs amending because of IT outsourcing, I would have to check whether it is general enough to survive until the end of the performance agreement period. I will check that.

**Senator LUNDY**—The annual reports for 1997-98 and 1998-99 state that OASITO paid the respective sums of \$113,646 and \$296,961 in performance pay. No figures are stated for 1999-2000. Can you tell me what the quantum of performance pay was in 1999-2000?

**Mr Smith**—On page 98 of the OASITO annual report, total performance pay paid during the year to executive officers is \$116,733 in the year 1999-2000. According to the annual report, in the previous year it was \$145,200.

**Senator LUNDY**—Does that include all of OASITO and not just IT outsourcing?

**Mr Smith**—It would include all SES officers and non-SES officers.

**Senator Abetz**—You have of course raised an important question, Senator. Today's *Financial Review* talks about the payments that were made and says:

... two reports have since condemned the process.

I think 'condemn' is too strong a word. There are other aspects as well to OASITO. There is the IT outsourcing and the market testing. That is overall performance. That is not in any way to denigrate the excellent work that was done in the area of IT outsourcing, which has saved the Australian people a lot of money.

**Senator LUNDY**—I will resist debating the point, Minister.

**Senator Abetz**—Yes, but the story in today's *Financial Review* unfortunately tries to link all the performance bonuses only to IT outsourcing, which is not correct. But it does make for a sensational headline.

**Senator LUNDY**—I have not had the fortunate experience of seeing it yet. I look forward to that.

**Mr Smith**—Senator, I should clarify that I have just been advised the figure I gave you is for SES officers only and does not include non-SES.

**Senator LUNDY**—Do you have the figure for non-SES?

**Mr Smith**—We would have to get that for you.

**Senator LUNDY**—Is it in the annual report?

**Mr Smith**—No.

**Senator LUNDY**—Can you see if you can track it down now? We have a couple of hours.

**Mr Smith**—That actually should not be too hard to get. Let me see if we can get that back in the office. We have the two people here. We might have to send someone back.

**Senator LUNDY**—That is great.

**Mr Smith**—We should be able to get that for you in the next hour or so.

**Senator LUNDY**—Thank you. How many OASITO SES officers was that \$116,000 divided up amongst?

**Mr Smith**—Again, we would have to check that. Whether everyone got performance pay or not, I do not know. We will check that and try and get back to you at the same time.

**Senator LUNDY**—I am looking at my notes and I would actually like the full detail, if it is possible—the breakdown of which officers got how much of the performance pay.

**Mr Smith**—I would need to check on the privacy side of that but we will see what we can give you, for sure.

**Senator LUNDY**—You could, if there are any concerns about putting names next to it, just give the position and classification and how much performance pay was paid.

**Senator Abetz**—But the position would basically tell you the person, wouldn't it?

**Senator LUNDY**—Minister, it is the expenditure of public money. We are actually entitled to the information in that degree of breakdown. I have certainly asked for figures like that before and they have been forthcoming. I understand that it is a bit sensitive for you but we are actually entitled to that information.

**Senator Abetz**—No. It is the privacy aspect of employees of the Commonwealth and I would have thought that the CPSU would in fact applaud my concern in that area. But we will see what we can do.

**Senator LUNDY**—I have suggested that you do not include the individual names but just the classification and position.

**Senator Abetz**—But that is a bit like saying do not mention 'Kate Lundy' but 'Labor senator for the ACT'.

**Senator LUNDY**—You guys do that all the time.

**Senator Abetz**—It might not be too hard if the classification is given to then link that to determine who the individual is. So not giving the name might be only token concern for privacy, that is all.

**Senator LUNDY**—Yes, that is a fair point. But I still believe that we are entitled to the information.

**CHAIR**—It would depend, Minister, on how many people were within each classification.

**Senator Abetz**—Of course.

**Mr Smith**—There are some classifications where there is one person.

**Senator Abetz**—That is probably what I was referring to—one Labor senator for the ACT.

**Senator LUNDY**—I do understand that. I do think that we are entitled—

**Senator Abetz**—But we will not mention Kate's name, for privacy purposes.

**Senator LUNDY**—Wayne Swan knows all about how that feels, doesn't he?

**Senator Abetz**—Wayne Swan?

**CHAIR**—We will carry on and Mr Smith, I am sure, can provide that.

**Senator LUNDY**—You have played that game before.

**Senator Abetz**—I am sorry? That has gone over my head.

**Senator LUNDY**—I am not surprised.

**CHAIR**—Carry on, Senator Lundy. You are right.

**Senator LUNDY**—I think that we are entitled to all of the information.

**Senator Abetz**—We will see what we can do within the bounds of concerns for privacy.

**Senator LUNDY**—Over to you. Obviously, within that information, if their positions are associated with the IT outsourcing program—remembering that this is all of the SES officers in OASITO—could that be identified as well so we actually get an idea of the performance bonuses paid specifically to the IT outsourcing officers. I would like to know that as well.

**Mr Smith**—We would be happy to provide that to show you just how well they have done.

**Senator LUNDY**—Thank you. I would like the same information with regard to the non-SES group—that sort of breakdown—which I know you are finding out about as well. Do you have identifiable criteria that are used to assess eligibility for performance pay at both the SES and non-SES level?

**Mr Smith**—I have performance agreements with each of the officers. They have a list of achievements that we are asking them to meet during the year. We do an assessment at midyear, which is reasonably informal—just to check where people are at—and then again at the end of the year. Whilst there is a core set of objectives and tasks we seek people to achieve, that would vary, depending upon the sort of project that people are working on at the time. You have to understand that in our organisation they are all permanent staff on AWAs, so they all have performance agreements attached to that.

**Senator LUNDY**—Every single staff member?

**Mr Smith**—Yes.

**Senator LUNDY**—I did not realise that. They are all on AWAs?

**Mr Smith**—Yes. There is a category of people who are on, I think, a non-ongoing thing, which I think is a contract for a specified period for 12 months and which is not technically an AWA; but all of our people are on some form of contract.

**Senator LUNDY**—So what you are telling me is that everyone's AWA has their own set of performance criteria within it?

**Mr Smith**—We have an AWA which refers to a performance agreement, and each one has a performance agreement signed with their supervisor.

**Senator LUNDY**—And those performance agreements vary from officer to officer, depending on what they are doing?

**Mr Smith**—As I just said, that is the case. There is a core. For the SES, you would find that most of the high level things like ‘commitment to government policies’, ‘diversity’ and those sorts of things would be very common, but then you would have specific ones as well, depending on who the officer is and what projects they are working on. So there would be variations for each of the officers.

**Senator LUNDY**—Is performance at estimates one of the criteria for those SES officers? It is a very cheeky question.

**Mr Smith**—I hope so; we would get well rewarded!

**Senator LUNDY**—It all depends on your perspective, I guess. It depends on which side of the table you are on.

**Mr Smith**—Exactly.

**Senator LUNDY**—Is it part of it? Is it identified as a criterion?

**Mr Smith**—It is not explicit, but it is implied in the way in which you carry out your executive duties, I think. But there is not a specific Senate estimates one.

**Senator LUNDY**—It is just part of your job, I guess, isn’t it—fronting up here every three months or so. I know it is your favourite part too, Mr Smith!

**Mr Smith**—We do take it seriously, Senator.

**Senator LUNDY**—I know you do. How are those performance criteria judged for different staff?

**Mr Smith**—It varies. Each of the supervisors does an assessment, a sit-down, direct face-to-face assessment with the staff, at the end of the year. An assessment is agreed and sent to me, and I and the Deputy Chief Executive look at that across the office, to make sure that we have consistency across the office. Where we have issues with the assessment, we go back to the supervisor and the staff person to check that. If our impressions are different, we go back and say, ‘Look, you have rated officer A very highly, but officer B over here hasn’t been rated quite so highly. Relatively, we think this has been a more complex job than that one.’ That sort of stuff goes on. Then an assessment is agreed and the officer, the supervisor and I sign off on their agreed assessment.

**Senator LUNDY**—In terms of those relativities, do you identify your pool of money that conforms to your budgetary plans and is available for performance pay? Or is it more subjective than that?

**Mr Smith**—We do not put aside \$150,000 and say, ‘We must spend the \$150,000,’ if that is the question.

**Senator LUNDY**—Kind of.

**Mr Smith**—We are in a ballpark figure. I am mindful also of broader APS standards in terms of performance pay. But we assess people on their merits on a case by case basis. Depending on the nature of the program that the person is involved in, for some years you might have a fairly standard program where there has been nothing particularly special done in the year, whereas someone might be absolutely at the peak of a complex project—like IT outsourcing—so it varies. Sometimes people can get good performance pay one year but not the next, not because they have not done so well but just because the demands are different in the particular year. So it does vary, which is why you see variations in some being paid more and less in different years. The total figures vary.



**Senator LUNDY**—Is there a maximum performance pay for officers?

**Mr Smith**—Our performance pay is 15 per cent of the person's remuneration.

**Senator LUNDY**—So that becomes a cap?

**Mr Smith**—Correct. So you can be paid up to 15 per cent of your salary.

**Senator LUNDY**—In terms of assessing that eligibility for performance pay, you have mentioned complexity and difficult challenges. How many of those challenges identified were actually linked to things that were ultimately criticised in the Humphry review, like issues relating to the ambitious contractual timetables that were put in place? Do you see what I mean? I can understand why at the time you would have set goals to head down certain paths, but can you tell me if any of those goals that were set were issues or factors that were criticised ultimately in the Humphry review?

**Mr Smith**—I am not sure it is as explicit as that but, in terms of timing, for someone to achieve a successful outcome in a year is related to timing, isn't it? Some would be to achieve successful prioritisation by 30 June or have the contract by 30 June or by 31 March or something like that. It can be as explicit as that. It is not specifically timing. I make the general point that all our actions were entirely consistent with an approved framework that we were operating in.

**Senator LUNDY**—I am actually not suggesting they were not. I am asking you to reflect retrospectively following the Humphry review about what criteria you actually did set and how that relates to some of the critique in the Humphry review.

**Mr Smith**—On reflection, to pick up your point, people were acting in accordance with what was required of them to do and therefore we can only judge them on that. If subsequently people say, 'Look, we don't believe what you are doing is right,' they were absolutely at the time operating in accordance with an approved framework.

**Senator LUNDY**—I am not suggesting that they were not, but I am still interested in the question.

**Mr Smith**—There would be some categories. The Auditor-General said we were too slow, Humphry said we were too fast, so it is pretty hard to know where you sit with all of that. Humphry was saying that his view was that we gave not enough regard to implementation and that we were therefore trying to get contracts out at the cost of getting a good implementation. For me, that is a matter of debate because we were going through a process with the agencies to arrange contracts. This is a point we could discuss for a long time—who was responsible for implementation, us or agencies. In terms of our roles and responsibilities, the Humphry review at appendix 10 clearly says that agencies are responsible for implementation. Whether it is fair that we are criticised for that is another thing, but it is a view that he holds that there was too much attention given to the contract and not enough to implementation. From my perspective, my officers did quite an outstanding job in doing what they were required to do set in an approved framework by government.

**Senator LUNDY**—Did the release of the audit report and/or the Humphry review have an impact on the way you assessed performance pay in this financial year?

**Mr Smith**—We have not assessed this financial year. The final assessment will be 30 June. All factors will be taken into consideration at 30 June.

**Senator LUNDY**—So I should not couch it in the past, I should couch it in the present? It will be taken into account in some way, shape or form?

**Mr Smith**—I would be very pleased to take both of those into account when measuring performance of our office. The Auditor-General, despite a discussion and points of difference about methodology in terms of how you might calculate savings, gave us a very resounding, confident sign-off in the integrity of our process. I was very pleased with that. And Humphry—as you say, it is all in the interpretation—

**Senator LUNDY**—Indeed.

**Mr Smith**—Humphry was saying that we had an important job to do and we did it, and now the environment is different and things can be done differently. From my point of view, that is a fairly big tip on both accounts. So I would be quite happy to take that into consideration, as we would, because feedback like that is important.

**Senator LUNDY**—I cannot help but reflect that the tasks that you were assigned as an agency were exactly that—you were assigned it, reflecting government policy of the day. As you said, however that is reflected on, the ultimate responsibility goes with your political masters in setting that agenda for your agency. Is that a fair comment?

**Mr Smith**—I obviously will not comment on that. We were given a job to do. The major point of debate is about OASITO's role in forcing this through. I think Mr Yarra alluded to that the other night. I know we have made this point—and you must find it tedious—but what is true is that agencies were with us side by side for the duration. If you take a look at some of the projects, they took well over 12 months to execute. It is not as if these projects were done in record time. The private sector would be horrified if they took a year and a half to do a transaction—the time that we took. Therefore, the emotion that runs around this has always intrigued me because we took a long time—we took three-odd years to do five contracts. The Auditor-General said, 'That's too slow,' and Humphry said, 'That's too fast.' What is right, I do not know. Maybe as we all get more experienced with outsourcing, we will understand what is the right way—what is the right method—to do this on the scale that we were trying to achieve.

I think what is fair, when you reflect on it, is that there was a lot of good work done. For me, what is important is that it goes forward. There is a genuine commitment to outsourcing, which I think is an important managerial tool to be used carefully and properly, so we are now in a situation where the APS in the year 2001 will be considering very seriously the benefits of outsourcing. I am very pleased about that.

**Senator LUNDY**—In the 1999-2000 annual report, OASITO spent \$146,000 on training activities. Can you give me a description of the sorts of training activities?

**Mr Smith**—I do not have them here. We are sponsoring three MBAs, for example.

**Senator LUNDY**—What does 'sponsoring' mean? Do you pay for people to attend those courses?

**Mr Smith**—We pay for their fees, but there will be a multiplicity of development opportunities that are in that. What was the figure you quoted?

**Senator LUNDY**—It was \$146,000. Is that right?

**Mr Smith**—I will check this, but I think a reasonable amount of that might have been for my own training. I did the advanced management program at Harvard Business School. I think it was in that year. I would have to check. I can get you the details.

**Mr Yarra**—I should also add that each officer has to attach to their performance agreement personal development undertakings. They drive a lot of the training expenditure.

Those officers are assessed as to whether or not they undertook what they said they would undertake at the end of each year. The sorts of courses that are generally offered around the place, apart from the things that Mr Smith has mentioned, are principally the PSMPC courses—for individual officers who are carrying out their personal undertakings attached to their performance agreements.

**Mr Smith**—For example, we have a couple of people at the moment going through Toastmasters to extend their ability to present information publicly. There are things like Excel training. So there will be a whole range of management sponsored courses down to day-to-day technical. We had one person on the SWIM program, which may or may not be reflected in that.

**Senator LUNDY**—Yes.

**Mr Smith**—We are very supportive of that program. But let us give you the details. We are happy to provide all that for you.

**Senator LUNDY**—Yes, please. Going back to your own attendance at the Harvard Advanced Management School, what did that involve? Did you get to go overseas as part of that?

**Mr Smith**—I actually did an 11-week residential course at Harvard Business School in Boston.

**Senator LUNDY**—When did you do that?

**Mr Smith**—From September 1999 to December 1999, I think. It seems like such a long time ago.

**Senator LUNDY**—Please remind me: was that before or after you took over?

**Mr Smith**—It was before.

**Senator LUNDY**—It was, because Mr Hutchinson left in December—right?

**Mr Smith**—Correct. I returned to Australia in the first week in December and took over a few days after that.

**Senator LUNDY**—Did you know that was going to happen? You are not going to answer that, are you?

**Mr Smith**—Obviously there were some discussions with me late November about what my ambitions might be.

**Senator LUNDY**—I am pretty curious about this, I confess. As part of establishing your own performance agreement, did you nominate that as a specific goal you had?

**Mr Smith**—It was actually suggested to me by the then chief executive, Mike Hutchinson, who had previously done the same course in the nineties when he was with another agency. He felt that, given that his view was that I was potentially able to become an agency head, this would be a good rounding out for me prior to doing that. Indeed, I would have to say, having been through it—Dr Watt from PM&C was with me as well—it was a very good program and was certainly worth while doing.

**Senator LUNDY**—How much was it all up, including travel, expenses and stuff?

**Mr Smith**—I do not know that, but that will be part of the costs we can give you.

**Senator LUNDY**—Is that an MBA? Sorry, I do not know much about all this academic stuff.

**Mr Smith**—It is not actually an MBA; you become an alumni of Harvard Business School. It is the only non-award course that is recognised as an alumni course. It is a 6½-day a week, 11-week residential, working till midnight—

**Senator LUNDY**—It sounds like fun!

**Senator Abetz**—It sounds like estimates.

**Senator LUNDY**—I would love to have an 11-week estimates, Minister.

**Mr Smith**—It was certainly worth while. I would highly commend it. Acknowledging that it is a reasonably large cost, it was certainly very worth while for me as a person.

**Senator LUNDY**—So there were three other MBAs in addition to that?

**Mr Smith**—We sponsor internally three MBA students at this point and other tertiary studies—undergraduate courses and stuff—for a few people.

**Senator LUNDY**—Are the MBAs for SES staff?

**Mr Smith**—One is and there are two non-SES, although one of those was an acting SES for a period this year, so that technically is a non-SES person.

**Senator LUNDY**—Which institution were those MBAs at?

**Mr Smith**—It is the Australian Graduate School of Management, I think, for the three of them. I took a decision when I took over the office that we needed to take a longer term view for development rather than the shorter term view that had prevailed in terms of short-term courses. It seemed to me that you needed to take a longer term view in terms of developing people at the strategic and executive level. We tended in the past to respond to one- or two-day management courses, but I wanted to shift some of that focus into longer term development like MBAs and the like.

**Senator LUNDY**—No wonder everyone was breaking down the door wanting to work for OASITO.

**Mr Smith**—We are very pleased for people to come and work for us, Senator, as you would understand. I think that is a fairly modest move but an important one. To get ourselves some skills at the masters level I think is important, certainly important for the individuals, if you take a broader APS view; and their longer term needs are fairly important about what contribution they can make in the broader sense. As I said, we are also sponsoring a couple of young people, encouraging them to go off and do their undergraduate degrees, who had previously not thought about that. We are trying to lift that a bit across the office.

**Senator LUNDY**—What staffing level or classification are those officers that are doing the undergraduate degrees?

**Mr Smith**—They would be an ASO6 and an executive level 1. We can certainly get you that detail.

**Senator LUNDY**—It would be very interesting to see the sorts of courses. Have those MBAs been completed?

**Mr Smith**—No, they are still current.

**Senator LUNDY**—What is the duration still to go? Will they finish their degrees before you have to wind up OASITO, I guess is what I am asking?

**Mr Smith**—We do not intend to wind up OASITO, I understand, nor does the government.

**Senator LUNDY**—The IT aspects of it, at least.

**Mr Smith**—The three individuals involved are on the asset sales side currently, so they would not be affected in any event. I must say I take an APS view of the world when it comes to development: we can sponsor people and, if they go to other agencies, I would do all I could to encourage the CEOs to allow that to continue.

**Senator LUNDY**—So it does not mean that they would be cut off?

**Mr Smith**—I would absolutely hope not, because I would identify them as a good need for those individuals and I would certainly be prepared to talk to my colleagues to say, 'Please keep that going,' because I think they are very important for the individuals involved.

**Senator Abetz**—The CPSU would support that as well, wouldn't it?

**Senator LUNDY**—I am sure they would be very enthusiastic.

**Senator Abetz**—We are in raging agreement. That is good.

**Senator LUNDY**—That is right. In terms of your residential course at Harvard, how does that work? Did you get paid a per diem over there or did you still get paid your salary, or what?

**Mr Smith**—I got paid my salary. It was an all cost type course. There was a one-up fee, so most of my meals were provided except for the mid-term break of three days.

**Senator LUNDY**—Ha, ha!

**Mr Smith**—They gave us three days off.

**Senator LUNDY**—Sorry, I should not laugh.

**Mr Smith**—It was quite an experience—

**Senator LUNDY**—And it would have been really nice and warm in Boston at that time!

**Mr Smith**—The first part was warm and the last part was unbelievably cold.

**Senator LUNDY**—So they would have covered accommodation and meals?

**Mr Smith**—We lived at the Harvard Business School itself. All meals were provided. There was a small cost associated with some extra activities where you had to go off to do certain things—

**Senator Abetz**—Like having a beer.

**Mr Smith**—Having a beer was my own cost. So there was a small thing, but we can get you the details of that.

**Senator LUNDY**—Thanks. Procedural order 34 provides that all heads of department and Senior Executive Service officers be required to undertake study of the principles governing the operation of parliament, accountability of their departments, agencies, et cetera. Have you undertaken that in OASITO?

**Mr Smith**—I think this is in line with your question. All the SES officers of OASITO attended the sessions that the Clerk of the Senate gave on Senate accountability and appearing at Senate inquiries. That was at the Royal Canberra Golf Club or somewhere. We made that compulsory for the office. I am not aware of any other direct things but we could also check that for you.

**Senator LUNDY**—If you could just take on notice, I guess, whether or not all officers participated in that training. How long did it go for at the golf club?

**Mr Yarra**—It was a half-day.

**Senator LUNDY**—And whether or not attendance at that seminar or session in fact constitutes compliance with that procedural order.

**Mr Smith**—We will check that, sure.

**Senator LUNDY**—Has anyone in OASITO undertaken further training beyond that half-day seminar in issues relating to accountability and the operation of parliament?

**Mr Smith**—We will have to take that part of it on notice, Senator. We do not know the answer to that.

**Senator LUNDY**—I just want to move to issues relating to the actual work that you were doing as opposed to how you were doing it. What consideration did OASITO give to intellectual property matters in relation to, in the first instance, the requests for tender?

**Mr Whithear**—Intellectual property of tender material is certainly something that we address in tender processes. Our RFTs specify that material submitted as part of the tender processes can be utilised by the Commonwealth without claim, so we certainly preserve a range of rights in that area.

**Mr Smith**—That would be spelt out in the RFTs that we have provided to you previously. It would be no different to what is contained in those documents that we have given you, I think.

**Senator LUNDY**—In terms of the contracts themselves, I confess that I have not read them all from cover to cover.

**Mr Smith**—Okay.

**Senator LUNDY**—I know that this starts to get tangled up in other issues that we are dealing with at the moment, but can you describe some of the principles you deployed in those contracts in terms of the intellectual property interests of particularly the Commonwealth but also the actual external service providers or vendors themselves.

**Mr Smith**—I will just make a general comment. Intellectual property can actually have a range of meanings. Intellectual property can mean owning the rights to specifications and designs that people put in to you on acquisition type things. I assume that you are not talking about that. You are talking more about the documentation and the information contained in that provided by tenderers. Is that correct?

**Senator LUNDY**—I am actually interested in both but maybe we could just work on the latter at the moment.

**Mr Smith**—Okay. I will get Mr Yarra to run through that.

**Mr Yarra**—And I am not going to help very much because intellectual property is, in my experience, a pretty complex area of law. We rely very much on our legal advice. Our legal instructions are that the advisers delivered to us an IP regime which protects the Commonwealth's interests absolutely and we are confident that, with the contractual relationships that we have entered into, we have protected those interests. You really need our lawyer sitting here in order to get answers to the questions that you want to ask about those principles. We are not IP experts.

**Senator LUNDY**—That is not much good to me at all, is it?

**Mr Yarra**—No, I said it would not be.

**Senator LUNDY**—We keep asking you to give us your legal advice and you keep saying 'Um, well, maybe ...'

**Mr Yarra**—But the legal advice on IP, for example, is embedded in the documents that we have executed that you now have. It is embedded in there. If you were to engage a lawyer to assess that regime, they would give you the answers that you are after in terms of understanding the regime that we have implemented. I am unable to explain that in its legality.

**Senator LUNDY**—I will turn to the contracts and look at the broad Commonwealth perspective of what the Commonwealth have in terms of intellectual property rights in relation to documentation and so forth. The issue is an interesting one with respect to the contracts. It also does extend to the issue of evaluation reports and other documentation compiled, which we are working through and still waiting for. Can you tell me whether, under the intellectual property regime, the actual contents of the contracts—the documents themselves—are in fact the intellectual property of the Commonwealth of Australia for the purposes of complete authority in dealing with those pieces of information?

**Mr Yarra**—I cannot answer the question of the IP right, which probably is a legal answer. You will see in those contracts, however, a right that we have in relation to, for example, the confidentiality clauses. If you go towards the end of the confidentiality section of the contracts, it has exceptions—or ‘carve-outs’, as we call them—to that confidentiality. Those clauses attempt to put in place confidentiality obligations for both parties, and then the carve-outs carve out one of the parties, and that party is the Commonwealth. You will see in those clauses the carve-outs that we have. It gives us a right to do things with that document and, in the confidentiality piece, you can read that. But you have asked a broader question about the IP, and it is a legal question that I cannot answer.

**Senator LUNDY**—Can you take it on notice?

**Mr Yarra**—Certainly.

**Senator LUNDY**—Let us go where you have taken that question then, into the actual provisions in the contract that relate to how that contract can be managed. I will not dwell on this too long, because I know that we are dealing with it and that you are working through those evaluation documents as we speak so that we can get them as soon as possible.

**Mr Smith**—The committee has set a date of the 26th, which we are aiming to get to.

**Senator LUNDY**—Thank you. Those carve-outs that you describe: you say they set the parameters by which you as the client and the vendor negotiate as to how that document can be protected on confidentiality grounds.

**Mr Yarra**—No. Those exceptions, as they are called in the heading there, are exceptions where those confidentiality obligations do not apply to us. They carve out us and give us the right to do things with those documents. They release us from those obligations, which are otherwise—

**Senator LUNDY**—So it is kind of an opt-out clause rather than an opt-in sort of thing.

**Mr Yarra**—In the vernacular, it says that both parties agree to keep the material confidential, except that the Commonwealth is allowed to do such and such. That is the way it works.

**Mr Smith**—This is a really difficult area for us and, as you know, we are trying to work our way productively through this for the other committee. But in my mind there is no doubt that the property actually belongs to the Commonwealth. It is the purpose for which you use the information which is probably the most compelling point. This is where we are struggling with the issue at the moment. Our advice is that we have a licence between the

Commonwealth and the tenderers, and that licence says that tenderers will provide the information for specific purposes—such as evaluating tenders and arranging contracts. And our clauses refer to the fact that information can be passed on to parliamentary committees, in the latter parts of our documentation. But there is an overarching point at which there needs to be a duty of care in handling the commercial information that is inside those documents. This is why we have taken up the references committee's suggestion to black out sensitive information at this point, until the committee decides that it formally wants the rest of the information, which we can certainly hand over. So it is that duty of care that we are trying at the moment to deal with. If it is the references committee's desire to have the information, then we would have to hand it over.

**Senator LUNDY**—Obviously, you have advice on this. What gives you the authority to be the determiner of that duty of care, as opposed to the committee being the appropriate determiner of how to manage that duty of care?

**Mr Smith**—I would have to check that, but I actually believe that the information is lodged with OASITO as the Commonwealth's agent, as specified. But I would have to check. That would be a legal question.

**Senator LUNDY**—Yes. That is obviously, at least from my point of view, a major point of contention—that information delivered to the committee, with your concerns and views and opinions appropriately couched—but in fact the parliament is the ultimate and appropriate authority to determine how that duty of care actually applies, and not OASITO.

**Mr Smith**—Absolutely. The parliament can ask for the information formally and the information can be given and the parliament decides. There is no dispute about that point. I think the references committee has acknowledged that I have a role to play by suggesting to me that I may wish to delete some of the commercially sensitive information, provided I give the committee a full explanation as to why I have done that. The committee says it will then form a view as to whether that is acceptable. That is an entirely legitimate and appropriate process, and that is the one we are pursuing. But, at the end of the day, no-one disputes the parliament's right to formally deal with this information. We have never done that. We believe we have always responded to the committee's suggestion to us that, in the first instance, we may want to take out commercially sensitive information. I believe, as the head of the organisation that holds that information, that I am the one who should make that judgment. But, I suspect, that would be a legal point which would be checked.

**Mr Yarra**—We believe that our right to exercise that duty of care is our right as long as we are being asked to exercise our discretion and judgment—that is, until the point where that right is removed from us by the Senate references committee saying to us, 'We formally require you to provide it.' That would extinguish the right, and we would immediately respond.

**Senator LUNDY**—I want to challenge that interpretation because I believe the committee formally requested the information from you in the first instance. I do not want to dwell on this, because I know this is the subject of correspondence. The committee is now providing opportunities for OASITO to comply with that formal request, as it was a formal request. If I place a question on notice here, it is a formal request. Just because I do not couch it in terms of orders, don't think for a minute that, if I ask for information here, you have some sort of discretionary out pending formal orders. Minister, I know you will confirm that a request is a request. I just wanted to make that counterpoint. I think the committee is being very understanding in dealing with the issue in the way that we have.



**Mr Smith**—We appreciate that. It is a difficult area for us. I would just make the point that we believe we have only been invited to provide the information. That might be semantics, but our advice is that we have not been formally ordered by the references committee to provide the information. But that is not to say—

**Senator LUNDY**—I suspect there was not any other advice you could have received that would have extricated yourselves from a very difficult position. As I said, the committee is being very understanding in proceeding down that path. But do not be under any illusion about the powers and authority of this committee with regard to extracting information.

**Mr Smith**—We have no illusion about that. To be fair, I think the most compelling point is that we believe that we are now operating in an arrangement that has the endorsement of the committee. At the last hearing, the chairman of the committee said to me that—

**Senator LUNDY**—Absolutely. As I said, the committee is being very understanding in providing a course of action that could resolve the issue.

**Mr Smith**—Correct.

**Senator LUNDY**—It is by virtue of the committee's decision to conduct itself in that way that you are able to have that opportunity.

**Mr Smith**—If I could put in a plea, Senator: this is a very difficult area, and we are trying to work very productively to get you all the information the committee needs. That is our absolute desire. But I have to have regard to protection of the information under the RFTs and contracts. It makes it difficult for me when advice is given that, 'At this point, you can't hand it over.' What we are trying to do is to give as much as we possibly can and then work with the committee to give the rest. That is our absolute desire.

**Senator LUNDY**—What lessons have you learned from all of this in terms of future contracts—perhaps not involved in the IT outsourcing area but in other areas that OASITO is working on?

**Mr Smith**—I think that referencing in the later tenders the fact that it could go to parliamentary committees was a good lesson. We did not have that in the earlier ones. We have them in some of the contracts. I am not sure too many contracts in the Commonwealth would have that, frankly, but we have.

**Senator LUNDY**—It is an assumption—that is why. That it has now been made explicit—

**Mr Smith**—Again, I may be wrong, but I thought we had an advice from the Clerk who said that the Commonwealth should be putting in clauses. So I think there is an expectation coming from the Senate that this is a thing people should be doing—that is, to explicitly put it in to remove doubt.

**Senator LUNDY**—I hate to sit here and across the table try and interpret advice from people, but my clear understanding was that there was no requirement to place those clauses in the contracts and that did not suddenly make those obligations to make material available to committees real, but in fact that it is always there and is inherent. By placing that clause there, it removed an opportunity for potential contractors to be actively misled, which, quite frankly, was a reflection on some of the inherent conduct of OASITO in that somehow there was not an inherent right for that material to come forth to a committee.

**Mr Smith**—I actually very much dispute the latter point. I agree with the advice that came out of the Senate that it is fundamentally good practice to be explicit about that point. We responded very quickly to include those clauses. I suspect others were not—

**Senator LUNDY**—So will you include them in all subsequent contracts?

**Mr Smith**—Absolutely.

**Mr Yarra**—Can I add a higher level comment. I went to the Harry Evans half-day course and got a lot out of that. What I brought back and what we have, in his words, is that OASITO have not contracted, without consulting the Senate, to make information confidential. We have kept our discretion. We have contracted the parties to confidentiality to stop them releasing our information but we have not contracted ourselves away in either the ITO contracts or the RFTs. So we have retained the discretion to do as we see fit with the information, including meeting our accountability to the parliament. That is a very important point coming out of the Harry Evans course that I went on: that we have not constrained the parliament in that way. We still have that discretion, and you might see an example now of our exercising that discretion—much to the committee's irritation, perhaps. But we have that discretion, and that is the important point. We did not give that away, and Harry Evans said to us, 'Do not give away that right unless you technically consult with the Senate first. If the Senate say that we can give it away and they agree with it, that is fine.' So we have not contracted that away. You can see it in our contracts. For parliamentary purposes it is in there.

**Senator LUNDY**—Which is why the committee's issue is with you and not with the wording of the contract.

**Mr Yarra**—That is right; that is the issue.

**Mr Smith**—Could I also add that we have for a very long time had a clause in our contracts that allows the auditor full access to the premises and data of contractors—

**Senator LUNDY**—You could not contract that away either, could you?

**Mr Smith**—We actually can, I think. It is not in all contracts. There is a joint committee that is dealing with that issue right now. But we have always believed that it is important for the auditor, who reports directly to the parliament, to have that full access to be able to report as well. So we are really working hard to create the environment where people can feel comfortable that they have this obligation to provide information to the parliament.

**Senator LUNDY**—The bottom line is that the parliament is the body accountable for the expenditure of public money and you are spending an awful lot of public money. We need to know about how you are doing it.

**Mr Smith**—Absolutely. We do not dispute the point at all, and never have.

**Senator LUNDY**—Going to another aspect of intellectual property, now on the actual issues dealt with in the contract, I will use an example. There is a significant intellectual property aspect held by an agency. As part of the transition to an outsourcer, what is the general approach of protecting that intellectual property for the Commonwealth if in fact one of the contracts involves applications as well as infrastructure? Does that intellectual property get transferred to the outsourcer?

**Mr Whithear**—We really need to be quite specific here—

**Senator LUNDY**—I know. It is a very general question and it may vary from contract to contract, but if you could give some examples.

**Mr Whithear**—If we break it up into certain circumstances we can probably help you. Most of the contracts let under the IT outsourcing initiatives are primarily IT infrastructure contracts, but let us pick an example of an applications development exercise which might be in or outside one of the contracts we have let. In most cases, the contract would be structured

to ensure that the intellectual property created by that application's development would vest in the Commonwealth. I have seen examples—in past experience, not since I have been at OASITO—where the Commonwealth has agreed to the vendor retaining the intellectual property rights. So, as a general principle, it would vest in us. If we perhaps take procedures that might exist in an in-house IT operation to run database administration or something like that, that might be something that the in-house IT operation is willing to share with the incoming contractor in the interests of them having a smooth transition. I guess that is one of the areas where we have not always been able to produce the procedures we would like to. The Commonwealth would still retain ownership in those procedures but would probably licence the contractor to use those procedures in building up its own set in order to give effect to the service delivery it was responsible for under the contract. There are a range of other circumstances.

**Senator LUNDY**—In terms of the assets held I suppose I am thinking of a mainframe, whereas part of the contract—the ownership of the actual hardware transfers, the management and operation of that system—is conducted by the vendor. Who would own the intellectual property for—not the data, because I know we have dealt with that—the actual processing and procedures associated with the management of that data? I guess the context is that we are not dealing with any sort of run-of-the-mill mainframe system here; we are talking about incredibly complex legacy systems for which there really is only one way of doing something.

**Mr Whithear**—Again, I have to answer with a single answer, but I know that there will be variations to the theme.

**Senator LUNDY**—Sure.

**Mr Whithear**—Mainframe data centre operations, under the outsourcing model adopted for the IT outsourcing initiative, are split into two functions, and we mentioned applications development and the fact that that is generally held in-house under these contracts. Just to give you an order of scale, in the larger mainframe shops—say, HIC, Centrelink and those sorts of agencies—the applications development functions are probably two-thirds or three-quarters of the IT function. The infrastructure is really the plumbing upon which it runs. So in those more complex examples, the applications development will be held in-house. The intellectual property in running those applications is therefore in-house. As far as the intellectual property associated with the procedures for running a mainframe is concerned, I think I just alluded to the process by which you might transition from an in-house operation to an outsourced operation. However, during the contract period, the contractor would develop its own set of procedures—it might change the mainframe it runs on. There are a whole range of things that it would do and probably own the intellectual property in. The terms of our contract are such that at the expiration of that contract—at the end of it or at the end of the extension options or upon termination—the contractor is obliged to give the Commonwealth substantial disengagement assistance which includes, if not the transfer of the rights to the intellectual property for those procedures, at least the licence to use, or for another third-party contractor to use, those procedures, that intellectual property, for the period that the Commonwealth requires to transfer operations.

**Senator LUNDY**—Where the applications development is part of the contract—it may or may not be the same contractor, but where it is bundled together and outsourced in some way—the development of those applications can quite often occur in conjunction with the proprietary software provided by the vendor but, because of the practices required by the agency, that requires that software to be modified. This is not unusual, is it?

**Mr Whithear**—Not at all.

**Senator LUNDY**—How do you manage that in terms of who owns the intellectual property?

**Mr Whithear**—I think I addressed that question reasonably well in the example before. That example is one of the cases where I have seen Commonwealth agencies agree to allow the intellectual property to vest in the contractor. Really, it is in the interest of the agency to be able to use that software. It will not then go on and market it and use it as an asset, whereas the software vendor may. That is where I have seen negotiations between the Commonwealth and vendors. It is really a question I cannot answer in any specificity in relation to our ITO contracts.

**Senator LUNDY**—I appreciate that. I am just trying to get a feel for your approach.

**Mr Smith**—We actually did not have to deal with that issue. There was only one small application site. The rest kept all applications in-house, so we did not have to deal with the issue. It would be an agency issue. But, in general, if you had a contractor in something the size of Health or Tax, you would want to make damn sure that the interfaces were clear so that you did not lose your rights by bringing in other ownership rights from the contractor. You would hope that your lawyers could create that for you. As you say, this is a very common issue right across all contracting, and it is something that the Commonwealth has to be very clear about, because you do not want to give away your rights to ownership by the fact that people can come in, modify and claim. There are protections in a legal sense that you can put in place for that.

**Senator LUNDY**—Just to take that analogy a step further, what if, at the termination or conclusion of a contract, the management systems associated with the technology have become proprietary to such an extent that they are, perhaps for appropriate reasons, the property of the vendor? Can they pick it all up, move out and leave you with nothing?

**Mr Whithear**—No. That is very clear. The disengagement assistance provisions are really quite comprehensive. Certainly, in talking to others in the industry about what common practice is, I think we have engineered that. On the heavy side, the contractor has to do almost all the things necessary to ensure the smooth transition to a new contractor.

**Senator LUNDY**—And application is linked to infrastructure in that regard, so there is no build-up of proprietary hardware that only that software and nothing else will work on?

**Mr Whithear**—As Mr Smith said, in just about all cases there are no major applications tied into these ITO contracts. At that level, we are talking only about the Microsoft desktop type stuff.

**Mr Smith**—I think the senator was making a slightly different point.

**Senator LUNDY**—There are some, though, where the applications and infrastructure might not be bundled together but in fact the agency has chosen subsequently to outsource their applications outside of what you have done. That could arise between the arrangements of those contractors. I know that is not under your control, but it is an issue.

**Mr Smith**—As a general principle, it would be very important for the agencies to ensure that. With their buying a service, they can actually mandate certain things with the service provider. I agree with you in that you would not want to get to the end and find that your software operated only on a certain piece of hardware and you were left stranded.

**Senator LUNDY**—It is a very famous marketing strategy by some very big software and hardware producers, isn't it?

**Mr Smith**—Frankly, that is not a function of outsourcing either. That has been a long-time problem in the IT area. In terms of what the transitioning rights are, it may be helpful if we specifically identify all our clauses in the contract, pull them together and show you the suite of things we have done to protect that.

**Senator LUNDY**—That would be really useful. Then I would not have to get that big pile of contracts and find it myself.

**Mr Smith**—It would save you trawling through this. We will put them all together in one spot, and throughout the whole contract we will show you what we have done on the transitioning out to protect the Commonwealth's rights.

**Senator LUNDY**—Also I am particularly interested in any protections you have put in the contract against the development of highly proprietary systems that, either in the course of this contract or in subsequent changes—and this is an issue of machinery of government as well—could prevent interoperability of technologies as the government explores how different systems work with other systems, particularly when talking about an Internet interface across a range of government services. I am interested in any clauses that do relate to that issue of interoperability between different systems and preventing highly proprietary systems developing in the first instance. I do not know if there is anything there, but I will be particularly interested in that aspect of it.

**Mr Smith**—We will have a look. I think that, as a general observation, your concerns are the same as mine. Prior to outsourcing days when agencies were buying strictly proprietary line issues, the potential for us not to be able to have this interoperability was very high. One thing that outsourcing does do is to help that a bit, provided you get all your arrangements correct. We will definitely have a look. I do not think it is as explicitly addressed as your question asks, but we will have a look.

**Senator LUNDY**—I think it is an issue that prevails across all sourcing environments. I suppose I contend briefly your point that outsourcing in the way that you have done it defies it; I think it has the potential to make bigger proprietary systems. But it is a point you are obviously thinking about, so anything you have on it would be useful.

**Mr Smith**—I think the agencies have a role to play in ensuring that the APS is protected—in the way in which they specify it.

**Senator LUNDY**—I am certainly of the view that interoperability of systems, a mind for the future and even going to the issues of open source, which relates back to that intellectual property of applications, should be on the agenda of anyone negotiating these contracts. Anything you have on that would be good.

**Mr Smith**—In the APS there has been good progress in some ways. There is a long way to go but, thinking back to a decade ago when I worked in Defence, we could not talk from one floor to the other. Today things are so different. That is not to say we have not got a long way to go, but I think we have made some reasonable progress across the APS. There is still a long way to go, but the benefits are enormous if we get it right.

**Senator LUNDY**—The Auditor-General's report identified a series of privacy issues and particularly some instances where the provisions of the contract were either not explicit enough to prompt a specific course of action for agencies to follow through with their privacy obligations or indeed the agencies engaged in the contract had neglected to follow the

specified course of action. Has OASITO had any role in the following up of the way privacy has been treated within the contracts that you negotiated?

**Mr Yarra**—No, Senator. We established a privacy regime within the contracts in consultation with the agencies and also a regime to secure information. Once the contract was signed, the agencies would implement that regime. That is no different from the regime they have in place without the contract. It is now contracted to the contractor.

**Senator LUNDY**—That point was contended by the Auditor-General in comments provided by the Privacy Commissioner about areas of improvement.

**Mr Yarra**—All we have done is to contractually bind the contractor to the regimes that the agencies use now, as embedded in the Privacy Act and the *Protective Security Manual*. In my experience, the *Protective Security Manual*—which was prior to outsourcing—was a guideline for agencies. After outsourcing, it becomes mandatory and agencies have implemented the PSM through their contractor as they have never done before. In my opinion, we have put in place the regime that is there now, but through a different mechanism, and contractually bound it to the extent that it is not observed or not fully implemented. To me it is a function of implementation, not a function of the regime itself.

**Mr Smith**—My understanding is—and it would be helpful if you could actually refer me to the relevant part of the report—that we are contractually obliging the outsourcers to comply strictly with the Privacy Act and I think that we went a couple of steps further, which gave the Commonwealth rights to audit which were not in the Privacy Act and that are in our contracts. So I thought that we had actually been a bit more responsible than perhaps you are suggesting. Could you actually refer us to the part in the report?

**Senator LUNDY**—Yes. The reference I have is, I think, page 233 of the Audit Office report, clause 9.74. The latter third of that paragraph says:

The Privacy Act sets out a very specific regime for the collection, use, access to, destruction, alteration, or addition to personal information. This regime is not recognised or catered for in the confidentiality clause.

That is referring to the contract—in this case the ATO and Group 5 contracts.

**Mr Yarra**—Okay. I have got it now. It says:

The guidelines note that it is common for confidentiality clauses to be made to protect all information.

That is a reference to confidentiality clauses. We have a separate privacy provision.

**Senator LUNDY**—But what it is saying is that it actually modifies the separate obligation requiring the vendor to comply with the Privacy Act.

**Mr Yarra**—That is a pretty subtle point for me, Senator. We will take that on notice and get back to you on that. I have read that many times and not been worried by it, I have to say. But we will have a look at that again and try to tease out the substance of that point.

**Mr Smith**—We were very clear in our minds, Senator, and if there is a subtlety that we were not aware of that is interesting. But it was very clear in our minds that they had an absolute obligation to comply with the full force of the Privacy Act and more. That was where we started from in our discussions with the Privacy Commissioner, who we had many discussions with. We were adamant that that was an area that had to be covered off, so if there is a subtlety out there that we have missed we will have a look at that.

**Senator LUNDY**—If you could. To take the point further, the Privacy Commission's response to the recommendations gives substance to the earlier point I made about the

compliance aspects of the privacy regime within the contracts. Mr Yarra said that it has nothing to do with you—and perhaps you will not be involved with any more IT outsourcing contracts—but in light of this, has it alerted you to the fact that you will need to upgrade and improve your consideration of privacy matters in contracts generally, given that apart from that point there are obvious loopholes in the compliance aspects?

**Mr Smith**—We will certainly have a look at that for our own contracts. As you know, we will not be dealing with others going forward, but for our own contracts we will have a look at the messages out of here to make sure that we cover those off for sure.

**Mr Yarra**—This seems to me to be a classic case where we take on board these sorts of comments and continuously improve.

**Senator LUNDY**—That is the point, I guess: what lessons have you learnt from this and how can you improve the contracts arising out of what is an obvious issue?

**Mr Yarra**—And the agencies in particular should now look at that closely and also, individually, do the same with their own contracts—to the extent that they need to change them.

**Proceedings suspended from 10.29 a.m. to 10.36 a.m.**

**Senator LUNDY**—We have heard from Dr Boxall and you how you do not have to report through Dr Boxall because you are an executive agency. What opportunities does that give you to inform or advise the minister's office when you feel that there might be issues or problems associated with the policy that the government has given you to implement, and what opportunities are there for rectification? I guess it is a question about the nature of the relationship, as opposed to any specific advice.

**Mr Smith**—I think as with any policy, be it a PSMPC policy or any policy, if I had a problem with an operation or part of a policy I would take it up with the policy agency. I think the first step would be to go to the policy agency.

**Senator LUNDY**—Which would be DOFA, as opposed to directly to the minister's office.

**Mr Smith**—I absolutely think the first point it is appropriate to go to is the policy agency, not the minister, to discuss those issues, as I would if I had a problem with the PSMPC policy or other policies.

**Senator LUNDY**—Given that, even prior to the audit office report and the Humphry review, there were obvious ongoing issues from various participants in the program, whether it was agencies and the challenges you were having with agencies that you have alluded to, throughout the ages—

**Mr Smith**—It seems like ages, doesn't it?

**Senator LUNDY**—The vendors as well have had a range of issues post the signing of the contract, in the implementation phase. Were you a conduit for those issues, and I will say complaints, to go back into the policy unit in DOFA?

**Mr Smith**—They are what I would call implementation issues rather than policy issues or transaction issues.

**Senator LUNDY**—They happen once you have signed off on the contract. So you have had all the involvement in the preparing of the contract and so on, the agencies are implementing it and the vendors are trying to do their work. There are issues that we now know about because they were documented in here: problems, concerns and blow-outs and

whatever appropriate descriptive terms you want to use. Did the vendors and agencies come back to OASITO and make you aware of those issues and concerns? Do you see what I mean about being a conduit back into the policy unit?

**Mr Smith**—I understand your point. As we went through the process, we often had feedback from agencies that had implemented or were in the process of implementing. In fact, a fairly standard procedure on our part was that for each transaction we would bring the contract manager or one or two of those from another group to brief the steering committee and the participants for the new one. For example, Bob Leech from the Australian Taxation Office came along and talked about his experience—the pluses, the minuses, the positives, the negatives and things to watch out for. Group 3 was a really good source of information for us because it was the first one and we were breaking new ground.

**Senator LUNDY**—That was a good 12 months before the others, was it not?

**Mr Smith**—It would have been quite a long time. It was the first one where we had multiple agencies. It was breaking new territory for us. We learned a hell of a lot out of that, which we got back from the contract office specifically or in these forums. So we tried to encourage the contract managers to come along and talk to all the subsequent groups. They were very obliging, very open and very honest about that. We did not shy away from that because it was a critical part of the learning. So on the transaction implementation side, we try to keep bringing those issues back into the processes. We amended some of our tenders. We changed some of the procedures. We tightened up in different areas. They would be transaction implementation issues in the main rather than policy issues. But quite a lot of that went on. Did we get all of that right? God only knows, but we certainly tried to.

**Senator LUNDY**—I have my views. In the context of those consultations, what was your relationship with the policy unit in DOFA? Did you have a mechanism by which to provide them with advice or views? Perhaps the first question is: did you try?

**Mr Smith**—The policy framework was a policy framework. We did not have a problem with the policy framework per se; we were implementing the policy framework. So there was no need for us to go to DOFA and say that the policy was fundamentally wrong or needed changing.

**Senator LUNDY**—I am not saying it was fundamentally wrong, but I believe there were obvious opportunities for refinement in the policy per se that would have been brought to light only by virtue of what you were observing with the contract negotiations, the subsequent consultations and observing how the contracts were operating.

**Mr Smith**—I suppose my point is that there was a high level policy framework which talked about outsourcing infrastructure service, grouping and those sorts of things. In my view, that was fairly solid. There was a whole heap of other—I think I have talked about them in the past—small ‘p’ policy issues, which we believed we had the flexibility to deal with in terms of the implementation and transaction.

**Senator LUNDY**—Sure.

**Mr Smith**—I would have gone back to Dr Boxall only if I felt that the high level policy was fundamentally flawed or needed change. We made a hell of a lot of change to the framework from when we started to where we got to at the end—for example, the Centrelink arrangement which was an alliancing contract. We had certainly not done that in the past.

**Senator LUNDY**—Was that something that you had to tick-tack with DOFA on?



**Mr Smith**—No, I absolutely believe not. It was a form of the contract and the way in which a contract would be managed and the relationship with the contractor. That was an implementation thing. Sue Vardon and I dealt with that. It was Centrelink's desire to have an alliance contract. I actually think alliance contractors can work very effectively if it is done well. We tried to work with Centrelink to implement that, as we did with the science group. Despite the public attention that the science group got, we were trying to do a totally different implementation model for the science group than what we did for the others, recognising the unique situation that they were in. I felt I had the authority to deal with all of those things on an implementation-transaction level rather than a policy level because it was leading to outsourcing, which is really what the top level policy is.

**Senator LUNDY**—This point is really quite important to me and very important to the whole basis of this, which is accountability: it is OASITO, as the implementation agency defining the areas of who developed the policy, who has responsibility for the policy and who has responsibility for implementation. I have asked this, and I reckon you have played a few semantic games with the terminology and there was that flicking to and from Finance. But what you are telling me now is: there is 'Policy', the big picture, but there is small 'p' policy with which OASITO had a great degree of flexibility in its application. Then there is quite strict high level policy which says, 'You must outsource, you can't have in-house bids and you have got to try and find savings, at least initially.' Those are the three things, whatever the words were. Was that all you got from Finance in terms of policy guidance?

**Mr Smith**—That was the government policy. There are other characteristics of the policy, but at the top level it was: you shall outsource unless there is a whole-of-government case not to do so—groupings and all of those sorts of policy parameters were put in place; you shall achieve savings; and you shall do industry development. Industry development was another part of the policy. All those policy parameters were designated and beyond that we tried to implement it, first of all to meet those policy objectives but also to meet the objectives of the agencies, which is where you saw things like alliance contracting for Centrelink and the like. Within that overall framework, I believe that agencies and OASITO had a reasonable amount of flexibility in terms of implementation of the policy.

**Senator LUNDY**—I have to say that that really adds another layer of insight that you have not provided the committee with before, despite us having asked the question about implementation and policy. Whilst a lot of the discussion across various committee tables has been about who is responsible for the policy here, it seems that the line is a little more your way than I have been otherwise led to believe at this point in time.

**Mr Smith**—If you went back over the *Hansard*, you would see that I have made consistent references to our ability to change the things like alliance contracting. All of that came from us. We have never attributed that to anyone else. My line has always been that I was given a policy to implement and then the implementation structure beyond that was left to me and agencies. There has never been any inconsistency in my testimony in that regard.

**Senator LUNDY**—No, experience tells me that if you track back over it and you look for key words like 'implementation' as opposed to 'policy development' you are probably quite right, but I am telling you what my impression was and what it would have been obvious to you my impression was.

**Mr Smith**—I would have answered strictly in accordance with what I thought you were asking me.

**Senator Abetz**—In fairness, what an official's view of your impression was or was not is not something that is very helpful to canvass here.

**Senator LUNDY**—This issue has a very long history, Minister. I am sure Mr Smith takes my point.

**Mr Smith**—I just make one observation, Senator. I have never walked away from my accountability in terms of implementation of this project. I have said that on two or three occasions, and I stand by that. The accountability rests squarely with me and with the agencies. I have always consistently made that point, which I think is the most powerful point, and that the policy framework was one which I inherited and I went off to implement.

**Senator LUNDY**—Did you every make representations to Finance—and I do not know who the appropriate person would be? Would it have been Dr Boxall or would it be Mr Prior in Finance? Who would it have been in the policy—

**Mr Smith**—I think you asked me this question once before, who was responsible for policy issues in outsourcing in Finance.

**Senator LUNDY**—I think I asked it way too generally, and you answered it way too generally.

**Mr Smith**—No, I said I did not know the individual. You asked me who was the individual in Finance who was responsible for policy. I said I did not know. But if I had an issue I was always able to pick up the phone and talk to Dr Boxall, but you would go in probably at the general manager level if that was an issue.

**Senator LUNDY**—Have you been able to find that name for us?

**Mr Smith**—I do not know whether we took that question on notice or not.

**Senator LUNDY**—I cannot remember. I cannot remember seeing it.

**Mr Smith**—I cannot remember whether we actually took it on notice or whether you actually asked for the name.

**Senator LUNDY**—See what I mean. See what I am dealing with, Minister. Can I ask you to officially take it on notice to provide me with the name of the policy officer responsible.

**Mr Smith**—Senator, be fair: if you did not ask me for the name then I should—

**Senator Abetz**—That is right.

**Mr Smith**—Should I just offer it to you?

**Senator LUNDY**—Of course.

**Mr Smith**—If I did not know it at the time, and you did not ask me to follow it up, do you want me to just—

**Senator Abetz**—That is where the official does have difficulties with the impressions that you might have as to what you have—

**Senator LUNDY**—I know there is a line. I am being very explicit. Can you take on notice to provide me with that name and whether you ever had contact with that person, whether or not you knew it?

**Mr Smith**—Do you mean OASITO?

**Senator LUNDY**—Yes. Did OASITO make any representations—either formally or informally, verbally or in writing—to that officer with respect to the IT outsourcing policy

and/or implementation? I think I have it all covered in that. Please take the broadest interpretation of that question.

**Mr Smith**—We will try to get to the bottom of that for you. My expectation is that we have never taken up that issue in terms of the policy framework. I cannot speak on behalf of everybody in the organisation, but I certainly have not taken up the policy framework. Others may have, but I will check that for you.

**Senator LUNDY**—I ask the same question with respect to contact with OASITO and Dr Boxall.

**Mr Smith**—I do not recall ever discussing that with Dr Boxall personally, but we will check the question for you.

**Senator LUNDY**—These questions have particular significance in relation to the potential savings outcomes with the group 5 contract which, as explained in the audit report, were not explicitly identified before the minister effectively signed off on that contract. Given that savings were a key part of the government's policy per se—capital 'p' policy, which Finance was responsible for—and you were responsible for implementing it, was there any communication between OASITO and Finance about the relative lack of achievement at the time of signing of a key policy objective in the group 5 contract?

**Mr Yarra**—I will go over my memory of the events. I think in hearings you observed the difference between the group 5 RFT and the group 8 RFT in relation to how we handle the savings question: the group 5 RFT specified a bunch of criteria; the group 8 RFT captured them all more generally in a concept called 'value for money'. We would always contend that the group 5 RFT was also about value for money, which we have articulated, but we just did not mention it specifically.

**Senator LUNDY**—I know, but it did not say that at the time.

**Mr Yarra**—Correct, but to claim that it did not go for value for money is a breach of the procurement guidelines, and of course we would not do that.

**Senator LUNDY**—Indeed, which is why the Auditor-General spent so much time analysing the process through which that contract was signed.

**Mr Yarra**—The Auditor-General was analysing whether or not the tender conditions were met, and those tender conditions are conceptually consistent across the group 5 and group 8 RFTs—and future RFTs, in my view. By articulating more clearly and by continuously improving our RFTs from three to five to eight in the future, is not a big 'p' policy change.

**Senator LUNDY**—I take that point.

**Mr Yarra**—So there was no consultation with the department of finance.

**Senator LUNDY**—That in effect answers my question. I guess this is a question of formal accountability with respect to the procurement guidelines and the big 'p' policy requirements of the government—the contention that there were flaws in the execution and in signing off that final process of the group 5 contract. What I want to know—and I think I now know—is that no representations were made by OASITO to Finance about those concerns or deficiencies because you thought you were fulfilling the general principles anyway. I am not trying to be difficult; I am trying to move on.

**Mr Smith**—On a general point, we would not acknowledge there were deficiencies or a need to go to DOFA on that issue. I do not see anything in that audit report that said we were flawed in our decision making in group 5.

**Senator LUNDY**—We will just have to agree to disagree on that one as well.

**Mr Yarra**—I would like to make a comment about the interaction between the procurement guidelines and our tender process. With respect to the tender process—and we are constantly alert to Hughes—we write our RFT and we comply with the RFT. But the drafting of the RFT is mindful of the Commonwealth Procurement Guidelines. That is the relationship we see. Once we set the tender rules in group 5, for example, we were very careful to make sure we complied with them. So, in our view, the decision on group 5 is absolutely consistent with the tender rules—so we have no Hughes issue—and absolutely consistent with the procurement guidelines in terms of the process we went through. So the procurement guidelines constrain our process and our tender rules constrain our decision.

**Senator LUNDY**—Don't get too defensive; the issue for this one, because it is a big 'p' policy issue about whether or not savings are realised, actually lands in the minister's office and, arguably, on those in charge of the policy, which is the Department of Finance and Administration.

**Mr Yarra**—In my view, there has been no big 'p' policy change. We have not consulted Finance and there was no big 'p' policy.

**Senator LUNDY**—Again, that is a matter of interpretation. What I wanted to know was to what degree OASITO made any representations to Finance, in particular. My next question, Mr Smith, went to representations in the same vein that OASITO may have made to the minister's office. I am presuming by Mr Yarra's answer that you did not make any representations to the minister's office either specifically relating to group 5 or anything else?

**Mr Yarra**—Our group 5 process went through the minister's office. He signed off.

**Senator LUNDY**—He signed off on it, yes.

**Mr Yarra**—All the comfort was given to the minister that we had complied with what we had to comply with.

**Mr Smith**—In addition to that, we had the normal sign-offs from the probity audit, the lawyers—all those sign-offs.

**Senator LUNDY**—All of which is canvassed in the Audit Office report. You have answered the question, so we will move on. I am conscious of time, and I want to move to the market testing area soon. I will have to leave some of these questions for another forum. Finally, one of the very significant criticisms in the Humphry report was what he described as lack of agency buy-in or senior management buy-in. That is a pretty serious allegation, if you like, that has been made in the Humphry report, and it would seem to me that if it had any substance it would have been clearly identifiable by you in your role of implementing the contracts. Because that had the potential impact of affecting not only the timing of the contracts—which had already been raised in the Auditor-General's report—but also the subsequent implementation, would that not have been an issue you ought to have raised either with the policy unit in the Department of Finance and Administration or, indeed, directly with the minister's office?

**Mr Whithear**—My recollection is that Mr Humphry did raise that as an implementation risk. That kind of gives you some guidance as to where it sat: it was implementation rather than policy.

**Senator LUNDY**—But this does relate to the questions I asked earlier. You would have known that because, if it were true, you would have experienced it every step of the way.

Perhaps I should start by saying: do you think lack of management buy-in was a problem for you in pursuing the government's policy? Maybe that is where we should start.

**Mr Smith**—I will go to a couple of really important points. Firstly, we actually implemented five contracts. Given the size and complexity of the program and the fundamental nature of the change that goes with that, I think that it was a good result. The second point is that all of these processes, because they are major change processes, come with challenges. There is no doubt that throughout our process we had challenges with agencies about responding to certain time frames and asking them to commit to produce information for us when they had other things to do in their businesses—running their businesses and so on. So all of that does come with a challenge for the agencies and for OASITO. I will not sit here and say that all that ran smoothly, because it was a difficult and demanding process.

I answered this I think in another forum. My view on this is that this was difficult and people actually worked quite productively in the difficult circumstances to get to the end of the process. Sure, things were not smooth. Where agencies were buying in, agencies committed one hell of a lot of resource to this process. So at one level they absolutely bought in. I think on occasions we had 60 or 70 people from agencies or groups of agencies working with us, so that is a big commitment and a big amount of buy-in.

**Senator LUNDY**—The way I am hearing your answer is that you do not precisely subscribe to Mr Humphry's observation about lack of buy-in.

**Mr Smith**—I am not saying I agree or disagree; I am saying that if people articulated a concern about the implementation to Mr Humphry and said that this was difficult and challenging I understand that, because it was.

**Senator LUNDY**—But Humphry went further than that, didn't he? He was implying that people were not proactively or with goodwill engaging in the exercise. It does not sound to me like you agree with that.

**Mr Smith**—What I am saying is that this is a very difficult change process. First of all, you go to the route of transferring people from the public to the private sector, so there are issues for people about that. You have got this overlay of a major project upon their day-to-day operations, and, sure, people are going to find that difficult. We had discussions about pressures, which is why we found interesting the Auditor-General's view about us being slow. What we were trying to do was to manage the implementation of this complex project in accordance with the day-to-day requirements of the agencies. That was a very difficult issue for us, as it was for agency staff, essentially to be involved in a process which was seeing them move from the public to the private sector. I understand that that brings emotions for people; I understand that entirely. A whole range of things in this difficult change process would have led people to be concerned about the process, and they may have articulated that concern to Mr Humphry. I am not going to comment on whether or not senior executives bought in, other than to say that we worked productively in a difficult environment, achieved five contracts and were well down the road of achieving others. That program under that model would have been implemented. So, in terms of buy-in, you could sit here and debate all day whether agencies were happy with the centralised approach or not, but from my point of view those who were in that process worked with us to try to get to that point, although it was difficult and I make no secret of that.

**Senator LUNDY**—In managing those difficulties and challenges and all the small 'p' political issues in negotiating these contracts, were you ever presented with opportunities to

convey those difficulties being experienced to the minister or anyone from the minister's office?

**Mr Smith**—Absolutely. We talked to the minister's office about that and on occasions I spoke to the minister about that. I spoke to others about it and I spoke to agencies about it as well. On reflection, one of the things I found—and I have made the point a couple of times today—is that this is a major change process, and in one sense you have to understand that to make this thing work effectively. If I reflect back, I think that point did not dawn upon me early enough. Earlier on I saw it as an implementation program. It was only some time into the program—nowhere near well into it—that you could see where the anxieties were coming from. It is at some levels a threatening process for people. We tried then to build into our process communication and other things to try to deal with the change issues that were going on with people. So I had discussions with the minister about the size of this program. And we went back, as you know, and sought extensions of time over the project because it was actually taking us longer to manage that process through with people.

**Senator LUNDY**—I want to explore a little further the nature of those discussions: were they regular, informal discussions with the minister's representatives? Were you able to get access to the minister himself to discuss these issues?

**Mr Smith**—I always have good access to the minister on all issues. But were they regular? What does regular mean? Certainly I had many discussions with the minister's office.

**Senator LUNDY**—I don't know—once a month? Once a fortnight?

**Mr Smith**—Probably.

**Senator LUNDY**—Once a fortnight?

**Mr Smith**—Probably once a month, but I would call that regular. I had more dialogue with the minister's office around times of contract award or key milestones like short-listing and that sort of stuff. In those discussions you are probably more inclined to talk about the project than you are if it is just running along in a period of a 12-week evaluation or something. But this is a very important program across all the programs.

**Proceedings suspended from 11.05 a.m. to 11.11 a.m.**

**Mr Smith**—Earlier Senator Lundy asked me whether I would take a question on notice. The question that she asked me is not something that I can answer. Discussions between the minister and me are confidential. I think I have answered that question in general terms.

**Senator LUNDY**—I am certainly appreciative of that. My question did not relate so much to the nature of the content of the discussions; rather, it related more to what opportunities you have had to express a view to the minister. By and large, I think you have answered that question. You said that you have regular opportunities to express views to the minister.

**Mr Smith**—To the minister's office.

**Senator LUNDY**—I refer now to market testing. What was OASITO's role in providing whole-of-government responses to the Audit Office report?

**Mr Yarra**—I think we have also answered that question. I am trying hard to remember the terms of that answer to ensure that it is consistent. But that process was facilitated and coordinated by the Department of Finance and Administration. We have anticipated, as other agencies have anticipated—

**Senator LUNDY**—I have asked the Auditor-General what opportunities he has had to follow up the government's response to the recommendations. I cannot remember what he said so I would like to ask you whether you can provide to the committee details of your activities relating to the government's response to Audit Office recommendations. What have you actually done to comply with the commitments that the government has made in relation to that response?

**Mr Smith**—First, I think you will find that most of the recommendations in the audit report that the government accepted were implemented prior to the tabling of the audit report, but we can check to verify that point. Second, we will let you know what we have done in relation to any of the recommendations that were not implemented prior to the tabling of that report. The recommendations will be fully implemented. They have been accepted.

**Senator LUNDY**—So it really is a question of monitoring the follow-up?

**Mr Smith**—Sure.

**Senator LUNDY**—I ask the same question in relation to the Humphry review. I know that we have to revisit some of these issues—for example, what is the future of OASITO. Can you also provide detailed responses about OASITO's specific activities while phasing out on the government's acceptance of the Humphry recommendations?

**Mr Smith**—As I understand it, only one issue relates to us, and that is the six-month advisory role. I do not think I can add much more to what I have said to you about what we have done in relation to that issue. Those agencies are in a current tender process. We have transferred all the relevant documentation to them. They are now making their own decisions. As far as I am concerned, that part of the process is finished. As we said the other night, in addition we are acting in an advisory capacity and we are giving that information back. That is our response to that recommendation. All the other recommendations do not affect OASITO.

**Senator LUNDY**—I will still place that question on notice. Please provide me with any additional and appropriate information. I turn now to market testing. Can you tell me whether market testing and contracting out staff have read the ANAO report into IT outsourcing?

**Ms Cowling**—Yes, we have read that report.

**Senator LUNDY**—Have you also read the Humphry review?

**Ms Cowling**—Yes, I have read the recommendations of the Humphry review.

**Senator LUNDY**—What is being done to ameliorate the implementation risks that may affect the market testing and contracting out processes?

**Ms Cowling**—I need to make the point that OASITO's role in relation to the implementation of the market testing and contracting out program is quite different from the role it played in relation to the IT outsourcing program. We work with agencies that are responsible for implementing those decisions, so we provide advice and assistance to the agencies where that is appropriate. To the extent that we do that, we have reflected concerns that were raised in the context of the implementation of IT outsourcing. But the issues are significantly different from those involved in the market testing program.

**Senator LUNDY**—I refer to the market testing process. Are you able to define where the market testing finishes and where contracting out actually begins, when referring to the processes you are managing or when you are advising agencies that are managing?

**Ms Cowling**—You will probably get any number of answers to that question, depending on the number of people that you ask. Perhaps I can best help by saying that we all refer to market testing as seeking tenders from the market for a particular activity and evaluating those tenders.

**Senator LUNDY**—Is a market test more like a request for information, or does it actually involve the preparation of requests for tenders?

**Ms Cowling**—It generally involves the preparation of a request for tender. But there may be occasions when an agency approaches the market, for example, for expression of interest requests. The agency may not pursue the process beyond developing a request for tender if the response to the expression of interest request has not been adequate.

**Senator LUNDY**—I raise that point because what you just described is more closely reflective of IT outsourcing. The market testing process is very much blended in with the preparation of the RFT. However, with IT outsourcing there is effectively a compulsion, by virtue of government policy, to proceed to tender, as part of the release of that RFT involves generating responses when they are being considered. When you go through this market testing process and the preparation of an RFT do you have a mandatory obligation to then invite a formal response from tenderers and go through an evaluation process, or is that something agencies can determine one way or another? Are you committed, by virtue of the issuing of a request for tender, to evaluating those tenders with the intention to contract out?

**Ms Cowling**—If an agency proceeds to issue a request for tender they would then evaluate those tenders.

**Senator LUNDY**—I presume that an agency still has a discretion whether or not to proceed beyond evaluation. Is the market advised specifically that funding a bid and preparing a tender for those contracts might not result in a contract being ultimately awarded to anybody?

**Ms Cowling**—That is something that we have made very clear to industry. In fact, last week we conducted a series of seminars for industry around the south-eastern capital cities. The point I made clearly in my presentation was that this was a market testing program and that the market testing processes agencies were engaged in may not necessarily lead to outsourcing. So they understood that they were investing in the cost of tendering and that it was not mandatory to proceed from that point to outsourcing if the tenders were not competitive.

**Senator LUNDY**—To what degree are in-house bids allowed to form part of the market testing process?

**Ms Cowling**—The government's policy is that in-house bids do not formally participate in the process, in the sense that existing staff within an agency do not form an in-house bid team and submit a tender or a bid in a tendering process that is evaluated alongside other tenders.

**Senator LUNDY**—What is the government's policy? To what degree are benchmarking exercises completed before the market test bids?

**Ms Cowling**—I am not sure whether I understand the question.

**Mr Yarra**—It is standard process in agencies, certainly on the IT side. You used the term 'benchmarking' in other areas. We do not use the term 'benchmarking' in the same way in which you use it. We measure costs and the service levels that are being delivered as much as



we can. We use them as reference points in the final decision, but the benchmarking term that we use relates to mapping the services that are being delivered over a period by the contractor.

**Senator LUNDY**—I will not use the term ‘benchmark’.

**Mr Yarra**—We use the term ‘cost model’.

**Ms Cowling**—Are you referring to assessing current costs? We refer to developing a baseline costing.

**Senator LUNDY**—Do you develop the baseline costing before you test the market?

**Ms Cowling**—Yes, the agencies develop a costing for current delivery of the services that are within the scope of the RFT. They are then able to compare that with the tendered responses.

**Senator LUNDY**—That is exactly my point. Do they do that to compare it with the RFT, or do they do that before the RFT is prepared?

**Ms Cowling**—They do that before the RFT is prepared, to some extent in parallel with preparing the RFT documentation. It is important that that cost reflects the scope of the services sought in the RFT.

**Senator LUNDY**—I appreciate that. My concern relates to the baseline cost. In preparing the baseline cost in conjunction with an RFT, as opposed to before an RFT, any efficiencies that may be identified through that increased understanding of your costs are already locked into the market testing. In my view, by going through that exercise in the first instance you are preventing the agency from establishing the optimal baseline cost.

**Ms Cowling**—I understand the point that you are making. I think, Senator, that many agencies have already gone through that process by the time they get to market testing. They have already reviewed their internal costs.

**Mr Yarra**—Our experience in the ITO side is that towards the end of more recent tenders they had substantially trimmed down their operations as part of their modelling. Many of their savings were generated in the process of restructuring prior to outsourcing and not as a result of outsourcing.

**Senator LUNDY**—Are savings a prerequisite to proceeding with the evaluation and the contracting out of whatever is being contracted out? Are savings a prerequisite of this policy?

**Ms Cowling**—The process is that tenders are evaluated on the basis of value for money. The response of the leading tenderer or the preferred tenderer that emerges from that process is then compared with the in-house costs and levels and standards of service delivery. The agency head then makes a judgment about which option represents the best value for money for that agency.

**Senator LUNDY**—I ask you to take on notice a number of questions. To what degree do competitive neutrality calculations constitute a saving to government outside that specific agency? Do they form part of the government’s decision to proceed with the contract? I have other questions which I would also like to place on notice.

**CHAIR**—There being no further questions, that completes the examination of the Finance and Public Administration portfolio and the examination by this committee of additional estimates for the year 2000-01. I remind members of the department that the committee has set 23 March as the date by which answers are required. I also note that on 6 February 2001 the Senate adopted changes to arrangements for estimates hearings, which include the

abolition of supplementary hearings on additional estimates with effect from the beginning of 2001. I thank the minister, Senator Abetz, and Mr Smith and officers from OASITO for their assistance and attendance this morning.

**Committee adjourned at 11.33 a.m.**