



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

Reference: Citrus canker outbreak

WEDNESDAY, 22 JUNE 2005

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

SENATE
RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE
Wednesday, 22 June 2005

Members: Senator Heffernan (*Chair*), Senator Buckland (*Deputy Chair*), Senators Cherry, Ferris, McGauran and Stephens

Participating members: Senators Abetz, Allison, Bishop, Boswell, Brown, George Campbell, Carr, Chapman, Coonan, Eggleston, Chris Evans, Faulkner, Ferguson, Greig, Haradine, Hogg, Hutchins, Knowles, Lightfoot, Ludwig, Lundy, Sandy Macdonald, Mackay, Mason, McLucas, Nettle, O'Brien, Payne, Robert Ray, Santoro, Tchen, Watson and Webber

Senators in attendance: Senators Ferris, Heffernan, O'Brien and Stephens

Terms of reference for the inquiry:

To inquire into and report on:

The Department of Agriculture, Fisheries and Forestry's administration of the citrus canker invasion with particular reference to:

- 1) AQIS' response to the allegations of illegal importation of plant material;
- 2) The adoption of the quarantine protocols and management of the emergency response;
- 3) Cooperation between the Commonwealth and States, including funding issues;
- 4) The impact of the incursion on the Australian citrus industry;
- 5) Prevention and management of future incursions; and
- 6) Other related matters.

WITNESSES

BRAKE, Dr Vanessa Mary, Quarantine Plant Pathologist, Australian Quarantine and Inspection Service, Department of Agriculture, Fisheries and Forestry.....	1
GORDON, Ms Jennifer, Executive Manager, Quarantine and Plant Programs, Australian Quarantine and Inspection Service, Department of Agriculture, Fisheries and Forestry.....	1
RANSOM, Mrs Lois Margaret, Chief Plant Protection Officer, Department of Agriculture, Fisheries and Forestry	1
ROBERTS, Dr William Philip, Chief Scientist, Biosecurity Australia, and Former Chief Plant Protection Officer, Department of Agriculture, Fisheries and Forestry	1
STANTON, Ms Meryl Annette, Executive Director, Australian Quarantine and Inspection Service, and Deputy Secretary, Department of Agriculture, Fisheries and Forestry	1
YOUNG, Mr Anthony James, Queensland Regional Compliance Manager, Compliance and Investigations, Australian Quarantine and Inspection Service, Department of Agriculture, Fisheries and Forestry	1

Committee met at 3.36 pm

BRAKE, Dr Vanessa Mary, Quarantine Plant Pathologist, Australian Quarantine and Inspection Service, Department of Agriculture, Fisheries and Forestry

GORDON, Ms Jennifer, Executive Manager, Quarantine and Plant Programs, Australian Quarantine and Inspection Service, Department of Agriculture, Fisheries and Forestry

RANSOM, Mrs Lois Margaret, Chief Plant Protection Officer, Department of Agriculture, Fisheries and Forestry

ROBERTS, Dr William Philip, Chief Scientist, Biosecurity Australia, and Former Chief Plant Protection Officer, Department of Agriculture, Fisheries and Forestry

STANTON, Ms Meryl Annette, Executive Director, Australian Quarantine and Inspection Service, and Deputy Secretary, Department of Agriculture, Fisheries and Forestry

YOUNG, Mr Anthony James, Queensland Regional Compliance Manager, Compliance and Investigations, Australian Quarantine and Inspection Service, Department of Agriculture, Fisheries and Forestry

CHAIR (Senator Heffernan)—I declare open this public meeting of the Senate Rural and Regional Affairs and Transport Legislation Committee. The committee is hearing evidence on the committee's inquiry into the Department of Agriculture, Fisheries and Forestry's administration of the citrus canker outbreak and associated issues. I welcome you here today. This is a public hearing and a *Hansard* transcript of the proceedings is being made. The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the order of the Senate of 23 August 1990 concerning the broadcasting of committee proceedings.

Before the committee starts taking evidence, I place on the record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given. I remind witnesses that parliamentary privilege does not extend to statements repeated outside the committee's proceedings. Any act by any person which may disadvantage a witness on account of evidence given by him or her before a Senate committee is a breach of privilege. While the committee prefers to hear all evidence in public, the committee may agree to take evidence confidentially. If the committee does take confidential evidence, it may still publish or present all or part of that evidence to the Senate at a later date. The Senate also has the power to order production and/or publication of confidential evidence. The committee would consult the person whose evidence the committee is considering publishing before taking such action.

I also draw your attention to the continuing resolution relating to claims of commercial confidentiality. Under the resolution a claim to withhold information on the basis that it is commercial-in-confidence can only be made by a minister and must include a statement setting out the basis for the claim, including a statement of any commercial harm that may result from the disclosure of the information.

I indicate that it is the committee's intention to seek the fact relating to the inquiry and not to apportion blame. It hopes that it will have the cooperation of the states in its efforts to do so and appreciates the Department of Agriculture, Fisheries and Forestry making itself available today. Would you like to make a brief opening statement?

Ms Stanton—I thank the committee for the opportunity to appear. I would like to make a short introductory statement that may assist the committee in its understanding of various government roles and responsibilities in relation to international and domestic quarantine and responses to emergency plant pests. This will provide a brief context for actions taken in pursuing this particular case.

First, let me address the roles of the Commonwealth and the states and territories in matters of possible pest and disease incursions. The Commonwealth is responsible for border control, mainly at airports and wharves, through the Australian Quarantine and Inspection Service—AQIS. The committee will be aware that from mid-2001, under the Australian government's increased quarantine intervention program, intervention levels at the border were substantially lifted and increased. Before that, AQIS was heavily reliant on specific profiling of passengers and cargo. Even today, however, we cannot equate the increased intervention levels with an elimination of risk at the border, given people's determination and ingenuity.

Post border, apart from some particular surveillance that AQIS does under the North Australia quarantine strategy designed to identify pests and diseases which might have been transmitted from islands to our north, it is the states which monitor their own jurisdictions for animal and plant pests and diseases. The states have

responsibility under the Australian Constitution to deal with any incursions that may occur in their jurisdiction and have the appropriate legislation to do so. Where those incursions may have national significance, there are national arrangements made to assist in the coordination of the emergency response, including in some cases the sharing of the costs associated with the program. The Australian government Department of Agriculture, Fisheries and Forestry coordinates the national response on behalf of the eradicating state and remaining jurisdictions. Industry is also generally closely involved in the decision making.

Within the department, there are some other roles and responsibilities worth noting. Biosecurity Australia, now an independent agency, determines the scientific basis for import policies—the conditions under which animal and plant products can be brought into Australia. The Product Integrity, Animal and Plant Health program also provides scientific and professional advice to the Director of Quarantine and to AQIS through the Chief Veterinary Officer and the Chief Plant Protection Officer. PIAPH has a particular coordination role when incursions occur. This covers coordinating national advice to the eradicating state regarding technical aspects of the eradication program, including on sampling, prospects of eradication and so on.

AQIS not only mans the border and sets the Biosecurity Australia policies into action in terms of import and export conditions but, where there is evidence that the Quarantine Act or the Export Control Act has been breached, AQIS also has an important investigatory role. AQIS investigates through its Compliance and Investigations Unit and, where possible, gathers and presents sufficient evidence to enable the Commonwealth DPP to prosecute. There are very strict rules about due process which we need to consider in fulfilling this role.

Within that context, I will say a few words about this particular case. I will not go over the details of which I know you are already aware. In essence, the department's concern from the beginning, from mid-2001 when allegations were first made known to AQIS, has been twofold: firstly, to investigate whether plant material had been brought into Australia illegally and, if so, to gather enough appropriate evidence to prosecute the offender or offenders. This has been almost solely an AQIS responsibility. Secondly, to try to ensure that if such material entered Australia, and if it were in some way diseased, that disease would be detected and controlled. While this is technically a state responsibility, it is also inextricably linked to the previous point: the investigation of illegal entry. Consequently, the department has remained involved through both AQIS and PIAPH, in ways which I am sure we are about to discuss, primarily to progress the compliance investigation.

I am aware that the Australian government activities subsequent to the discovery of citrus canker at Emerald last year have been well documented through Senate estimates. While the emergency response largely rests with PIAPH, other areas of the department have contributed to support ongoing export market access of citrus fruit and plants from Australia, as well as working across government to develop an assistance program for Queensland citrus growers and nursery operators significantly impacted by this disease.

I believe we have sufficient departmental representation here from both AQIS and PIAPH to be able to deal with the likely breadth of your questions. We also have a number of documents which I hereby table, along with a copy of my statement. These documents include chronologies, maps and other items that we thought may be of assistance to the committee.

CHAIR—Thank you very much. With regard to the 2001 incident and the 2004 incident, a technical person might see a division of responsibility between an AQIS disease incursion and a quarantine issue. Have you in any way tried to treat the 2004 incident as a separate part of business from the 2001 incident?

Ms Stanton—To the extent that it is clearly separate to the investigation, because the investigation, which dates from 2001 and which is still ongoing, is an investigation into possible illegal entry of plant material. Once there was an actual incident in 2004, the department went into the normal mode that it goes into when there is such an incident.

CHAIR—A normal curious mind would say, 'Perhaps we should link this.'

Ms Stanton—Indeed. There is no doubt—

CHAIR—There is no need to give a longwinded answer. We have some very detailed questions which may require you to come back, but who put together the brief that was handed up to the DPP?

Ms Stanton—The brief that was handed up to the DPP was put together by the AQIS compliance and investigations unit.

CHAIR—Was that Mr Young?

Ms Stanton—It was largely Mr Young but possibly not only Mr Young. I will let him answer that for himself.

Mr Young—The brief was compiled by senior investigator Steve Watson, under my supervision.

CHAIR—Is there any chance we could see that?

Mr Young—I would have to take that on notice. The matter is still ongoing.

Ms Stanton—There is an issue here. In the documents we have tabled, we have not tabled that. I am perfectly willing to table. Certainly even today, here, I can table the covering brief that we wrote to the DPP and the DPP's response.

CHAIR—I understand the response was that there was not enough evidence. Is that right?

Ms Stanton—That is right. We have the response, so we can table that as well.

CHAIR—If you were gathering the evidence for that brief, why would we have some key witnesses come here and say that they have never been formally interviewed?

Ms Stanton—Again, I think we need to look at the compliance process. It is a matter of what we mean by 'formally interviewed'. There are some witnesses who have come to this inquiry who said they have not been interviewed, and we believe we have contacted them.

CHAIR—If you are going to be serious about this and not have a Dad and Dave investigation, wouldn't you sit them down and say, 'This is a formal proceeding because it is a formal process?' I have never heard of the 'How are you, mate?' contact over the phone that is alleged to have occurred. This is a very serious incursion into Australia's vital trading credentials—that is, our green, clean and disease-free status. It is just a disgrace to think that if there had been an incursion, it was not treated as a military type operation. The manager of the farm, the manager of the nursery and the manager of the winery were never told, 'We want to formally interview you, record it, take notes and give a statement back to the witness.' Why didn't that happen?

Ms Stanton—Mr Young will explain to you the efforts he made to do that.

Mr Young—In relation to the rules of evidence, we have no coercive powers under the Quarantine Act to cause or force a person to make a statement to us if they do not wish to. We asked all the people present on the property on the day the warrant was executed whether they had any knowledge of any illegal importation of budwood material. The response was a unanimous, 'We don't.'

CHAIR—How did you do that?

Senator Ferris interjecting—

Mr Young—We know nothing about it.

CHAIR—Was this a public meeting where you asked, 'Hey, does anyone have anything to say?' or did you sit everyone down in private?

Mr Young—We were not able to speak to them in private on the property because Michelle King, the director of Evergreen Farms, accompanied them and us while we conducted the search.

CHAIR—What a joke.

Mr Young—I cannot force that person to break away from their employer to come and speak to us.

CHAIR—As a professional in your industry that was, were you disappointed to think that this was the way you had to conduct this inquiry?

Mr Young—It is no different to being a detective in the police service. They have no coercive powers to force a person to speak to them.

CHAIR—With great respect, though, we have managed to get these people just with a simple phone call to come along and tell their story.

Senator FERRIS—That is not true. We have actually subpoenaed them, Chair.

CHAIR—Yes, but it was no more than that.

Senator FERRIS—There is a very serious difference between that and a phone call.

CHAIR—But to pass up the opportunity to formally interview, I think, is a bit *Dad and Dave*.

Mr Young—With all due respect, there was no opportunity to speak to these people individually, alone and away from Evergreen Farms. Marco Cornejo was interviewed on the day. He appeared to have a problem with the English language, so I arranged for a quarantine officer to contact him—

CHAIR—Even though he has got good English!

Mr Young—That is the problem we have. If he shrugs his shoulder and says, ‘No understand,’ we have to accept the fact they do not understand. I got a Spanish speaking quarantine officer to interview him over the phone and ask him the questions that I had already asked him in English. Again, the response was, ‘I know nothing about it.’

CHAIR—As you would.

Senator FERRIS—Ms Stanton, is it possible for you to give the committee a list of all of the people you did interview and any file notes that were made of those interviews or any material that indicates the extent to which they were interviewed? In other words, was the interview for 10 minutes or half an hour? Is it possible for you to give the committee a list of those people and also any notes that were made of those interviews subsequently?

Ms Stanton—We can do that. I think we also need to note that there were some attempts made after the days in question to contact some of these people, and we were unsuccessful in doing that. That is important to know.

Senator FERRIS—Any notes that can substantiate these efforts that were made and that would indicate where people chose not to understand or not to answer would be appreciated. We want to substantiate in our minds the extent to which AQIS tried to do this investigation, notwithstanding that I know you do not have coercive powers. I think that would be very helpful to the committee.

Ms Stanton—We can certainly provide that to you, Senator.

Senator FERRIS—I would also like to know the qualifications of the AQIS officers who carried out those investigations and those interviews, so that we can clarify in our minds the extent to which those officers knew the specific questions to ask.

Ms Stanton—Perhaps I could make a general comment there first, and then Mr Young can speak for his own qualifications. First of all, the staff in our compliance and investigation unit, which currently comprises about 22 people but at that time comprised about 15—three now in Queensland; two at that time in Queensland—are all competent investigators. The majority of them have an investigations or law enforcement background. There are a number of staff with a variety of technical backgrounds in horticulture, meat exports or whatever. Most investigators either meet or exceed the minimum requirements set out in the Commonwealth fraud control guidelines. Indeed, the entire unit operates under the ISO 9001 2000 standard. Our investigations program, to our knowledge, is the only government Australian investigation unit to hold that quality assurance standard.

Senator FERRIS—To clarify that: the people who did the investigations were skilled investigators? They were not, say, clerical staff or whatever?

Ms Stanton—I will turn to Mr Young to explain his qualifications.

Mr Young—I was a member of the Victoria Police Force for 24 years. Seventeen of those years were spent as a senior detective and a detective sergeant. I also did law study and was a police prosecutor for a period of three years. I resigned from the Victoria Police and joined the Queensland Police Service for one year. I then moved to AQIS as a senior investigator and was later appointed as a regional compliance manager. I have undertaken further studies whilst in AQIS in relation to investigation, auditing and other training courses.

Senator FERRIS—I understand and readily accept the qualifications you have as an investigator. Would you then be accompanied by someone with a scientific background who would be able to advise the sorts of questions to ask so that the particular focus was on the issue which you were investigating?

Mr Young—When we executed a warrant on Evergreen I had with me Senior Investigator Steve Watson and Dr Vanessa Brake, who is our plant pathologist. I had a gentleman from the Department of Primary Industries, Dan Smith, who has since passed away and so is unable to attend, and another quarantine officer from Gladstone who accompanied us. They had the necessary expertise, I believe, to be able to identify, look for and search the plant material, which is not my forte of expertise.

Senator FERRIS—I accept that. Ms Stanton, would that be the normal sort of qualified squad that would attend one of these sorts of investigations?

Ms Stanton—In the sorts of cases where we were executing a search warrant, as we were, yes.

Senator FERRIS—One of the things that I have been curious about in the period from when we had Mr Gillies's evidence last week has been the length of time that it took for AQIS to execute these warrants and conduct these searches following the first indication from Mr Gillies, according to him, that he had made to AQIS as a 'whistleblower'. I am wondering what it was that AQIS did in what appears to be the six weeks between his call to you and your search warrant that was more important than executing that search warrant, given the seriousness of the charges that he was making.

Ms Stanton—I do not think that it was so much a matter of anything being more important. There was a period of nearly six weeks between the first red line call and the actual execution of the search warrant. In the papers that I have tabled it explains the sorts of things that had to occur during that period—

Senator FERRIS—Could you take me through some of those?

Ms Stanton—Certainly. We received the red line call on 12 June. That was, as I recall, a Tuesday after a long weekend. For much of the rest of that week my recollection is that the Queensland investigators were in court on another case. However, in that time, on the 14th, contact was made with Mr Gillies to confirm that we had received his call. At the end of that week Mr Young proceeded on leave for a week and, indeed, received a phone call while he was on leave, I think, from Mr Gillies—I think that was the 20th. At that point he rang back to his office to ensure that Mr Watson went and got that statement from Mr Gillies, which he then did on the 16th. The statement was signed by Mr Gillies on the 17th.

Between 16 June and being able to conduct the search, we had to compile enough evidence to be granted a search warrant. That required not only the statement but making some corroboration. You will appreciate that it is not unusual for us to receive vexatious redline calls, and we have to be careful to make sure we have got enough to go on. Mr Young can perhaps outline in more detail the sorts of things that we had to do to satisfy a magistrate about a search warrant. It took us about three weeks to do that after the statement and then it took us two days from receiving the search warrant to executing it.

Senator FERRIS—Under normal circumstances, would you consider six weeks a long time for a serious accusation like this to be executed as a search warrant?

Ms Stanton—I would defer to Mr Young on that.

Senator FERRIS—I am not asking for the specifics; I am asking: when AQIS get a redline call, when a search warrant may be needed, what is the normal length of time for you to be able to get it, notwithstanding that people were on holidays and all the rest of it? I accept that there are some complications that need to be satisfied. I still cannot believe, given the seriousness of this redline call, that it was six weeks in which that company were able to dispose of all manner of samples and plants. We had evidence that they did so in the middle of the night after your visit. Think about what they could have done in the six weeks before that.

Ms Stanton—In hindsight it was a terribly serious call, but we get at least one and sometimes more very serious calls a week. We treat them all seriously. We get as much information as we can to ensure that they are not of the vexatious variety. We take statements and we try and corroborate what we are being told.

Senator FERRIS—Was the call recorded? Can you tell us exactly what Mr Gillies told you?

Ms Stanton—I cannot answer that question.

Senator FERRIS—Was it recorded?

Ms Stanton—Mr Young may be able to answer that.

CHAIR—It was on a recorded phone message, wasn't it?

Ms Stanton—The hotline is a recorded message that is checked every day because quite often these calls come in the middle of the night.

Senator FERRIS—I would like to know what he said on that message. Do you have a note of that somewhere?

Ms Stanton—I am sure we do.

Senator FERRIS—Could you table that?

Ms Stanton—Yes, I can take that on notice and get you that.

CHAIR—Given the seriousness of this, what is the logic behind not bothering to have someone with a mobile phone who could answer calls? Who actually had the phone—one of your guys?

Ms Stanton—No. The phone is in the Canberra office.

CHAIR—Why doesn't someone take it home with them?

Ms Stanton—Because it receives a number of calls a day, some of which are simply information calls. They are not all what we call merit calls.

Senator FERRIS—So it is never answered by a live voice?

Ms Stanton—It is not usually answered by a live voice—that is right. All we ask is for people to leave a phone number, not even necessarily their name, to be rung back.

CHAIR—Okay, we surrender. When you got the call in that six weeks, was any contact made with the farm before the raid?

Ms Stanton—Not to my knowledge.

Mr Young—No, there was not.

CHAIR—We were given evidence that on the day of the raid one of the key people was sent home to be out of the road, as it were. That was not a prior notice thing: 'We're coming at 10 o'clock.'

Mr Young—We do not advise people when we intend to execute a search warrant. It is not good practice of any investigation to tell someone you are going to execute a search warrant.

Senator FERRIS—On this occasion you simply drove in the gate.

Mr Young—We arrived there at seven o'clock in the morning—

CHAIR—So did you arrive in Emerald the night before?

Mr Young—Yes.

CHAIR—And you booked in at the motel?

Mr Young—We did.

CHAIR—When you booked in, was it as the compliance team of AQIS or as Joe Bloggs, incognito? Towns talk.

Mr Young—I appreciate that, which is why we made no contact with the farm prior to going there.

CHAIR—But, when you booked into the motel and had your feed et cetera, did you say who you were? Who made the booking at the motel?

Mr Young—I believe I possibly did or Steve Watson—I cannot recall.

CHAIR—Was it the day before or the week before?

Mr Young—It was several days before. We had to arrange for air travel and cars.

CHAIR—Who did you say you were?

Mr Young—The Australian Quarantine and Inspection Service.

Ms Stanton—I would like to actually take that on notice and look at that a little further. You would not normally say what organisation you were from when you were making the booking—you would just give your name.

Mr Young—That is right. The travel et cetera is done through the central office—it is not done directly by us personally.

CHAIR—I guess we have more witnesses to come.

Senator FERRIS—It would be useful to know if you flagged who you were, given that it is a small town.

Mr Young—We did not flag who we were, I can assure you. We were very circumspect in who knew we were coming there.

Senator O'BRIEN—The evidence in the material we have just been given indicates that, when you got there, it appeared as though plants had been moved—

Mr Young—That is correct.

Senator O'BRIEN—from the area in which you were expecting to find the illicit material.

Mr Young—That is correct.

Senator O'BRIEN—That indicates, doesn't it, that there was some expectation that that area would be scrutinised?

Mr Young—That is correct.

Senator O'BRIEN—How would the company or its operatives know to move those plants just before your visit?

Mr Young—I received a phone call from Wayne Gillies on about 17 July indicating that, when he had returned from leave, his house had been entered—the house is on the property—his computer had been accessed illegally and a document he had faxed to me setting out the map of the property with the blocks had been disturbed. So they had information prior to us arriving there that he had been in communication with us, which is probably why they removed those plants.

Senator FERRIS—Is that something you have been investigating separately?

Mr Young—We have nowhere to go to investigate. The people from Evergreen will not talk to us. They have refused through their legal people any offer of interviews. All correspondence has been via their lawyers.

Senator FERRIS—But, very clearly, Evergreen had two ways of finding out—firstly, by accessing his house and getting the information and, secondly, by someone in AQIS telling them. I am not for a moment suggesting it might have been you.

Mr Young—I would dearly love to find out how they found out. I do not know. We were very careful not to involve any people outside of the compliance unit and the people directly involved in travelling to Emerald, for that reason.

Senator FERRIS—Have you looked at it internally to see whether there was any way that any AQIS operative could have informed that company?

Mr Young—There is no way of looking at it internally. The closest AQIS officers are stationed in Gladstone and one of them accompanied us on the trip to Emerald.

Senator FERRIS—I am just trying to understand the procedure that you go through when you decide that you are going to seek a warrant and do all of these things. How many people in AQIS would know that was happening? Would it just be you?

Mr Young—It was the compliance unit in Queensland and my then manager in Canberra.

Senator FERRIS—How many people are we talking about inside of AQIS who would have known that you were proceeding to this point of the investigation?

Mr Young—It was six to eight people, to the best of my knowledge.

Ms Stanton—I also knew. If a search warrant was to be executed, I would know.

Senator FERRIS—One point I want to make is that it would have been enormously helpful to this committee if, instead of arriving here today and getting this much material to ask you questions on, we could have had it yesterday. It is really very unhelpful.

CHAIR—But do not be alarmed—we will invite you back!

Senator FERRIS—Maybe, but you have wasted everybody's time.

Ms Stanton—I understand that—

Senator FERRIS—It is very annoying.

Ms Stanton—In terms of getting our own documentation together and making sure it was in the best state so it really could help you, it did take us until this morning—my apologies.

Senator FERRIS—All of it? You could not have given us half of it yesterday?

CHAIR—Can I just get away from that discussion now. We will deal with that, but we have limited time today. When that brief was handed up to the DPP, Mr Young, in your professional experience, did you think it was a bit light?

Mr Young—It was light because we had no further evidence to add to it.

CHAIR—That makes a farce of the whole process.

Mr Young—The process of obtaining evidence to support a brief for prosecution relies on interviewing witnesses—

CHAIR—You do not need to repeat what you said earlier. Since that evidence the other day, has anybody bothered to interview those witnesses?

Mr Young—Not at this point in time.

CHAIR—Why not?

Mr Young—We have not had the opportunity. I have been in Canberra since Monday for this hearing.

CHAIR—Has anybody rung them and said, ‘Hey, mate, where are you?’

Mr Young—The first thing I intend to do when I get back to Brisbane is to ring Mr Ienco and ask him to undertake an interview with me.

Ms Stanton—As we have done before.

CHAIR—If it was me, he would not have got out of the room before he got the call. Given that there was a quarantine order which was sustained by the court, why did you then agree to dismantle that order and go to a confidential agreement? What was the logic?

Ms Gordon—The quarantine order that was on the grapes and the citrus material at the time that we entered into the deed of agreement was an extension of a quarantine order that would have taken us through to November of that year. However, to sustain a quarantine order on goods under the Quarantine Act, you have to have some reasonable basis to do so in terms of the evidential material available to you. By that period of time, we had no evidence that the grapes themselves had any quarantinable disease in them. The company was very keen to harvest their grape crop. If we maintained a quarantine order on the property or on the grapes in those particular circumstances, they were likely to suffer a commercial loss. However, we were keen to keep some control over the grapes for a period of time because of the allegation that they had illegally imported grapevines from California. You may recall that, at that period of time, there were particular concerns about Californian table grapes and the diseases that might be imported along with them. So it was really very focused on trying to maintain some control over the harvesting of the grapes.

CHAIR—Why was there a need for it to be confidential?

Ms Gordon—We had no powers under the Quarantine Act that would be readily suitable for us to maintain control over the grapes. If we wished to enter into a deed of arrangement with the proprietors of the company, in the negotiations they were keen to protect their commercial reputation, and we had no other option.

CHAIR—Fair enough. It was for an 18-month period. We had evidence the other day that the outbreak in 2004 may have gone back 18 months into that period. Did the DPI carry out the 18-month inspections? Who carried out the inspections? By the way, we put some of these questions on notice at estimates and, as you know, we are eagerly awaiting the answers.

Ms Gordon—The inspections and sampling of materials on the property throughout that period of time under the deed of arrangement were undertaken by AQIS, although a number of the tests were carried out by various state laboratories where expertise lay. In the materials that we have provided you with, we have given you a schedule of all the samples that we took, where the tests were done and the results.

CHAIR—The last three months are a curiosity to me—there was no inspection, as I understand it. Is that right or wrong?

Ms Gordon—The last inspection and taking of samples was done in December. The deed itself concluded at the end of February. There were technical scientific reasons why it was deemed appropriate to take that last sample at that particular point in time. It might be appropriate for Dr Roberts to explain to you why we made that decision.

Dr Roberts—I am currently principal scientist for Biosecurity Australia but I am really appearing here because I was chief plant protection officer at the Department of Agriculture, Fisheries and Forestry.

CHAIR—You have been overtaken by Lois, I understand.

Dr Roberts—That is correct, but I was Chief Plant Protection Officer at the time of the earlier incident. We sought advice from Australia’s top citrus pathologist on the best time for sampling as the deed was coming up to its end point. The advice we were given was that you need to sample in that early growth phase in the

season when the material is quite soft and more susceptible to disease and when the humidity is high and the disease is more likely to be evident.

CHAIR—There was scientific advice. Who took the samples?

Ms Stanton—The sampling was done by Dr Vanessa Brake.

CHAIR—What day were the first samples taken?

Ms Stanton—The date of the very first samples was of course—

CHAIR—Was the day of the raid.

Ms Stanton—the day that we executed the search warrant.

CHAIR—The visit. It has been suggested that some of those may have been mishandled. Is that a false assertion?

Ms Stanton—I do not know the nature of those assertions. I would need to—

CHAIR—Did some of them die?

Ms Stanton—My understanding is that the grape samples were non-viable, and reading through the *Hansard* from last week I can understand why they were non-viable. The citrus samples, though, have been grown through—I saw them myself only last week at Eastern Creek.

CHAIR—Yes, I know. I prompted everyone to go and have a look and find out what they were like three years after—no-one had bothered.

Ms Stanton—I had seen them before.

CHAIR—I know, but nobody had bothered to find out what they were until the other day. Which is, once again, Dad and Dave—

Ms Stanton—I am sorry: that is not right. That is not correct.

CHAIR—We were told you did not know.

Dr Roberts—In what sense?

CHAIR—We were told you did not know what variety they were.

Dr Roberts—Yes, but I can table a report where we pursued the issue of identifying the variety.

Senator FERRIS—It might be useful if you could do that.

Dr Roberts—I will. It was done by a scientist in CSIRO, very early on in the investigation, of course.

CHAIR—Was that down at Dareton?

Dr Roberts—No, at Merbein in Victoria. They have a research station there.

CHAIR—Did anything go to Dareton?

Dr Roberts—Not that I am aware of. Dr Steve Sykes, in his sampling, came to Eastern Creek to pick up some material, and some other material was forwarded to him under arrangements about their security.

CHAIR—What became of the second lot of samples that were taken a week later?

Dr Roberts—All the material went to Eastern Creek, which was the main processing and control centre for that material.

CHAIR—So why were the second lot of samples taken? Was that because the first lot of samples were unviable?

Dr Roberts—I am not aware of the precise details.

CHAIR—Can someone—

Dr Roberts—I was trying to address the question about the variety, though. Can I—

CHAIR—Could you clarify that for us?

Dr Roberts—Can I finish the question on the variety? That is the key question that keeps coming up: why couldn't we determine what the variety was? This report, which I will table, was some work done by Steve Sykes from CSIRO. Basically, he says that the owners of the suspect trees had at one time claimed them to be Imperial mandarin. We all know that. AQIS had suspicions that the impounded trees were Ponkan mandarin,

which is a mandarin variety very similar to the Australian variety, Emperor. In fact, Emperor is thought to be a seedling introduction of Ponkan. In other words, they are more or less identical.

Steve Sykes got material on two occasions. He approached it by looking at isoenzyme markers as well as the morphology of the leaves. He concluded that they were certainly not Imperial but they were indistinguishable from Emperor and indistinguishable from Ponkan. On the basis of that we approached some other experts, because there are other approaches to differentiating varieties. Again, the advice that we were given was that Emperor and Ponkan are indistinguishable with the available technology.

CHAIR—Were they the Eastern Creek samples?

Dr Roberts—Some of the samples were obtained directly from the field. So some of it was some of the field samples and some of it was the Eastern Creek stuff that had grown out.

CHAIR—When did you work out what the samples grown at Eastern Creek were?

Dr Roberts—I have forgotten when this report was received. But that started straightaway. The Australian leading citrus pathologist looked at the leaf material and thought straightaway that it did not look like Imperial, so we had concerns immediately about it probably not being Imperial. This subsequent work just confirmed that, both the leaf morphology of material from the field plus the biochemical tests on the material that was grown out at Eastern Creek. It is consistent with Emperor or Ponkan—they are indistinguishable.

CHAIR—Do you think the law as it stands gives enough power to you guys to do your work? I am thinking in terms of the separation of whether it is an illegal importation or it is diseased. Do we need to beef up the power of AQIS to do a better job?

Dr Roberts—I just work on the technical aspects. I will defer to my regulatory colleagues in terms of those aspects.

CHAIR—We are here to help.

Ms Stanton—In this particular case I cannot see that it would have made any difference.

CHAIR—That is not what I am asking you.

Ms Stanton—In terms of our powers and the legislative power we have, as far as I am concerned that is a matter for government policy.

Senator O'BRIEN—I am sorry, but we have been told that there was a problem which made it essential for AQIS to enter into a confidential agreement with the operator of the farm because you did not have the power to do what you wanted to do, but you seem to be telling us that there is no problem with the power that you have. Which is true?

Ms Stanton—I do not believe that you can put it that way. The situation that we had when we wanted to make sure that we still had surveillance powers related to the investigation.

Senator O'BRIEN—Yes, but that is the way Ms Gordon put it to us at estimates.

Ms Stanton—I am sorry?

Senator O'BRIEN—The way that I put it to you then—that is, the reason that you needed to enter into the agreement was that you lacked the power to have continuing access to the property to test out the thesis that there might have been improperly imported material there.

Ms Stanton—But normally you would expect the states to have that power and to do that.

Senator O'BRIEN—That is not the question.

Ms Stanton—As it turned out at the time—

Senator O'BRIEN—Hang on. That is not the question. The question is: did you have the power or not? At that stage you wanted, we were told, to conduct further surveillance but in order to be able to, we were told, you needed to enter into a confidential agreement which effectively gave Evergreen the whip hand to determine how many people could go in there and how often.

CHAIR—And where they could go.

Senator O'BRIEN—In that context, are you still telling us that the powers available to AQIS were satisfactory?

Ms Stanton—My answer still remains that powers available to AQIS are a matter of government policy.

Senator O'BRIEN—That is dodging the question. The question is—

CHAIR—With respect, I guess—

Senator O'BRIEN—I am asking the question. Does AQIS need additional powers to be able to adequately deal with matters such as this?

Ms Stanton—My answer would be: that is a matter for government policy. If the government wish to change our current powers then that would be a matter for the government.

CHAIR—If there were a change to the current powers which gave you more power, would that be helpful?

Ms Stanton—I am still not convinced that in this case it would have been helpful.

Senator FERRIS—Given the lack of coercive powers, Mr Young—and you would be accustomed to having access to the National Crime Authority or the ACC's coercive powers—would it assist you in your aspect of the job if, under certain circumstances, you were able to have coercive powers?

Mr Young—No, it would not because, with regard to any coercive power that is exercised, the evidence obtained is inadmissible in a prosecution matter.

Senator FERRIS—That does not mean that you cannot extract the same evidence at a later time in a different way.

Mr Young—Certainly. If there was a coercive power to cause or force people to talk to us, yes—but, again, you rely on them being honest and making a statement to us.

CHAIR—Did you feel a bit underresourced, inadequate and maybe even a bit embarrassed that you had handed up to the DPP some paperwork that looked very light on from a professional point of view?

Mr Young—From a professional point of view we felt embarrassed because we did not have more evidence to mount a prosecution.

CHAIR—We are hoping to assist you with that, by the way. It seems to me it is a danger signal, that if you can do this and get away with it perhaps it invites someone else to have a go. The second danger signal is that if you are a whistleblower expect to be sued through the floor and broke—which is what has happened to the whistleblower—and no-one will give you any sympathy. They are issues for this committee.

Mr Young—On the issue of the whistleblower, Wayne Gillies did contact us, yes, and as a result of that contact his position was possibly terminated on the property, although they claim he was inefficient in his operation as the farm manager.

CHAIR—As they would.

Mr Young—As they would. I do not agree that being a whistleblower is the cause of him being in the position he is in now.

Senator O'BRIEN—You do not agree with that because you know it is not true or you do not agree with it on the basis of the assertion by the company? On what basis do you make that statement?

Mr Young—I make it on the basis of the numerous conversations I had with Mr Gillies. Even had he not contacted us, there is a very real chance that he would have been sued by the company for lack of performance, as they did with other organisations that performed work on the property. They are a very litigious company.

CHAIR—People tell me they are pretty litigious.

Mr Young—They are. Almost every contractor has either not been paid and/or sued for not performing or not supplying equipment—

CHAIR—Given that we have received evidence that so many hundred trees were sprayed at three o'clock in the morning, having got rid of some grapevines to the rubbish tip or something in the meantime, who inspected the place during the 18-month period? Was it anyone here or does anyone know the people who inspected the place, how many and how often?

Ms Stanton—Yes. We had a number of people do inspections.

CHAIR—They are not here, though?

Ms Stanton—One is: Dr Vanessa Brake is in the room.

CHAIR—Could she come forward?

Ms Stanton—Certainly.

Dr Brake—I am the quarantine plant pathologist with AQIS in Brisbane.

CHAIR—So you are pretty familiar with trees?

Dr Brake—I can recognise them.

CHAIR—During the 18-month period, how many times did you go to the property?

Dr Brake—I have been to Evergreen Farms a total of five times.

CHAIR—We have received evidence that in that 18-month period there probably was citrus canker on the place. I do not want to ask you about that, because human error may have enabled you to be taken the wrong way or whatever. But if 300 or 400 trees were sprayed with Roundup, did they turn up?

Dr Brake—I was not there specifically to look for—

CHAIR—No, but surely to God if rows of trees had been sprayed with Roundup they would get a bit sad after a while. You didn't notice that?

Dr Brake—It was a very large property and I did not get to see all of the property.

CHAIR—If you were looking for canker, wouldn't you have to look at the whole property?

Dr Brake—It was impossible for me, by myself—

CHAIR—How many mates did you have with you?

Dr Brake—I often had one assistant.

CHAIR—And you were the expert. So, in other words, you were given mission impossible to properly inspect the orchard for citrus canker?

Dr Brake—I had to do a targeted survey, basically. I had to look for anything that was unusual in relation to plant health, and sample accordingly.

CHAIR—But if there are 300 trees—

Senator O'BRIEN—I am sorry, Chair, I did not hear that answer.

Dr Brake—I was doing a targeted survey, so I was looking for anything that was unusual with regard to plant health and I sampled accordingly.

CHAIR—So if there were 300 trees that happened to have been sprayed with Roundup it was bloody bad luck that you missed them, wasn't it?

Ms Stanton—Senator, with all due respect, regarding the issue about the Roundup I have been looking at the *Hansard* from last week and my understanding from the evidence that was given is that the trees that were allegedly sprayed with Roundup—

CHAIR—More than one.

Ms Stanton—were the ones on the block that ended up being destroyed. They were the ones on block 182, I think.

CHAIR—I do not know the answer to that.

Ms Stanton—They were not in leaf at the time and in fact they were destroyed because they were the ones that were the subject of quarantine.

CHAIR—But, unfortunately, the trees having been sprayed with Roundup, if you went back the week after to take the samples it is no wonder we have evidence here—

Ms Stanton—We took samples from those trees on the day of the search warrant.

CHAIR—Yes, I know, and some of those fell over and you went back and got some more?

Ms Stanton—No, my understanding is—

CHAIR—What did you take the second time around?

Ms Stanton—I would have to defer to Dr Brake on that. My understanding is that the citrus samples we took on the day of the search warrant, perhaps not 100 per cent, were all—

Dr Brake—They arrived safely down at Eastern Creek.

CHAIR—Were they the only samples you took?

Dr Brake—Not of block 182. On, I think, 24 October we took another 10 plants from block 182, simply—

CHAIR—What was the date of the first samples?

Dr Brake—It was 26 July.

Senator O'BRIEN—You took them 'simply'—what were you going on to say?

Dr Brake—We took the second lot of samples simply because the more plants we have to test the better it is.

Senator O'BRIEN—I think what the chairman is asking is: in taking the range of samples, was there no apparent deterioration of the trees?

Dr Brake—There was. Mr Cea explained to us that, because we had put on the order into quarantine that the plants were not to be interfered with in any way, they had stopped watering the plants.

Senator O'BRIEN—So Mr Cea led you to believe that they were dying because of lack of water?

Dr Brake—Yes.

Senator O'BRIEN—Were they dormant?

Dr Brake—They did have leaves on them. They were in a foliated state when we first saw them. They still had dead leaves on them when I was there in October.

Ms Stanton—I stand corrected on that—my apologies.

CHAIR—How old were the trees?

Dr Brake—That would be hard for me to estimate. I am not an expert on citrus trees. They were about 50 to 60 centimetres tall. They would have been less than a year old.

Senator O'BRIEN—So they fitted the profile of the evidence you have been given about the introduction of a new species?

Dr Brake—Possibly.

Senator O'BRIEN—Would the evidence you had, Mr Young, have been that the plants or cuttings that were allegedly brought in from overseas had been planted within that 12-month time frame?

Mr Young—We were directed to that specific block, 182, by Mr Gillies.

Senator O'BRIEN—The stock there fitted the age profile of his allegations?

Mr Young—I could not comment on that.

Senator O'BRIEN—That is the evidence we are getting now, isn't it?

Mr Young—Yes.

Dr Brake—That is correct.

Senator O'BRIEN—It was consistent with them not having been planted more than 12 months before?

Dr Brake—Yes.

CHAIR—When you arrived at the gate with your offsider on the day of the routine inspection, who else did you have with you?

Dr Brake—On one occasion I had Dr Jo Luck from IHD at Knoxfield in Victoria, who was a specialist in detecting grape diseases. On other occasions I had an AQIS officer with me to help me take the samples.

CHAIR—Did you have any state officials?

Dr Brake—Not from the Queensland Department of Primary Industries.

CHAIR—Did you go there during the original quarantine period of six weeks?

Dr Brake—On the initial visit we did.

CHAIR—Who was securing the quarantine?

Dr Brake—AQIS secured the quarantine.

CHAIR—How did they do that?

Dr Brake—We inspected the property—

CHAIR—Who stopped people from coming and going?

Dr Brake—On the day of our visit?

CHAIR—No, any day.

Senator O'BRIEN—During the period of the quarantine.

Ms Stanton—We subsequently had a security officer on the gate.

CHAIR—How much of the place was quarantined?

Dr Brake—We quarantined the entire property on the first day.

CHAIR—How big is the entire property?

Mr Young—It is 20,000 acres.

CHAIR—This would be an interesting prison concept: one person was given the entire task of securing the quarantine for the entire farm?

Ms Stanton—No, that is not correct.

CHAIR—How many did they have?

Ms Stanton—On the day of the search warrant, which was when the property was put into quarantine, we quarantined the entire property, but once the search warrant was executed we had to ensure that only the product that we were there for was quarantined, which was grapes and citrus.

CHAIR—Didn't you say the entire property was quarantined?

Mr Young—The order related to the removal of plant material from the property and any equipment associated with that plant material. That was written on the order. We had some signs made in Emerald overnight and erected on the property the following day. Michelle King, the director of the company, was advised accordingly.

CHAIR—The allegation is that the bloke took them after you left the first day. He beat you to the signs.

Mr Young—Unfortunately, I cannot comment. The day we arrived there to execute the warrant—

CHAIR—Anyhow, you put the signs up. There are 20,000 acres. Who supervised the 20,000 acres then? Who would have stopped me driving through and picking something or doing whatever I wanted to do and then driving out the other end?

Mr Young—You cannot legally stop anybody from going onto the property. It is not within the powers in the legislation or under the quarantine order.

CHAIR—What if I cut a few trees down and chucked them in the back of the ute—I am not allowed to do that, am I?

Mr Young—No, you are not allowed to remove plant material.

CHAIR—Who is going to stop me?

Mr Young—We had a security guard on the front gate.

CHAIR—Is that the only entrance and exit?

Mr Young—There is one other side gate to the property, which was padlocked, and a sign was erected on that gate.

CHAIR—Would you say that one person to look after the quarantine security of a 20,000-acre block was a fairly light resource? He must have been a magician.

Mr Young—There were no other options available at the time to do anything else but that.

CHAIR—And what does that say? Should there have been? I think that is pretty unreasonable for one person. Do you think that is unreasonable?

Mr Young—It certainly is under the circumstances, but how else can you control it?

CHAIR—These are questions for the committee to reflect upon. When you rocked up to the gate with your assistant and whoever else, they met you at the gate.

Dr Brake—We would arrive at the head office.

CHAIR—Would they then say, 'You can go here but you can't go there,' or would you say, 'I would like to go here, there and there'?

Dr Brake—I said I would like to go and see certain blocks, and they would escort me to those blocks.

CHAIR—What made up your mind that you wanted to see those certain blocks?

Dr Brake—Initially, it was back to the original blocks. After that, I wanted to look at certain blocks close to those initial blocks.

CHAIR—You did not want to go down the other end.

Dr Brake—On one occasion I did ask to be driven around the citrus area to get an idea of the general health status.

CHAIR—Were you involved with the grapes?

Dr Brake—I looked at the grapes.

CHAIR—So when you discovered the row of grapes that was gone, were you curious enough to think, ‘We’d better go and have a bit of a look down the other end and see if they have been replanted somewhere’? Or did you just think they had gone? Did anyone offer you—

Ms Stanton—At that stage, we were operating under the search warrant and we were not entitled to go anywhere other than what had been specified in the search warrant. The search warrant was based on Mr Gillies’ information.

CHAIR—It is very valuable for the future protection of Australia that this simply is a system that does not work. Did you discover the vines that were missing?

Dr Brake—There was a group of us who were all there at the one time.

CHAIR—What did you say: ‘Hey mate, where did these go?’

Dr Brake—I believe Tony Young asked questions.

CHAIR—Tony, what did you say?

Mr Young—We had Michelle King, Marco Cornejo, who was a grape supervisor, and Wayne Gillies. We went to block 179, which had been identified by Wayne Gillies on the map provided to us and rows 1, 10 and 20, which had been identified by a white dropper. The number of plants in each of the three rows which Wayne identified as being the suspect plants had been removed and replaced with other vines. There were no holes in the ground as indicated by a previous witness to this inquiry.

CHAIR—Did you think that that—

Mr Young—I asked Mr Cornejo what had happened to the plants and why the soil had been disturbed around those three rows. I must also indicate that there are a large number of plants—thousands of plants in rows—with grapes on that property. It is a physical impossibility to inspect the whole property.

CHAIR—I realise the impossible task you were given.

Mr Young—In those three rows there was freshly disturbed soil, and my opinion—and I am not an expert on removal of plants—was that someone had removed the plants very recently from those three rows and replaced them.

CHAIR—Given that and your experience—and I have to say I would not argue with you; you look big enough to be an old-style policeman—did anyone offer you a bike or ask if you wanted to look anywhere else?

Mr Young—We had a vehicle. We drove around the property. I cannot understand why Mr Gillies said in his evidence or in his statement that he wanted a four-wheel drive to drive around. We asked Wayne to direct us to where he believed plant material was located that we suspected it had been illegally imported—or he did—and he directed us to those two blocks. We did inspect other blocks as much as we could in the time frame allocated.

CHAIR—But you did not go to the tip.

Mr Young—We drove past the tip on the way to the citrus block. There was no need at that point in time.

CHAIR—Was that the first day?

Mr Young—That was the first day.

CHAIR—You did not on the second day because—

Mr Young—The only reason we went back on the second day was because the warrant had been executed. We had no legal power to re-enter the property without permission from the occupiers. They gave us permission to come back on and erect the signs.

CHAIR—In the subsequent 18-month period, did you feel you were constrained either by the enormity of the task of 20,000 acres or the thousands of trees? Did you feel in defending Australia's clean, green and free status that you had been given a mammoth task which was underresourced to physically inspect whether there was canker in the orchard in that 18-month period? Would they give it one day at a time?

Dr Brake—I was allowed onto the property one day at a time.

CHAIR—I am sure that the average punter out there would think that you were given a task that was impossible. Do you think the task was pretty well impossible?

Dr Brake—It is impossible to inspect the whole property in one day.

CHAIR—Thanks very much.

Senator O'BRIEN—We have received this material, which includes some spreadsheet information on testing. It contains evidence of samples and testing methods, blocks, dates taken, the dates of testing and the like. This is all of the testing on material from the Evergreen farm property, is it? There is no other material held which is awaiting testing?

Dr Roberts—There are still plants at Eastern Creek quarantine station.

Senator O'BRIEN—Have they been the subject of testing already?

Dr Roberts—They have been, yes.

Senator O'BRIEN—Some of the testing on variety took place in 2003. That postdates what I understand to have been the brief to the DPP. Am I right?

Ms Stanton—I would have to check on the date of the brief to the DPP. It is quite possible but the testing does not indicate that it is an exotic variety.

Senator O'BRIEN—It indicates that it is not the variety the owner said it was.

Ms Stanton—That is true.

Senator O'BRIEN—It is pretty clear that it definitely is not Imperial.

Dr Roberts—That is correct.

Senator O'BRIEN—It seems to be clear from your evidence that it is a variety which is either Emperor or Ponkan—

Dr Roberts—That is right.

Senator O'BRIEN—and, from what you have said, you cannot distinguish between the two.

Dr Roberts—That is correct.

Senator O'BRIEN—Do you think that that material would be germane to consideration as to whether there was a probability of conviction if that material went before the court?

Ms Stanton—I do not believe it would be because it gives you no indication whatsoever about where that material may have come from, whether it has been illegally imported and, if so, by whom.

Senator O'BRIEN—Mr Gillies was the connection, wasn't he?

Ms Stanton—One statement without corroboration is never going to get the DPP to a stage where they say that a possible offence is worth pursuing through to prosecution.

Senator O'BRIEN—If I understand what you are saying, you have a whistleblower who is prepared to swear—and did—that the proprietor told him that he imported material, that the whistleblower told your officers where to find this material and that when it was tested it was not the material that the owner said it was but, in all probability, the material that your whistleblower said it was. That is a fair assessment, isn't it, on the evidence you have given us? You are saying that the sampling showed it was either Emperor or Ponkan, and the only reason that you could not be more definite is that testing cannot tell the difference.

Dr Roberts—That is correct, but Emperor is widely available in Australia and there were, I understand, lots of other Emperor on the property. So I think it is not a reasonable conclusion to say that that indicates that it is Ponkan. That is one of two possibilities in terms of that material. That is the difficulty the prosecution would face, I think, in those circumstances.

Senator O'BRIEN—There is no other testing that is available to determine—

Dr Roberts—On 20 June 2002, I contacted Malcolm Smith in DPI in Queensland, who had a technology called microsatellite, which can be used to a much finer level differentiation in some circumstances. The response I got on 24 June 2002 was:

Sorry I can't be of more help in separating this material. If you thought the material might be anything other than Ponkan then this would be relatively easy to establish.

So all the technical advice we got was that it was impossible with all the technology that was available then to differentiate between Emperor and Ponkan.

Senator O'BRIEN—And there is no way to test the material structurally—DNA type testing, for example?

Dr Roberts—Microsatellite is a DNA technology. The other approach that was used by Steve Sykes is enzymatic, which is pretty close to the genome of the plant. As in the report I tabled, Emperor is thought to be a seedling of Ponkan, so it is not surprising that it is almost indistinguishable.

Senator O'BRIEN—I am just trying to be clear: in terms of the evidence that we now have, there are no other tests pending?

Dr Roberts—Not that I am aware of, but I understand the material is still in Eastern Creek and it is checked regularly for visual symptoms.

Senator O'BRIEN—Are Ponkan and Emperor fruits the same?

Dr Roberts—Yes, that is my understanding. The material in Eastern Creek is fruiting. I think Meryl has seen the material.

Ms Stanton—I have. I was there last week. The fruit is clearly not Imperial. There is a difference. Imperial does not have a crown on the fruit. Emperor and Ponkan have a crown rather like a large crown on a navel orange that you see sometimes. This fruit in its most mature stage clearly had a crown. I might just pick up, Senator, on your question. Given that Dr Roberts is not currently the CPPO, I will ask Ms Ransom whether there is further testing happening on that material at Eastern Creek.

Mrs Ransom—There is no further testing on that. Through the life of the eradication program, we have been in contact with AQIS at Eastern Creek and they have rechecked that material a number of times. There are no symptoms of canker associated with the material.

Senator O'BRIEN—This is material taken from the block that, on the evidence we have received and you have read, was sprayed with Roundup?

Ms Stanton—That is correct.

Senator O'BRIEN—This is also the block of which the owner said, 'It is dying because we haven't watered it.'

Ms Stanton—These are likely to be samples that were taken on the day of the search warrant.

Senator O'BRIEN—I understand that.

Dr Roberts—Some of the material is complete in the sense that the scion and the rootstock are there. That is presumably the material that was taken before the Roundup was used. With some of the other material, it is only the rootstock that has grown away.

Senator O'BRIEN—You say that there can be no conviction on the evidence that we are talking about. You had a whistleblower say this was the block. You took samples; the owner said it was Imperial. You have established it is not Imperial; it is one of two other varieties. The owner, on the evidence we now have, organised for someone to spray it with Roundup. The owner tells you what apparently is untrue—that is, that the trees are dying because they lack water and the trees are subsequently removed to remove the evidence. Has that not been put to the DPP to consider whether there is a case?

Ms Stanton—I would have to take that on notice to check precisely the attachments to that letter to the DPP.

Senator O'BRIEN—It could not have been because he did not have the finding of the variety of the fruit.

Dr Roberts—But it was pretty clear that it was not Imperial because the leaf morphology was incorrect for Imperials.

Senator O'BRIEN—But he did not have that evidence before him.

Ms Stanton—I am not clear on that. I want to take that on notice.

Senator O'BRIEN—I would appreciate it if you would.

CHAIR—Mr Young, have you something you wish to add?

Mr Young—Only in relation to the comments by Mr Ienco. These only came to light at the start of this inquiry. We have not had the opportunity to interview Mr Ienco, obtain a statement from him and put that with the other evidence to the DPP.

Ms Stanton—That is on the issue of the Roundup. That is true.

Mr Young—Or the evidence relating to the removal of the grapes from those particular rows.

Senator FERRIS—There is the digging up of the grapes and the burning of them.

Mr Young—That is right. We had none of that evidence available until this inquiry started.

Senator O'BRIEN—In pursuit of the matter after the 18 months had expired, and particularly in the light of the outbreak of citrus canker, did that not switch on any lights to say, 'We'd better go back and conduct some more interviews and see if we can get some more evidence because there looks to be the likelihood of more evidence now that will connect up this farm owner with the introduction of the disease'?

Mr Young—Yes. I went back to Emerald. I made two trips to Emerald in an attempt to obtain evidence from any witness who was prepared to come forward. People in the industry up there had made contact with the people who were still employed, at that time, on Evergreen. They were given the opportunity to speak to me off the property as I had no legal right to go back onto the property. That offer was not accepted by those people, including Mr Ienco. I then contacted him earlier this year. He recalls our conversation on the property on the day we executed the warrant, so what he said about not being spoken to is not factual. I did speak to him on the day and I asked him the same questions as I asked all the other employees.

CHAIR—That is Mr Ienco?

Mr Young—Yes.

CHAIR—We called him back and he corrected himself.

Mr Young—Right.

CHAIR—He was not formally interviewed.

Mr Young—That is right. He was asked questions.

CHAIR—But he did not make a statement.

Senator FERRIS—That is splitting hairs.

Mr Young—I gave him the opportunity to make a statement or speak to me further, which he did not accept. I will give him the same opportunity after this to speak to me and make a signed statement. Maybe we can then use that to further a prosecution.

Senator O'BRIEN—Who put the stickers on trees and why were they placed there?

Dr Brake—I placed stickers on the trees out in the field where I sampled so that, if any sample had turned up positive for a disease, we could go back and check that tree in particular.

Senator O'BRIEN—And what about the markings or labels that were put on plants in the nursery?

Dr Brake—In the nursery at Evergreen?

Senator O'BRIEN—Yes. You did not put any of those on?

Dr Brake—No. I did not take any samples initially from the nursery.

Mr Young—We spoke to Mr Price, who was in the nursery at the time, and asked him if he knew anything about illegal importation and whether there were any plants in the igloos, as they call them. He had no knowledge of any illegal importation.

CHAIR—They all wanted to hang onto their jobs!

Senator O'BRIEN—In terms of the other evidence that was given about I think watermelon seeds and paw paw, what inquiries were made by AQIS about that importation?

Mr Young—We did a check through our database which records all importation of materials into Australia. A permit is required to get them into the country legally. There was no evidence found to indicate that Evergreen Farms or Pacific Century had applied for a permit and brought any items—seeds or other plant material—into the country.

Senator O'BRIEN—Is it an offence for any person to take action to conceal evidence from AQIS in the context of an investigation such as the one which took place?

Mr Young—You could utilise provisions under the Commonwealth code in relation to obstructing an official in the execution of his duty, but it would be a very tenuous argument. It would have to be argued in a court of law.

Senator O'BRIEN—On the evidence we have received—and I concede that it is only on the evidence we have so far—it would appear that there was a strategy put in place by the proprietor of the property to mislead the AQIS officials in the course of their duties. What you are saying is that there is not really any satisfactory legal deterrent to the owner undertaking such activity?

Mr Young—One witness whose name has come to light since the inquiry started will be interviewed in relation to further evidence. He apparently did make some form of affidavit. If that was in fact false then we may well be able to further that against Pacific Century in relation to offences independent of the importation. I have contacted the DPP since this inquiry started and they are certainly prepared to accept more evidence and to further the possibility of prosecution.

CHAIR—Do you think this inquiry has been a useful exercise?

Mr Young—Most certainly.

Senator O'BRIEN—I would like an opportunity to look at the material. Obviously, we have not had an adequate opportunity to do that. We expected this to be a short hearing today, but it has been a bit longer for other reasons. Thank you for that material. I propose to look at that at some stage and perhaps return to those matters, but, when we do, I would appreciate some further information about the issue of what matters have gone to the DPP and what matters could now go to the DPP.

CHAIR—Mr Young, we would be able to avail you of in camera evidence at a future date. We absolutely do not want to prejudice any procedure.

Ms Stanton—We are aware of that and, when that becomes necessary, we will certainly ask for it.

CHAIR—What is the incubation period for citrus canker?

Dr Roberts—I will defer to Lois on that. She is a bit closer to it at the moment.

Mrs Ransom—The incubation period will vary, depending on the conditions. Some of the information I have read suggests that it can be anything from seven days to 60 days, depending on the weather conditions and the nature of the material that has become infected. I understand that the leaves of the citrus trees become less susceptible as they get older, so older material will not take infection quite so easily.

CHAIR—Regarding the July 2004 outbreak, I think we were given evidence that that may have been 18 months old. Is that as far back as you can trace it?

Mrs Ransom—The information from experts in that field that has been provided to the consultative committee on emergency pests is that that is the limit for having confidence of the timing of the infection. As I understand it, it is based on the physiology of the tree and the nature of the way the tree grows allows you to age it back to particular leaves.

Senator FERRIS—How much longer will it be before we get the answers to the estimates questions?

Ms Stanton—We are in the process of providing them to the minister.

Senator FERRIS—Otherwise we are asking you questions we have already asked you and it would be handy to have the answers.

Ms Stanton—The minister does not yet have the answers but will have them shortly.

CHAIR—Going back to the impossible mission, did you notice anything about the trees other than that they were dying? Was any explanation offered to you? Had you taken samples from the plot where trees had suddenly died?

Dr Brake—Plot 182 was where I took the samples from.

CHAIR—What was the success rate of the samples versus the cultivation? Did a quarter of them or half of them survive and grow into something?

Dr Brake—I could not comment on that. We could take that on notice.

CHAIR—Sorry to do this, but there are some question marks over the survival rate of the first lot of samples—that something went wrong. Is that a myth?

Dr Brake—As far as I know, the majority of them are still alive. The second lot that I took had mainly the root graft alive.

Ms Stanton—That is not the case with the grape samples that were taken. The grape samples that were taken were non-viable.

CHAIR—Whose decision was it to use the Florida protocol?

Mrs Ransom—Is this in relation to the emergency response?

CHAIR—Yes.

Mrs Ransom—The Florida protocol was incorporated into a draft contingency plan for citrus canker that was developed. Coincidentally, it was completed as a draft in May 2004. That was used as the basis for considering what we would do in Australia in the event of an emergency. Also included in that contingency plan were experiences and information from other countries and from the most recent outbreaks in the Northern Territory, in the early nineties.

CHAIR—So when you instituted the Florida protocol you would have been well aware that it was not 100 per cent?

Mrs Ransom—That is right.

CHAIR—At what intersection of the percentile did you take the 600 metres? What percentile is that?

Mrs Ransom—It was always understood in the contingency plan that what we had access to was only ever going to be a guide and that any emergency response was going to be determined by the incidence of the disease and the circumstances surrounding it: its location and things like environmental factors would have an impact on the way that you would address the response. As I understand the way the plan is written at the moment—and it is only a draft—it referred to 500 or 600 metres. It referenced the Florida protocol to the extent of what the Americans were doing. That draft contingency plan was sent to Tim Gottwald, who I think was the author of the paper that you referred to last week. Tim Gottwald recommended by email that we adopt the 600 metre approach, but clearly understanding that in the event of an emergency—

CHAIR—We will have to stop. We have run out of protection. Thank you very much for your time and patience. We would be delighted to have you back again in due course.

Senator FERRIS—Hopefully with the answers to the questions on notice from estimates.

Committee adjourned at 5.00 pm