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SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES
COMMITTEE

Reference: The government's information technology outsourcing initiative

FRIDAY, 18 MAY 2001

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SENATE
FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

Friday, 18 May 2001

Members: Senator George Campbell (*Chair*), Senator Watson (*Deputy Chair*), Senators Buckland, Lightfoot, Lundy and Ridgeway

Participating members: Senators Abetz, Allison, Brandis, Brown, Calvert, Carr, Chapman, Conroy, Coonan, Crane, Eggleston, Faulkner, Ferguson, Ferris, Gibson, Harradine, Harris, Knowles, Mason, McGauran, Murphy, Murray, Payne, Tchen, Tierney and Watson

Substitute member: Senator Eggleston for Senator Watson

Senators in attendance: Senators George Campbell, Eggleston and Lundy

Terms of reference for the inquiry:

For inquiry into and report on:

The Government's information technology (IT) outsourcing initiative in the light of recommendations made in the committee's report, *Contracting out of government services—First Report: Information technology*, tabled in November 1997, and the Auditor-General's report No. 9 of 2000-2001, and the means of ensuring that any future IT outsourcing is an efficient, effective and ethical use of Commonwealth resources, with particular reference to:

(a) the need for:

- (i) strategic oversight and evaluation across Commonwealth agencies,
- (ii) accountable management of IT contracts, including improved transparency and accountability of tender processes, and
- (iii) adequate safeguards for privacy protection and security;

(b) the potential impact on the capacity of agencies to conduct their business;

(c) savings expected and achieved from IT initiatives; and

(d) the means by which opportunities for the domestic IT industry, including in regional areas, can be maximised.

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Committee met at 9.02 a.m.

BADGER, Dr Rod, Deputy CEO, National Office for the Information Economy

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DANIELS, Dr Kay, General Manager, Intellectual Property Branch, Department of Communications, Information Technology and the Arts

HOLTHUYZEN, Mrs Fay Elizabeth, Executive Director, Communications, Department of Communications, Information Technology and the Arts

PELLING, Dr Simon, General Manager, ICT Industry Development Branch, National Office for the Information Economy

ROBERTS, Mr Colin, Director, Information Systems Section, Department of Communications, Information Technology and the Arts

SUTTON, Mr Michael, General Manager, IT Industry Development Branch, Department of Communications, Information Technology and the Arts

CHAIR—I declare open the seventh public hearing of the Finance and Public Administration References Committee inquiry into the government's information technology outsourcing initiative. I welcome my Senate colleagues and witnesses.

Before we commence, I wish to advise for the record that all witnesses appearing before the committee are protected by parliamentary privilege with respect to evidence provided. The committee prefers all evidence to be given in public. However, you may at any time request that your evidence or part of your evidence be given in private and the committee will consider any such request. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate. I also remind witnesses that the giving of false or misleading evidence may constitute a contempt of the parliament. Do you wish to make an opening statement?

Mrs Holthuyzen—Yes, we do. I understand that what the committee is particularly interested in talking about today is the new industry development framework and the intellectual property guidelines, so I thought it was worth giving a couple of background comments on both of those at the outset. In relation to the industry development framework, in response to the Humphrey review, the government affirmed its desire to continue to outsource IT. Commonwealth agency heads will now assume responsibility for the scope and methodology of future IT outsourcing activity.

Following the government response to the review, on 20 April 2001, Minister Alston released details of the new ID framework to apply to future Commonwealth IT outsourcing tenders. The new ID framework favours strategic ID outcomes and complements the government's strategies to encourage the growth of Australia's ICT sector, recognising that clustering of IT contracts will no longer be used as a source of ID leverage. The new system is more streamlined in terms

of the ID component without sacrificing ID objectives such as SME development and Australian content.

For contracts under \$10 million in value, the only requirement is endorsement under the endorsed supplier arrangements. For contracts over \$10 million, endorsed supplier arrangements is also the basic requirement, plus tenders will be required to provide in-scope commitments as part of their RFT response. ID commitments for larger contracts are to be recorded in ID agreements similar to the partnerships for development arrangements negotiated between DCITA and the company. The framework encourages continued access by small firms to the government market. In addition, the devolved environment is likely to result in increased opportunities for SMEs as agencies outsource through smaller contracts. Strategic industry development objectives previously pursued on a contract-by-contract basis will now be incorporated in a new strategic idea agreement that will apply to companies with significant sales to the Commonwealth. This arrangement will replace the existing partnerships for development program with appropriate transition arrangements.

In relation to the IT IP guidelines, these were launched by Senator Alston on 8 February 2001, building on the innovation action plan *Backing Australia's ability*. The objective of the guidelines is to encourage better management of government owned intellectual property and to identify means and circumstances where Commonwealth agencies can facilitate commercialisation of intellectual property created through information technology contracts.

The Prime Minister announced in December 1997 in the Investing for Growth statement that guidelines on the handling of IP generated in Commonwealth IT contracts would be developed by the government. These guidelines have been prepared by the Australian Government Solicitor for the department, following consultation with Commonwealth departments who have a major role in the creation and management of IP. Peak information industry organisations provided valuable input to issues that have been incorporated into the guidelines.

The guidelines encourage Commonwealth agencies to only acquire the intellectual property necessary for achievement of their corporate missions and to be alert to opportunities for financial savings through exploitation of licensing options. The guidelines will assist Commonwealth officers to take a more flexible approach when negotiating IP ownership in contracts by properly informing themselves of the IP management options and on-costs. This will help innovation and the development of the IT industry. Agencies are encouraged to take account of these guidelines in their management of IT related IP and in reviewing their IT and IP management policies. The guidelines mention the main contractual frameworks in operation across the Commonwealth government in outlining mechanisms where intellectual property ownership and management arrangements are recorded. However, as the guidelines were launched in February, they are expected to influence future decisions in these areas. It is expected that the guidelines will be reviewed after two years to ensure that they maintain their relevance within the IT industry.

CHAIR—Thank you.

Senator LUNDY—In terms of the role that NOIE has in providing the overall strategy for the information and communications technology industries, I was wondering if you could provide an outline of the relationship between NOIE and the officers in the department itself

who still have carriage of the ID framework and those associated projects. I am trying to get a stronger feel for your administrative arrangements and what the linkages are between the ID framework, your administration of that and the overall strategy.

Mrs Holthuyzen—As you are aware, the overall IT policy strategy rests with NOIE and the implementation of the ID arrangements rests with the department. I think it is fair to say that we have a very close working relationship. Clearly, the issues are interlinked in terms of overlapping with each other, so the department and NOIE work closely together in the development of the policies that we are both responsible for.

Senator LUNDY—So when industry wants to come and talk to the department or NOIE about their thoughts of future directions—for example, putting more detail behind the transition arrangements for PFD—do they talk to NOIE with a view of how that fits into an overall strategy or do they talk to Mr Sutton in the department?

Mr Sutton—Generally on those specific matters relating to the regime, industry would talk to my branch in the department. Where NOIE has been particularly involved, including in the framework that was released by the minister several weeks ago, was in formulating the key policy objectives and strategies that are identified as part of that document. But in terms of the actual implementation of the new outsourcing arrangements and the new strategic industry development agreement framework, that will be primarily us but we will be involving NOIE closely in the work on that.

Senator LUNDY—I just sense that there is some confusion in industry about who are the most appropriate officers to talk to and to lobby, I suppose, about their views. Just going into some finer detail about the ID framework, one of the criticisms levelled by, amongst others, the Australian Information Industry Association was that the issue of involving SMEs was passive rather than active in that they say it really leaves it up to industry to take the steps to involve SMEs. What is your response to that? What do you have to put on the table that suggests a more proactive approach from government to allow access by SMEs to the government contracts?

Mr Sutton—You are quite right. That was an issue that was raised with us in developing the framework. The new framework involves retention of SME in-scope requirements as part of the framework. In addition to the core parts of the framework, Senator Alston also announced that we would be conducting a review of inhibitors to SME involvement in outsourcing contracts. As part of that review, we will be seeking to identify, in consultation with SMEs and the broader IT community and in consultation with agencies as well, specific factors that may impact negatively on the ability of SMEs to get contracts. One of the issues that we will be looking at as part of that will be current government contracting requirements, liability caps and whether there are ways of influencing the shape of RFTs which may have a positive impact on the ability of SMEs to get outsourcing work from the Commonwealth.

Senator LUNDY—Just on that issue of liability caps, my understanding is one of the barriers for small businesses—or SMEs, I guess, is probably a better way to describe the particular group in the corporate sector I am talking about—is that currently the government RFTs require unlimited liability. Is there any law or statutory requirement that insists upon that being the case or is there actually some opportunity for flexibility within departments and agencies to modify the extent of liability protection that they require?

Mr Sutton—At this stage I am not aware of the answer to that question. It is certainly one of the issues that we will be investigating as part of this review. It has been raised with us as a significant issue. Part of the review will mean that we will be needing to get to grips with that issue and assess the extent to which it is a problem and, if it is a problem, is there anything that can be reasonably done about it, looking at it from a whole of government perspective.

Senator LUNDY—Another barrier they have identified is what I think they have described as capital guarantees. For many small to medium enterprises, what is required actually locks up some of their working capital and prevents them from expanding on their operations or investing in research, development and commercialisation of perhaps some other arms of their business. If I can ask you the same question again: to what degree do you understand these capital guarantees to be a mandatory feature of government contracts; and what scope is there for that perceived barrier to be modified?

Mr Sutton—Again, at this stage I am not able to give an answer to that. But it has been raised with us as a significant issue by a number of small to medium enterprises, and we will certainly be looking at it closely as part of the review.

Senator LUNDY—This issue really takes it across to NOIE and some broader questions about the government's commitment to growing the information and communications technology sector in Australia and what mechanisms are put in place to assist SMEs to become bigger as part of that strategy: do you see this freeing up of these participants in the contracting to government as being a key part of your overall strategy for growth for the indigenous ICT sector?

Dr Badger—As you know, there is a range of government programs ranging from R&D programs to the BITS program with incubators, et cetera. The ID outcomes from purchasing fits within that framework, which is about a range of things, one of which is encouraging investment from a large number of international players in the Australian economy. But the other aspect, which is the one you are focusing on now, is to provide opportunities for Australian players to participate in the government market. One of the things that the government has emphasised in the strategy associated with the change from the previous outsourcing approach to the one that is post Humphry is that, if you are dealing with smaller contracts, then the ability of the smaller Australian companies to play in that context is heightened. It is not a strategy about saying that just because you are an Australian SME you will get business; it is a strategy about providing opportunities for those players to play in significant markets.

You have mentioned a couple of issues that have been around for a very long time in purchasing, such as liability caps and the capital guarantee. It is certainly the way these things come up. They tend to be significant to some groups of industry and not to others. But if they are raised as significant problems, then the policy that is in place or the practices that are in place in purchasing are able to be tinkered with—not tinkered with but modified to make sure that the overall objective is not being put at risk by implementation processes. They are the sorts of things that Mr Sutton is talking about happening at the moment. The overall strategy has all these various arms, one of which is to ensure that the Australian SME players are able to demonstrate their wares in government contracts. With the systems we have in place, while we try and focus on things like value for money and accountability and ensuring that, if you do get

a government contract, you do have the wherewithal to actually follow it through, we need to ensure that we do those things in a pragmatic and realistic fashion.

Senator LUNDY—Just going further on that, another issue that has been raised by industry, but I think more generally than that, is the natural tendency of agencies and departments to be risk averse in their choices of contractors. It has been put to me that a cultural change is required, because once the smaller contracts are available through directly contracting with agencies and departments, there is another step that will be required of the government to assist in developing a cultural change so that the smaller companies are actually allowed to present innovative solutions that perhaps are not off the shelf and tried and tested, but nonetheless are worth marginally more risk to be procured and developed.

The best example I can offer you is one referred to by a local CEO at a function last week. He cited a case on the north-east coast of the US where a US government tender was put out and Canadian and Australian companies tendered with full capability in that area. An indigenous company had nascent capability, and the contract was awarded to that company because it was local and because that injection of funds would allow the company to develop the capability the government was looking for. That is an example of an extension of risk to grow local capability over imported capability. I want to throw that out to you: are you thinking about that? What is your policy response to that particular challenge? It goes beyond what you do with industry because it feeds back into agencies, departments and the cultural change that is required.

Dr Badger—I have a couple of comments to make on that. That issue has been around for a considerable length of time. In dealing with public purchasing, there is always a balance. The purchasing officer takes the very conservative, well-trodden path along the lines of, 'If anybody questions this decision or if it ever comes up in a Senate estimates committee or another inquiry, if I say that we went with the very big, sound supplier and something went wrong, who could blame me?' There has always been the downside risk if you use small, innovative players in that, if something goes wrong, you are not on sound enough ground in respect of your responsibility for looking after public money. Ten or 15 years ago that would have been a significant problem in the system. By and large, most of the IT sales would have gone to the large multinational companies because that was the soundest way to go about it without possibly giving yourself a problem with risk.

Over the past so many years, the approach has been not so much to remove risk averseness, because you want to come up with a risk profile that people employ which is sensible and pragmatic; you do not want people jumping all over the place. The objective has been to educate people about the qualities and capabilities of the smaller players. The sorts of things that Michael referred to would be looked at in detail in respect of the implementation of the policy. The extent to which that sort of thing needs to be followed up is recognised. There have been campaigns in the past to provide better training and information processes for purchasing officers. At one stage, many years ago, the issue of the capital guarantee factor was well and truly working against smaller players—not only Australian smaller players but all smaller players—because the way that was weighted in purchasing contracts and evaluations was almost open ended. If you were very big and international, you scored so highly that you could wipe out the other criteria against which other people were being judged. In summary, it is an issue that we have to keep on addressing by providing the purchasing environment with information about peoples' capabilities.

Mr Sutton—Senator, again you are dead right. We have heard exactly that concern from our initial consultations in establishing the framework, but I should say as well that we have also had some encouraging conversations with agencies. There is no doubt that on the part of the SMEs it is a significant concern, but some agencies have indicated to us that the trade-off, if you like, for not having the size of an IBM or a CSC to fall back on, is that with a small SME there is the opportunity to work much more intensively and directly with the people involved with that company. Certainly, we are quite confident that, for at least some agencies for some types of contracts, they will look very favourably at contracting the small companies because of the, I suppose, immediacy and responsiveness of the SME to what the agency needs, which they feel they may not get from dealing with large companies.

Senator LUNDY—Thank you for that. Just going a little bit further on the issue of the skills and efficiency with which agencies procure and how they do that, are you involved at all in any discussions with the department of finance about refining processes like the endorsed supplier arrangements and, indeed, on this issue of requiring—and I am not sure of the specificity of this—some qualification of procurement officers within the department? The Institution of Engineers raised yesterday the issue of the perceived lack of expertise now in government agencies and departments in the whole contract management area. I know they are all contributing factors to the problems and issues at the moment; what are you doing about them?

Mr Sutton—I can only speak on the endorsed supplier arrangement aspect. Certainly, DCITA undertakes the assessment of the industry development aspects of the endorsed supplier arrangement. ESA is administered by DOFA, but we assess the industry development qualifications of ESA companies. We have been heavily involved with DOFA in developing a new online system for ESA, which is expected to go live fairly shortly and promises to significantly streamline the operation of the endorsed supplier arrangements.

In that respect I should say as well that, under the framework that was announced by the minister, the ESA is very definitely a building block for the whole regime, so we are very interested and concerned in ensuring that the ESA operates as effectively as possible. But DOFA has been very responsive to consultations that we have had with them about the operation of the endorsed supplier arrangements and, as I say, we fully appreciate that the effective operation of that scheme is going to be very important to the successful operation and implementation of the outsourcing regime in future.

Dr Badger—I think it is important to add to that the issue of the responsibilities of individual agency heads. Under the responsibilities that they have, not only for purchasing but for all aspects of the running of their organisation, they have a very considerable requirement to ensure that they do have access to good advice. I am well aware of the concerns of the Institution of Engineers, but there is more than one way of getting advice into agencies about contract management and those types of matters. Certainly inside some of the major Commonwealth agencies, for example the services agencies which have very considerable IT resources, the heads of those agencies do put in place mechanisms to allow them to ensure that they do get value for money and that they are getting the right sort of equipment to meet the requirements that the government expects of them.

Senator LUNDY—The AIIA spoke about a capability database that was being developed. Is that something you are involved with for ICT companies in Australia?

Dr Pelling—There is a thing called the Australian Information Industry Capability Directory, which is basically just an information database which collects a range of information about companies and it is online. It is maintained by the National Office for the Information Economy, but it is not directly related to the outsourcing issue that I am aware of.

CHAIR—To what extent is this information available? We talked to the AIIA yesterday about this very question of whether or not there was a capabilities directory and they said they were in the process of putting one together. They did not give any indication they knew that you had one.

Dr Pelling—This is on the web. It is available through the small business entry point.

CHAIR—I understand that. I am sure there is a lot of stuff on the web. I do not know what is on the web either. The point I am making is they did not give us the impression that they knew that you had such a directory available on your web site. I just wonder what type of communication occurs around the industry to get this type of information out.

Dr Badger—I am surprised that the AIIA does not know of its existence. It may be a changing range of people. Certainly historically there has been involvement with the AIIA. We meet and talk with the AIIA very often. The people involved in IT industry policy and the people from the AIIA have worked on common projects for any number of years. There may well be occasions when they are unaware of what we are doing, but I would regard that as an exception rather than the norm. If there are particular things, we should do something about it, because there is not much point in us doing work that is about spreading information about capabilities if we are not getting that across.

CHAIR—I am only making the point that they said it would be a good idea to do exactly what you are saying you have on your web site. There is obviously a lack of communication somewhere.

Dr Badger—I will have to talk to Mr Durie.

Senator LUNDY—You mentioned that that is accessible through the business entry point. Is that particular capability database maintained in-house by NOIE?

Dr Pelling—I am advised that NOIE is responsible for maintaining the accuracy of the member companies database, but the actual technical shell is maintained by a company called Wizard Information Systems.

Senator LUNDY—Can you give me the web address?

Dr Pelling—It is <http://itt.dcita.gov.au>. I understand it also can be accessed through business.gov.au, the Australian government's business entry point.

Senator LUNDY—This is a general policy question. The previous assessments that have been done on the ID requirements of the existing contracts to date relate to Australianness and measure Australian value add and proportion of revenue spent going to Australian companies. Will the policy post-Humphry be to maintain the focus on Australianness within those contracts

or focus on the size—the SMEness, for want of a better description—of the participants in those contracts, or indeed a combination of both? I know Mr Sutton administers all of that, but I think it is a policy question about how you are going to try to create an emphasis for the greater participation of a certain end of the market given that, if you require SME involvement, you are generally capturing a far stronger contingent of Australian companies anyway, given the way the market is structured. I do not mind who answers. I am curious as to where you are heading with that issue.

Dr Badger—You might like to outline what the detailed requirements are. I will come back to it.

Mr Sutton—The in-scope requirements under the new regime for contracts over \$10 million are in some ways consistent with the in-scope requirements under the previous OASITO regime in that they will take account of both SME content and Australian value added. For the new framework, though, we have invented a new acronym—SMEAVA, meaning the Australian value add of small to medium enterprises. In a sense it is to address some of the issues you have identified. We were conscious that under the former approach people would get full value for their SME content numbers regardless of the Australian value add. So, for example, if under an outsourcing contract there was a requirement for an item with a high imported component, that would get the same rating as something which was all done in Australia.

We have supplemented the SME and AVA requirements by the new requirement for SMEAVA. What we envisage doing—certainly, as it was in the former regime, in the evaluation process—is that the actual numbers that come out of those three measures will be significant, but we will also be assisting agencies to identify the quality of the industry development associated with those numbers. For example, for companies which have got strategic industry development agreements in operation in Australia, we will be looking at how well—

Senator LUNDY—Sorry, did you say grants?

Mr Sutton—Strategic industry development agreements. For companies that have those in place, following on from the Partnerships for Development program, we will be looking at how well they have met their commitments under the PFD program and under their agreements generally. So it will not be just focusing on the numbers; we will actually be focusing in the broader sense on the quality of the ID that is associated with those numbers that go into the bids.

Senator LUNDY—I want to come back to that, because the minute we start talking about SMEAVA, the implication is that they are not the prime contract. Do you see what I am saying? I will come back to that point. First, for the record, for contracts over \$10 million under the new ID framework, what are the metrics, if you like, for measuring both Australian value add and SME participation?

Mr Sutton—The metrics for those will be very similar to what they were under the OASITO approach—that is, in terms of Australian value add, we will be asking the bidders to deduct from the value of any imported components or content of the bids. For SME content, it will be asking them to identify the amount of work under the contract that will be going to SMEs.

Senator LUNDY—So that is a revenue figure?

Mr Sutton—That is correct. In relation to the first part of your question, in some ways those numbers are independent of whether the bid comes from an SME or not. For example, in the same way as under the OASITO framework in assessing the bids, there is no explicit factor for whether an SME is priming, but if an SME is priming, that will have implications for the numbers it is able to put into its bids in relation to SME content and AVA.

Senator LUNDY—But as an Australian company priming a bid, would their Australianness be calculated as part of the AVA? It would be by default on the formula you have given me.

Mr Sutton—That is exactly right. It is not a separate factor but, inherently, if they are an Australian SME, then their SME numbers are going to be extremely high.

Senator LUNDY—I am just trying to work out how that would stack up against a multinational prime. If the formula is to deduct value of the imported component, how does that work in that project management structure of the multinationals' bids, given such a huge proportion is in fact subcontracted? Is the revenue going to head office, if you like, to supply the jobs provided by the multinationals to project manage the bid deducted? Or because the jobs are here in Australia, for argument's sake, is it not?

Mr Sutton—All of the large multinational outsourcers and systems integrators have a very substantial presence in Australia. My understanding is that, if any of those win contracts, the vast amount of work that is actually done is done within Australia and counts for AVA purposes. I think that is correct.

Senator LUNDY—So in terms of establishing Australian value add, where within that measurement is there some, I suppose, fluctuation allowed for whether a company is Australian or non-Australian? How does that manifest itself at that prime contract level in your formula?

Mr Sutton—In the formula, as I say, there is no explicit distinction for whether a company is an Australian company or an overseas company. What it manifests itself in is the figures that are produced for SME or AVA. Where the AVA figures really start to come down in a contract—for example, in a contract to supply desktops—is where the prime chooses to source those desktops substantially from overseas; or if it chooses to use Australian desktops, where there is a substantial, and there always is, imported content; or where the company would choose to use external international expertise to deliver some aspects of the contract. For example, if it chose to import or involve expertise from head office in America, Germany or somewhere, under the system that has been developed, that would need to be identified in the bid and it would be deducted for the purposes of calculating AVA.

Senator LUNDY—Even if those experts came to work in Australia for the duration of the contract?

Mr Sutton—If the work was done in Australia, it would be included as Australian value added, but the calculations would take account of whether there were income flows out of Australia.

Senator LUNDY—In terms of the Australian value add component, you said that you deduct the value of the imported component. Is the AVA calculated at a dollar figure or a percentage figure?

Mr Sutton—Both.

Senator LUNDY—So you establish the dollar figure and that becomes a percentage of the overall tender price?

Mr Sutton—That is correct.

Senator LUNDY—Is there any reason why you deduct the value of the imported component rather than add together the identifiable Australian value add component for the purposes of your formula?

Mr Sutton—I think in theory that should yield the same outcome.

Senator LUNDY—I suspect in theory you are right. That is why I am asking.

Mr Sutton—I am not aware of there being any methodological problems with the approach that is adopted.

Senator LUNDY—Can you provide us with the methodological approach that you use?

Mr Sutton—I do not think that should be a problem.

Senator LUNDY—Thanks. I will see if I can make sense of it. I would like to go back to the other end of the market, if you like—that is, the larger companies—and the issue of the transition of Partnerships for Development. You mentioned strategic industry development agreements, and I interpreted that as being a possible overarching approach for large companies that would subsume at some point the current Partnerships for Development programs. Can you tell me where that discussion is heading and how it fits into what we have discussed so far about strategies within the ID framework for how government work is procured? I am really exploring it from the big end of town now.

Mr Sutton—In the minister's press release about the new outsourcing framework, the minister made the point that the development of a new framework required us to look at the operation of existing government purchasing related industry development programs. The minister flagged that we were going to pull together as many of the existing elements as we could under a new umbrella, which at this stage is called the Strategic Industry Development Agreement program, or SIDA. The next step is for us to issue a discussion paper in the near future. That discussion paper will be circulated to all existing PFD companies. It will be put on our web site and we will be using it as a basis for consultation and finalising the details. The intention of that program is very much to be an umbrella program that will pull together and integrate as far as is possible the current procurement related ID programs.

Under the OASITO framework ESA was a building block for everything, and that will remain the case. We had the Partnerships for Development program, a separate major projects initiative for IT acquisitions which were not related to outsourcing, and we had outsourcing. The intention is to combine those three elements into a single program—the rationale being to enable a more strategic approach to be taken to industry development activities of companies within Australia. That framework will apply to any company with sales of over \$10 million per annum selling IT services to the Commonwealth. For any outsourcing contract over \$10 million, the successful bidder will be expected to have a SIDA in place, or we will review an existing SIDA, if one is in place, to take account of the additional work that they have got out of the particular outsourcing contract that they won.

The intention is to have as easy a transition as possible from the old regime. The purpose of the discussion paper that we will be issuing will be to identify any particular issues associated with the transition. We are not expecting companies with existing PFD agreements in place to have to negotiate new SIDAs overnight, although they will have to as their PFD agreements expire or as they acquire new work as a result of the outsourcing initiative. We envisage that the scheme will operate in practice similarly in many ways to the PFD—the core thing being that the government will expect companies to undertake industry development activity in Australia commensurate with their level of sales to the Commonwealth. If they get outsourcing work and they bid into that work that they will be performing certain levels of SME content, AVA and SMEAVA, the commitments that they have given in the winning bids will be administered as part of a SIDA and they will be asked to report separately on those specific outcomes as against those elements of the bid.

Senator LUNDY—Why did you pick \$10 million?

Mr Sutton—Ten million dollars for the outsourcing threshold is the current level at which the government's model industry development criteria cut in. The jargon we use is 'major projects'. That threshold applies not just to IT products and services but to government procurement more generally. There is a threshold for industry development activity, which kicks in for a broad range of government procurement.

Senator LUNDY—I note that it is not just for a single contract; it could actually have 3.5 million contracts and still be required to have a SIDA.

Mr Sutton—Let me clarify: that \$10 million threshold relates to individual outsourcing contracts. The broader government approach is a \$10 million per contract threshold.

Senator LUNDY—So it would be an aggregated \$10 million relating to outsourcing contracts only?

Mr Sutton—For a specific outsourcing contract, once they cross that \$10 million threshold, they will be required to include in their bids the level of SME content, the level of AVA and the level of SMEAVA for that contract. The winning bidder will be expected to have a SIDA agreement in place. That is specifically on outsourcing. The broader requirement that we will have for the SIDA scheme—that is, for IT companies selling products and services to the Commonwealth—even if they do not have any outsourcing business, will be based on \$10 million per annum sales to the Commonwealth. So there is a distinction between the

requirements for companies with outsourcing contracts of more than \$10 million and general sales to Commonwealth. Once those general sales to Commonwealth exceed \$10 million per annum, they will be expected to have a SIDA in place.

Senator LUNDY—I think I understand. How does that whole approach to having a strategic industry development agreement sit with the smaller companies that are trying to break into the government market? It may be that they have had a small contract below \$10 million and the next stage for them is to bid for something bigger—that is, bigger than \$10 million—but as a growing company they have not yet developed a credential for a SIDA. I suspect one of those agreements would form a powerful ID credential for any company bidding on work. What is the pathway for companies seeking to grow their businesses by virtue of involving government contracts as part of their strategy?

Mr Sutton—Their Australianness and their smallness will mean that, once they get to that \$10 million threshold, they would have basically no problems at all in meeting industry development criteria under the new program.

Senator LUNDY—Let me stop you there. For that bid, because of their Australianness and because of their smallness they will qualify, but the whole structure of the SIDA implies that there are a series of out-of-scope value-adds that could again be assessed, and these small companies are not going to have that. Do you see what I am saying? Where is the trade-off? Where is acknowledgment that perhaps they are in a growth phase or breaking into a new market, compared with established companies that have 76 different projects that qualify to flesh out their SIDA credential?

Mr Sutton—On the outsourcing side, we think the new scheme will offer significant benefits over the old scheme for exactly that reason. Under the old scheme, as you are aware, in addition to having to prove their in-scope numbers, to win the work they were required to bid in substantial out-of-scope initiatives. It was clearly very difficult for a small Australian company to bid in substantial work in that sort of way.

Under the new regime, out of scope has been entirely separated from the outsourcing regime, so they will not have to put together deals to establish projects unrelated to delivery of services under the contracts. If they can prove their credentials to deliver the services, we think that will have a substantial positive impact in terms of their ability to get outsourcing work.

Senator LUNDY—Where are you at with your ID project register initiative?

Mr Sutton—We will be discussing this as part of the consultation phase. In effect, under the new regime there will be no need for a project register as such. The need for a project register arose because under the OASITO approach there was a very clear rule that, for something to count towards winning a contract, there had to be a very clear causal link between the contract and the particular project. So the register was introduced as a way of recognising that the way that major investment decisions are made, particularly by multinationals, could have some adverse implications.

Under the new arrangements, with respect to the way we will be looking at it, it is very much intended to be a strategic approach. If a company has invested, say, \$500 million in a major

R&D facility, we would look, firstly, at whether that was not an explicit criterion to win the outsourcing contract. If they win an outsourcing contract that gives them \$200 million or \$300 million a year in revenue, in sales to the government, then we would expect the additional sales to government to be picked up in the level of ID that they are achieving under the Strategic Industry Development Agreement framework. That will happen automatically, because we are not drawing fences around particular projects. So the need for a register will disappear as part of the new environment.

Senator LUNDY—You said that those big, out-of-scope things will be dealt with separately. Building on what you have just said, what about the situation where a large multinational company was bidding in part of the process and had a significant investment in a certain state, the continuation of which could be contingent on their getting a government contract? I am painting a pretty hypothetical scenario but certainly there have been cases where large corporations leverage existing investments on the basis of their pitch to government. Can they do that under this new system or is that kind of out-of-scope leverage, whether it is pre-existing or promised, still going to be a factor in creating a disadvantage for other bidders and a direct advantage for the larger players?

Mr Sutton—Directly in terms of outsourcing work, it will not have an impact because the evaluation criteria will not include in any sense investments in things which are not related to delivery of services under the contract. In the broader sense, however, if a company has invested—as we hope they will—half a billion dollars in an R&D facility, the implications of what it is expected to do under the SIDA will mean that potentially that could give it some substantial credits in future years. We think that will be a positive factor in terms of helping, say, a multinational to justify to head office a major investment in a major R&D facility. They will be able to say, ‘It will bring immediate benefits but it will count for us for credits in future years potentially in the event that we get future outsourcing work.’ We will be administering the scheme in collaboration with the companies in a way which tries to maximise the leverage which local arms of multinationals get with their head offices to attract those sorts of investments.

Senator LUNDY—So it will serve to bolster their credentials under the SIDA structure?

Mr Sutton—It definitely will, yes.

Senator LUNDY—Can I ask NOIE what the policy thinking at the moment is about this overarching strategy and priority of, on the one hand, growing indigenous capability or the size of the IT industry here in Australia and, on the other hand, the counterpoint of continuing to focus policy on making Australia attractive for overseas companies to continue to invest in, and in fact to consider greater investment. Obviously, what we have been talking about this morning has elements of both, but I am interested to hear what the latest view of the government is—whether their view has changed and whether there is seen to be a stronger imperative now to grow our local industry. I suppose the simplest context is to look at the trade deficit in ICT and the trend growth there as being a potential motivator to place a stronger emphasis on the growth of ICT industries in Australia.

Dr Badger—From a strategic perspective, the idea is to achieve a balance between those two elements. If we look at the policy that has been in place for a considerable time across a number

of governments of encouraging long-term, sustainable development in the ICT industry, that has a range of prongs to it. One is the type of thing we are talking about here in terms of SMEs and their role in the purchasing side of things, which actually gives them demand for their products et cetera. There are other elements to supporting SMEs, whether it is BITS programs, the programs that AusIndustry runs et cetera, which help them to be better companies.

The strategy with respect to international companies investing here is also about having long-term, sustainable, high value added activity here. The way that has operated for a considerable number of years is to encourage those companies to link with small Australian firms in order to provide them with avenues to technology and expertise that come from the rest of the world. So the strategies are interlinked and related. You could not run a sustainable strategy that did one at the expense of the other. Certainly, the government has made it clear that, although Australia has been a very successful adopter of ICT in terms of the rest of the economy, it wishes to ensure that we have a domestic industry that is composed of both international and local players and which has a high level of competence. That is basically the rationale behind the significant investments in the innovation statement, Backing Australia's Ability.

Senator LUNDY—Are you able to quantify in trend growth terms the benefit to the Australian ICT industry that has been derived from global partnerships with multinationals?

Dr Badger—Are we able to quantify how much growth—

Senator LUNDY—The public policy justification for encouraging investment is largely that it will not only have the impact of developing expertise and having high value added development but also will create pathways for global expansion, global opportunities for local companies that they partner with. Do you have any figures or statistics that can quantify the benefit of the global opportunities that have been presented to local companies as a result of multinational partnerships?

Dr Badger—I would have to have a look—I honestly do not know. I do not know whether it is measurable, but certainly we could—

Senator LUNDY—But can you see my point?

Dr Badger—Yes, I understand what you are saying.

Senator LUNDY—If it is not, then why the big public policy emphasis on it?

Dr Badger—You could certainly look at a range of things that have occurred under the Partnerships for Development program since its inception in the late eighties that could say, 'These companies that were Australian owned and Australian R&D companies have got into these markets by partnering with—

Senator LUNDY—There are figures around as far as Partnerships for Development goes, but this argument has been used specifically with regard to the IT outsourcing program to date, of which PFD is in the background but not a key element. Perhaps if I could just leave that with you to see what figures you could come up with.

Dr Badger—I will look at it. You are specifically interested in outcomes from the IT outsourcing environment?

Senator LUNDY—I am interested in the general figures. I am aware that figures are available for PFD, but I want figures that go beyond just the outcomes of the Partnerships for Development program.

Dr Badger—I will see what is available.

Senator LUNDY—The other thing I wanted to go back to for a second—I do not think I asked the second part of the question—is the metrics relating to SMEs and the revenue flows as part of the ID framework agreement. How do you measure SME involvement and what is the current mandated percentage as part of that framework?

Mr Sutton—In terms of the precise way of calculating it, it might be best if we took it on notice. There will be no problems in doing that.

Senator LUNDY—From memory, in the industry development clause in the cluster 3 and subsequent contracts there was a nominated percentage of SME involvement.

Mr Sutton—No, we are not aware of that, but we can certainly check. To my knowledge—as I have said, we will check this—there were no mandated levels in the tender documents, although the tender documents made it clear that SME content and AVA were the key factors in determining the credentials of the bid in terms of the in-scope industry development requirements, but I am not aware of any firm targets or threshold levels being set in those bids.

Senator LUNDY—Going back to NOIE, have you set a target as to managing the growth of the ICT sector in Australia? For example, in looking at the trade deficit figures in that particular sector, have you been able to identify a goal in terms of halting the growth trend in that deficit by virtue of industry development strategies or any long-term aim?

Dr Badger—This is a discussion that we have had before. Certainly, no formal target is set. The idea of focusing on any particular part of the trade deficit can be counterproductive. Certainly, what we want is for the Australian ICT industry to grow and expand, and the government has introduced a range of policies to do that. Whether that brings about a change in the balance of trade in that particular sector in the short or medium term will depend on other facts as well, such as the take-up of ICT in the rest of the economy, which is something that we as a nation also have to achieve if we are going to be as efficient as the rest of the world. While the ICT balance of trade is a measure that we need to keep aware of and it tells us something, it is not something that we would focus on as a narrow outcome from policy. There is no formal target set. It helps us to look at areas of the Australian ICT sector in which we may be able to perform better, given our factor endowments, et cetera, but we have not done so in the past. If we look at those things in the trade figures, we may then get ideas about areas of industry that we may need to encourage, but it is better to look at the trade deficit in that fashion—that is, something that needs to be focused on as an objective in its own right.

CHAIR—On that issue, it seems to me all of the discussions that I am hearing so far between Mr Sutton and Senator Lundy are essentially focused upon what proportion of the IT spend

across Commonwealth gets back into the hand of local industry and what measures you can put in place to ensure that that occurs. That is a laudable objective, but that in itself may not contribute one iota to industry development. It seems to me that where there is weakness in the strategy is that there does not appear to be any framework in place—I might be wrong and you may be able to explain this—that actually looks at the capability of the local industry and what capacity there is for a transfer of technology knowledge and skills as a result of this spend of government moneys on IT. In other words, what do you allocate to arrangements between a multinational for example and a local company—an SME or whatever—where it may be a small contribution in terms of the proportion of the work or the spend, but the technology transfer involved in it could be of great significance to the growth potential of that company and its capacity to meet Australia's ICT needs into the future? I would have thought the objective out of this strategy is to try and develop a local industry with the capacity to meet all of our ICT needs in the future. That may not ever be achieved but that ought to be what the objective is. I am having difficulty listening to the debate for the past three-quarters of an hour in finding the threads of where that is occurring in this strategy.

Dr Badger—I think that that point is one which emphasises the need to see the purchasing activities in IT as only being part of the total strategy for the development of industry in Australia. One of the roles that we play in the development of purchasing policy is to ensure that, in coming up with responses to particular requirements of measurements et cetera, we do not do something that is perverse in achieving a total objective, or indeed works against the objective of purchasing, which is to improve the efficiency of government operations. The total objective of policy is about having long-term sustainable ICT activity in Australia. Over time, if that is successful and we have a balanced development of the integration of IT into the rest of the economy, you would probably see a growth in the industry and a reduction in the trade deficit. When you go beyond those broad strategic objectives into saying that we are going to run a particular purchasing contract in such a way as to, through that contract, bring into Australia particular sets of technology or capabilities, you go into a degree of detail which would be almost impossible to manage. We cannot get away from the fact that the objective of government purchasing is to purchase equipment that would improve the efficiency of government. If in doing that you are able to also bring about a number of significant industry development outcomes then you have achieved an additional outcome. Certainly governments of all persuasions have had that as their objective.

However, unless you are prepared to have a very detailed intervention and a series of judgments, which I do not think too many of us are able to make, about what will come from individual contracts, you have to make the assumption that if you put these general approaches in place in some contracts you will get a small amount of long-term technology transfer and you will just get the service you want, whereas in others, because of the nature of the business that the equipment is going into, you will get much longer term sustainable technology transfer.

CHAIR—I think you are probably right in terms of stating that up-front in contractual terms, but it ought to be part of any measurement criteria in measuring the bids from companies as to whether or not there is going to be a proportion of technology transfer or skill transfer as a result of the issue of a contract. That then becomes a criterion for determining who finally wins a bid. It may not just be on price alone, because the consequences of that transfer could be quite significant for a local businessman.

Dr Badger—I do not disagree with that. One of the difficulties in this area is that what we are trying to deal with are actual on-the-ground measurements that business can relate to and that people making assessments can deal with and actually bring about some sort of measure of the type of thing you are talking about. It is like asking: what is the effectiveness of technology transfer in a particular project? It is something you can more sense than actually measure in terms of dollars, cents, percentages, et cetera. That is where the challenge in designing these programs comes in—trying to find these detailed pragmatic measures which are real indicators of some of those more strategic objectives.

Senator LUNDY—I have a couple more questions directly for Mr Sutton. One of the issues I have been concerned about is the lack of transparency in assessing the ID outcomes, the existing contracts. Under the new system, will you be releasing the individual SIDA reports for ID outcomes of the contracts and will they be audited independently?

Mr Sutton—Under the new outsourcing regime the responsibility for the conduct of the process will primarily rest with individual agency heads, so it will be up to agency heads to make decisions on the extent to which documents will be released.

Senator LUNDY—That contradicts the whole reason that you guys are involved in offering a central assessment and central administration of it. I question that. Are you effectively devolving yourselves of a role in that and handing it back to agency heads; and, if so, why?

Mr Sutton—That is not the intention. It is merely a reflection that the industry development aspects of the RFT and the evaluation process will be one aspect of that process and agency heads in each case will have ultimate control of that process. What is in the RFT and the evaluation will be taking place under transparent frameworks. The outcomes of that process, as they relate to industry development, will be built into strategic industry development agreements for relevant contracts. As you are aware, Senator, we released an annual report early this year on outcomes of the first year for the three contracts. We will be releasing a further report sometime towards the end of this year on the five contracts—it will pick up the two that were not covered by last year's agreement—plus any other outsourcing work that has been undertaken under the new initiative. We will be maintaining that annual public reporting commitment. Under the new arrangements we will be continuing the requirement for there to be audited reports from each of the companies which win the bids.

Senator LUNDY—Audited reports from each of the companies is to be provided to whom—to you or the agency head?

Mr Sutton—As far as they relate to the industry development aspects, we have yet to work out the mechanics of exactly how it would work, but I would envisage those reports would certainly be coming to us.

Senator LUNDY—As well as the agency heads or just to you?

Mr Sutton—It is distinguishing here between the industry development aspects which are likely to be—

Senator LUNDY—That is what I am talking about—the industry development reports.

Mr Sutton—They would be to us rather than to the agency heads.

Senator LUNDY—You said before that the individual agency heads will decide what happens with that documentation. If it is coming to you, surely it is up to you to decide.

Mr Sutton—The way the system will work is that our involvement with the agency will be through developing the RFTs in consultation with agencies for relevant contracts and assisting with the evaluation process for those contracts.

Senator LUNDY—Just from the ID component.

Mr Sutton—That is correct. Once the agency has decided on the winner of that bid, they will negotiate the services agreement. The ID components will not be part of the actual services agreement that is negotiated between the agency and the winning company. Those ID commitments that were in the RFT will become part of a SIDA agreement which the winning company will have with us.

Senator LUNDY—To what extent do the agency heads determine the merits or otherwise of the ID component of the bids?

Mr Sutton—The evaluation of the ID will be undertaken pursuant to an evaluation framework which we will agree with the agency in each case.

Senator LUNDY—What power do you have as DCITA to insist that ID elements are factored into their decision making?

Mr Sutton—Under the Humphry response, the Department of Communications, Information Technology and the Arts was given responsibility for the ID aspects of the outsourcing regime. The government's response to the Humphry report made it clear that industry development was going to continue to be a key objective of the outsourcing regime.

Senator LUNDY—So it is the fact that it is policy that that will occur?

Mr Sutton—That is correct.

Senator LUNDY—Have you explored the implications or issues relating to the responsibilities of agency heads under the FMA and CAC acts and how their responsibilities could potentially conflict with an ID component being incorporated into the bids?

Mr Sutton—We are certainly aware of the general issues. We envisage undertaking the process very much in a collaborative way with the individual agencies. We had extensive discussions with agencies in developing the framework, and we anticipate that the framework will be very workable in that regard. So we do not think there will be any inconsistencies between the new framework and the requirements on agency heads under the legislation.

Senator LUNDY—Will it continue to have that flavour of a two-envelope process where the agency looks at the financial and technical merits of each bid, and perhaps the same or indeed a

different group assess the ID merits of the bid, and then there is a higher stage consideration, presumably still involving agency heads, where the two components are brought together?

Mr Sutton—We do not envisage that being part of the new framework. The ID will become one of perhaps four, five or six key factors which will be taken into account in making the final decision. The way we envisage contributing will be to assist agencies in developing and evaluating the ID elements of the overall bids.

Senator LUNDY—Why is the government choosing not to release those reports and make them public, given that they are such an important part of the whole public policy strategy?

Mr Sutton—Which reports?

Senator LUNDY—The reports by the companies to yourselves and presumably to the agency heads as to whether or not they have achieved their ID outcomes.

Mr Sutton—Similar sorts of issues arise there as they do in relation to the existing contracts in terms of commercial sensitivities associated.

Senator LUNDY—I do not accept that. I ask you on the basis that (1) it is public policy to have these ID agreements, and (2) because you can expect a decision has been made about a contract that can be, in part at least, attributed to these commitments.

Mr Sutton—Yes.

Senator LUNDY—On what conceivable grounds can the government suggest that they will prevent the meeting of those commitments from being scrutinised in a parliamentary committee or publicly?

Mr Sutton—We anticipate and certainly recognise the strong public interest in the outcomes of the process. We certainly envisage administering the new framework in a way which fully recognises our responsibility in those areas. Exactly how this new framework is going to work is yet to be fully worked through. We recognise the need to report on the outcomes but we also consider that there are legitimate commercial sensitivities involved potentially in releasing some of the information.

Senator LUNDY—Can I ask you whether or not it is your intention to place in further RFTs any commitments from the Commonwealth that you will sustain commercial-in-confidence beyond what is acceptable as far as parliamentary scrutiny standards and laws actually go?

Mr Sutton—Our approach to the release of information to committees such as this one is always based on a recognition of the committee's powers and responsibilities.

Senator LUNDY—Not if you make commitments or indicate in requests for tenders that you are prepared to place a commercial-in-confidence regime about certain information—that then potentially creates difficulty down the track in terms of the level of scrutiny. It does not prevent our entitlement, but you are actually misleading participants in those bidding processes by

giving an impression that in fact you are entitled to protect the information to a degree that you are not. I would put to you that an audited report on a policy outcome and whether or not that policy outcome was achieved is not a case where you have any entitlement, in my view, to mislead but to advise bidders that that information will not be available—appreciating, of course, that any commercial-in-confidence can be assessed by a committee of the parliament and will be done so with the utmost diligence.

Mr Sutton—There are broader issues here. If we are talking RFTs, the ultimate responsibility for the RFT will rest with the agency that issues the RFT.

Senator LUNDY—That is a complete fob-off. I am asking you a policy question about an approach from you, given your extensive involvement in the ID component of both the RFTs and the rest of it. Sure, we could go and ask all the agency heads, but I have no doubt that you will be the guiding force in what the RFT contains in these matters.

Mr Sutton—It is clearly an issue which we are going to have to address more closely. As I say, we fully respect the parliament's right to access information, and we will make judgments on an approach which fully takes that into account.

Senator LUNDY—I have some questions about the intellectual property aspects. Perhaps you could give me a brief overview of the key areas of difficulty in protecting Commonwealth intellectual property under the IT outsourcing and your considerations on this matter, particularly given, again, a view expressed by industry in earlier comments that there is scope and opportunity for that to be a key part of how government can be involved in a growth strategy for many IT companies involved in government procurement.

Mrs Holthuyzen—The first thing to say is that obviously these guidelines have just been put out and have gone through a very detailed consultation process. The importance of the guidelines is not that they are being prescriptive about what to do, but that they are heightening the awareness of agencies about taking intellectual property issues into account when they enter into contracts and arrangements. The idea is to give them issues that they need to think about, because, at the end of the day, we do not want to be prescriptive, because all contracts are going to be slightly different and they will raise different issues. The idea of the guidelines is to give them some basis of issues that they must think about—such as whether the Commonwealth should be owning intellectual property or whether it is a good idea to license it to someone else—so that they can take into account a range of different commercial decisions. These guidelines were obviously not in place in previous IT outsourcing arrangements but, clearly, in most of those IT outsourcing contracts you would find that there would be some provisions relating to intellectual property. The idea is to try and get the best use out of our intellectual property in that broader context.

Senator LUNDY—Is that something that NOIE or the department will be involved in as far as the preparation of the RFTs goes? How will you introduce into the formality of the process at least the suggestion of a range of options that might be available for the handling of IP?

Mrs Holthuyzen—Kay Daniels might be able to answer that, but I think the broad outline is that agencies have been advised of these guidelines. They have been asked to take them into account. As a department, we are following up with them to make sure that they are aware of

them and that when they do their particular contracts, they actually put these into account. Do you have anything further to add to that?

Dr Daniels—Only that the guidelines provide agencies with a full range of options and a lot of help in managing their own intellectual property. We would be hoping that they would take them into account, and certainly encouraging them to do so in all the contracting they do about IT.

Senator LUNDY—So it is not an initiative that is actually being driven by the ID involvement in the development of the RFTs and contracts?

Mrs Holthuyzen—No, it is not.

Senator LUNDY—Do you think that is a potential direction for the future, that it does become a stronger part of the department's involvement in these contracts, or is it completely separate? Are there reasons why you would keep it separate?

Mrs Holthuyzen—I do not think this would be an issue that would develop in the same way as the ID has developed, where we have got a particular role. I think that, because at the end of the day each contract is so individual and the intellectual property in each contract will vary so much, this is a matter very much for the individual agency to work out what they think the best way to take it forward is. As Kay Daniels said, the issue is that we will be encouraging them to do so. All these guidelines have been sent out to them and certainly there will be follow-up encouraging them to take this into account, but there will be no direct involvement of the department in actually managing or looking at the IP elements of contracts.

Senator LUNDY—I confess I have not read the guidelines from cover to cover, so can you tell me whether or not the guidelines offer advice on the treatment of existing intellectual property that may or may not be being used by an incumbent contractor?

Dr Daniels—I suppose the best way to answer that is to simply say that it gives advice on how to draw up contracts in the future.

CHAIR—That concludes this session. Thank you, Mrs Holthuyzen, and your colleagues.

Proceedings suspended from 10.34 a.m. to 11.03 a.m.

ROBEY, Mr Anthony James, Information Industries Development Board, ACT Government

Senator LUNDY—Thank you for your submission. This morning we had the opportunity to ask questions of NOIE and the Department of Communications, Information Technology and the Arts about their existing industry development and their proposed industry development framework. I understand that you are reasonably familiar with both, and I want to ask you some specific questions about their proposals for the new ID framework for the IT outsourcing, in particular the question of Australianness and SMENess and how the government proposes to provide for inclusion of both factors as measurements of a commitment by an entity to industry development in that sector. Do you have a view on how you would effectively measure, from a public policy point of view, involvement by SMEs and indeed Australian companies in the IT outsourcing ID framework?

Mr Robey—If you do not mind, I would like to start with a slightly broader perspective, and come back in to answer that specific question. Probably the most important thing to understand about industry development is that government procuring from its own companies, giving them the opportunity to hold contracts, to manage and to deliver those contracts, is the first point of developing an industry. Unless industry gets that sort of opportunity then realistically they are being deprived of the major benefit that a government can provide its own industry; because that provides them not only with obviously needed revenue on the greatest scale possible but also with referenceable work which they can then take offshore and expect to win business internationally. If they do not get those opportunities, it is nearly inconceivable to assume that they can then go offshore and be successful internationally. It is even fairly inconceivable that they are likely to win it from a private sector which will often be, in its own way, driven by other forces outside of the ones that government might consider in its buying. So the first thing that it is important for any government to understand is that the biggest favour it can ever do its own industry, and therefore itself in terms of the long-term development of its own industries, is to procure directly from them.

Secondly, in doing and undertaking those activities there are things that they can do to the structure of the contracts that they put forward which will facilitate that. When you put forward a contract which, of its nature, has \$300 million or \$400 million worth of work in it, you are immediately saying that unless the organisation you are putting it to has probably 10 times that level of business it probably cannot defend the value of the contract, and therefore is unlikely to be regarded as being financially viable enough to do the work. In addition, it is beginning to be recognised that contracts of that size internationally are not actually a good solution to this problem in the first place and that outsourcing is better resolved by taking the best that you can get from industry broadly and doing a thing called selective outsourcing—which I am sure at least some of you will be familiar with—which allows contracts to be broken up so that you end up with a panel of outsourcing providers who provide different aspects of the technology solution you need.

This has numerous benefits, and I will just pick on one or two. The first and obvious one is the fact that it means that companies do not have to be as large to be successful in winning those contracts. Secondly, it provides the purchaser with a range of advice any time they need to look

at their technology requirements. What normally happens, at least in European examples of this of which I am aware, is that these people basically form an advisory panel, and all of a sudden the customer is in a position where what they are getting from their suppliers is a breadth of advice on how to tackle issues that relate to technology and not a single supplier's point of view. There are advantages for both sides in all of this. If that is the basis on which this goes forward then the other elements of industry development are ancillary in that there will be situations, for a variety of reasons, where the major supplier may not be an Australian company. But also, where a major supplier is an Australian company, there is no reason to presume that they are not in a position to facilitate other Australian companies that were not large enough to win those pieces of business. So you still need to look at the industry development opportunities.

Any ID framework—and if we go back to the one under the previous outsourcing one—that is built around an event-by-event approach immediately lacks strategy. So you have this issue in which in bidding for a particular piece of business of a particular value the organisation prime contracting it—whether it is an Australian company or a multinational does not make any difference—is basically forced to put forward a proposal which, unless something very serendipitous occurs at the same time, is not likely to be highly strategic to that organisation.

One of the things I believe the new framework proposes to offer is the ability for people to put forward a strategic approach as to how they would do industry development and then basically be able to use that long-term strategy as a set of brownie points—or whatever we want to call it—which they can then call on to establish their credibility in that space. This means that relationships between companies can be established around real business opportunities where the level of investment is much more viable for both parties and the likelihood of success is much more viable for both parties as well. Therefore, given that it goes in that direction—as I understand it is intended—the new industry development approach will definitely benefit from that.

I understand that there are some proposals that will be affected by individual contracts. I really hope that those things are still allowed to fit into that same strategic framework and that, for anybody who puts forward a very viable case—that by doing X, which might be a five-year program leading to a lot of, let us say, export opportunities, which is something that the Australian industry is very keen on—as long as that is sufficient for the value of the contract, that be regarded as being sufficient for the value of the contract and they get a tick in the box and roll on and the bid itself is not festooned with one-off special events in order to make it in some way or other palatable because it is seen as a large piece of government business. Getting that strategy right is probably one of the greatest things that the government could now deliver the industry. The piecemeal approach, whilst it is beneficial—my company has benefited from that—is certainly nowhere near optimal. I would like to restate the fact that the biggest thing the government can do for the local industry is procure directly from them and give them the opportunity to win major contracts. That is what happens overseas—the Americans are great at it; the French are great at it, et cetera. We are probably—for our position in the world, being one of the top 10 users of IT—easily the worst at it.

CHAIR—This morning the representative from NOIE said that they have on their web site a description of all of the IT companies in Australia and their capabilities. Are you aware of that?

Mr Robey—A description of all the IT companies in Australia and their capabilities?

CHAIR—That is what I understood them to say.

Mr Robey—It could be true. I have not personally looked at it. I would be surprised, given that there is something in the order of 10, 000 to 20,000 IT companies in Australia of various shapes and forms. My guess is that he was probably talking about all the endorsed suppliers for government.

CHAIR—It may well be that that was what he was talking about, but he did not use that term.

Mr Robey—I would be a bit surprised if they are all there with a description.

Senator LUNDY—Just before we go any further than that, he actually nominated Wizard Information as providing the technology behind an IT industry capability database that is accessible through the business entry point.

Mr Robey—That is certainly true. We built the business entry point for the government.

Senator LUNDY—I just wanted to make sure we all knew what we were talking about. That was the only thing they had to offer in terms of the online capability database. But, from an industry perspective, I think we want to know this: as an industry player—regardless of what your company is contracted to do—are you aware of that capability database or whether it has any place or meaning in the market?

Mr Robey—There is definitely a database for endorsed suppliers. That is currently being upgraded. I think new information for that closed Friday of last week. That is my rough memory. You will have to excuse me—I do not personally do these things, but I am aware they are going on. There are other databases inside government, which you could argue is probably not a good thing. You really want one point of reference for these things, but they tend to grow out of particular initiatives. But the only database that counts is the endorsed supplier database because, in theory, you need to be an endorsed supplier for government to procure from you. There is a cabinet directive to that effect. Given that that is the case, as far as Commonwealth agencies are concerned, they need access to know who the endorsed suppliers are and what their capabilities are. However, that is not necessarily going to resolve any of the sorts of issues that we might get into today about how effective the openness is for Australian companies to get access to government business. There are prejudices against Australian companies by government in procurement—there is no doubt about that—and there is the difficulty, particularly at the smaller end of those companies, in having the presence to be able to access what is going on.

Basically, unless you can trawl the marketplace well in advance, there is no real use in responding to a tender that appears in the press. By the time that tender appears in the press, there has probably been a great deal of work done by the people who are well established in Canberra to position themselves for that work and to understand what it is going to be. As we have discussed in other forums at which I have represented the AIIA, what is really important is that there is some sort of preview process, preferably at least a six-month window in advance, which allows companies to say, 'These are the initiatives that each of the departments and agencies are proposing in the IT sector in the coming six- to 12-month period. That is an

initiative in the area where we have strength.’ They can go and do their marketing to those people early in the process. Otherwise the situation tends to benefit best those of us who are larger, more well established players in the Canberra marketplace. By and large, the people who are being done a disservice by this are the small to medium Australian suppliers.

It is a little unreasonable, as I have heard at least one person state before, that these people should get to know the marketplace. The sort of investment involved is just too great for a lot of them. The uncertainty of government procurement, particularly the time spans involved, the fact that you can get into a process and sometimes discover that process will trail on for months and months, means that it is very difficult for people on a small scale to be able to pick more than one or two horses that they should ride. If that is all they can afford to bid for with the Commonwealth in a year, they really need to position themselves very early in the process, so that those people who are going to be involved in framing the procurement process get to hear from and understand them. Those people are influenced by what they hear—and it is quite reasonable that it should be so. They understand something about those people; they have some confidence in them. But, in turn, if they have something good to offer, that will often be reflected in the tender. And so it should be; tenders should not be written in isolation without an understanding of what the marketplace has to offer. But if they are not in a position to put forward the attributes that they think they can bring that are special to such a tender process, those attributes may not even be asked for in the tender process, even though they might be of great value to the government.

There is a weakness there for the government. It is not always getting the optimum solution and it is definitely depriving local industry of the opportunity to be as well presented as the major players—some of whom are also local industry; I am not discounting that. But the bulk of the people who are disadvantaged are the indigenous Australian industry.

CHAIR—The only effective way that you could address the issue that you are raising, surely, would be if the procurement officers in each of the agencies had a list of the Australian industry per se and its capabilities and were then able to go out, in a proactive way, to companies with specific capabilities and ask them to bid; or to advise them that work in the area of their capabilities is on the horizon and therefore they should seek to establish bids. Is that what you—

Mr Robey—No, I beg to differ. I have tried to present something different and I have obviously not done a good job, so I will have another go at it. I am suggesting that the Commonwealth should be in a position—most of these things are budgeted for—well in advance of the time when they release tenders, which is usually the first formal notification. That is the way industry finds out something. They should be able, well in advance of that, six to 12 months in advance of it, depending on where you are in the budget cycle and so on, to say, ‘We are planning an initiative in this area; these are the major factors,’ because at that point it can be very high level. As long as that is well published, in a site that the Australian industry at large understands is there, the industry can select itself. It does not require the Commonwealth to understand the industry; the industry only has to understand what the Commonwealth’s initiatives are that are coming up over the next six to 12 months and they can say, ‘That’s right where we are; we’ll pick on that particular one. We’ll go and talk to that department, we’ll get in there early and we’ll do the sort of work that the major players already do in dealing with departments.’

CHAIR—The reason I put it in that context is that, if the objective behind the strategic industry development policy is to grow the capability of the local industry—and it ought to be, to the extent where we are capable of servicing all of our ICT needs locally: we may never reach that objective but that ought to be our objective—it seems to me that a part of delivering on that objective would be a requirement for the government to be proactive and to look at companies and areas where there is the potential for development of new technologies or technology transfer to the local industry. It is almost like picking winners to some degree, but it is at least giving those companies that are in that specific area the opportunity to get in and get that technological transfer. Do you put more value on that in terms of who gets the final contract, even though it is a multinational, if a component part of that is a transfer of technology to local industry? How do you measure that against the Australian value add out of the contract or the number of dollars that go to the Australian industry? The work that could go to the Australian industry might be of a very low technological nature. There may be no contribution in terms of industry development. There may be a contribution in terms of the ongoing viability of the firm, but in terms of the development of the industry as such, which is a different issue, there may be none. Whilst there seems to have been a lot of emphasis this morning from DOCITA in terms of the second part of it, there did not seem to be much grasp of or understanding about the first part of it, or how to put that element of it into practice.

Mr Robey—That is probably true, but they are also coming from a long way back. When you look at what the OASITO model was for doing this, it lacked any of the strategic things I talked about at the start today. Consequently, this is a bit of a catch-up process. I am not at all suggesting that the model they are putting forward is by any means perfect, but it does open the door to being more proactive. I placed a caveat on my comments at the beginning by saying, ‘It’s buying from locals that makes the difference.’ That is part of what has not really been understood or adopted in what we are talking about here.

Every time an Australian company is a subcontractor to a multinational that company has lost the opportunity to gain an internationally credible piece of work which might allow it to do export related activities. That means the loss to the people of Australia is twofold. Undoubtedly, some slice of that cake goes offshore because it is an export activity by that multinational but, more importantly, the multiplier that is the export opportunity is lost altogether. Basically, the Australian people lose twice. There is nothing in the evaluation process that goes on at the moment which takes any account of this. Yet it is certainly my understanding that both the US federal government and US state governments have very good processes in place to take account of and to help build this up.

Getting to the very point you are making, in the area of what we might call ‘strategic technology development’, at the moment we are in a revolution of e-government as part of e-business. For example, it would be very reasonable for us to say, ‘Australia is good at software. We do not have to begin a hardware industry and spend \$10 billion on a chip infrastructure and all the rest of it. We can use the people that are here now. Let’s try and guide that element of our opportunity, picking winners at a macro level, not a micro level, as much as possible through Australian companies that are prepared to and are already showing the effort to try and get into that space.’

As I understand it, under what the US government does, their SMEs are capped at \$US500 million. There aren’t too many Australian billion dollar IT companies, so we would not have

much trouble with capping. We would then allow a strategic approach that says, 'We are going to do work in this space, some of which we are really going to fund the R&D. We are going to make allowance for the fact that these people can bring us the glass but they don't have the jug yet—they're only halfway through working on it—but we'll allow for that in the process.' When we start to do those things, the sort of thing you are talking about comes true immediately. You can immediately say, 'Yes, that is a strategic thing. The government has seen the big picture.' That is always an easier thing for governments to see rather than whether company A is better than company B. You say, 'If there happen to be 12 Australian companies that fit that space at the moment, the battle is between them: they have to prove their bona fides to be the best player in that space. The ones that bring the most to the table have the most to offer in terms of where they are going.' My example is the e-government space.

The moment that happens there is a complete turnaround in the way Australian companies can view the industry development opportunities offered by government. They know there are going to be opportunities where the government specifically is saying, 'This is to develop our SME sector,' the way the US government does. The US government does other things beside that. They occasionally look at things which they regard as being strategic to government, an example being a development of supercomputing facilities. I remember one grant that went to a large company to help them in bringing out or advancing their area of supercomputing. These are the sort of strategic things that government chooses to do. If you look underneath them, they are great industry development. Don't tell me that the advances that went on in that space don't then get sold internationally. Of course they do. Part of this was a lubrication process from government to suit its own purposes while recognising what industry development opportunities are.

I regularly sit in meetings where the bureaucracy describes the situations as being very difficult to deal with because of our GATT obligations. We seem to be the only people who suffer these difficulties. The French and Germans do not seem to suffer them. Have we signed up to a different agreement from everybody else or don't we understand how to operate?

CHAIR—I think we are more honest about applying it in a more rigid way.

Mr Robey—It is not doing us a lot of good. Look at the trade deficit in IT.

CHAIR—That seems to be the rationale for it. The sort of scenario you are describing sounds to me very similar to a scenario that Telstra put in place back in 1996 particularly for software development. They picked a number of companies. It essentially came out of the fact that with the competition, from Optus in particular, they needed a much quicker response time in terms of getting material. There was a trend to buying off the shelf rather than local development, which they wanted to reverse. They finished up picking a dozen firms in particular areas of software and had a shortlist of companies that they regarded as being good in particular areas. When contracts arose they then threw them into those 12. Is there something like that that would fit this model?

Mr Robey—I would prefer to be careful about doing things which create panels. One of the problems of creating panels is that you are quite possibly excluding new arrivals on the scene. Creating panels would suit the company that I normally work for very well because we are a very well established company in the government market. I want to make that point because

people might think that there are personal agendas behind this but there are not. It is the other way around. When we were a much smaller company one of the problems was that we could not get on to panels. Because you cannot get on to panels in the first place, then the panel becomes a roadblock to the new initiatives of these organisations and that is why you should turn it around it other way.

By and large I do not think the Americans have a panel approach to this from what I have seen. I do not claim to be an expert on what they do. Their approach is more one of identifying an area of technology to foster, for whatever reason. They do it across the board in SMEs as well as within vertical areas of technology. Having chosen whatever basis they are doing this on, it is then pretty much open to any US corporation to get the advantage of the fact that they are doing this with a particular idea in mind, for example developing this area of industry or expanding this area of technology. It goes back to what I said before. By allowing this information to be available very early in the process, you open it up to everybody else. If there is someone in Perth who has been investing their hard-earned dollars that they might have been getting out of the domestic Perth IT market but are now ready to go national and have a go at these larger opportunities that, say, the Commonwealth might afford, we want to be very careful that we are not, by creating a panel, keeping them out of the game. Otherwise you tend to create a club and the club becomes protected.

It does not mean that it is not competitive and they will not do a good job but I do not know that overall that is good for industry development in the country. That is potentially narrowing the window on the winners. It might be that, if there were 12 in the club, it might be the 13th guy who could have knocked on the door 12 months later, who would turn out to be the great international success. I really have not seen much advantage in panels other than where, for some reason or other, government thinks that they are going to get a more rapid procurement process out of just having a panel sitting there.

I think one only needs to examine one panel, that I have only ever been able to witness from afar, and it was the currently ending defence prime systems integration panel, to recognise that the procurement process they went through was still exhaustive even though they had a panel. So, basically having got the right to be one of the seven or eight players on that panel did not really save you a lot when it came to the procurement exercise. That was still done in the same rigorous detail as it would have been done if it was a public external tender.

At the same time it is also not my experience that in the main you get a very large number of tenderers for any one opportunity. By and large companies are very good at being able to sort out strategically that this is not something they have a great chance of winning because they know something about the other people who will play for that space, and so they can count themselves out quite effectively. At least they learn to do so after a couple of goes, by understanding why they have not got very far, through the debriefing process if that is done well.

From my point of view, and I think from generally the local industry's point of view—and I talk to a lot of them—panels are not really regarded as being of any great advantage. It is really a case of trying to give the same opportunity that the larger players who are better established in, let us say, the Canberra marketplace as we might call it, to people who are not even located here. To get back to my Perth example, people who only have offices in Perth see in the six-

month, or whatever you want to make it, window that we now establish, something and say, 'That is exactly what we are doing. It is now worth getting in a plane, going to Canberra, knocking on doors, and establishing something—maybe locating two people in Canberra who can follow through the process until this contract is awarded, because we believe we have a strategic advantage and something to offer in this space.'

As I said, the big difficulty for those companies at the moment is that when they see a tender come up in the press, it is going to close in three weeks time or whatever. In fact that sort of period is quite often the time frame, even though there was a commitment at one stage that tenders would not close in anything less than four weeks. The ones that close in longer than three are pretty rare actually. That is a waste of time. If they get on the plane, get the tender, go to the briefings and put in the bid, I would say they have got a one in one hundred chance at absolute best of winning a tender like that.

Senator LUNDY—For the committee's benefit, I have just had a look at the capability directory. It says, 'Welcome to the 1999 Australia Information Industries Capability Directory'. It contains no information in the 'Hot Topics' category and no information on the Bulletin Board, so I think we will be asking some follow-up questions to the National Office of Information Economy whose site claims, 'This web site is an initiative of the Department of Communications, Information Technology and the Arts' and the contact person is a NOIE officer.

Mr Robey—I think that is the old ISR database, moved across, because they had an IT capability database. It is certainly true we provided the technology for that as well.

Senator LUNDY—I am not holding you responsible, Mr Robey, if they have not kept it up to date. I know how it works.

Mr Robey—Thank you. We definitely do not have content responsibility for these databases. If they fall over, you can have a go at us.

Senator LUNDY—It is working fine by the way.

Mr Robey—What I was going to say is that that database was originally built out of a set of, I think, the attendees at the Hanover Trade Fair CiBET in 1995 and then expanded. It certainly has a bigger membership than the endorsed supplier database because it was an export focus database. There are plenty of people in Australia, or even here in Canberra, who do not bother bidding for Australian government business—you could worry about why—but who are involved in export and therefore would probably want to be on that database.

Senator LUNDY—Thanks for that. That is helpful. You know more about it than they do—which does not surprise me, but you do not have to comment on that.

Mr Robey—Thank you.

Senator LUNDY—I want to get into the more specifics of some of the proposals. Were you able to listen to evidence presented this morning or not?

Mr Robey—No, I was not.

Senator LUNDY—Okay. Can I flag now that we would welcome any feedback from you in response to what NOIE and the department were saying this morning about more detail on how they envisaged the new ID framework working? I might just ask a couple of questions relating to that. One of the issues raised with DOCITA this morning—and they are charged with implementing the new ID framework—was what were the actual measurements they would be using to assess the industry development outputs, this Australianness and SMENess of involvements. They spoke of various formulae they would use. My concern was that applying those types of formulae to assessing an ID qualification almost pre-empts that SMEs are not going to prime the contracts in the first instance. Then they had a subsequent formula trying to create an apples with apples measurement for if you had an Australian company priming a bid or an SME priming a bid versus a multinational. It became very clear that the metrics for Australianness and SME involvement did not differentiate between whether an Australian company or a multinational primed the bid.

Can I ask for your general thoughts about that kind of categorisation for assessing industry development outcomes? Does it have any meaning to you as an operator in the market or does the group you represent have a specific view about the validity or otherwise of measurements like Australian value add or about a proportion of SME involvement based on a revenues measurement being credible and of substance, and likely to be of assistance in growing the ICT industry in Australia?

Mr Robey—You can take as read the comments I made right at the beginning, which relate to where the greatest benefit lies; that is, in priming the deal. Senator Campbell raised before the potential problem of saying, ‘Here’s a lump of dollars.’ What is the value of those dollars? There is grunt work in any contract. If it is just the grunt work, does it mean anything? There would be very few major IT contracts where quite a number of contract staff are not brought in for the process, for example. Those contract staff could be hired through an Australian company and you could put the total revenue stream—which might be a fairly large number of dollars—down as being of benefit to that company. To start with, 90-something per cent of that would not be, it would be going through to the contractors—who are hopefully Australians as well, so it is perhaps not a bad thing. But you can turn around and ask, ‘How much of that could go into growing the industry?’ Obviously very little, because it is just another form of paying for human resources. So there is an example of the sort of thing which is not a bad thing; it is work, it is going, it is happening for Australians, but it is not that much different from if the multi in the first place employed that person as an employee.

Senator LUNDY—This morning we heard that, if a multinational corporation employed people in Australia to do their work, under their formula it would be included as Australian value add. You are quite right in the sense that bums on seats, for want of a better expression, in terms of jobs does actually qualify as far as multinationals are concerned under their formula for what constitutes Australian value add. I am interested in your comment as to whether you see that as part of a valid measurement, given the industry development outcomes that are being pursued here.

Mr Robey—If you will forgive the pun, it devalues the word ‘value’. The essence of this is that you need to know what the outcomes are that you want to achieve as a government. Indus-

try development really should be something which can be measured against things like our gross domestic product in IT. What does that mean in terms of export? What is the contribution or deficit to Australia in terms of the value of the IT industry? It is probably roughly at the moment somewhere between \$10 billion and \$15 billion, but we will have to wait a few years until statistics can actually tell us that. Consequently, from my point of view, the sorts of things you want to do are very similar in anything you do. If you establish a business or anything else, you sit there and say, 'What are the goals, what are the strategies to get to those goals?' The trouble is that most of the time we are talking in respect of the minutiae of how we do some finetuning of the bottom left-hand dial, which makes no sense in respect of the long-term strategic outlook for the ICT industry.

If you can put up with another small sermon on the subject, but from a different angle, one of the things that to some extent people do not recognise if they are not close to the industry is that the ICT industry is one of the great enablers of other industries. If you are in the segment of the First World economy, it is very difficult to imagine any significant industry undertaking, including government, which is not facilitated and enabled using ICT. Basically, it is a prerequisite to having a First World economy. If you want to keep your status as a First World economy, you have to be able to move ahead at least at the rate of the other leading economies in your use of that technology because that is what leads to productivity et cetera in the rest of your economy. Knowing that, you can also understand that, at least for the foreseeable future, it will be a growing component of the economy. I understand that today it is 12 per cent of world trade. I think it was about 8½ per cent less than a decade ago. Nothing else grows at that rate. In the slightly broader area of elaborately transformed manufactures, the United States achieved \$US228 billion worth of exports last year, a 17 per cent growth on the year before. What areas in exports which are significant—and that is really significant—grow at 17 per cent? I contend no others do that.

The writing is on the wall; this is a bigger and bigger part of what everybody does. Fifteen years ago, motor vehicles had one or no computers. Today, a standard domestic model motor car probably contains 20 computers and a whole bunch of software which has been written for that purpose. If a country does not have an industry in that regard which is doing a reasonable job of getting somewhere near break-even, you will have an ever-spiralling trade deficit. There are some very important economic reasons why any country—and certainly any First World country—needs to take seriously what it is doing in this space and how it is going to foster it. The great beef of our industry is that we are in the First World country that does the least about it so we have a lot of catching up to do. We are lucky that it is a fast changing industry and, every now and again, we will get an opportunity to jump on a new bus as it goes by. However, to date we seem to wave to them as they travel down the road. Sometimes we claim that we are going to have early ability in that space, but it is interesting to note that we nearly always end up being regarded as a great user of the technology. That is wonderful because it means we know how to adopt and use the technology, but it means that, with every bus that went by, our trade deficit just grew bigger again.

Returning to the real point about what we are going to measure and how we are going to measure it, we have to start with some decent strategies at the top level and some goals to achieve. In industry jargon, we want some KPIs, some key performance indicators, which show that we are achieving them. If it was up to me, I would be giving those KPIs, as they apply to government procurement, to the secretaries of each department. I would tell them, 'These are

the KPIs we want you to achieve at that macro level.’ The things underneath which they are trying to measure will happen as a result of doing that. You do not need to finetune at that level; there will be an outcome of trying to achieve those macro level KPIs.

Senator LUNDY—You mentioned the proportion of ICTs in relation to GDP, and the trade deficit in the ICT sector. This morning, we raised with NOIE the concept of the trade deficit in that sector as an important measure and we asked whether the government intended to set goals or express aims to halt the trend of growth in that deficit or reverse it, and they effectively said no. I am telling you that because it seems to run counter to your point of view. Can you nominate any other macro-economic measures which could possibly assist the government in setting an appropriate high-level goal to initiate the necessary changes in the industry’s policy?

Mr Robey—I was not trying to indicate that by any means that was the only measure—

Senator LUNDY—No, I know.

Mr Robey—That is probably a measure about current poor performance.

Senator LUNDY—Take this as an invitation to tell me what your thoughts are on other appropriate measures in that sort of macro-economic area or even in industry outcomes that you think would be appropriate.

Mr Robey—We can take some simple ones at the government level, not even going outside of that, because government obviously cannot influence domestic buying decisions by industry in anything other than a sort of minor way because then I think they will get into a problem with GATT anyway. When the current government came to office, it stated that it was going to set a goal of 10 per cent for—I cannot remember whether it was local procurement or local SME procurement; it does not make much difference.

Senator LUNDY—They could not tell me that figure this morning, by the way, because I asked for clarification on that and they were not aware of any figure.

Mr Robey—I am pretty sure that figure is right. The only thing I am not quite sure of is whether it was just for SMEs or for local companies, but it does not make much difference.

Senator LUNDY—My recollection was that it was for SMEs.

Mr Robey—I think there is next to no-one locally that does not actually make a definition of SME because as you know there are multiple, and certainly every one of them would make the US definition of SME on their ear. One of the things that really saddened the industry that was knowledgeable was that at that time probably the procurement level in IT was around 30 per cent from local companies. So we are busily setting ourselves a goal to go backwards by two-thirds.

Senator LUNDY—Right.

Mr Robey—What that really indicated is that we thought there was no understanding of the local industry. We really did not think that they were intending to go backwards by two-thirds;

we thought they just did not know. That was not based on just no judgment at all. If you go back and look at the gazettes that used to be issued at that time, the purchasing gazettes, and did an analysis of it, you got a fairly reasonable view that around 30 per cent was being procured locally. That is a very nice measure. You could turn around and say that the government should hope to procure at least—I think the industry would think—probably a majority of its IT locally.

Senator LUNDY—Are you aware that the AIIA has expressed a view? They mentioned the figure of, I think, 25 to 30 per cent or 25 to 35 per cent as what they were seeking government agreement on—I am not sure of that. Are you aware of the AIIA setting any figures in that regard?

Mr Robey—I was not privy to the setting of that figure. I have been in a number of meetings; I do not remember that.

Senator LUNDY—I might not be correct.

Mr Robey—You could be too because, whilst I am a long-term member of the AIIA, I do not intend every one of these various things. It could be that they have come up with a figure for this. My view would be somewhat different from that. I really believe, and I think you would find that most of the local industry believes, there is no reason why the government could not set itself a target of buying the majority of its IT locally. That could be one of these key performance indicators that they provide to the secretaries of departments. Basically, the secretaries of departments could then be in a position to both monitor this, and, where they cannot achieve it, report on what the reasons were for non-achievement, because it may be that in that year they did only a couple of major procurements and they did not believe there was any local supplier who was capable.

One of the things about that is there would then be some very good feedback to both industry and government about things they might need to do to be able to raise that performance level. Senator Campbell before referred to looking at areas where you might make some strategic investment in the local industry. The very input for that might come out of a process like this. If it becomes apparent that three or four departments had a lot of trouble achieving that majority figure because of the sorts of things they were procuring and the lack of local suppliers capable of doing that, that might be a focus for where you would go and do some strategic investment. That is a very simple thing that mainly needs to be done within the domain of the government and therefore does not require anything to be achieved outside of that in terms of what the rest of industry does. I am a great believer in the fact that, if you want the rest of industry to buy local, it should start with government because the very fact that government is one of the biggest buyers of IT—over 40 per cent, I believe, across all levels of government in Australia—will establish the credentials of people to the extent where the Woolworths, the Coles, the whoever else would feel more comfortable buying from those same suppliers.

Senator LUNDY—Just on that issue of key performance indicators and the role of departmental heads or departmental secretaries, given the Humphry recommendation devolving that power, one of the areas we explored this morning with the department was to what degree does that change empower the agency heads to make decisions and determinations on the industry development side. The upshot was that they were still exploring the degree to which DCITA kept control of the ID requirements; that is, specifying the sorts of outcomes that were being

pursued and how much of that would actually be handed over to the agency and departmental heads. In terms of your interpretation of the Humphry review, can you see an ID framework working where the department, DCITA, has overriding control of the ID outcomes as opposed to the agency heads?

Mr Robey—It is not how I would have envisaged it would have worked. In fact, I probably in that case have a slight misunderstanding of what I thought DCITA's role was going to be. I thought they would more establish the framework and things like these key performance indicators and whatever other guidelines—or preferably not guidelines but actually directives would be a nice word in this situation, as we have some great ability to avoid looking at guidelines—I would have thought that, having established those things, they then pass them to the agency heads and it is the agency head's job to make sure they are implemented. Otherwise you are splitting the procurement process in two again, and we are going to get into all this battle about who should be making what decisions and that these decisions are contrary to the strategic outcomes of the agency, et cetera—much of which has gone on through the process that was on before. That was just the battle between OASITO and the agencies.

Senator LUNDY—This is my concern that what is happening here is that the new ID framework is effectively preserving DCITA's role in how it was under the old system. This morning they said that they would still have involvement in the preparation of the requests for tenders, the RFTs, in describing the sorts of industry development outcomes that were desirable. They would have involvement through collaboration through the tender evaluation process with the agency and department head. But then they nominated themselves as being the recipient of the independent ID reports and the managers of agreements, which they described as SIDAs, the strategic industry development agreements, which would be the culmination of a transformed PFD combined with ID commitments and combined with anything if you are involved in a contract over \$10 million. Do you see what I mean? That is where we got the discussion to this morning as far as what the expectations are. Without obviously having looked at that evidence, can I ask for your reaction to those kinds of proposals and suggestions?

Mr Robey—Can I give my interpretation of what I thought that was leading to, because I have obviously been in discussions about this directly with them in various of my roles.

Senator LUNDY—Sure. To be fair, it is obvious that a lot of these issues are still being discussed and considered. The department was very clear that there were a lot of areas where they could not be definitive.

Mr Robey—What you described and the way you described it really could be interpreted in two ways. I have been interpreting it in a particular way and maybe the way you heard it this morning is encouraging you to interpret it in a different way. There is a reason why the SIDAs need to be basically with an agency because, if they adopt what we have been encouraging them to adopt, they are the strategic approach which basically says, 'We IBM are going to do this initiative. It is a five-year initiative. It has \$100 million worth of value to it and we want to use this as our set of brownie points or whatever measuring stick against anything that we do with the Commonwealth during that time, unless the contracts go to a size where we need to expand to it or add to it or whatever else.' That therefore is going to cover a range of contracts. But there is going to be one SIDA. So therefore someone needs to be responsible for that.

To get back to the strategic nature of things that I discussed at the very beginning of my evidence today, that process needs to be of a form which really is strategic so that they can sit there and say, 'This is a five-year plan. Our outcome is to be the world centre for Linux or something or other—bingo, that is what we will do.' It has to be then accepted by the Commonwealth that, yes, this is a great contribution. It is wonderful that they are doing it in Australia. It is worth this level of brownie points, and they can keep reeling in contracts until they use those brownie points up. The department's concern should only have to go to DCITA—if they are going to be the ones to look after this—and say, 'This is a \$120 million contract, it is of this shape. This is how it is broken up. IBM is the prime,' for argument's sake, but it could well apply if they were the subbie as well. 'This is their contribution to the contract. Do they have enough brownie points to sustain that? They claim they do.' If the answer by DCITA is, 'Yes, they do.' It is bingo, tick in the box, and for Australia that is a great outcome because it means that we will do things here that are real and that have real international momentum. They will not be building a call centre six minutes drive outside Newcastle or whatever other mad proposal is going on next—

Senator LUNDY—Or offering the odd scholarship to the odd lucky person.

Mr Robey—Yes, or whatever else. Realistically, non-strategic industry development does not address any of the issues we have been discussing in the recent time here. Consequently I do not believe that what they are proposing, as I understand it at the moment, is contrary to that situation. That is why they need to manage that. It is also true that they need to provide some sort of assistance to anybody tendering, because the odds are pretty good that the people tendering do not understand the ID arrangements. Most people in government do not tend to get involved in more than one or two major IT purchases. Consequently, there is a degree of ignorance, if I can use that in its real sense, in the procurement process. The greatest ignorance will be about these external things, as they will see it, because they are trying to buy a piece of technology and industry development is a side issue, which is a bit of a pity. I wish they regarded it differently but I am not going to be that optimistic that they will. So consequently they need assistance. So it is important that they play a role in helping the people who are responsible for the procurement process understand that process and provide whatever assistance that entails. I do not think there is anything contradictory in that to the department then being responsible for the actual procurement. It just means that they at least do it in good knowledge of what the industry development outcomes need to be, how they are going to be achieved, how they are going to be measured and why they should be looking at these things in a certain way. For example, they do not get themselves sidetracked into accepting something that does not fit in with this strategic approach.

Senator LUNDY—I have one more question. I know you have specific views about the management of intellectual property, having been privy to your presentation at the local industry event last week. Could you just in a few minutes provide the committee with your views of the importance of intellectual property management associated with government contracts and your thoughts about how that needs to be developed?

Mr Robey—I will try to make this brief but provide a bit of background. The background is basically that not just the Commonwealth but all governments in Australia have pretty much insisted in their contracts that they own the IP. Examples of the government then taking any advantage of the ownership of that IP are as close to zero that it does not matter. So a great asset

of the Australian nation sits incarcerated under some contractual clauses, rather than being liberated and exercised. It makes very little sense because some of that IP would be of great use to particularly indigenous companies in terms of providing them with the basis for what might then become an internationally viable and useable product.

That being the case, there are two things that grow from that: one is—it goes back to this point I made earlier on—that if the Australian company is as often as possible the prime contractor, they have responsibility for the establishment of the IP. If the IP is then vested in them and not the Commonwealth and the Commonwealth just has an irrevocable licence to use at no further cost than its investment in the actual tender process or whatever it was, then immediately that asset is being invested in an organisation that has the ability to exploit it. It will not always be exploited; it will not always be exploited successfully; but, compared with a track record of close enough to zero per cent, the outcomes will undoubtedly be startlingly better. It represents an investment by government in its own economy at effectively nil cost—great potential benefit but effectively nil cost. Consequently, any way that is fostering the prime contractor relationship for local industry and then the vesting of the IP in the local industry has significant benefits to the country. It has no real downside for government that I can possibly perceive of but considerable upside, because it may be that the product that results from that means that the government keeps getting better and better product at very minimal investment compared with what they would have to do if they were maintaining that product internally, which is what they tend to do today.

CHAIR—Thank you, Mr Robey. Unfortunately, we are out of time and we are running 15 minutes over time. Thank you very much for your contribution today.

Mr Robey—Thank you for hearing us.

[Midday]

BOWMAN, Mr Chris, Executive Director, Serco Group Pty Ltd

HASLER, Mr Michael Horace, Director, Business Development, Serco Australia Pty Ltd

CHAIR—Mr Bowman, do you wish to make an opening statement?

Mr Bowman—I have got a brief presentation here, which will be handed around to you. I might just make a few points from that, if it is possible.

CHAIR—Yes.

Mr Bowman—Our view of the IT outsourcing process was that it did not go far enough; that insufficient thought was put into the designing of service delivery models; that OASITO and the agencies were not really given the chance to develop a strategic approach to outsourcing and that, partly as a consequence, that agency has lost control of service delivery objectives. Our position is that all providers of government services should be selected through a competitive process; complete services should be subject to competition; and outsourcing should be used to drive innovation and cost-effectiveness into monopoly service structures, which most government service structures are. Our experience in the market suggests that, in fact, most things can be outsourced.

Overhead transparencies were then shown—

Mr Bowman—I will talk briefly about two contracts. We have run Britain's ballistic missile early warning system for the last 36 years—right through the Cold War. You can see a picture of it in one of those slides. That radar station has only two government employees in it, and they are the people we tell if we detect an attack coming into the British nation. We also manage Britain's atomic weapons establishment, we do all of Britain's nuclear research, we manufacture Britain's nuclear weapons and we are the custodians of Britain's nuclear arsenal. I put the proposition that, if private companies can manage things like that, we can pretty well manage anything.

I have given you some other examples of what we do in various places. The case study I would commend to you as an example of the approach we believe government should use is the one used by the UK Department of Trade and Industry which, in 1993-94, conducted a strategic review of their 10 agencies. They reviewed them to determine whether: if there were already competing service providers in the marketplace, they could privatise them; if they were focused on service delivery but were a monopoly service delivery, they could outsource them; and, if they were essentially policy focused, they would keep them in house. I have shown you the decision making process they used to review their 10 agencies. The outcome was that they came down to managing five agencies at the end of the day with a number of them strategically outsourced and a couple of them privatised.

The success factors were that they had clear political direction—that certainly was not missing in the IT outsourcing process—that they were based on a strategic approach with well-defined management objectives and well thought out decision criteria; that control was placed with a strong central implementation unit with direct access to the minister, rather like OASITO, staffed by individuals who were not affected by the outcomes of the reviews; and that it was also supported by good quality external advisers. Early discussions were held with private sector interests to make sure they got feedback from people like us. The whole process gave us in the private sector great confidence, and we were willing to invest a very substantial amount of money into creating a good solution for government. The other aspect of the British approach was that they had very clearly thought out and very sensitive staff transfer arrangements, more so than we have here in Australia.

We won the management of Britain's National Physical Laboratory—the equivalent in Australia is the National Measurement Laboratory at Bradfield Park in Lindfield, Sydney. It is the standards organisation where we carry out a basic research program for government, and some 700 scientists transferred from government to Serco. The outcomes of that contract have been spectacularly good: science has increased, resources have moved from the tail to the teeth of the organisation, NPL has won additional outside work, the number of scientists has increased by 25 per cent after years of a declining number of scientists, the age profile of the scientists has improved dramatically and, at the end of the day, NPL actually has a new laboratory out of it—all as a result of private sector management.

The key lessons are: most government services are delivered by monopoly providers, and I would suggest that many of them therefore suffer the classic ills of any monopoly—poor customer focus and high costs. I also make the point that competition avoidance behaviour is every bit as strong in the public sector as in the private, and that the white-collar people in the public sector have been most effective at avoiding competition over the years. It is interesting that nearly all the work we do here in Australia involves what I would call blue-collar workers. They are the guys that have suffered from this process, not the white-collar workers.

Humphry was right that the agencies must control what is outsourced; however, it would be much better if agencies took a strategic view on what might be outsourced, and if they focused on complete service delivery programs. It is important that outsourcing be managed according to a thorough methodology, and we believe this suggests the need for a continuing central management unit to manage outsourcings. The skills are so short in the public sector that they need to be focused in one place. I will finish with a comment by Ted Gabler, a US public servant who writes extensively on this. He makes the point that this debate is not between public and private sectors but between competition and monopoly and between good, flexible management and bureaucratic-rule government management.

CHAIR—Was Serco in the business in 1996 when Shaw Pittman were engaged?

Mr Bowman—This is for the IT outsourcing?

CHAIR—Yes.

Mr Bowman—We looked at the IT outsourcing process and decided from the beginning not to participate in it.

CHAIR—On what basis?

Mr Bowman—We did not like the way they were mandating the outsourcing of slices of the bureaucracy without sitting back and asking what outputs they required. I made the point here that we like it when government agencies sit back and say, ‘We believe we can outsource this entire service.’ That is the business end we tend to focus on.

CHAIR—Are you familiar with the US system of tendering?

Mr Bowman—We have a company in the US that participates fairly broadly in outsourcing. They are all—

CHAIR—Are you in a position to give us a brief overview of how the US system works?

Mr Bowman—It is not anywhere near as innovative as the UK system. It is focused often far more on inputs than outputs. It is a fairly old style of contracting, I would suggest, compared with what has occurred in the UK and also what has occurred here in Australia. I understand, though, that the issue that concerns you is the transparency of contracts in the US. You are right—in that aspect the US does go further than Australia or the UK. All of our contracts are, as a rule, made publicly available. We are allowed to request that some parts of the contracts be kept confidential, but it is actually rare that anything is kept confidential, even from our competitors, if they request the information.

CHAIR—Is this an impediment to companies participating in the US contracting system?

Mr Bowman—There is plenty of competition still in the US. I think people simply adapt to that sort of situation. If you want to be in this business, you have to go along with it. I do not think it destroys the competition. It might in fact speed up the improvement cycle.

Senator LUNDY—I am interested in your comments about a strong central unit. Halfway through your presentation I made a note to ask you a question about whether you mean within the larger agencies or as a whole of government approach so that the central unit would provide that coordination from a whole of government perspective? I think you actually answered that later in the presentation, and that you do indeed mean a central unit of coordination. Is that right?

Mr Bowman—Yes, that is right.

Senator LUNDY—So the question is: in your view, and given the outcomes focus of your business, is that unit best associated with the department of finance or equivalent, or indeed perhaps a more service orientated department or agency, or indeed an industry orientated department or agency? Where do you think it should fit to achieve the optimal outcomes of the whole strategy?

Mr Bowman—First of all, we believe there needs to be a central agency that holds the collected experience in outsourcing.

Senator LUNDY—I will come back to why you think there needs to be one. I would like your opinion on where it should be located within a bureaucracy first.

Mr Bowman—If you look at our experience across the world, the ones that we tend to like to work with most are those that are aligned with one of the finance agencies. In New South Wales at the moment the Department of Public Works is looking to manage a private infrastructure build and operate approach. There is a bit of a tussle going on between the Treasury in New South Wales and the Department of Public Works. We would pretty much come down on the side of Treasury, I guess—that they should remain aligned with them rather than one of the line agencies.

Senator LUNDY—Why is that?

Mr Bowman—I do not want to be too generous to the finance agencies, but they tend to be more thoughtful about the process. A department of public works, for example—

Senator LUNDY—That is not the experience here. Tell me on what you base that statement. Is that your experience internationally?

Mr Bowman—In the few deals that we have done with OASITO—for example, we bought the *Ghan* and the *Indian Pacific* from them—we have no complaints about their methodology. By comparison with other places we have worked across the world, we found their actual methodology pretty transparent. It was a methodology we had quite a lot of confidence in. We have no complaints about that.

Senator LUNDY—That was with their asset sales role, as opposed to their outsourcing role?

Mr Bowman—We have not dealt with a pure outsourcing role.

Senator LUNDY—Did you choose not to?

Mr Bowman—We chose not to for the IT outsourcing. We are addressing some of the corporate service tenders at the moment where they are nowhere near as strong. We are very worried—

Senator LUNDY—What is nowhere near as strong?

Mr Bowman—The OASITO's involvement in that corporate services outsourcing. They are largely being left to the agencies.

Senator LUNDY—Is that a good thing or a bad thing?

Mr Bowman—We think it is a very bad thing.

Senator LUNDY—That they are not as strong?

Mr Bowman—In fact, we have almost lost confidence in that process because there is not sufficient transparency in the management process.

Senator LUNDY—You did not want to deal with OASITO on the IT outsourcing?

Mr Bowman—No, it was not that we did not want to deal with OASITO; it was that we did not want to address the IT outsourcing because we believed a particular approach had been mandated that would not necessarily deliver good outcomes.

Senator LUNDY—In all of our estimates hearings, though, we find that OASITO was quite central to the establishment and implementation of that policy. I guess, in terms of their implementation role, they had control of that. If you say you did not like the process, you are actually reflecting on the capability of OASITO.

Mr Bowman—As I understand it, they were mandated to carry through the process of outsourcing IT. The fact that IT outsourcing was mandated was the fundamental mistake—not the process that they used to carry out the outsourcing. We have no doubts whatsoever that agency heads should have the control over what, at the end of the day, is outsourced.

Senator LUNDY—But that was not the view of Finance or indeed OASITO, who contended right through their presentations that it was essential that there be central control.

Mr Bowman—It is very rare that you get a line agency that is willing to go very far in outsourcing. That is the challenge that they were dealing with, I guess. That means strong ministerial direction.

Senator LUNDY—That is what they said. It is certainly not what the department said.

Mr Bowman—Let me contrast this with the Department of Trade and Industry in the UK. There we have Michael Heseltine, a very powerful minister, who said, ‘I want a strategic approach adopted to this whole process.’ We do not see many ministers anywhere in the world who apply that sort of political will to a line agency. That is what has been missing here.

Senator LUNDY—I am interested in your comments about monopolies and competition as being almost like a key measure of what will lead to the success or failure of any outsourcing endeavour, and monopoly markets. In your observations of the IT outsourcing in Australia, and given the structure of the contracts here, would you describe that as perhaps not a monopoly but certainly an oligopoly as far as who is able to access that work?

Mr Bowman—You are suggesting that there were very few people to address those sorts of opportunities—three, four or five at the end of the day?

Senator LUNDY—Yes.

Mr Bowman—We would reckon that if there are four or five vigorous competitors in the market you probably have a pretty reasonable market. You certainly have a lot better market than you have had in government to date, where you have a group of people with a brief to

deliver a service who have been designing organisations with no market discipline on them whatsoever. That is the monopoly I am talking about.

Government agencies, briefed or commissioned by a minister or parliament, or given funds by parliament to deliver a new service to the community, hitherto have largely gone out and designed the service delivery organisations themselves. So you have had one solution only placed before the parliament to consider, with all the costs attached to it, whereas if you use an outsourcing process and go to the market and seek four or five solutions you inevitably get a better outcome. That is monopoly versus competition that I am talking about.

Senator LUNDY—Let us translate that into the issue of market development and the maturity of given markets. One of the issues with respect to IT outsourcing in Australia was that, when the requests for tender were prepared, they were tipped out into an immature market and therefore limited the capability of the competitors or competing fields that could participate. How much of that market maturity is a factor in your observation of whether a government department providing their own services can be construed as a monopoly in the face of private competition? What role does government have in market development and how much of a priority should the government put on market development?

Mr Bowman—Let me answer that in two ways. I am not sure that there was a lack of competition in IT. There were certainly some obvious winners, the way it was put out there—all the big guys no doubt had an advantage. But I still make the point that there were three or four of those at the end of the day that contested every one of those tenders. I make the proposition at the outcome: if they are well specified, it is likely to be better than simply leaving it to a public sector organisation to design the service delivery in isolation from that competition. To me, that is okay.

In terms of making a market, the government has a key role to play in giving the market sufficient time to prepare for the opportunity that is coming up. Defence has always been very good in this—for example, their Commercial Support Program. They have made opportunities known up to two years before the tender was released, and that gave us in the private sector plenty of time to put together consortia that could address even the most unusual opportunity. To us the key issue is the time you are given to prepare for the market and the interaction that occurs during that time between the private sector and the public sector in terms of getting the model right.

Let me give you an example of a unique infrastructure where there has always been very good competition. The Tidbinbilla deep space tracking station is a unique infrastructure, yet every time a tender has been called for the management of it over the last 30 or 40 years there have always been three or four strong contenders. People know it is coming up—people put together teams that can estimate the task and the resources needed to satisfy the requirement.

Senator LUNDY—You mention that policy is an area that should not be outsourced in the scheme of things. In terms of your definition of policy development, how much of that goes into the research and development issues that might underpin policy development? I am trying to get an idea of what you are advocating, because I can interpret your presentation as advocating a selective sourcing or highly strategic sourcing approach, but on the next page you give the

impression that you are arguing for a holistic approach to outsourcing in the presentation of very vertical opportunities to the private sector. I am trying to get a grip on your position.

Mr Bowman—Governments now outsource quite a lot of research background to policy development—there is no doubt about that—yet, when I look at our customers across the world, most governments believe they should keep the design of policy pretty much in house. It is neither here nor there to us in Serco. We tend to focus on the service delivery end, once that policy has been produced and a government decides on a service to be delivered to the community. That is the area of the market that really interests us. But there is no doubt about it: components of policy development could be outsourced, and indeed are already. There are plenty of agencies in this city involved in that.

Senator LUNDY—You identify as a key lesson that the Humphry review recommendations were correct in saying that agencies must control what is outsourced—again, reinforcing my perception that you support a strategic approach to sourcing expertise. How do you reconcile that with your view? What would you perceive to be the appropriate relationship with what you describe as a strong central unit within a finance department?

Mr Bowman—Let us take as an example the corporate services outsourcing that is occurring at the moment. The agencies are designing their own approach to it. Some are putting out very small packages and individual services and others are combining them into much broader contracts. I see all of that as being the responsibility of the agency itself. Once they have essentially defined the task, I would put the execution of that into the hands of a central agency like OASITO. I would make sure that there were one, two or three people—

Senator LUNDY—What do you mean by ‘execution’? Do you mean contract negotiation or contract evaluation? What do you mean?

Mr Bowman—I mean the refining of the specification and the framing of the tender documents.

Senator LUNDY—So this is pre closing of tender? This is the finalising of the RFT?

Mr Bowman—I am suggesting that you need an independent agency to manage the tendering process.

Senator LUNDY—I am very interested in this. You are suggesting that the agency itself would work out what they need to be done.

Mr Bowman—Yes.

Senator LUNDY—Then they provide a brief to another agency and they draft a request for tender based on the outcomes the agency has requested. They then call for tenders and evaluate the tenders. Presumably the agency gets to have a say then.

Mr Bowman—Absolutely. You would put together a project team that would have representation from the agencies.

Senator LUNDY—Is this essentially the description of what occurred with the IT outsourcing that made it so fraught?

Mr Bowman—I do not believe that was the problem with the IT outsourcing. The problem with the IT outsourcing was that the—

Senator LUNDY—The problem was that the agencies were so disempowered.

Mr Bowman—Sorry?

Senator LUNDY—One of the big issues was that the agencies themselves had so little control, and that is why the Humphry review said that they needed to have more.

Mr Bowman—What was done there was that what was outsourced was mandated centrally. I am proposing that that stays with agencies. With respect to the actual execution of it, there is a huge amount of difference between an average outcome and best practice outcome. The skills within government to manage these processes are incredibly short. If you are going to make the most of that, get the best outcomes and deliver a transparent system that we in the private sector can have confidence in, you need to put all those talents in one place and manage it centrally.

Senator LUNDY—I am contending that the evidence of the Humphry inquiry and the Audit Office report demonstrated that, despite that theory looking pretty good on the surface, the consolidation of that expertise and, in fact, the purchasing of expertise to the value of some \$90 million within that specific unit within the finance department failed to achieve any optimal outcomes for the agencies, leading to the scrapping of that approach. So I am challenging that.

Mr Bowman—I do make the point in here that your white collars have been very effective at stifling the process. I believe that was a major issue in the outcome.

Senator LUNDY—That was certainly contended by the agency, which has just been disbanded, effectively because of its incompetence. It has not been acknowledged or accepted by the agency heads involved. The outcomes of the government's acceptance of the Humphry review do not indicate that that criticism had any validity.

Mr Bowman—That does not surprise me at all. Let me give you one other government example here in Canberra, where I believe there has been a change that highlights the point we are trying to make. The Department of Defence have, for the last seven or eight years, run the commercial support program. In the early days within the department they had a unit called the directorate general of the commercial support program, which focused all the high level skills in managing outsourcing processes. More recently, that unit has become much less powerful. Whereas in the early days the execution of the outsourcing processes was very heavily influenced by that unit, today it is not; it has moved much closer to the coalface. If you look at the outcomes of that program, you will find that the outcomes are becoming much less satisfactory today than they were in those early days because there was a continuous improvement loop involved in the process.

Senator LUNDY—That is why I asked you whether or not you saw a central unit within an agency, as opposed to within the whole of government, as being important. I concur with that

point that CSP is an excellent example of an agency—in this case a department—having a central, focused and strategically orientated program of managing external sourcing of products and services. That runs parallel to the success of the strategic approach you have described with the UK department of industry. It seems to me that the success that you are describing can be attributed to central units within agencies that give a strategic focus to any ID and so forth in the contracting out and outcomes of the contract. But that does not necessarily translate once you externalise that expertise beyond the individual agency and department.

Mr Bowman—I guess there is an issue of scale. The Department of Defence, with 80,000 or 90,000 employees, has a scale that enables it to devote the resources to this. But if you go down the road to the Australian National Audit Office, to whom we have been talking this morning, who are going to manage one outsourcing this year, they simply do not have the ability to put together the talents they need to do it thoroughly. I think that is the difference.

Senator LUNDY—You said you were involved in the market testing process of corporate services. Are you aware that that has been mandated by government—that it is not optional?

Mr Bowman—I am, yes.

Senator LUNDY—How does that sit with your earlier comments that you thought the underlying problem with the IT outsourcing was the fact that it was mandated?

Mr Bowman—We are being very selective about those we address. We have bid outside Defence. We have bid only one so far, and we may bid one other. We have been highly selective.

CHAIR—Thank you, Mr Bowman and Mr Hasler, for appearing before the committee.

Proceedings suspended from 12.26 p.m. to 1.32 p.m..

BRIDGE, Mr John, Senior Director, Office of Asset Sales and IT Outsourcing

MAKAY, Ms Trixie, Ex-Senior Director, IT Outsourcing, Office of Asset Sales and IT Outsourcing; Branch Manager, Strategic Intelligence, e-Solutions Group, Department of Finance and Administration

SMITH, Mr Ross Sydney, Chief Executive, Office of Asset Sales and IT Outsourcing

WHITHEAR, Mr Rod, Senior Director, Asset Sales, Office of Asset Sales and IT Outsourcing

WILLIAMS, Mr Neil Robin, Director, Office of Asset Sales and IT Outsourcing

YARRA, Mr David John, Executive Director, Office of Asset Sales and IT Outsourcing

CHAIR—Do you wish to make an opening statement?

Mr Smith—No, Mr Chairman.

Senator LUNDY—What was the nature of the agreement between the probity auditor engaged by OASITO and yourselves?

Mr Yarra—With regard to the nature of the agreement, we had a contractual relationship with the probity auditor.

Senator LUNDY—Was that contract in writing?

Mr Yarra—Yes, it was a written contract.

Senator LUNDY—Can you provide the committee with a copy of that contract?

Mr Yarra—I would like to take that on notice.

Senator LUNDY—With regard to the probity auditor's role, were they working to your direction or did their role as an independent probity auditor allow them to peruse and access your work, whether or not you requested their involvement?

Mr Yarra—Operating from memory, so I will need to confirm this, he was operating subject to our direction. He had a specified set of duties set out in the contract. I will have to check whether those duties went to him having independent access to our papers, but he was certainly involved very closely with everything we did.

Senator LUNDY—I am sorry. I could not hear your last few words.

Mr Yarra—He was very closely involved with everything we did.

Mr Smith—Mr Marks participated in the vast majority of our steering committee meetings that oversighted the processes. In that context he had access to all the conversations and dialogues that went on in those meetings. If ever he asked for anything arising from those meetings, he was granted access. But in general terms he was under the direction of the office of asset sales and he had an understanding that he had direct access to our minister if he felt there was an issue he wanted to take up with the minister.

Senator LUNDY—Is that contained in the contract?

Mr Smith—I would have to check that, but I think not. He did have that understanding. He and I had talked about that on several occasions. It may be in the contract; it may be not. I will check that for you.

Senator LUNDY—Did he have access to the minister without your approval?

Mr Smith—Absolutely. My dialogue with him was that, if he felt at any time there was a probity issue that he was not satisfied was being handled well or any other issue, he could feel free to be in contact with the minister's office. I am not aware that he ever took that up and I am not aware that it is in the contract, but certainly we had dialogue about that on several occasions.

Senator LUNDY—Do you recall that contract containing a clause that offered payment for appearance at committees?

Mr Smith—There was one contract with an amended scope of work — I think that is the technical answer to part of your question. We placed a contract with him I think back in 1997, and in about 1998 we varied the scope of the work. So there was a variation rather than a separate contract. In varying the scope of the work, the provision that was in the first element of the scope of work that contemplated reimbursing him for costs for appearing at parliamentary inquiries and so on was deleted in the second contract.

Senator LUNDY—Why was it deleted?

Mr Smith—My view is that there are two ways to look at the issue of whether somebody should be reimbursed for appearing at committees. We felt it very important that it be known to the probity auditor and our contractors that they have a responsibility as part of their scope to appear at committees if requested. We wanted to make that clear. Mr Marks, I recall, at the time requested that we have a provision in the contract that he be reimbursed his costs for doing so. That was included. In the review of the process you can handle it in two ways in my view: first, it can be transparently in contracts; second, it can be not quite so transparent and consultants will build those costs into their contingencies. However, in terms of the fee going forward, we had a fee structure.

Mr Marks might have given testimony here that it was an oversight or something in the second phase. I do not recall whether it was an oversight or not, but it was not contained in the second part of the contract. I do think it is a very interesting issue though, because on the one hand if it is in a contract then you have got transparency, and on the other hand if it is not in a contract they will build it into contingency whether or not they appear before a committee. So in

one sense, whilst I understand the argument that if you build it in then you may be somehow prejudicing your independence, you may have a built-in cost that you never incur and pay for it. I cannot confirm for you whether it was deliberately or otherwise left out, but they would be the arguments.

My personal view for what it is worth is that it is probably better to be transparent, but on balance I think you could go either way because the primary objective is to make sure that these people know quite clearly that they have an obligation as part of their work with us to come forward to committees—be it this committee, the JCPA or whatever—to give evidence if required.

Senator LUNDY—Or indeed as part of their responsibility as citizens to come before the parliamentary committee, not necessarily resulting from their relationship with you.

Mr Smith—Absolutely; I agree with you.

Senator LUNDY—At what point was the probity plan revised? Was that around the same time that the contract was revised with Mr Marks?

Mr Smith—Are you talking about the scope of work of the contract? I am not quite sure—

Senator LUNDY—No; your overall probity plan in handling the initiative.

Mr Yarra—The issue of the probity plan was taken up in the audit report—recommendation 3, from memory. They said we should have a fully developed probity plan. We had our response to that. The issue that the audit raised was that we did not have a probity plan in the form that they thought we should have, and we agreed with that recommendation. So we did not have one in that form.

Senator LUNDY—Have you got one now?

Mr Yarra—We have not got a probity adviser on deck for the initiative.

Senator LUNDY—Because you are not doing any work—

Mr Yarra—We are not doing any work that requires probity advice, correct.

Senator LUNDY—We had an interesting discussion about the description of the type of work that the probity auditor had done. Have you been able to familiarise yourself with the evidence presented yesterday from both Mr Marks and the Audit Office?

Mr Yarra—No. I am familiar with the clarification of the audit view of that that is presented in the audit report where they draw the distinction between an adviser and an auditor, but I am not familiar with the evidence given yesterday.

Senator LUNDY—Okay. So in your view, given the description of the type of work that Mr Marks did, do you acknowledge that he better fits the description of probity adviser rather than probity auditor?

Mr Yarra—He was our probity auditor engaged back in 1997, as I understand it. The contract was amended over time to align his duties with the changing shape and nature of the initiative. I do not really know whether the latest version of his duties best aligns with the description of auditor or adviser. To me the important thing was that the description of his services that we required aligned with what we needed from a probity adviser/auditor. If the name ‘probity auditor’ remained on the contract, then so be it, because we just amended the schedule at the back.

Mr Smith—The scope of the work that we amended in 1998 better reflected the type of work Mr Marks was doing for us than when we first contemplated the contract in 1997, because he was involved, as I said, in things like steering committees. Our first scope did not contemplate him attending steering committees, if I recall correctly—it is going back a long way. It seemed to me absolutely fundamental for him to be involved in these key strategic meetings if he was going to properly perform a function of probity auditing. That is just one example of where we had to clarify his role in 1998 to say, ‘Yes, we want you to be at steering committee meetings.’

Senator LUNDY—Are you able to provide the committee with documentation that illustrates the changes in the scope of his work in 1998? I have already asked for the contract, and you have taken that on notice, but can you provide us with documentation that gives some illustration of what was changed in that scope of work?

Mr Smith—If we are able to release the contract, the contract will include scope A and scope B, so you will be able to see the differences amongst scope A against scope A revised. The differences would be clear. We have taken that on notice. If we are able to give the information, you will see quite clearly the differences between the two.

Senator LUNDY—Okay. In addition to that, can you provide an explanation to the committee of the differences in the scope, regardless of whether or not you provide us with the contract? If you can undertake to do that sooner rather than later, I would appreciate it.

Mr Yarra—Sure.

Senator LUNDY—In terms of the ongoing role that OASITO has—limited as it is, and who knows what happens next—are you under any obligation by virtue of the government’s acceptance of the Humphry review to have a probity plan or a probity auditor in place? I know you have not got one, but I am just asking whether there is any residual obligation out of those recommendations.

Mr Smith—There was no obligation as I saw it. That is why we terminated the contract arrangement, I think sometime in February, after the recommendations were accepted by government. We had no ongoing role in the tendering and contracting, which is where I think the best use of a probity auditor is—that is, issuing tender evaluation decisions and so on. Our role was one of providing advice, as we have been across before. So I took the view that we did not need a probity auditor for the sort of advisory role that we were undertaking.

Senator LUNDY—If you were requested by an agency or a department to handle that process for them or to be involved at a deeper level, would you see a reason to engage a probity auditor or would you think that is something the department should handle?

Mr Smith—I would have thought those departments undertaking tendering and contracting would find it useful and probably appropriate to have a probity adviser on large transactions. They would be spending lots of taxpayers' money. I think that is a good model. In most of our transactions on the asset sales side we have a probity auditor as a matter of course because these are incredibly large public interest and complex projects. I think, as a general rule, our office supports it. I do think it depends on the nature of the requirements you are dealing with. If you have small, low-level contracts, maybe you could not justify it. But certainly on significant projects, I would have thought it was good advice for people to look to have a probity auditor.

Senator LUNDY—Did Mr Marks ever produce a report that was of his initiation or did he only ever produce written documentation at your request?

Mr Smith—Did he ever provide us with unsolicited documentation? I do not know the answer to that. He certainly fulfilled his obligation under the contract to provide documents as he was required to. First of all, I do not recall that he ever did, but that is something that over 3½ years I would want to check for you. I just do not recall it, but we could check. It would be quite an exercise.

Senator LUNDY—I have not seen any evidence from Mr Marks or you over the years that his role was externalised to the degree where he did oversee your activities and provide reports that were not at your request but were an overseeing role. Do you know what I mean?

Mr Smith—Yes, I know what you mean.

Senator LUNDY—I do not think there is anything there. I want to ask you again whether that implies the degree of independence that you have claimed over the years—the virtues of having an independent probity auditor present through your practices. In fact, the contractual arrangement you have with him is not as independent as has been implied, and that is why I want to get a view from you about the status as adviser as opposed to auditor, perhaps using the definitional terms provided by the audit office yesterday.

Mr Smith—Yes. I understand that point, but I do need to make it clear that there is no implication on my side that it was anything other than independent. I know how it acted in reality and in practice. Mr Marks is a professional probity auditor who signs off on it, and his advice is made on his own judgments. I never had any cause to believe that he was doing otherwise. He actually performed that role with an incredible amount of determination and was very keen, willing and eager to bring forward issues that he thought were of concern in steering committee meetings. Never at any time did I feel that he thought he could not bring forward anything other than independent advice, and he did that very strongly on several occasions in those forums. So whether you call it a probity auditor or a probity adviser, I would have to say to you that the nature of the work that he did and the way in which he behaved in my view was absolutely independent.

Senator LUNDY—Do you have any instances that you are able to cite where you were perhaps dissatisfied with his work or his ability to fulfil his duties?

Mr Smith—Not at all. I did not quite always agree with some of the advices that he may have given us, but they were independent and we accepted them.

Senator LUNDY—Were there any situations when you did not accept his advice?

Mr Smith—Not that I recall.

Senator LUNDY—If you did accept his advice, as part of your processes and his independence, did you acknowledge formally—that is, in writing—that you were accepting and acting on his advice, or was there a verbal relay of information?

Mr Smith—When we went through a process we advised our minister of all the clearances from all our advisers—Shaw Pitman, Blake Dawson and the probity adviser—as appropriate. That is a standard process. When people put advices to me, they have to say what our advisers have said—whether to accept their advice, et cetera. That is a standard process that we now offer. Whilst I would not sit here and say categorically that it happened on 100 per cent of the occasions, it is our standard practice that, if an adviser gives an advice, we have to say that this conclusion is agreed by whomever.

Senator LUNDY—So you cannot recall any occasion when you did not agree with the advice?

Mr Smith—No, I cannot recall any occasion. My recollection is that there were none. I would have to trawl through literally thousands of files to indicate categorically.

Senator LUNDY—So you create a file when you receive advice and you formally acknowledge—

Mr Smith—It would have been on a project. We did each thing by project. Let us take for example cluster 3. There was a group of files, and all the probity stuff in relation to cluster 3 would have been on that. We had a contract administration file on the contract for Mr Marks, but that was a process thing. In relation to each project, all the probity advices would have been on the project files. If there was a particular issue arising out of a steering committee, it would be beyond that file. So it would be something that would require some effort for us to trawl through.

Senator LUNDY—I want to turn to the issue of the health tender, the leak that occurred and the involvement of, amongst others, the probity auditor in handling that process. Can you confirm the date of the final pricing of the health contract? I understand it to be early August.

Mr Whithear—It was 2 August.

Senator LUNDY—Are you sure of that?

Mr Whithear—Yes.

Senator LUNDY—Can you give me a time? Was it 6 p.m. or close?

Mr Whithear—Not off the top of my head. I could hazard a guess at 2 o'clock, but it is better to check.

Mr Smith—It would probably be more likely close of business—5 o'clock or something. It certainly was after the leak.

Senator LUNDY—I want to confirm some dates. Tenders closed for the health group contract on 15 February 1999. The first repricing round, if you like, was on 21 May 1999. The second repricing was on 22 June 1999. The probity breach occurred on 27 July 1999. The final pricing came in before close of business on 2 August 1999. Can you confirm all of those dates?

Mr Whithear—Certainly the later dates and the closing of the original bids. I do not have in front of me the dates of the repricings, but that jells with my recollection.

Senator LUNDY—Are you able to provide the committee with correspondence from Mr Hutchison to Mr Podger of the health department in relation to the particular leak? That letter would have been dated 5 August.

Mr Smith—It is my understanding that we have already provided that to the Senate estimates committee around May last year. We will check that. If we have not provided that, we will take it on notice for you.

Senator LUNDY—Previous evidence indicates that, as part of the course of action following that breach, you received advice from Blake Dawson Waldron that advocated a course of action for you to take. Can you advise us of the course of action?

Mr Smith—Senator, we did give that in incredible detail in another place, as you know. I do not think we have that chronology here. It is in *Hansard*.

Mr Whithear—I recall the date of the advice and that we acted in accordance with advice from the probity adviser and the legal advisers. I cannot walk you through the explicit content of that advice.

Mr Smith—Senator, are you able to get that from the estimates *Hansard* or do you want us to provide that again? Unfortunately, we do not have it here.

Senator LUNDY—I think I have previously requested copies of that advice but they have not been forthcoming—copies of the Blake Dawson Waldron advice to you.

Mr Smith—Can I clarify your request? What is your request now?

Senator LUNDY—I would like to request all documentation associated with the leak. I know I have requested that previously and had some difficulty getting it.

Mr Smith—I am advised that we gave you the Mr Hutchinson letter arising out of the 8 February 1999 session. We will have to take the rest of it on notice.

Senator LUNDY—In terms of that advice from Blake Dawson Waldron, I am particularly interested at the moment in whether or not Blake Dawson Waldron provided you with a formal clearance on whether or not the actual tender could proceed if their conditions were met, or whether it was left open-ended.

Mr Whithear—At the end of the process, in putting forward a recommendation to appoint the preferred tenderer, we obtained sign-offs from all the advisers involved in the process, to the effect that the selection was appropriate, the tender process was run appropriately, and there were no issues to suggest that this contract should not proceed to award.

Senator LUNDY—I know you have said that a number of times on the record, but I want to track through the process that was followed leading up to that point at which you can claim that was the situation.

Mr Smith—We will have to take that on notice. As I think we have said previously, we did seek legal and probity advice at the time to guide us through that period.

Senator LUNDY—Can you tell me whether or not specifically Blake Dawson Waldron indicated a course of action, whether or not that course of action was followed and whether that constituted the clearance?

Mr Smith—With respect to the former part, to the best of my understanding—I was heavily involved personally at the time—we were given guidance from the probity auditor and the lawyers as to how we should handle the matter. My understanding is that we followed that advice to the letter. Whether that was a formal sign-off or whatever, I do not know; we would have to check.

Senator LUNDY—You are the ones that have used the word ‘sign-off’, so we will come to that. I am still not asking about the probity auditor; I will come to that, too. I am asking specifically about the Blake Dawson Waldron advice—whether or not it was followed and whether or not your following it constituted their sign-off on the probity issue.

Mr Smith—I cannot answer the latter part, but with respect to the former part I am fairly confident that we followed their guidance to the letter. We would have to double-check that for you. Whether that constituted the second part, I am not sure; I would have to check that.

Senator LUNDY—Can you tell me what constituted what you have described as a sign-off by the probity auditor, as you recollect it?

Mr Whithear—There is a sign-off process for each of our transactions at the end of the process, particularly at the point of appointment of the preferred tenderer, being the significant step that it is. We seek an opinion from the legal probity and other advisers involved in those transactions that the process has been conducted appropriately, that it should proceed, and that the facts and the recommendation are correct, et cetera. That is broadly the intent of the sign-off. To pick up on your previous question, if we had not acted in accordance with the advice of

the legal advisers, they would have been unable to provide the final sign-off at the end of the process, which they did.

Senator LUNDY—Can you tell me what was asked of the probity auditor when you received the Blake Dawson Waldron advice and whether there was any correspondence from the probity auditor specifically referencing your actions following receiving the Blake Dawson Waldron advice?

Mr Whithear—In general terms, the request to the probity auditor was: what should we do and how should we handle this to preserve the integrity of the tender process? We received advice from him, and the probity auditor accompanied Mr Smith and me to visits to the—

Senator LUNDY—No, I will come to that—you have answered a question that I have not asked. I want to ask the same question again: did the Blake Dawson Waldron advice specify a course of action that then led to your seeking a particular opinion from the probity auditor as to whether that advice had been followed?

Mr Smith—If we could take this a bit sequentially, when we became aware of the breach we immediately sought in parallel advice from the probity auditor and from Blake Dawson. Those pieces of advice were received and a course of action was established and followed through. At the end of the tender process per se, we had a sign-off from both parties on the whole process. One was not dependent on the other; we sought them in parallel, if you know what I mean. We had—

Senator LUNDY—No, that is a good point. So the probity auditor's advice was unrelated to the advice you received from Blake Dawson Waldron?

Mr Smith—Was this the same incident?

Senator LUNDY—The same incident—

Mr Smith—Sought their views—correct.

Senator LUNDY—but did not refer to the legal advice.

Mr Smith—My best understanding is that we said to Mr Marks, 'We want your advice on how to proceed.' We said to Blake Dawson, 'We want your advice on how to proceed—any legal issues that we need to be aware of.' We had those two pieces of advice and established a way ahead. I will have to absolutely check to make sure that there was no cross-connection that I cannot recall, but we asked for those two pieces of advice separately; they came in parallel around the same time. That was put into the pot for deciding how we were going to proceed. My recollection is that one was not dependent on the other.

Senator LUNDY—So the Blake Dawson Waldron advice was, 'It's okay if these courses of action are followed and these outcomes are secured'—then their tick was on it?

Mr Smith—Let me check that for you, because you obviously are keen to understand exactly the nature of that.

Senator LUNDY—Yes.

Mr Smith—So let me check to be sure that we have that right.

Senator LUNDY—It is important for several reasons. One, of course, is going back to the question of the independence of the probity auditor; the second is in terms of what constituted an autonomous signing off and the activities that you undertook that led to that subsequent signing off at the end of the process. You have already got on notice requests for all documentation from Blake Dawson Waldron and from the probity auditor, the letter from Mr Hutchison that we are trying to track down, and perhaps the documentation that constitutes the final sign-off, which Mr Whithear mentioned, at the conclusion of that health group tender process as well.

Mr Smith—We will take all that on notice.

Senator LUNDY—I know, by virtue of previous hearings we have had, that the legal advice, the probity advice or whoever's advice suggested that you meet with the competing bidders, given the breach related to the inadvertent release of sensitive information to competitors, and explain to them the violation that had occurred. My memory tells me that, in conducting those meetings, agreement was given by both—was it by CSC and EDS?

Mr Smith—We have never confirmed the participants—

Senator LUNDY—Oh?

Mr Smith—Let me say we spoke to each of the bidders.

Senator LUNDY—Right; I understand that in fact they had agreed that the process should continue but that you never actually got that in writing; is that the case? I know I have asked that before, and I am pretty sure you said you never got written confirmation from those CEOs to the effect that they were happy with that.

Mr Smith—It is my recollection that I, Mr Marks and Mr Whithear visited the three principals and talked them through the issues. The two bidders other than the one that had the information disclosed to it said 'unfortunate but happy to proceed' and continued to proceed by participating in the process by putting in repricing. As to whether they confirmed that in writing, again I would have to check that for you. My recollection though is that they did not.

Senator LUNDY—I think that is consistent with the evidence we have on this to date. Would you take it on notice to double-check and provide any correspondence either to or from your office that could shed a bit of light on that?

Mr Smith—Sure.

Senator LUNDY—The next question I have in that regard relates to the dates of those meetings, and, again, this may well be already in *Hansard*. Did those meetings with those other bidders actually occur prior to 2 August?

Mr Whithear—On 30 July.

Senator LUNDY—Those meetings were on 30 July?

Mr Whithear—Yes.

Senator LUNDY—When was the health group notified? Did you notify the secretary? Now I think I am relying on evidence heard from the department of health itself. From memory, you advised Mr Podger?

Mr Whithear—Yes, on 2 August.

Senator LUNDY—So it was after you had acted on the advice of the legal people and had the meetings?

Mr Whithear—That is correct.

Senator LUNDY—Was there anything contained in the legal or probity advice that suggested whom you ought to advise beyond just the bidders involved; that is, ministers, higher-uppers and other people?

Mr Whithear—Not that I recall. We have explained whom else we did advise, but I do not recall that being subject to specific advice from the lawyers or the probity adviser or auditor.

Senator LUNDY—Sorry, would you say that again.

Mr Whithear—As I think we have explained to you before, we briefed the relevant chief executives as well as wrote to them—and, of course, we briefed the minister on the issue—but I do not think any suggestion was contained in the professional advisers' advice as to whom else we should contact beyond the bidders.

Mr Smith—Senator, we should check that though. It is possible that they said, 'Make sure you advise the key stakeholders' or something, but it is not something that I recollect. Normally, that would be a judgment of ours. Mr Hutchison quickly acted and spoke to all the key stakeholders.

Senator LUNDY—Can you give me a date when he would have spoken to the minister for finance about it?

Mr Smith—No, we would have to check that. Did we not give that information previously?

Mr Whithear—On 28 July the minister's office was advised by telephone.

Mr Smith—That would be in *Hansard* I suspect.

Senator LUNDY—After the breach, given the final pricing was about a week later on the 2nd, can you tell me whether any changes in industry development commitments occurred within the tender?

Mr Whithear—In the repricing?

Senator LUNDY—After the leak but before the close of the final pricing.

Mr Smith—That is something we would simply have to check. Repricing was not to do with industry development. Whether that changed subsequently would be a matter of fact we could check for you.

Senator LUNDY—I think we already have this on the record, but I am seeking clarification. Between the leak and the closing of the final prices were there any changes in the prices received?

Mr Whithear—The prices were to change, the tenderers had an opportunity to change the prices on 2 August, and did so I think in most, if not all, cases. There was some revised information produced by the relevant departments as to what they sought—maybe some changes around the edges of service levels, et cetera—and that attracted different pricing from the bidders.

Senator LUNDY—So the only previous pricing you had on record was what you received on 22 June?

Mr Smith—That is something Mr Whithear said we would have to check on, but the repricing phase that we were involved in at that time was because there would have been changes required to bring it to normalisation, if you like, so it was through a normal repricing and we would have expected prices to move. We will double-check when the last repricing was done—I think you said on the 22nd.

Senator LUNDY—That is my understanding. I know you are going to clarify that.

Mr Smith—We can check that for you.

Senator LUNDY—Are you saying all of the prices changed between 22 June and 2 August?

Mr Whithear—When I say all the prices, there are hundreds, if not thousands, of price points in these transactions. As you might appreciate, I cannot say that every one of those changed by any means, but there were different results.

Senator LUNDY—I was thinking in terms of the three—the overarching—

Mr Smith—I do not recall that there was anything between the 22nd and the August repricing, but we could check that for you.

Senator LUNDY—What you received between those dates?

Mr Smith—I do not think there is, but let us check the figures. We can say that there was a repricing in August, but we need to check back behind that.

Senator LUNDY—In terms of the post-leak issues, can you tell me who made the decision as to how far that should be notified, both within the bureaucracy and within the ministerial offices? I know the minister's office was notified and a departmental secretary involved with the health group was notified.

Mr Smith—As was the head of the Health Insurance Commission, as was the head of Medibank Private.

Senator LUNDY—Right, all of the heads of the health group. I am trying to work out where you got guidance from in terms of who you told and who you did not?

Mr Smith—You asked us a question about whether that was contained in probity and legal advice, and we said we would check that for you, but it is a question of judgment. The chief executive at the time, Mr Hutchison, made a judgment, which seemed appropriate to me on reflection, that the three key stakeholders—the minister's office, the probity auditor and the legal advisers—would be advised. Beyond that I do not know who else you would advise, but at the time Mr Hutchison took the view that he had to advise those key stakeholders, and we did accordingly.

Senator LUNDY—Did Mr Hutchison, as far you are aware, request that that information not be more widely disseminated or that it be kept confidential within that circle that had been nominated?

Mr Smith—We will need to check, because I recall the drafting letter was along the lines 'You have your accountabilities, and I do not want to interfere with your accountabilities. It is your judgment call, but it would be important in Mr Hutchison's judgment that this be contained in terms of how widely you publicise the leak.' I do recall quite expressly him saying, 'You have to advise whomever you feel appropriate within your own accountabilities, but from our perspective, in terms of ensuring that the media and other people involved externally did not try to undermine the process, this containment would be appropriate,' or something along those lines. But, quite expressly and rightly, it was put in there that each of the agency heads had to determine their own accountabilities in deciding whom they would advise—their own ministers, et cetera.

Senator LUNDY—What was the justification for that? How was it expressed? I have not got the letter in front of me. What were the stakes for the government if the health group bid fell over as a result of this leak?

Mr Smith—That is hypothetical. The reality is that it did not; it proceeded, the parties continued to participate, our advisers signed off the process and we had what I regard as a successful outcome. So it is hypothetical to speculate what might have happened had it not.

Senator LUNDY—At the time when you secured the agreement from the other CEOs who had been, I suppose, victims of the violation, were you confident that the Commonwealth was protected from any litigation which may arise after the closure of tenders and awarding of the contract? Do you have any written legal advice to that effect?

Mr Smith—I do not recall expressly, but I would have thought that the legal advice we got would have canvassed issues of potential litigation. I would be surprised if it did not. As we have actually been around, not on this issue but in relation to other issues in this committee and others, you never categorically say people will never take litigation action against you. In any process it is the right of parties involved to take litigation action against you. You cannot predict with confidence when and how people might do that, but I would be surprised if the lawyers did not canvass possible issues of litigation as a result of the breach.

Senator LUNDY—You have certainly been consistent in raising it as an issue of concern in the provision of information to this committee. Your observations now are interesting. I place on notice a request again for that letter from Mr Hutchison relating to the leak, just in case it did not actually emerge in previous requests for records.

Mr Smith—Would it be more appropriate if we just gave you a copy of the answer and the attachment we gave last time? We could send that through to Ms Donaldson.

Senator LUNDY—Certainly, if you have it there.

Mr Smith—We will get it from the office and send a copy of the response at the time.

CHAIR—There may be some other questions that the committee will want to put in writing to you, and we realise that you will take them on notice and provide us with answers. There is one issue of concern to the committee, however, which you may be able to answer for us now, and that is: what will happen to all of the records and materials currently held by OASITO when OASITO's role is wound up? Who will take over responsibility for the management of those documents and records?

Mr Smith—My expectation is that we will hold the documents for some time, probably six to 12 months, in our own premises. Some of that documentation may be more appropriately transferred to the Department of Finance and Administration, who have an ongoing transition responsibility after 30 June. Beyond that, it would be under the Archives Act and kept as Commonwealth records through the archiving process. But it seemed to me to make some sense for us to keep some of those files and our information handy in case agencies rang up for clarification on some of the contracts, or committees such as this one wanted information over the next six to 12 months. But we would then run through the normal archiving process under the Archives Act.

Senator LUNDY—Can I just ask one more question. It relates to the engagement of Blake Dawson Waldron as OASITO's legal adviser. Can you confirm that Blake Dawson Waldron did not act for any of the CAC agencies within the group?

Mr Smith—At the time of advising us?

Senator LUNDY—Yes.

Mr Smith—We would have to check that.

Mr Whithear—They were the Commonwealth's legal advisers for the outsourcing transactions.

Senator LUNDY—That is the point. They were the Commonwealth's advisers. But we have asked the question of agencies as to what legal advice they have engaged, and they have from time to time nominated the fact that Blake Dawson Waldron was engaged by the Commonwealth and that that constituted legal advice. Yet we have heard from you very specifically that Blake Dawson Waldron was engaged by OASITO as part of those negotiations.

Mr Smith—You just need to clarify the question so that I can give you the right answer. Whether the CAC agencies advised BDW for other reasons—

Senator LUNDY—No, that is not the issue. It is whether, under their contract with you, they were perceived to be or indeed were acting on behalf of CAC agencies through the course of this whole process.

Mr Smith—My recollection is that some of those CAC agencies had their own legal advisers. Whether any of those agencies relied on advice that was provided to us in the context of the contract with us is something that we would need to check. But I am aware that some actually engaged their own independent legal advisers. I would have thought it was appropriate for boards of CAC agencies to take a decision to engage their own advisers, because they are a separate legal entity. It would be equally appropriate for them to take the decision to rely on Blake Dawson Waldron's advice, but we would have to check that for you.

Mr Whithear—Or they may indeed just have observed the Commonwealth acting or making certain decisions based on legal advice. They were entirely free to make their own decisions, which may have been the same and often were.

CHAIR—Mr Smith, if we put some questions in writing to you, we will nominate a date for return of answers. If there is any difficulty in meeting that date, can you liaise with the secretariat. We have a tabling time of the end of June, so it is going to be a bit short.

Mr Smith—It would depend on how many questions there are, but we have four or five people there ready and waiting to assist, so we will do our very best.

CHAIR—Thank you. That concludes this part of the hearing.

[2.25 p.m.]

BOWEN, Mr Phil, General Manager, Property Group, Department of Finance and Administration

BOXALL, Dr Peter, Secretary, Department of Finance and Administration

CLOUT, Mr Jamie Kendall, Branch Manager, Finance and Banking Branch, Department of Finance and Public Administration

HUTSON, Mr Jonathan, Group Manager, Department of Finance and Administration

PRIOR, Mr Phillip, First Assistant Secretary, Department of Finance and Administration

CHAIR—Dr Boxall, do you wish to make an opening statement?

Dr Boxall—No, thank you, Mr Chair.

CHAIR—I go back to an issue which we have dealt with previously relating to the inquiry conducted by Mr Humphry and the records which were generated or held by that inquiry. We were advised on 7 February or thereabouts—and this is a summary of the information—that the submissions made to that inquiry had been returned to the submitters by Mr Humphry, that had been based on legal advice from AGS, they were not Commonwealth records and you had indicated that you subsequently sought legal advice from Phillips Fox in relation to the same matter. We have received, as a result of this inquiry, a copy of the letter of appointment of Mr Humphry by the minister, which clearly states in paragraph 5 that, ‘all material created, derived or provided to you for the purpose of your review shall be and remain the property of the Commonwealth’. It states, ‘Copyright in your report and any drafts shall be the property of the Commonwealth and all information acquired by you in the performance of the review is confidential and must comply with the provisions of the Crimes Act 1914 and the Privacy Act 1988’. Is the document that you provided to us the document that was signed by Mr Humphry?

Mr Clout—The document that was signed by Mr Humphry in return was the deed of undertaking attached to that letter of appointment, which I understand you have, which we provided on Wednesday afternoon.

CHAIR—Yes, we have the letter of appointment.

Mr Clout—The letter of appointment, I understand, which set out the terms of Mr Humphry’s engagement, was agreed verbally by Mr Humphry.

CHAIR—That was agreed to by Mr Humphry?

Mr Clout—Yes.

CHAIR—Can the deed be made available to the committee?

Mr Clout—I would have to take some advice on that. Can I take it on notice?

CHAIR—Yes. We would strongly suggest that it be made available, considering the level of information that we have. Dr Boxall, I turn first to the advice to you from Phillips Fox. I understand, from reading the advice, that Phillips Fox were not advised of the contents of the letter of appointment of Mr Humphry when they provided their legal advice. Can you tell the committee why they were not advised of the letter of appointment?

Mr Clout—I was the officer who commissioned the legal advice from Phillips Fox. I did that so that I could prepare a response for the Minister for Finance and Administration to your letter of 23 January asking for the copies of the submissions. At that stage I was unaware of the contents of the letter of appointment.

CHAIR—You commissioned the advice from Phillips Fox?

Mr Clout—That is correct.

CHAIR—From the discussion we had on Wednesday 7 February, Dr Boxall, I thought that you indicated that you had verbally requested the advice. You said, ‘We briefed them orally.’ Who briefed Phillips Fox?

Mr Clout—Which page are you looking at there, Mr Chairman?

CHAIR—It is page 221 of the transcript of the estimates committee of 20 February.

Dr Boxall—Senator Campbell, where on page 221 is the reference to which you are referring?

CHAIR—It is your second response. Just underneath Senator Conroy’s comments, you respond, ‘We briefed them orally.’

Dr Boxall—It is on page 220 of our copy, but I have found it. An officer briefed Phillips Fox under the instruction of Mr Clout.

CHAIR—Further down the page, Dr Boxall, as part of this discussion you go on to say that Phillips Fox did not see the letter of appointment. You say:

We have not seen it, and we did not give it to them.

That was on 20 February. When did you see the letter of appointment?

Dr Boxall—I do not think I have seen it at all.

CHAIR—Can someone advise us as to when it came into the department’s hands? The department provided us with a copy of it.

Mr Hutson—One of the questions on notice at the last hearing related to a catalogue of documents which had been held in the records of the Humphry review. That document was located among those other documents in the process of developing that catalogue.

CHAIR—It was located among those documents?

Mr Hutson—Yes. But at the point at which the committee was advised—on 20 February—certainly nobody at the table that I was aware of had seen that document.

CHAIR—Mr Prior, were you part of the secretariat to the Humphry review?

Mr Prior—Yes, I was.

CHAIR—When did you see this document?

Mr Prior—I must say that I have not actually seen the document.

CHAIR—You have not seen the document?

Mr Prior—I cannot recall seeing the document.

CHAIR—As part of the secretariat of the Humphry review, you signed various pieces of documentation authorising payment to Mr Humphry?

Mr Prior—Yes.

CHAIR—On what grounds did you authorise the payment to him?

Mr Prior—That he was appointed to do an independent review for the government.

CHAIR—What documentation had you at your disposal that allowed you to authorise those payments?

Mr Prior—I was delegated the authority to sign for him carrying out the work.

CHAIR—Who delegated you?

Mr Prior—The chief executive instructions, within the normal process of the department.

CHAIR—I do not want to be pedantic about this, but under the FMA you do have to have some form of authority to authorise payment other than just an instruction. You say that you had no authority to authorise payment.

Mr Prior—I had authority to authorise payments, as far as I was aware.

CHAIR—From where did that authority derive?

Dr Boxall—Mr Prior had authority under delegations of the chief executive instructions within the department. Several officers in the department are authorised to make payments. It is delegated to them. He was delegated, and in this instance he was the one who made the payments.

CHAIR—Yes, I can understand that part of it, Dr Boxall, but how was Mr Prior provided with advice that Mr Humphry was on the Commonwealth payroll, that this was what he was to be paid, and that he was authorised to make those payments?

Mr Clout—The Financial Management Accountability Act, regulation 9, provides that approvers with the appropriate delegations can approve purchasers so far as they are satisfied that it is consistent with government policies and they are satisfied that that is an efficient and effective use of the public money. There is no requirement for Mr Prior in that situation to have been aware of the details of a particular contract.

CHAIR—But how does Mr Prior satisfy himself that it is in accordance with Commonwealth policy?

Mr Clout—There was sufficient material in the public arena by that stage, with public announcements in November, for him to have been quite satisfied. I imagine that paying Mr Humphry to conduct the review as he did was consistent with the policies of the government.

CHAIR—Mr Clout, the Auditor-General appeared here yesterday and I specifically asked him if a press release would be satisfactory evidence for the payment of public moneys, and he specifically said not.

Mr Clout—I am afraid I cannot comment on what the Auditor-General might have told you yesterday. I am not aware of what he told you.

CHAIR—Before approving the payment of an account, the certifying official must ensure that the expenditure is correct as to amount. Dr Boxall said that he was doing it under the chief executive instructions. Dr Boxall, the chief executive instructions that appear here are the standard ones. Are they the same ones that apply within the Department of Finance and Administration?

Dr Boxall—I do not know, Chair, because I am not sure what you have there.

CHAIR—I have regulation 9 from the Financial Management and Accountability Act.

Dr Boxall—The chief executive instructions issued in the department are appropriate for the department, and I should imagine, without knowing what you have there, that they do not deviate much from the standard. The bottom line is that there was a budget prepared for the secretariat, and Mr Prior used his delegated authority to make payments against that budget. Moreover, Mr Prior had access to a departmental brief which spelt out the terms and rate of pay—particularly the rate of pay—for Mr Humphry. So Mr Prior had sufficient written material in front of him to exercise his delegated authority.

CHAIR—Can we have a copy of the written material that was provided to Mr Prior?

Mr Hutson—The relevant document I think you are actually referring to is the accounts payable form, which was provided to the committee on Wednesday, regarding purchase order 0000941. Mr Humphry's fees for the IT outsourcing review from 17 November until 29 De-

ember were authorised by Mr Prior, following a recommendation by a junior officer who prepared and checked that the payment was correct.

CHAIR—Yes, I understand that. But we also saw it in the documents you provided on Wednesday, and we saw in 1.5 that material that supported the delegate's decision, as required under regulations 9 and 13. In response to that you said that no documents could be found.

Mr Hutson—There are not any documents regarding that which we were able to find. Can I say that regulations 9 and 13 really are at a different time in the process from this accounts payable. This accounts payable thing follows regulations 9 and 13, but it is actually regulation 13 which provides that in entering into a contract one must be aware of the implications of regulation 9. The contract, if you like, is really that letter of appointment, which you have.

CHAIR—But Mr Hutson, with all due respect, if the department does not have the letter of appointment, how can you initiate all of these other matters? How do you know what amount of money to pay Mr Humphry?

Mr Hutson—I would come back to the point that I made earlier—that is, that no-one at the table, at the earlier discussions on 7 and 20 February, had seen that document. Quite obviously, given that it was in the records of the secretariat, people who worked at the secretariat, other than Mr Prior, must have seen it. What process was undertaken in respect of checking this particular accounts payable form, I am not aware. In any event the point was that at least there has been no evidence to the contrary that the payment is anything other than entirely correct. So in making this decision, Mr Prior authorised the payment under the delegation, which we discussed earlier. He was relying on work of junior officers who would have been required to check to make sure that the payment was appropriate. I do not think there is anything inconsistent with the evidence which has been provided.

CHAIR—You said that people in the secretariat must have been aware of the letter. Mr Prior said on 7 or 20 February—I am not sure—that he was not aware of the contents of the letter, that he had never seen the letter.

Mr Hutson—I think that we would probably like to review the *Hansard* on that. My recollection is that at one point—

CHAIR—It is on page 219 of a copy I have. It could be page 218 in a copy you have. In response to a question from Senator Conroy, Dr Boxall, you said:

... I have not seen and I do not think anybody else has seen the actual letter of appointment of Mr Humphry.

Then Mr Prior said:

Certainly he did not come to me and say, 'Put this on file.' It was his letter. Senator Conroy, in six weeks—very busy—I can tell you that if Mr Humphry had shown it to me, I have no recollection of that. It was extremely rushed.

Mr Hutson—That is the reference I was looking for, Senator, yes. I think that Mr Prior's evidence shows pretty clearly that he was aware of the general content of the letter. At one point Senator Conroy asked Mr Prior, 'Were you involved in the preparation of the letter?' Mr Prior's

answer was, 'Absolutely yes.' I think I can quote him in that respect. That is at the bottom of page 217. If I can go further, there was a question from Senator Conroy and an answer from Mr Prior, which read:

Senator CONROY—So you wrote yourselves a letter?

Mr Prior—We wrote ourselves a letter ... As far as I am aware, the department does not have a copy of that letter.

As I said earlier, on 20 February, that was entirely correct. As I said, that was part of the review process of the documents that were held by the committee secretariat that revealed that we did have a copy of the letter.

CHAIR—Mr Hutson, can you tell us when this copy of the letter came into the hands of the department?

Mr Hutson—I believe I can, Senator, because it is actually a faxed version, and you will see the fax date at the top of it. That was not into the hands of the department; that was into the hands of the secretariat.

CHAIR—This fax is dated 21 November.

Mr Hutson—Yes.

CHAIR—So the secretariat had it for that length of time and Mr Prior did not see it?

Senator LUNDY—Or was not aware of its existence.

Mr Prior—As I said before, we were party to being around Mr Humphry when he was putting forward his conditions of engagement. The AGS were with us at that time. I was certainly in the room, and a part of that general discussion. I was not personally particularly focused on constructing that with Mr Humphry. That was a matter for Mr Humphry to work through and to put forward what he was looking for in terms of what he needed for his appointment. That went up to the minister. My understanding, from communication with the minister's office, was that it had been signed and sent to Mr Humphry. I had not seen that letter then during the course of the review.

I do recall that Mr Humphry wanted the original or a copy of the letter of appointment. I do recall asking my PA at the time to organise finding where it was. She searched through the department and could not find it. As far as we were aware, it did not come back to the department, which I felt was strange, because it went up in the normal process under a ministerial. We assumed that it had been sent directly to Mr Humphry and had not come back to the department because it was an appointment letter between the minister and Mr Humphry. We operated on that assumption for some time but at some point Mr Humphry said he did not actually receive that letter or that he wanted a copy of the letter—something along those lines. I asked my PA to ring the minister's office to organise to get to him a copy of that letter. Those may well be the facts you are now looking at.

Senator LUNDY—The document that has been provided to us does have the fax index at the top of each page, but it actually starts on page 5.

Mr Hutson—Yes.

Senator LUNDY—Can you tell me whether a cover sheet accompanied this fax, whether that was on file and what were the previous four pages.

Mr Hutson—I can tell you that the other pages were a copy of the brief to the minister.

Senator LUNDY—A copy of the brief to the minister from whom?

Mr Hutson—That was a brief from Mr Prior.

Senator LUNDY—But this is a fax to the secretariat from Mr Fahey's office at Parliament House. So they were faxing you a ministerial brief?

Mr Hutson—No, they were faxing the secretariat. They faxed back a copy of all the documents that had been in front of the minister.

Senator LUNDY—So a ministerial brief came in to the secretariat but was not presented to Mr Prior?

Mr Hutson—Yes, I understand that was the case.

Mr Prior—I can answer that. I honestly did not look at it. My concern was that I had discussions well back in the original process to understand that Mr Humphry would be paid \$600 a day—

Senator LUNDY—I am not asking questions about that now. I am asking questions about the previous four pages of this particular fax. If a ministerial brief had come in to your office, it would have been the first three pages, presumably with a cover sheet. Who would have been on the cover sheet? Who would it have been attentioned to?

Mr Prior—As I say, I asked my PA to organise for the appointment letter to get to Mr Humphry. Presumably she has done that. One of the other team members may well have received it and filed it. My answer continually to you, and quite rightly, is: I did not personally look at it. I did not deal with it.

Senator LUNDY—I am just inquiring as to the administrative processes within the secretariat as to why a ministerial brief would have come through on a fax which included this letter, which is one of quite a number of pages. In total, there are at least nine pages of a fax, of which we have got pages 5 to 9. I am curious as to whether it came in attentioned to you and for some reason you did not get it.

Mr Prior—No, it would not have come to my attention. In our administrative arrangements, I was not playing that role to manage the paperwork and paper flow, so I could—

Senator LUNDY—No, I know, but would a ministerial brief have come through just for filing?

Dr Boxall—It is a return of the ministerial brief.

Mr Prior—It is a return of the one that went out.

Dr Boxall—It is the original one that went out being returned. It is not a new document.

Senator LUNDY—No, I appreciate that. I am presuming as much, if it has been faxed from the minister's office, as opposed to the minister's office. What I am curious about is whether you have the cover sheet of this fax available to supply to the committee, because I want to see who it is addressed to.

Mr Hutson—We do not have it with us, Senator.

CHAIR—As I understand what you are saying, Mr Prior, you authorised all those payments to Mr Humphry, and associated expenses, on the basis of the information that was in the public arena.

Mr Prior—No, I based it on information—being my staff who were working for me—and also my knowledge of my discussion with the minister's office at the time of appointment that I understood that he was to be paid a certain amount and to be paid for particular outgoings.

CHAIR—But the certain amount that you understood could have been renegotiated at the point of negotiations with the minister's office and Mr Humphry.

Mr Prior—It could have been, but it was prepared by a staff member, so I—

CHAIR—What documentation did the staff member use to determine the \$600 or whatever it was?

Mr Prior—I would assume they would have had access to knowledge about the terms of payment. I just don't—

CHAIR—But how would they have that knowledge?

Mr Prior—The secretary certainly had the letter of appointment from November. I cannot recall the date of payment of Mr Humphry, but it was after that date when he finished the job.

CHAIR—No, you made payments progressively to him—December, January, February.

Mr Prior—Yes, but December is after the date of the fax back into the secretariat of the letter of appointment.

CHAIR—Yes.

Mr Prior—Is that right?

CHAIR—Yes. There is a whole series of payments made over a period of time.

Mr Hutson—There are a whole series of payments, but Mr Humphry's fees were paid in one payment.

Mr Prior—Yes, that is what I understand.

CHAIR—And associated expenses.

Mr Prior—Yes, but his associated expenses—that is right, yes.

CHAIR—Including the payment for legal advice?

Mr Prior—Correct.

CHAIR—On what grounds did you make the payment for legal advice?

Mr Prior—On the grounds that he would have been entitled to engage consultants to support the secretariat, which was again part of the terms of his appointment.

CHAIR—That was an assumption?

Mr Prior—In setting up the secretariat—in previous evidence I have given—I did discuss with the minister's office the basis of appointment and other logistics of establishing the secretariat. One of my staff members worked with the AGS and Mr Humphry in finalising the terms of engagement, and that staff member then was knowledgeable, as far as I was aware, through the course of the secretariat, of the terms of appointment. No, I was never advised that the terms of appointment had changed. If I look at the letter of appointment now, if they have changed, then they have changed, but I was not aware that they had changed.

CHAIR—So you authorised all these payments based on an assumption that your staff member had access to the appropriate information?

Dr Boxall—That is correct, and that is how we work in Finance. Staff members do not sign off documents that they have prepared unless they have a good basis. So Mr Prior relied on his staff members to do the job. They did the job, they put up the material to Mr Prior, and Mr Prior signed it off, because, first, he trusts his staff, as do I; and, second, the material that was being put up to him was consistent with his understanding of the arrangement.

CHAIR—Who would be regarded as an approver in the Department of Finance and Administration, Dr Boxall?

Mr Hutson—For the purposes of regulation 9?

CHAIR—Yes.

Mr Hutson—This is an issue which the Financial Framework Group spent some time looking at. The term ‘approver’ is a very broad term. Most of the Financial Management and Accountability Act refers to the term ‘official’, but regulation 9 is cast somewhat more broadly than that. I can give an example in this particular case. If you look at regulation 13 through to regulation 9, I suspect the ‘approver’ of entering into the contract was actually the minister, because he signed the letter of appointment.

CHAIR—He certainly did, and he approved the appointment.

Mr Hutson—That is right.

CHAIR—That was not the question I asked. I asked: who in the Department of Finance and Administration are the people who would fall into the category of approvers in accordance with that regulation?

Mr Hutson—That is a fairly wide range—

Dr Boxall—Anybody who has a delegation can sign payments, so they can approve and sign them—and they are held accountable.

CHAIR—I will ask the question again: who, within the department generally, has all the delegations?

Dr Boxall—We have a list here, which we keep, of staff members who are delegated to make payments. As we have explained, Mr Prior was one of the staff members who was delegated to make a payment for the secretariat for Mr Humphry.

CHAIR—In respect of that issue, was the staff member who prepared the documentation for Mr Prior to sign an approver?

Dr Boxall—No. As you have seen from the material that has been given to you, staff members prepare but cannot authorise or sign payment. That is done by the authorising officer, and the material you have been given was authorised by Mr Prior. That is how the system works: we do not have everybody in the department approved to make payments; only certain people are approved. But material is prepared by their staff for them to sign, and that is exactly what happened in this case. There is no departure in this case from what normally happens in the Department of Finance and Administration—nor, I would imagine, from what normally happens in other government departments under the new FMA Act.

CHAIR—Dr Boxall, I again ask the question in respect of this letter of appointment. When did people in the department, as opposed to the secretariat, become aware that this letter of appointment existed?

Mr Hutson—I think I have already answered that question. It was in the course of the preparation of the answers to this committee and to the legislation committee.

CHAIR—Can you put a date on that?

Mr Hutson—I do not have a date on it. I am sorry. I recall the issue of the letter of appointment coming up, someone showing it to me and me saying, ‘Oh, this is a bit interesting.’ But I do not recall a date, I could not tell you a date and I do not have any record of the date.

CHAIR—Were the contents of this letter drawn to the attention of Phillips Fox, who provided you with the legal advice?

Mr Clout—No, they were not.

CHAIR—Why not?

Mr Clout—The advice that we sought from Phillips Fox in January was for the specific purpose of drafting the letter for the minister to send back to you. At that stage we acted on that advice, and there did not seem to be any point in spending further public money simply to find a view that we were not going to action in any way.

CHAIR—In the advice that you received from Phillips Fox, they specifically said, on page 4, point 14, ‘We are instructed to assume that the letter of appointment contains no such provisions.’

Mr Clout—That is correct, Senator. I actually instructed them to make that assumption.

CHAIR—But how did you know that?

Mr Clout—I think that the assumption was quite reasonable because I did not have any knowledge of the letter of appointment or of the terms of the letter of appointment when I commissioned the legal advice. At that time logic suggested to me that either the letter of engagement was not specific or, if it was, Mr Humphry had obtained his own legal advice.

CHAIR—Why would you not draw the opposite conclusion? On what basis did you have to draw that conclusion?

Mr Clout—Because to make the opposite assumption would assume either that the letter was specific, in which case it would be strange to understand why Mr Humphry behaved the way he did, or that Mr Humphry had sought his own legal advice.

CHAIR—Did you ask Mr Humphry?

Mr Clout—No, I did not speak to him.

CHAIR—Did you ask the members of the secretariat?

Mr Clout—I understood at that time that Mr Humphry had sought his own legal advice.

CHAIR—Did you ask the members of the secretariat whether there was anything in the letter dealing with the issue of Commonwealth records?

Mr Clout—Yes, I did.

CHAIR—And they advised you?

Mr Clout—That they were not aware of anything in the letter that dealt with that.

CHAIR—Who provided you with that advice?

Mr Clout—It was an officer of the secretariat.

CHAIR—Was it the same person who prepared the accounts for signing?

Mr Clout—No.

CHAIR—Mr Prior was not consulted?

Mr Clout—I did not consult Mr Prior personally.

CHAIR—Were you consulted, Mr Prior, by the officer in the secretariat who provided Mr Clout with the advice.

Mr Prior—I am not sure of the exact timing. If I could help you, there was a time when one of my team members—this is after the Humphry report was finalised—we went back to the AGS to clarify the point that was being raised about the AGS advice. That officer certainly talked to me and we took counsel with Mr Humphry. So, if it was around that time, that might have been part of the consultation process.

CHAIR—Were you aware of the provision in the agreement on Commonwealth records?

Mr Prior—I am now aware of it, yes.

CHAIR—Were you at the time?

Mr Prior—At the time when we were constructing the letter of appointment, I certainly was aware of it, yes.

CHAIR—Would you have advised the officer who consulted with you to that effect?

Mr Prior—Yes.

CHAIR—They provided no advice to you?

Mr Clout—No, Senator.

Mr Prior—I thought we were talking about whether we advised Mr Clout that the letter contained specific reference to Commonwealth records. I just want to clarify that.

CHAIR—I am trying to establish whether the officer whom Mr Clout consulted had consulted you in respect of the letter and whether that officer would have been aware of the contents of the letter of appointment.

Mr Prior—No.

CHAIR—He didn't?

Mr Prior—Not about that particular issue, no.

CHAIR—Would the officer who spoke to Mr Clout have been aware of the contents of the letter of appointment?

Mr Prior—The officer involved was not party to the construction of the contract at that time; he was quite separate to all of that.

CHAIR—Was he aware of its contents?

Mr Prior—This is what I am saying about timing. He was certainly part of the process of us going back to the AGS in terms of understanding what their legal advice meant in terms of getting a second opinion.

CHAIR—The AGS provided the opinion before Phillips Fox.

Mr Prior—Yes, but that was a different officer that they provided their written advice to. It was a different team member.

CHAIR—But you said this person would have been involved in the going back and forward to the AGS.

Mr Prior—At the second set of advice.

CHAIR—At the second set of advice?

Mr Prior—Yes. Mr Humphry responded to the secretariat to say that we had been back to the AGS to clarify their earlier opinion. The officer whom I spoke to about that was not the officer at the time that the AGS gave their first opinion when they were present with the secretariat.

Senator LUNDY—Can I ask a question about the timing of the preparation of the response to questions on notice by the secretariat and what date those answers to the questions on notice were provided to the minister's office for sign-off.

Mr Hutson—I do not have that information.

Senator LUNDY—Surely Mr Prior would have compiled the responses to answers to questions on notice, within the secretariat.

Mr Hutson—All of the questions on notice were prepared in my group. I do not have for you information on when they were provided to the minister's office.

Senator LUNDY—Can you give me a ballpark time? Was it two weeks ago, was it a week ago, was it three days ago?

Mr Hutson—In respect of which set of questions? Senator, there have been a few.

Senator LUNDY—Specifically the letter that was found.

Mr Hutson—Wasn't the letter requested at the estimates committee rather than at the references committee?

Senator LUNDY—Quite possibly. Either way, I want to know when the answer to the question with respect to the letter having been found was forwarded to the minister's office.

Mr Hutson—I really do not think I can help you with that. The question would have been asked on 20 February, and I cannot help you beyond that at this stage.

CHAIR—Was it within a week of 20 February, was it last week, was it a month ago?

Mr Hutson—Perhaps I might add that the internal process within Finance is that my group would not provide the questions directly to the minister's office; they go through a central coordination process. So I would not be aware of that date.

Senator LUNDY—Perhaps Dr Boxall can shed some light on when the collection of answers to questions on notice was forwarded to the minister's office.

Dr Boxall—I am afraid I cannot. I do not know when they were forwarded.

Senator LUNDY—You would have records of that, though, wouldn't you?

Dr Boxall—We could find out, but we do not have that material with us here.

Senator LUNDY—Can you on notice find out the date they were provided to the minister's office.

Mr Hutson—Yes, we will take that on notice.

CHAIR—Mr Clout, in the material you provided to us, can you tell us what has been blacked out or what has been deleted on the front page of the advice from Phillips Fox?

Mr Clout—No, Senator, I am not aware of what was blacked out.

CHAIR—Who would be aware?

Mr Clout—I am not sure. I did not prepare the extract for provision to the committee.

CHAIR—Who did?

Dr Boxall—One of Mr Clout's officers prepared it, and the relevant material was forwarded to the minister's office.

CHAIR—I do not understand what you are saying, Dr Boxall. Are you saying that you did not black it out and that it was the minister's office that blacked it out?

Dr Boxall—No, I am not saying anything like that. I am just saying that we prepare responses to the questions on notice. We give the responses to the minister's office and they forward them on.

CHAIR—I am asking a specific question: was the material on the top of the first page blocked out within the department?

Dr Boxall—I do not know.

CHAIR—Does Mr Clout know?

Mr Clout—As I said, I did not prepare the extract or the legal advice for provision.

CHAIR—Who would have forwarded the material to the minister's office?

Mr Clout—As Mr Hutson said earlier, the material is prepared for forwarding to the minister's office in a central area of the department, along with all the other questions on notice.

CHAIR—Who would have been responsible for that?

Dr Boxall—Can I clarify whether this material was provided to you as part of questions on notice at the estimates committee or as part of questions on notice at the references committee?

CHAIR—The advice to Phillips Fox was from the references committee. You specifically said that you would provide it.

Dr Boxall—What has happened is that officers in the department have prepared the advice; they have made recommendations to the minister's office; the minister's office has taken some of those recommendations on board, as is their prerogative, and the result has been forwarded to the committee. It is not appropriate for me, or any of the officers, to comment on who made a decision on what aspect of it because it goes to issues about advice to the minister's office. I am afraid that I do not feel in a position to answer. I do not know what the answer is, but I could find out. However, I do not feel in a position to answer as to whether we recommended that particular extract or whether it was put together after the minister's office considered our recommendations and made a decision.

CHAIR—Dr Boxall, I think that the committee is entitled to know why it has been denied material.

Mr Hutson—As I recall it, this particular advice was provided to the committee by the minister in his letter of 4 April.

CHAIR—He may well have done that.

Dr Boxall—It is the same—

CHAIR—I make the point that we have requested the information from Dr Boxall and on 7 February you indicated that you would make it available subject, I think, to you checking with Phillips Fox.

Dr Boxall—We have prepared a number of responses to questions from the committee. We have advised the office. The office has, or has not, taken our advice and the results have been forwarded to you.

CHAIR—Can you advise me as to whether the five pages are the full advice received by you?

Mr Hutson—The document you have is an extract of the advice.

CHAIR—Do we know how long the full advice was?

Mr Hutson—Yes, we do.

CHAIR—How long was it?

Mr Hutson—It was six pages long.

CHAIR—So there must be something in the concluding remarks or in the introductory remarks that you do not want us to know about. Is that what we have to assume?

Mr Hutson—I do not think I can comment on that.

CHAIR—That is the only assumption we can draw. Are you aware of whether there were any consultations between Phillips Fox and AGS in respect of this matter?

Mr Clout—I am not aware of any consultation.

Senator LUNDY—On a different issue, we asked some questions earlier today and yesterday about the status of the probity auditor engaged by OASITO for the IT outsourcing. Has DOFA at any point had any involvement in the appointment of that probity auditor or in the construction of their terms and conditions of employment?

Dr Boxall—No, Senator Lundy. What is more, it is none of our business. It is the office of asset sales that does that, and they are an executive agency that reports directly to the minister.

Senator LUNDY—Have you at any point received any correspondence, documentation or advice from the probity auditor engaged by OASITO?

Mr Hutson—Not that we are aware of.

Senator LUNDY—Does that mean you are going to take it on notice to find out if you have?

Mr Hutson—No, I do not think it does mean that.

Senator LUNDY—If it does not mean that, can I ask you to take it on notice to find out definitively whether or not you have received any documentation, advice or correspondence from the probity auditor?

Mr Hutson—Specifically in respect of IT outsourcing?

Senator LUNDY—Specifically from Mr Stephen Marks, who is the probity auditor from that particular part of the finance portfolio, yes.

Mr Hutson—Yes.

Senator LUNDY—Thank you.

CHAIR—Dr Boxall, you have, in the possession of the department, a number of records generated by the secretariat to the Humphry review—at least, that is what Mr Prior advised us on the last occasion. Given that we have spent something like \$7,000 on legal advice that is obviously flawed—based on a wrong premise—and that we have now established that they are Commonwealth records, what do you intend to do with those records?

Mr Prior—I know that question was directed at me, but which records are you referring to?

CHAIR—Mr Prior, you advised us on the last occasion that you had a range of material, which was being held in the department, that had been generated by the secretariat—apart from the specific submissions which were sent back to the submitters.

Mr Prior—Correct.

CHAIR—Now that it has been established by the letter of appointment that they are Commonwealth records, what does the department intend to do with those records?

Dr Boxall—My officers and I are not in a position to say whether they are Commonwealth records or not. What we plan to do is hold the records according to the usual process—file them, archive them according to the usual process of the department and treat them like any other records in the department.

CHAIR—Given that you have just become aware of this letter and the specific reference in it to all of these documents being Commonwealth records, would it not be wise to go back and advise Phillips Fox to that effect and ask them whether that changes their opinion?

Dr Boxall—We have not seen any new evidence to suggest that we should behave any differently. As you know, the submissions were returned to the submitters by Mr Humphry. The other records, as Mr Prior has testified, are kept in the department, and we are planning to keep them in the department.

CHAIR—Are you planning to keep them as Commonwealth records?

Dr Boxall—We are planning to keep them within the department, the same way as we keep other records.

Senator LUNDY—Doesn't the letter that has now been recovered, outlining the terms and conditions of the Humphry appointment, remove any ambiguity about the status of those records?

Mr Clout—I may be able to assist. Mr Humphry took legal advice from AGS, who were involved in the drafting of the letter of appointment. He relied on that advice to return the submissions, so we have no reason to believe that anything in the letter suggests that the Archives Act would apply to the submissions.

Senator LUNDY—Has the department initiated any activity to clarify this issue or to remove the ambiguity, or are you just letting it go as it currently stands?

Mr Clout—We do not have any role or function. There is little for us to achieve.

Senator LUNDY—Other than ongoing inquiries from this committee, I guess there is no motivation. Doesn't public accountability count—answering questions that have been put to the department?

Mr Clout—I am not aware of any questions that we have not been able to answer.

Senator LUNDY—What is being presented is that there is obviously a clear and counter view that those records constitute Commonwealth property. Yet you are happy to sit out there in limbo, taking advice that someone else has secured versus advice that has been able to present a counter view, with a public forum in between canvassing these issues, and you are not doing anything about it.

Mr Hutson—Which records are you specifically referring to—the submissions or the other records?

Senator LUNDY—Both.

Mr Hutson—They clearly fall into two camps, because we have the other records.

Senator LUNDY—Yes, that is right—the submissions.

Mr Hutson—It is just in respect of the submissions? It is very much on the record. Mr Humphry took legal advice, he made a decision and the submissions were returned. I do not know if there is too much more for the department to do here.

Senator LUNDY—There is not very much more that the department is choosing to do. That is very clear.

CHAIR—The important point in the letter is on page 4 at paragraph 14, which reads:

Unlike the standard Commonwealth consultancy agreement, which typically provides that all material generated or obtained as a result of the consultant's activity is vested in or assigned to the Commonwealth, we are instructed to assume that the letter of appointment contains no such provisions.

The facts of life are that it was a standard Commonwealth consultancy agreement because it did contain those provisions. I would have thought that the department, based on that assumption being so far from the truth, would have had a responsibility to go back and advise Phillips Fox that the letter of appointment did contain those provisions and to establish the status of those records, because the status of those records is now up in the air.

Mr Clout—Senator, there are two points. The first, as I already indicated, is that we are relying on the fact that Mr Humphry sought legal advice as to the status of the records from AGS, who assisted in the preparation of the drafting of his letter of appointment.

CHAIR—Mr Clout, you are not relying on that. You sought your own legal advice. You did not rely on the AGS's advice; you deliberately went out and sought alternative advice from Phillips Fox.

Senator LUNDY—Which we now know to be inaccurate because it was based on an inaccurate brief.

Mr Clout—Senator, we are now talking about two different times. The Phillips Fox advice was sought in January 2001 to prepare a letter for the minister to sign back to you on the provision of those submissions. I believe you are now asking us as a department what we are doing about it now, in May 2001. In May 2001 we are aware that Mr Humphry sought legal advice from AGS on this very issue, who assisted in the drafting of the letter of appointment. He then acted on that advice. The second issue is that I am not sure what the Department of Finance and Administration would do with any further advice that the records were anything other than what has been advised.

CHAIR—But you were aware that Mr Humphry had sought advice from the AGS when you engaged Phillips Fox to provide the same advice.

Mr Clout—Yes, Senator.

CHAIR—So you were not relying on the AGS advice back then.

Mr Clout—No, I was not.

CHAIR—The facts of life are that the basis upon which Phillips Fox provided the advice was wrongly constructed.

Mr Clout—I was not relying solely on the AGS advice, and that is why I sought additional advice from Phillips Fox in January.

Senator LUNDY—You can make a reasonable assumption that you would have got a different set of advice back from Phillips Fox had you advised them appropriately, or at least the risk of that was much greater. Don't you feel that you have some obligation, given the particular public accountability interest in this matter, to make an assessment about the differing advice, and that that does in fact raise the potential for conflict between what you know to be the situation and what the AGS advice is, and prompt you to take some action—not sitting there just wearing it all and saying, 'Oh well, too bad, move on, it's not our problem'? I put it to you that it is your problem and that it is unfinished business.

Mr Clout—Could I repeat that in January 2001 I was unaware of the letter of appointment and the contents.

Senator LUNDY—We know that.

Mr Clout—Could I also say that we are aware of legal advice that was aware of the contents of the letter of appointment, and that legal advice was relied upon by Mr Humphry, which apparently was that the Archives Act did not apply to the submissions. So it would not seem to be a very wise use of public money to now seek additional legal advice from another lawyer or, indeed, AGS again, when we already know that there is legal advice relating to those records with knowledge of the letter of appointment.

CHAIR—It seems that it was not a very wise use of the \$4,000 initially, to seek the advice. It was not based on a sound briefing. Mr Prior, can you confirm that the AGS had seen the letter of appointment when they provided their advice?

Mr Prior—I cannot confirm what the AGS do or do not do, but I can confirm with you that they were party to the construction of the terms of reference; they were on foot in the secretariat as Mr Humphry decided upon returning those submissions. They were in the secretariat; they had access to all those. Since that time I have been made aware by the AGS that they still have on their files a copy of the draft—which is not different from the final, I have been informed—letter of appointment. As far as I am aware, at all points they had access to the content of the letter of appointment.

CHAIR—But you are not aware of whether, at the time they provided the advice to Mr Humphry, they had a copy of the letter of appointment?

Mr Prior—No, as far as I am aware they had the letter of appointment on their file as part of the construction of it in the first place.

CHAIR—I thought you said they had a draft of it?

Mr Prior—I discussed this directly with the lawyers before the submissions were returned. I said, ‘Is there anything that would prevent Mr Humphry from returning these documents?’ They said, ‘No, there is not.’ What I am trying to say to you is that I cannot comment on AGS’s processes, nor should I want to.

CHAIR—What happened within the department, Dr Boxall, to initiate the seeking of independent advice from Phillips Fox?

Dr Boxall—Mr Clout has earlier testified that he initiated the advice from Phillips Fox and he has given the reasons why.

CHAIR—Maybe you would like to repeat them, Mr Clout.

Mr Clout—I was preparing a response for the Minister for Finance and Administration to a letter that you wrote to him requesting copies of the submission—I think it was on 23 January. At that stage one of my responsibilities was to prepare that correspondence for the minister and, in preparing that correspondence and advice to him, I wanted to satisfy myself as to the general situation with regard to the Archives Act.

CHAIR—You say at that time you were not aware of the AGS advice?

Mr Clout—I was aware that there was AGS advice and that Mr Humphry had sought legal advice and acted the way that he had.

CHAIR—Why did you not base your reply just on that? Why did you seek alternative legal advice?

Mr Clout—I may have been being overcautious.

CHAIR—You were being overcautious—

Mr Clout—I may have been being overcautious. It depends on whose judgment you wish to use.

CHAIR—If you had been being overcautious, you would have ensured that Phillips Fox had all the relevant material available to them that the AGS had.

Mr Clout—I could only provide them with what I had at the time. As you know, it was earlier this year, in January. We had a short time to get ready for the first hearing and to prepare a submission to the committee. That letter arrived, and we needed to provide a prompt draft response for the minister. I acted in the time frame that I had available to me.

CHAIR—You did not consult with the secretary at the table as to whether or not you had all the relevant material?

Mr Clout—I think we have already covered this question. I did consult the secretariat as to the content of the letter of appointment. We came up with a blank. I think we covered that earlier.

CHAIR—I do not think there is much point in pursuing this today, but I do not think it will go away. Do you have any further questions?

Senator LUNDY—No.

CHAIR—That concludes today's hearing. The next public hearing of the committee has been scheduled for Monday, 21 May at 1 p.m. Those interested in following the inquiry should refer to the committee's Internet page, which will provide information about the progress of the inquiry on an ongoing basis. Thank you.

Committee adjourned at 3.38 p.m.