



COMMONWEALTH OF AUSTRALIA

SENATE

Official Committee Hansard

FINANCE AND PUBLIC ADMINISTRATION
LEGISLATION COMMITTEE

TUESDAY, 3 MARCH 1998

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CONTENTS

TUESDAY, 3 MARCH

Department of Finance and Administration —	
In attendance	185
Program 10—Office of Government Information Technology	186
Program 11—Office of Asset Sales	192

SENATE

TUESDAY, 3 MARCH 1998

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Portfolios: Parliament; Prime Minister and Cabinet; Finance and Administration

Members: Senator Gibson (*Chair*), Senator Murray (*Deputy Chair*), Senators Heffernan, Ray, Sherry and Watson

Senators in attendance: Senators Gibson, Heffernan, Lundy, Ray, Schacht and Sherry

Committee met at 8.05 p.m.

DEPARTMENT OF FINANCE AND ADMINISTRATION

Proposed additional expenditure \$157,853,000 (Document A)

Proposed additional expenditure \$27,220,000 (Document B)

Consideration resumed from 25 February.

In attendance

Senator Kemp, Assistant Treasurer

Department of Finance and Administration

Program 10—Office of Government Information Technology

Ms Glenys Roper, Acting Chief Commonwealth Information Officer

Ms Dianna Banks, Assistant Secretary, Telecommunications and Government Systems

Ms Anne Steward, Assistant Secretary, Strategic Planning and Policy

Mr Steve Fielding, Director, Year 2000 Project

Mr John Wilson, Director, Telecommunications

Program 11—Office of Asset Sales and IT Outsourcing

Mr Michael James Hutchinson, Chief Executive

Mr Ross Smith, Executive Coordinator

Ms Gillian Marks, Executive Director

Mr Simon Lewis, Executive Director

Mr Clive Davidson, Executive Director

Mr Jonathan Hutson, Executive Director

Mr Mark Heazlett, Senior Director

Mr David Yarra, Senior Director,

Mr Rod Whithear, Acting Senior Director

Mr Tony Eaton, Acting Senior Director

Mr Robin Renwick, Acting Senior Director

Ms Trixie Makay, Acting Senior Director

Department of Finance and Administration—

Mr Bernie Hackett

CHAIR—I declare open this public meeting of the Senate Finance and Public Administration Legislation Committee. Tonight we are continuing our supplementary hearings into the consideration of additional estimates and will be examining programs 10 and 11 of the Finance and Administration portfolio. I welcome the minister, Senator Kemp, and officers of the Finance and Administration portfolio. Do you have an opening statement you want to make?

Senator Kemp—No.

CHAIR—Following your request with regard to timing, we have discussed the matter and agreed that we will finish by 10 o'clock tonight.

Senator Kemp—That sounds good.

CHAIR—The minister has got an appointment at 10 o'clock.

Senator Kemp—We are happy to cooperate with the committee, but it would assist me if we could finish at a reasonable time.

[8.07 p.m.]

Program 10—Office of Government Information Technology

Senator LUNDY—Last December, the audit office reported on managing the year 2000 problem. The findings of the audit office were quite serious because they pointed to a series of flaws in the structural management by each agency in assessing their year 2000 problems. Can you advise the committee what steps the Office of Government Information Technology has taken to correct the criticisms contained within that audit office report?

Ms Roper—I would point out to the senator that the ANAO report in December was based on information that was collected four to five months prior to that. In the period from December through to now, the Office of Government Information Technology has taken a range of steps with respect to agencies. It has a quarterly reporting framework where the minister reports to cabinet on agencies' performance against the cabinet mandated timetable for year 2000 compliance. It has also provided agencies with a reporting plan and framework, and a costing plan and framework.

Office of Government Information Technology has itself a strategic framework to report against in terms of what it is doing with agencies in accordance with the ANAO report. OGIT is also working with the states as well as working with the national strategy which is held within the DIST portfolio. It is doing a whole range of work, including working with agencies on contract clauses for suppliers for purchasing of equipment and seeking year 2000 compliance.

Senator LUNDY—Do you have up-to-date data with respect to the status of each department and the gradings that are provided in your own guidelines on how the departments manage their year 2000 problem?

Ms Roper—Yes, we do. The minister will be reporting shortly to cabinet with his latest quarterly report. All agencies reported at the end of February. We are just collating that data at the moment. So we have up-to-date data, yes.

Senator LUNDY—One of the issues raised in the audit report relates specifically to the critical date trigger for many of the departments in their computerised systems. Can you provide the committee with the details of what those critical dates are in terms of the various applications for each agency?

Ms Roper—I will just seek some clarification from my officer here. The critical dates are September 1997 for agencies to have finished their scoping work; December 1998 for agencies to have completed all of their remediation work; and June 1999 for implementation and finalisation of testing of all business critical systems.

Senator LUNDY—What is the government's contingency plan for those agencies who do not complete OGIT's program?

Ms Roper—Each agency is required to prepare its own business continuity plan. What agencies are focusing on are their business critical systems. Each agency is required to report to OGIT on its business continuity plans. They are in the process of preparation at the moment. Agencies have responsibility for their year 2000 remediation within the agency. OGIT's role is to monitor and to ensure that progress is going according to timetable and to audit, where necessary, if we think the departments are having problems or are falling behind.

Senator LUNDY—Turning to point 18 in your guidelines, what is your advice to the agencies with respect to contingencies for any liabilities or contractual litigation that might arise out of non-compliance with your guidelines as opposed to the year 2000?

Ms Roper—I am just going to ask Steve Fielding, who is our project manager in charge of year 2000, to respond to that particular question.

Mr Fielding—We have sought advice from the Attorney-General on a range of legal issues, including the liability of the Commonwealth and personal liability.

Senator LUNDY—In terms of that advice, has each of the agencies estimated what their liabilities might be?

Mr Fielding—Not as yet. Part of the reporting framework they have to do is to identify what the high risks are and then from that work out their own liability.

Senator LUNDY—Is the arrangement that each agency go through A-G's or do they rely on advice through OGIT on those contingencies?

Mr Fielding—Both—

Ms Roper—Essentially there is a concerted approach about what Commonwealth officers' liability would be and what the liability of agencies as agents of the Commonwealth would be. That is the advice that we have received from the Attorney-General and that would be the advice that we now need to work together with agencies on working out their liability.

Senator LUNDY—I go back to my question: how is that advice that you received relayed to the various agencies; what is the process?

Ms Roper—Agencies have received legal advice from A-G's about the potential liability and—

Senator LUNDY—Each agency has?

Ms Roper—Yes. There has been at least one workshop where issues of liability were specifically canvassed with an Attorney-General's representative. So agencies are aware of the advice that has been received from the Attorney-General's Department in relation to liability.

Senator LUNDY—In terms of Australia's progression on dealing with the year 2000 problem, can you provide the committee with some comparisons on the progression of the issue in other comparable countries? And to what degree are you plugged in, or taking advice, from the way the issue is being dealt with elsewhere?

Ms Roper—In relation to the first question, OGIT's role is to deal with the readiness of Commonwealth budget dependent agencies, so my answer would relate to that in relation to other countries rather than to the broader issues of Australia's readiness which is an issue for the year 2000 national strategy. Yes, we do check quite carefully about what other countries are doing in relation to liability issues, how they track and how they plan work with their government agencies. There is quite a lot of information published on most of the year 2000 Internet web sites that provides a good medium for exchange of information.

Senator LUNDY—Minister, are you confident that the current estimates in relation to the costs of rectifying the Commonwealth government's year 2000 problems are accurate?

Senator Kemp—The advice I have is that we are receiving more data at the moment and I think the final costings are not complete.

Senator LUNDY—When will they be complete?

Senator Kemp—I shall check for you.

Ms Roper—This is the second round of reporting to cabinet on the readiness of budget dependent agencies. It is probably fair to say that, in the first report, agencies were less aware of costing issues than they now are. I think we are getting a fairly good picture at the moment. But, given that the reporting date has only just been completed—the end of February—what we would want to do is check and see whether that costing data is as accurate as we would expect it to be.

Senator LUNDY—How will you do that?

Ms Roper—There is quite a complex and detailed form that each agency completes in terms of year 2000 readiness and also costing data. What we will do is check through each of the 120 agencies—or 128 agencies—that report to us to see whether or not they have been able to assess the costs against all the various systems that they have identified as business critical.

Senator LUNDY—And what about the systems that are not identified as business critical?

Ms Roper—The focus of budget dependent agencies is on business critical systems in the first instance. If time permits at the end of the business critical testing period and compliance period, then agencies would obviously move to less business critical systems.

Senator LUNDY—What is the proportion of business critical and non-business critical systems within the agencies?

Ms Roper—At the moment our data is much more focused on business critical, so we are having agencies report first on business critical. They would not be reporting on non-business critical at the moment; is that right?

Mr Fielding—That is exactly right.

Senator LUNDY—Are the costings being done on just the business critical areas?

Ms Roper—Yes.

Senator LUNDY—So, in fact, the estimates that emerge will not be the complete picture?

Ms Roper—Business critical systems are the systems that are required by government dependent agencies to ensure ongoing business beyond the year 2000. So in that context I think it would be fair to say that all the key and major systems would already be costed.

Senator LUNDY—Minister, is your government committed to ensuring that the funding is available to rectify the non-business critical areas, and within what time frame?

Senator Kemp—We are, of course, committed to dealing with the issue. I think the officer at the table has mentioned that the assessments are still being done. But make no mistake: the government takes this issue very seriously.

Senator LUNDY—And in terms of the consultants that OGIT has used—and you have already mentioned

A-G's—have you engaged any other legal or strategic consultants on this particular issue?

Ms Roper—In relation to legal advice, we have not at the moment. But we do intend to go out to tender for legal advice seeking legal firms with year 2000 expertise, and that would include inviting A-G's as well.

Senator LUNDY—What is that particular tender in relation to?

Ms Roper—Legal advice on year 2000 issues such as personal liability, Commonwealth liability and contractual clauses in documents.

Senator LUNDY—And what about the third party risk?

Ms Roper—It would also be included in some of the legal advice that we obtain.

Senator LUNDY—The ANAO report made eight recommendations which have been listed agency by agency to be responded to. What is the process for following through with respect to compliance with these recommendations contained in the auditor's report; and what is OGIT's role in that, if any?

Ms Roper—Each of the agencies is responding separately to that part of the report that relates to them. OGIT responded to those two or three recommendations that related specifically to it.

Senator LUNDY—So each of those agencies is now also required to respond to the audit office—

Ms Roper—To that part of the report.

Senator LUNDY—So they are responding to both the ANAO and OGIT?

Ms Roper—They respond to OGIT in terms of their business readiness against the business readiness plan that we ask them to respond to on a quarterly basis. They will be responding to ANAO on the particular issues that were raised by ANAO in their report.

Senator LUNDY—Did that include their readiness and compliance?

Ms Roper—In some aspects, yes.

Senator LUNDY—Minister, do you think that reflects some inefficiencies in the process embarked upon by your government?

Senator Kemp—Senator, I understand that this report is about eight months old. I have received further advice that most of the problems have been picked up over a period of time; is that right?

Ms Roper—Yes, that is right.

Senator Kemp—If you would care to enlarge on that, you should do that.

Ms Roper—In relation to OGIT, some of the specific issues were that OGIT prepare a strategic plan of its own and report on that plan, and it has done so. It also requested that OGIT prepare a costing model for agencies, and it has done so. It has refined its reporting model for agencies and continues to refine it in the light of information and data that agencies provide to us on a quarterly basis.

Senator LUNDY—Was not OGIT's whole role with respect to the year 2000 problem to provide a strategic plan for the agencies?

Ms Roper—It does provide planning. It provides step by step advice as to how to go about obtaining compliance. It provides step by step advice on how to go about looking at your systems, scoping, planning how you are going to do the work, testing it, seeking remediation and checking through your supply chain that all parts of the supply chain are taken into consideration and also how to work out risk strategies in case of business critical system failure—business continuity plans, in other words.

Senator LUNDY—Minister, my point is that, in terms of all of OGIT's work in this area in advising the departments, the audit office found it necessary to dictate to OGIT what their job is. Part of that advice was to provide a strategic plan. I am asking you, Minister, if you think that is an efficient use of government resources?

Senator Kemp—Senator, my advice is that that was nine months ago—

Senator LUNDY—I am sorry. What was nine months ago, Minister?

Senator Kemp—Senator, the collection of the information for the audit report.

Senator LUNDY—And its reporting date was December?

Senator Kemp—I think the report was collecting information from agencies in June and July.

Senator LUNDY—Minister, is it your intention to release information on the next round of collation that has been mentioned?

Senator Kemp—Senator, it is not my intention because I am not the minister involved. I will see whether I can find the information on what the minister intends to do.

Senator LUNDY—Do you think it is in the public interest that the status of the year 2000 compliance be released publicly?

Senator Kemp—Senator, there is no need to be aggressive. We are just trying to get the answer to your first question. My understanding is that this matter is being considered by the minister at present. I will take the substance of your question on notice and see whether we can provide you with any further updates.

Senator LUNDY—Perhaps you could take this on notice too. Is the minister confident that all the contingencies will be covered and that Australia's Commonwealth government will be prepared come the year 2000?

Senator Kemp—Senator, I think we will take that on notice. I am sure that the government takes this matter very seriously. We will see whether we can provide any additional information to you.

Senator LUNDY—I would now like to ask a few questions about the Australian federal government network and applications, entitled Fedlink, and ask about its relationship to ICON. What is the relationship between Fedlink and ICON?

Ms Banks—ICON is a small network that links about 15 agencies in the parliamentary triangle. It was implemented partly as a pilot to test the viability of interagency communications, and we talked about that at the last hearings. Fedlink is a proposal at this stage to expand that kind of functionality to all agencies in the Commonwealth based in Canberra.

Senator LUNDY—It seems from looking through some of OGIT's web pages that part of OGIT's charter is, in fact, getting the government on-line and involving itself in projects like

Fedlink. To clarify a point, is Fedlink about the applications and the content of that network as well and those aspects of Fedlink that OGIT is handling?

Ms Banks—Coordinating would probably be a better word, rather than handling on our own. If I step back a little bit, Fedlink at the moment is looking essentially at infrastructure delivery—carriage, if you like. The next layer, which is the one that you are referring to, is content, and that is still in its planning stage. OGIT's role was spelled out in the Prime Minister's industry statement in December as being one of bringing this ambition to fruition. So we are working with agencies—one of the lead agencies is Defence—to coordinate an approach.

Senator LUNDY—What is your involvement with the National Office of Information Economy?

Ms Roper—Senator, they are two very separate offices. OGIT is very much related to getting the government on-line and that involves a number of initiatives that were announced, both by the PM and by the Minister for Finance and Administration on 8 December. NOIE's role is in relation to getting Australia positioned in the information economy, so it is a broad role in relation to both business and other non-government industry.

Senator LUNDY—What is the budget allocation so far to Fedlink?

Ms Roper—At the moment we are not able to talk about a specific budget allocation because it will depend very much on what comes out of the tendering arrangements.

Senator LUNDY—I am not looking for an amount specifically in relation to the tender. I am asking if there was any allocation in the previous budget statements for this project.

Ms Roper—There was not.

Senator LUNDY—So its funding is contingent upon a special application to cabinet, an approval of funding through Finance?

Ms Roper—It is possible that it would be funded that way. It is also possible that it might be funded through use of the facility by agencies.

Senator LUNDY—Does this project bear any relationship to a project by the National Office of Information Economy that relates specifically to an on-line public access initiative which talks about getting the government on-line?

Ms Roper—I do not understand the question, I am sorry.

Senator LUNDY—I am just asking you what relationship, if any, this proposal has with a project that the National Office of Information Economy has outlined that takes government services on-line.

Ms Roper—Fedlink is a linking of Commonwealth agencies on an Intranet in Canberra. I am not sure which particular NOIE initiative you are talking about, I am sorry.

Senator LUNDY—There were several and one of them was to take up a project to put government services on-line. I am trying to ascertain whether there is any cross-agency coordination between your project and the work that NOIE is doing?

Ms Roper—OGIT's responsibility is to get government on-line. That is its specific responsibility. Again, Senator, I am not sure about what you are referring to in relation to NOIE. NOIE's responsibility relates more to positioning Australia in the information economy. Again, I am not sure which particular initiative you are talking about.

Senator LUNDY—From recent questioning with NOIE before the estimates committee, it seems that they have a series of four or so projects that are under way that cut across quite

specifically the areas that OGIT has been asked to look at. Perhaps you could take on notice investigating the potential relationship between the NOIE government on-line project and yours. I would be happy with that and we could move on.

Ms Roper—Senator, I would be happy to take it on notice if I was sure that I understood the question. NOIE and OGIT have very clear differentiation between relationships and they complement one another in their roles rather than overlap one another in their roles. I am not suggesting that this may not have happened, but, in terms of major initiatives, I cannot think of one that I can take on notice to give you further information on.

Perhaps this might provide some assistance. One of the complementary initiatives that OGIT and NOIE are involved in is a public key infrastructure. OGIT is working on a government secure signatures structure for data transactions on-line. NOIE is working on a national infrastructure for outside government public signatures for transactions on-line. The government one may in the end become integrated with the national one—and that would probably be an expectation—but they are very complementary rather than overlapping roles. I am not sure that that is the one the senator was referring to.

Senator LUNDY—It could be, but perhaps you could compare the two programs and provide comment to the committee about any potential interrelationship between the two projects.

Senator Kemp—I just want to make clear what you are seeking us to do.

Ms Roper—I am again trying to seek some clarification. Senator, are you really asking for us to indicate what the major initiatives are that we carry out, to present also the major initiatives that NOIE carries out and to say how they work with each other?

Senator LUNDY—Perhaps we could do it like this. If you could provide details about the initiatives programs, budget funded and proposals alike, to the committee, then we can do the comparisons ourselves.

Ms Roper—So you want both the OGIT ones and the NOIE ones?

Senator LUNDY—No, I do not need the NOIE ones from you; just the OGIT ones.

Ms Roper—I can give you the OGIT ones now, if you want them.

Senator LUNDY—No, that is fine. You can take it on notice. I have a couple of questions about Internet 2001. On your web site you have a draft project plan listed. Can you outline that particular project?

Ms Steward—The Internet 2001 is looking at enabling appropriate government services to be delivered over the Internet by 2001.

Senator LUNDY—Thank you. I have no further questions.

[8.36 p.m.]

Program 11—Office of Asset Sales

ACTING CHAIR (Senator Heffernan)—Senator Lundy will start by asking questions.

Senator LUNDY—I have a couple of questions for the minister to start off with. In 1997 there was a meeting of the International Council on IT Administration in Government. Did Australia host that meeting?

Senator Kemp—Senator, I think you may have got us there. We might take that question on notice. We do not seem to be able to provide advice.

Senator LUNDY—Perhaps you could also advise on notice where that meeting took place, if the minister attended and, if not, who represented the minister at that meeting.

Senator Kemp—We shall take it on notice.

Senator LUNDY—And if the minister did not attend that meeting, I would like to know why not.

Senator Kemp—Assuming there was a meeting, we shall take that one on notice.

Senator LUNDY—I would like to turn to issues relating to the responses to questions on notice from a previous estimates hearing. A series of responses related to the engagement of consultants both in the legal and strategic advice area previously by OGIT, now presumably carrying across to the Office of Asset Sales and Information Technology Outsourcing. I have some quite specific questions relating to those responses. I would first like to turn to the current contract with Shaw Pittman Potts and Trowbridge, the US outsourcing specialists legal firm. Can you advise the committee the processes by which that company was engaged?

Mr Hutchinson—Shaw Pittman were engaged by the former Chief Government Information Officer on a sole-source basis, based on recommendation from his colleagues in South Australia. A direct contract was negotiated with them.

Senator LUNDY—In the responses provided to questions on notice, it specifies the value of that contract as being \$4 million to \$5 million. Can you confirm the precise amount and why that response was so ambiguous in terms of the value of that contract?

Mr Hutchinson—The contract provides for the supply of consultants by Shaw Pittman with a specified fee rate for the consultants they provide in terms of dollars per staff month. The outturn will depend on how much of Shaw Pittman's consulting time we actually draw on during the year. The estimate was between \$4 million and \$5 million. Because Shaw Pittman are US consultants and their fee rates are struck in US dollars, to some extent, the outturn will depend on the exchange rate as well; so there is some uncertainty. As the year passes, we get a firmer estimate of the outturn. I do not have a figure before me that is more precise than \$4 million to \$5 million.

Senator LUNDY—What are the current terms of this contract and when is it due to expire?

Mr Hutchinson—The present contract runs to 30 June 1998. The present terms of the contract are fairly conventional. It specifies the provision of consultants with a particular level of expertise—it named consultants with a particular seniority in the firm—a fee per staff month and arrangements associated with that fee payment.

Senator LUNDY—Is that fee per staff month like a basic retainer and then you pay over and above that?

Mr Hutchinson—No, it is not a basic retainer. If I have a partner of Shaw Pittman working in the Office of Assets Sales and IT Outsourcing for a month, then I pay Shaw Pittman a nominated number of dollars per month for that consultant.

Senator LUNDY—Who in your office determines the usage of Shaw Pittman?

Mr Hutchinson—We essentially have a team of three people from Shaw Pittman working full time in the office. In the event that the workload or particular tasks require that to be augmented, then that is discussed between the senior officers on the IT outsourcing side and me, and we decide whether to augment that resource or not, depending on the need.

Senator LUNDY—Does the contract specify a minimum level of service provided by Shaw Pittman?

Mr Hutchinson—A minimum level of service in terms of numbers of people to be provided?

Senator LUNDY—Yes.

Mr Hutchinson—I do not believe it does. There is no minimum level. In the extreme, I guess I could ask them all to go home tomorrow and not to have to pay any more for them—I am not sure we would get much work done in total without them, but that is a different issue.

Senator LUNDY—But that is available to you?

Mr Hutchinson—Yes—very theoretically, yes.

Senator LUNDY—What about in reality?

Mr Hutchinson—In reality we have an integrated team of officers and consultants that are working to deliver the government's program. If we disrupted that in the short term, we would disrupt the delivery of the government's program.

Senator LUNDY—So what proportion of consultants work full time for your office compared with employees of the Commonwealth?

Mr Hutchinson—We have three full-time consultants from Shaw Pittman. The IT outsourcing staff comprises in the order of 16 Commonwealth officers, we have three consultants from Shaw Pittman and we have a number of other consultants.

Senator LUNDY—On a full-time basis?

Mr Hutchinson—It varies. Very few of them are on a full-time basis on a long-term contract. Most of them are working as needed.

Senator LUNDY—Just going back to the process of appointment of Shaw Pittman, you say they were appointed by the previous chief officer of the Office of Government Information Technology on the advice or recommendation—

Mr Hutchinson—‘After consultation with’ is probably a better phrase—

Senator LUNDY—Sorry, after consultation with whom?

Mr Hutchinson—The IT outsourcing team who manage the South Australian government outsourcing.

Senator LUNDY—And who is that?

Mr Hutchinson—My understanding is that it was the Office of the Government Solicitor in South Australia who had previously used Shaw Pittman.

Senator LUNDY—Can a copy of that advice be provided to the committee?

Mr Hutchinson—No, our records indicate that it was based on a telephone conversation.

Senator LUNDY—So you have nothing in writing to indicate that that consultation took place?

Mr Hutchinson—There is advice on the file that indicates the consultation took place, but the consultation itself was a conversation.

Senator LUNDY—Can you provide that record of advice that is on file to the committee?

Mr Hutchinson—Can I take that on notice? I am not sure of the classification of the relevant document I have in mind.

Senator LUNDY—I cannot see that it relates to the financial affairs of any particular private corporate enterprise, so you should not have a problem with respect to confidentiality.

Mr Hutchinson—You may very well be right. I just need to take it on notice and review the document. I will endeavour to provide as much of it as I properly can.

Senator LUNDY—Given that this contract is potentially valued at \$5 million, was the minister aware at the time of signing this contract that the competitive tendering processes and guidelines contained and constructed by the Department of Finance and Administration were completely ignored?

Mr Hutchinson—The contracting process was a sole source process. The government's purchasing guidelines do permit a sole source approach in certain circumstances. Quite clearly the Chief Government Information Officer believed at the time that those circumstances applied and he exercised his delegation to make the appointment.

Senator LUNDY—Was the minister aware at the time and did he give his approval to this contract?

Mr Hutchinson—To the best of my knowledge—I was not involved, but I have looked at the events—the minister was aware that Shaw Pittman were to be appointed and were appointed. The minister was not aware of the specifics of the process by which they had been appointed.

Senator LUNDY—So the minister knew the contract had been signed or was going to be signed, but did not inquire into the actual tendering process by which they were engaged?

Mr Hutchinson—Nor was there any reason why the minister should have done so. The appointment of consultants was an exercise of an official's delegation and the minister would be entitled to assume that the official had exercised that delegation in accordance with the proper procedures.

Senator LUNDY—Are you familiar with the Commonwealth procurement guidelines with respect to competitive tendering and contracting?

Mr Hutchinson—'Familiar' is a brave expression; I am aware of them and I operate under them. Occasionally, when in doubt, I will either refer to them or have them referred to. I am acquainted with them.

Senator LUNDY—Are you also aware that discretionary powers, as you have described them in your defence of this particular decision, do require a reference to open and competitive processes if indeed the opportunity exists to do so?

Mr Hutchinson—I understand the circumstances under which open competitive processes are required and the circumstances under which they can be bypassed. I would not be able to cite you chapter and verse of the regulations, but I am aware of the restricted circumstances under which a sole source decision can be and should be properly made.

Senator LUNDY—So what was the justification?

Mr Hutchinson—The justification was that Shaw Pittman had a unique expertise in the strategic, commercial and technical issues associated with IT outsourcing and as a practice had a policy of representing customers but not vendors. Therefore, their unique expertise was coupled with a unique lack of conflict of interest.

Mr Macdonald was clear from his file notes that there was no credible competitor available in the field at the time to challenge Shaw Pittman for this work. It, therefore, would not have been cost-effective to seek competitive quotes and would have been putting potential aspirants to unnecessary expense to ask them to undertake competitive tendering.

Senator LUNDY—So Mr Macdonald decided in his own wisdom that no-one else could possibly do the work and used that as the basis to justify his appointment of a US legal company?

Mr Hutchinson—I think the judgment is not ‘no-one could possibly do the work’, but no-one could compete with Shaw Pittman to do the work as effectively, including cost-effectively.

Senator LUNDY—But he didn’t know because he didn’t go to competitive tender.

Mr Hutchinson—Mr Macdonald is a specialist in the field in his own right. I assume he drew upon his own expert knowledge of the field.

Senator LUNDY—I go back to my earlier question: did Mr Macdonald act with the full support and knowledge of the minister in this process?

Mr Hutchinson—The minister was aware of the appointment of Shaw Pittman, but he was not aware of the process.

Senator LUNDY—Yes, you have said that. But he was not advised of the process?

Mr Hutchinson—He was not advised of the process.

Senator LUNDY—Minister, perhaps you could provide some perspective on this. Do you think it is appropriate for a minister to be advised of the appointment process before signing off on the contract?

Senator Kemp—Senator, I may not have been following this as closely as I might have, but to my mind the question was very well answered by the officer at the table. I do not think I could add anything more to what the officer said. You raised that question earlier on, if my memory serves me correctly. I listened with interest to what the officer at the table said and I thought it was a rather good answer, to be quite frank. I do not know whether the officer can add any more to it. If you want my judgment, I think the *Hansard* will show that you have asked that question and a good answer has been given to it.

Senator LUNDY—Does the current contract have any provision for it to be extended?

Mr Hutchinson—My recollection is that the contract does not have a provision for it to be extended, but then like all contracts it is open to the parties to negotiate those terms if they so choose.

Senator LUNDY—What was the nature and terms of the previous contract with Shaw Pittman?

Mr Hutchinson—By ‘previous contract’, you mean the engagement before the present engagement?

Senator LUNDY—Yes.

Mr Hutchinson—My understanding is it was of a similar nature, but much shorter term and focus.

Senator LUNDY—Much shorter term?

Mr Hutchinson—Essentially, as I understand it, it was to advise the then Office of Government Information Technology on the conduct of the scoping study and the conduct of certain analysis required by cabinet to make the decisions on IT outsourcing.

Senator LUNDY—How long was that engagement for?

Mr Hutchinson—I do not have that information at my fingertips. I would like to take that on notice if I could.

Senator LUNDY—Was there any other work that Shaw Pittman was contracted to do besides what you have just described that you are aware of?

Mr Hutchinson—I believe that the discussion we have just had described the totality of their work.

Senator LUNDY—Previous answers to questions on notice about consultants engaged by the Office of Government Information Technology have Shaw Pittman, Potts and Trowbridge listed as providing the advice as you have described with the value of that contract running at \$967,000 and with the notation that the consultancy was not yet completed. Can you please provide the committee with the total value of that particular consultancy?

Mr Hutchinson—Certainly. On notice, if I may.

Senator LUNDY—Again I ask what the terms of engagement of Shaw Pittman were at that point. Can someone advise the committee now whether it was on similar terms of engagement to the most recent contract?

Mr Hutchinson—On very similar terms and conditions because we have engaged Shaw Pittman on the standard terms and conditions on which they work for all their IT outsourcing clients.

Senator LUNDY—So you are telling me that a company has been engaged on direct appointment by the equivalent of an agency head—what was Mr Macdonald's status?

Mr Hutchinson—An agency head.

Senator LUNDY—So it was engaged by an agency head bypassing the department's own competitive tendering process to the value of \$5 million or \$6 million without the knowledge of the minister on the actual process of appointment?

Mr Hutchinson—As far as I understood what you said, I believe that is an accurate recollection. I add that there was no administrative or other reason why the minister would necessarily have his attention drawn to the particular appointment in the circumstances.

Senator LUNDY—Going back to the issue of conflict of interest, what endeavours were undertaken by Mr Macdonald to ensure that there was no conflict of interest with Shaw Pittman and any of the companies involved in the IT outsourcing program?

Mr Hutchinson—We have declarations of Shaw Pittman that their client base does not include any of the tenderers or likely tenderers for this work. As a principal legal firm in the United States those sorts of declarations carry a fair amount of weight. I do not know beyond that what checks were done. I will find out. If there is any more to say, I will provide that on notice.

Senator LUNDY—Can you provide to the committee those statements that ensure against any conflict of interest, and can you also provide information in relation to any relationship that Shaw Pittman may have with other consultancy firms or other legal firms that operate in the area of IT outsourcing.

Mr Hutchinson—As to the latter, I will inquire of Shaw Pittman and convey what we can ascertain from them. As to the former, my recollection of the documentation is that the assurances from Shaw Pittman are reported in internal documentation, but assurances themselves do not appear in that documentation.

Senator LUNDY—The assurances themselves do not appear in the contract.

Mr Hutchinson—They are reported in the documentation. Again, I will inquire of Shaw Pittman and obtain whatever documentation they have.

Senator LUNDY—Who are the officers that are specified in the contract to work with you? You said that they were actually named in the contract to guarantee a certain status of service from Shaw Pittman.

Mr Hutchinson—The three named consultants are Michael Murphy and Andrew Moyle, who are partners of the firm, and Scott Christie.

Senator LUNDY—Are you aware of those officers having any previous involvement in the IT outsourcing contracts they may have dealt with prior to going to Shaw Pittman?

Mr Hutchinson—Prior to joining Shaw Pittman? I really would have to ask them. From my recollection, clearly we will have seen their CVs at the time we engaged them, but the detail of their Cvs escapes me for a moment.

Senator LUNDY—So was a conflict of interest checked in relation to those particular connections?

Mr Hutchinson—A conflict of interest would not arise merely because an officer of Shaw Pittman had, working for a previous employer, worked for one of these tenderers. That would not amount to a conflict of interest because any obligation he would have had to his previous client would have ceased when he left the first firm and joined the second firm. So the conflict would not arise merely because he previously advised another client in a different firm.

Senator LUNDY—It appears that—

Senator SCHACHT—That would be made clear to that officer employed by Shaw Pittman. Would that, as a matter of course, be made known to them that their previous connection is not in accordance with the rules and regulations of the processes so that there was no conflict of interest, including personal contact, discussion, et cetera?

Mr Hutchinson—I was using the conflict of interest concept in a very strict sense, which is that a conflict of interest arises when a person has a duty to two conflicting parties. There may be other issues that arise because of an individual's personal or other relationships. I would not treat that as a conflict of interest in the sense that conflict of interest applies to a partner of a legal firm—

Senator SCHACHT—What would you treat it as then? Would you treat it a bit like the stock market—insider trading, inside information, inside connections and so on? Would you treat that as a problem?

Mr Hutchinson—Certainly—

Senator SCHACHT—What I am asking is: would you make it aware to those officers of Shaw Pittman that, if they had a previous connection with a firm that was now in the bidding process, they have to be extraordinarily careful in how they deal with those people so that no-one is given, accidentally, inside information, inside running or a perception? I am sure you are being a very—

Mr Hutchinson—Shaw Pittman, like all our advisers and consultants, are bound by very strict confidentiality agreements that preclude them from conveying any confidential information to any external party.

Senator SCHACHT—Is that a conflict of interest?

Mr Hutchinson—No, that is a confidentiality provision.

Senator SCHACHT—Confidentiality. If they break it, they are gone.

Mr Hutchinson—If they break it, they are seriously gone.

Senator LUNDY—According to answers to previous questions, Freehill, Hollingdale and Page were engaged by the Office of Government Information Technology during the same period as the original Shaw Pittman contract. It was on Shaw Pittman's home page that I found the press release citing the areas of expertise of Mr Moyle, formerly a partner of the Melbourne office of Freehill, Hollingdale and Page, as being negotiating all forms of computer contracts and counselling clients on the acquisition and management of information systems. Was Freehill engaged at the same time by OGIT when Mr Moyle was employed? Was Moyle one of the original nominees by Shaw Pittman in their first contract?

Mr Hutchinson—Senator, I understand that any engagement of Freehill, Hollingdale and Page by OGIT was not connected with IT outsourcing. We are aware that Andrew Moyle was formerly with Freehill, Hollingdale and Page. I had that in mind when I dealt with the earlier question. The description you have from Shaw Pittman's home page about Andrew Moyle's expertise seems to match the work he is doing for us.

Senator LUNDY—Yes, that is obvious. Shaw Pittman sing the virtues of when Mr Moyle joined their team. I am trying to ascertain whether Mr Moyle's transfer from Freehill to Shaw Pittman was ever when both of those firms were engaged by OGIT.

Mr Hutchinson—We would have to take that on notice. We cannot immediately recall the time period in which Mr Moyle left Freehill, Hollingdale and Page.

Senator LUNDY—Yes, it may or may not have some relevance. Given the nature of the appointment of Shaw Pittman in the context of the IT outsourcing program, I believe that these questions are important matters in the public interest.

Mr Hutchinson—We will certainly provide answers on notice.

Senator LUNDY—Thank you. Going to further questions relating to answers provided by you to questions on notice, another series of contracts appears to have been let in the same manner. One with a company called Flexible Resources is cited as having consultancy fees and expenses estimated in the vicinity of \$320,000 in 1997-98. The first question I ask is: is this the only contract that has been engaged in with Flexible Resources? The second question is: were any previous contracts engaged in the same way?

Mr Hutchinson—The answers are yes and no.

Senator LUNDY—With respect to the terms of engagement of the previous contract, was that on the same way of appointment by the chief officer of the then Office of Government Information Technology.

Mr Hutchinson—I must have misunderstood your earlier question. The answer is that this is the only engagement that Flexible Resources had.

Senator LUNDY—So was there no previous contract?

Mr Hutchinson—There was one that has escaped my notice under the OGIT umbrella, so the answer is yes and yes and yes.

Senator LUNDY—So do we have another example?

Mr Hutchinson—There was a previous engagement. It was in broadly similar terms and conditions and both appointments were made by direct appointment.

Senator LUNDY—And what was the value of that previous contract?

Mr Hutchinson—We do not know immediately, but less than the present contract. We will take that on notice.

Senator LUNDY—In terms of answers to previous questions on notice, when the consultant listing from July 1995 to June 1997 was asked, I cannot find a reference to Flexible Resources as having been engaged at all. Can you advise now on the reasons for that and seek to provide the committee with greater detail about the previous contract with Flexible Resources?

Mr Hutchinson—We will certainly take that on notice. If there has been an omission, then it is always very hard to find out why there was such an omission, but we will certainly investigate it and find out what we can from the records that we have.

Senator LUNDY—With respect to that particular contract, what are the terms and conditions of the current contract?

Mr Hutchinson—We engage a named individual from the firm Flexible Resources broadly to provide us with specialist advice on the industry development aspect of IT outsourcing. We engage that individual on a nominated per diem rate and when the officer works for us we pay that rate, and when they do not we do not.

Senator LUNDY—Does the contract specify a minimum requirement?

Mr Hutchinson—I believe not. Can I check and provide a correction on notice if that is the case?

Senator LUNDY—And whom does that person work to?

Mr Hutchinson—That person works directly to the project coordinator for the project involved. In this case she works directly to Mr Smith on my left.

Senator LUNDY—And what does Flexible Resources do? We have heard that they provide industry development advice. Can you expand on that, Mr Smith?

Mr Hutchinson—My understanding is that Flexible Resources is essentially a one-person specialist consulting firm.

Senator LUNDY—Why was the competitive tendering process bypassed for that particular contract?

Mr Hutchinson—The amount involved was fairly modest.

Senator LUNDY—What—\$320,000?

Mr Hutchinson—Fairly modest in the scale of the multibillion dollar program. The expertise—

Senator SCHACHT—I think you have been in the job too long, Mr Hutchinson, if you start thinking that \$300,000 is a modest amount of money. I think the battlers would have a different view about that.

Mr Hutchinson—The individual has particular expertise in working with the state government of South Australia in the area of IT outsourcing.

Senator LUNDY—I am sorry—where?

Mr Hutchinson—Working with the state government of South Australia in the area of IT outsourcing and there were very few people with that track record of experience.

Senator LUNDY—I see.

Mr Hutchinson—That must have been in Mr Macdonald's judgment that this consultant had an unbeatable edge.

Senator SCHACHT—What was his track record in South Australia? You said that he had a track record in South Australia?

Mr Hutchinson—The consultant Flexible Resources had worked with the South Australian government on their IT outsourcing.

Senator SCHACHT—On the EDS project?

Mr Hutchinson—Yes.

Senator SCHACHT—Is that their only work?

Mr Hutchinson—I am unaware of the detail of the rest of the work.

Senator LUNDY—What advice did this consultant provide on the South Australian contract and to whom were they engaged?

Mr Hutchinson—To the extent that we have it on our records, I will take that on notice and provide it.

Senator LUNDY—Can you also provide the specific dates of engagement of both this contract and the previous contract and provide any documentation the office has in its possession about the referrals that occurred between Mr Macdonald and whoever provided the advice that this person was worthy of a \$320,000-plus contract, twice?

Mr Hutchinson—\$320,000 minus contract.

Senator LUNDY—That is for that contract. There is still a previous contract that we do not know the value of.

Senator SCHACHT—When does a modest amount of money not become modest in your empire?

Mr Hutchinson—Senator, as my staff will testify, even very small amounts of money are subject to enormous scrutiny in the Office of Asset Sales and Information Technology Outsourcing. In answering Senator Lundy's question, I was attempting to reconstruct the sole source decision process that the former chief government information officer went through in making that appointment. I was not myself exercising the same judgments. I was speculating as to what his judgments may have been to lead him to that decision.

Senator LUNDY—Would you have done it the same way?

Mr Hutchinson—No, we have not made any sole source appointments.

Senator LUNDY—Is it your intention to?

Mr Hutchinson—It is our intention to follow the procurement guidelines. We will make sole source appointments when we are satisfied in all the circumstances that it is the appropriate and cost-effective thing to do. We are reluctant to go down that course and would seek to avoid doing it whenever possible, but we would not set our face against doing it, if that was the appropriate thing to do.

Senator SCHACHT—What is the limit? Is there a rule in the office about when single sourcing or making a direct arrangement would have to go to a normal tendering process? What is the cut-off point when modesty no longer applies?

Mr Hutchinson—The rule in the office is that every contract will go out to competitive tendering, unless a case is made that that will be inappropriate in the circumstances. Since I have been involved with the IT outsourcing, I do not believe anybody has even put such a case.

Senator SCHACHT—But you just said this contract, \$320,000, I think, did not go out. It was a direct appointment.

Mr Hutchinson—That is correct.

Senator SCHACHT—And you said that that was a modest amount of money for which that judgment was made. Does the office have discretion, or do you, Mr Hutchinson, or the minister have discretion of when it no longer is a modest amount of money?

Mr Hutchinson—My understanding of the procurement guidelines is that the decision whether to seek a sole source appointment does not depend upon the quantum; it depends upon the circumstances, provided the quantum is within the delegation of the officer involved and these appointments are within the delegation of the officers in OAS.

Senator SCHACHT—What is the delegation and the officer to your level?

Mr Hutchinson—To the limit of funds appropriated.

Senator SCHACHT—There is no figure for you?

Mr Hutchinson—To the limit of funds appropriated.

Senator SCHACHT—Yes, been appropriated? You said appropriate.

Mr Hutchinson—No, to the limit of funds appropriated.

Senator SCHACHT—Appropriated? Let me get this straight. Does that mean you have a judgment that \$1 million may be a modest amount in a particular contract? Is that a decision you can take?

Mr Hutchinson—I would be very loath to take a decision that \$1 million was a modest amount of money.

Senator SCHACHT—Okay. So I am getting into a range. Is half a million the cut-off point in reference to your modesty, Mr Hutchinson?

Mr Hutchinson—Senator, there is no cut-off point.

Senator SCHACHT—No, but have you let a contract to single sourcing, as you call it, for over half a million dollars?

Mr Hutchinson—That is a theoretical possibility?

Senator SCHACHT—Have you done a contract?

Mr Hutchinson—No.

Senator SCHACHT—But you have done one at \$300,000?

Mr Hutchinson—No, I have not.

Senator SCHACHT—Who did the \$300,000 one?

Mr Hutchinson—The delegation was exercised by the former chief government information officer.

Senator SCHACHT—I see. So you have got your hands clean of this one?

Mr Hutchinson—No, Senator, because I have inherited the accountability for my predecessor's work.

Senator SCHACHT—Okay. From the records, did your predecessor hit the million dollar mark or half-million dollar mark on single source contracts?

Mr Hutchinson—From the record, yes, because the Shaw Pittman consultancy that we have discussed at great length was a sole source appointment in the \$4 million to \$5 million rate.

Senator SCHACHT—Which I came in late on. I started picking up a few vibes here. The firm from South Australia—

Mr Hutchinson—Flexible Resources.

Senator SCHACHT—Flexible Resources, \$320,000. They provided the consultancy work for the South Australian government over the outsourcing of the information technology program of the state government. Is that correct?

Mr Hutchinson—That is my understanding.

Senator SCHACHT—Did they approach you to do this work, did you approach them or was there an intermediary that suggested you should talk to them?

Mr Hutchinson—My understanding from the file records that we have is that they were approached by OGIT.

Senator LUNDY—Who is the consultant from Flexible Resources?

Mr Hutchinson—Her name is Yasmin King.

Senator SCHACHT—In the records before your time, Mr Hutchinson, before you took over this part of the operation and added it to your empire—

Mr Hutchinson—I knew you were going to say ‘empire’.

Senator SCHACHT—I have followed your history in the public service under both governments with considerable interest, Mr Hutchinson. It is like the rise and rise of Michael Rimmer; it keeps going up and up and up. From the record, does it show that they put a note in to OGIT at that time saying, ‘In view of our work in South Australia, we think this is an arrangement?’ Or did someone in OGIT notice their work in South Australia or did someone from the South Australian government put their name forward?

Mr Hutchinson—I would have to consult the records.

Senator LUNDY—Perhaps, while you are there, you could also provide the committee with information of that particular consultant’s previous employment history and qualifications with respect to this contract.

Mr Hutchinson—We will consult our records and provide you with that on notice.

Senator LUNDY—Can anyone advise me now?

Mr Hutchinson—I would prefer not to rely on recollection when we have the material on file.

Senator SCHACHT—Would your file show the dollar value for the South Australian government?

Mr Hutchinson—I would be very surprised if it would show that, but we will certainly check and provide it if we have it.

Senator SCHACHT—Surely you would have it for your own information. If they had done a \$10,000 job for the South Australian government, it would be a bit odd to give them \$320,000. But, if they had done a \$1 million project and there had been good comments about it, you could see that you were dealing with an organisation that has some standing. I presume you must have some idea of the value of their work in monetary terms for South Australia.

Mr Hutchinson—We will certainly take a look at the records and let you know what our records say.

Senator LUNDY—Was the Attorney-General advised of the arrangements with respect to the appointment of Shaw Pittman, given it is a legal firm?

Mr Hutchinson—I do not believe so, nor do I believe there was any need to advise him.

Senator LUNDY—Is the scope of their work providing legal advice?

Mr Hutchinson—It is important to understand that, even though Shaw Pittman is a firm of lawyers, we have actually engaged them to provide strategic, technical and commercial advice on IT outsourcing rather than to provide legal advice.

Senator LUNDY—Have they provided any legal advice in the course of their contract?

Mr Hutchinson—Advice on those matters often crosses over into legal matters but we have engaged Minter Ellison as our legal advisers in developing the present contracts that we are working on.

Senator LUNDY—With respect to the legal advice that may have crossed over and been provided by Shaw Pittman, was there any contemplation by the previous chief officer of OGIT that the legal panel and competitive process with respect to the government procuring legal services was bypassed as well?

Mr Hutchinson—The procurement of legal services for the IT outsourcing initiative followed a competitive selection process which led to the appointment of Minter Ellison. They are our legal advisers. I was trying to indicate that we have not engaged Shaw Pittman for legal advice but their advice occasionally extends into legal matters, at which point the issue is picked up for legal advisory purposes by Minter Ellison.

Senator LUNDY—Just another point with respect to Shaw Pittman. Obviously, if they were to have provided any legal advice at all to the office, there would have been a requirement in some way for at least a cross-reference to the procedures relating to the procurement of legal services by Commonwealth agencies, would there not?

Mr Hutchinson—The procurement of legal services is no different from the procurement of any services by Commonwealth agencies. The same purchasing guidelines now apply.

Senator LUNDY—Which provide for a competitive process?

Mr Hutchinson—Or for a sole source in those circumstances where a sole source is warranted in the judgment of the delegate making the decision.

Senator LUNDY—I will continue to refer you to the guidelines which do specify that those types of discretionary decisions are usually made, as we saw with the piggybacking of one of the IT contracts in the first instance, with the imprimatur of the minister. This has not occurred in this case and yet we have a multimillion dollar contract.

Mr Hutchinson—I would not accept the premise that in all such cases the minister's imprimatur is necessarily required.

Senator LUNDY—Perhaps the minister could take on notice the question of providing any examples where that discretion has been used under the procurement guidelines by the Minister for Finance and Administration and the minister has not been aware of the selection process. I think you will find that there are no other examples of the competitive tendering process having been bypassed in this way for a contract to the value of this particular one.

Senator Kemp—Senator, we will take your question on notice and see what Mr Fahey is able to provide you.

Senator LUNDY—I have a couple more questions with respect to the engagement of other consultants which are listed here. I would like to make reference to another consultancy which was made on a direct appointment process, which was outlined by Ms Marks at the last round of hearings, relating to the appointment of Stephen G. Marks & Co. Pty Ltd in relation to the probity of cluster 3. Has that particular consultant's work been extended to any other terms of reference outside of the probity of cluster 3?

Mr Hutchinson—Yes. There was certainly one issue, possibly two, where we have sought probity advice from Mr Marks on matters on the asset sales side of the office where the scope of the work did not warrant seeking a new appointee.

Senator LUNDY—So you have re-engaged Mr Marks?

Mr Hutchinson—Varied the scope of his engagement.

Senator LUNDY—Piggybacked his own contract is perhaps another way of describing it. So this is actually the first time you have taken a decision yourself to bypass the competitive tendering process?

Mr Hutchinson—We have not bypassed the competitive tendering process. Mr Marks was appointed arising out of a competitive tendering process.

Senator LUNDY—No, he was not.

Mr Hutchinson—There was a competitive tendering process that led to the conclusion that it was going to be very difficult to make any appointment other than that of Mr Marks.

Senator LUNDY—He did not participate in that competitive process, Mr Hutchinson.

Mr Hutchinson—That is correct. His appointment arose following that process.

Senator LUNDY—He was contacted by an officer of OGIT and approached after a competitive process had taken place. I just wanted to make sure that is clarified.

Mr Hutchinson—That is a fair clarification.

Senator SCHACHT—Then, of the ones who did tender, OGIT believed that they were not up to the mark. So therefore you went and approached somebody else. Is that correct?

Mr Hutchinson—OGIT had some difficulties with those who tendered—the precise nature of which I have not investigated.

Senator SCHACHT—Is it before your time again?

Mr Hutchinson—My time only goes back a very short period in this office.

Senator LUNDY—So let us go back to this point about the current terms of extending Mr Marks's contract. What were they? How does the scope of his work that you have now engaged him to do differ from the independent probity auditor role he was required for under cluster 3?

Mr Hutchinson—On one particular asset sale, which is still in train, we reached a position where we considered it desirable to have formal probity advice on the process we were about to follow. This situation arose at short notice. Mr Marks was familiar with the workings of the office, and it was very cost effective to brief him to provide the necessary probity advice within that short notice period. The amount of work involved was very small.

Senator LUNDY—What value?

Mr Hutchinson—It was a matter of a few hours work, barely extending past a day's work. It was not the sort of volume of work you would put out to tender.

Senator LUNDY—What was the work?

Mr Hutchinson—I have deliberately avoided saying that because to do so would necessarily disclose the status of a particular asset sale that is still under consideration at ministerial level. I will say there is nothing mysterious about it and nothing suspicious about it, but it is just that it has reached a certain stage where ministerial confidentiality needs to be maintained.

Senator LUNDY—In terms of this justification for the extension of these contracts and the bypassing of the competitive tendering process, you have relied a couple of times now on ‘cost effective’ as an argument for bypassing that process. Can you advise the committee on the relationship of that argument to support a process by which other contracts currently held with the Commonwealth could be extended, given that to embark upon a competitive tendering process could be deemed as not cost effective?

Mr Hutchinson—I am sorry, Senator. Could you rephrase the question or explain it?

Senator LUNDY—Can you envisage other examples where that same justification could be used to bypass a competitive tendering process?

Mr Hutchinson—Senator, the process has not been used to bypass a competitive tendering process. The process has been used consistently with the procurement guidelines in a circumstance where a competitive tendering process was inappropriate. It is not a question of bypassing. It was not appropriate; therefore it was not adopted. We are not seeking to circumvent the guidelines, merely to achieve the government’s objectives in a cost-effective way.

Senator LUNDY—I understand, Mr Hutchinson, but I am just trying to follow your logic on where there is a cost imperative in the actual competitive tendering process that outweighs the value of entering into that process, hence your justification. Perhaps I should put this question to the minister. With respect to the IT outsource contracts themselves where there is no or arguably little cost effectiveness in reviewing a contract after a period of time, is it the government’s intention to allow this same argument that the procurement guidelines competitive process can be bypassed, given it is not cost effective?

Senator Kemp—Senator, we have already discussed the issue of bypassing. I think you have raised it three or four times, and each time the officer has clarified—

Senator LUNDY—I have just asked you quite a specific policy issue, Minister.

Senator Kemp—Just let me finish. You have an unfortunate habit of butting in when people are seeking to respond to your questions.

Senator LUNDY—Because you do not answer questions.

Senator Kemp—You asked me a question. I say five words, and then you butt in. I have said to you that, each time you have spoken about bypassing a competitive tendering process, the officer has clarified the position to make it clear that the competitive tendering process and the procurement guidelines allow for where that is not—as you say—cost effective. Is that right?

Mr Hutchinson—That is true.

Senator Kemp—He has made an explanation. You have asked the same question three times. Each time, the officer has given an utterly consistent answer. Each time, you seem to have given your own interpretation to it, which you are entitled to do. But we do not have to accept that.

Senator LUNDY—Can you answer the question I asked you now?

Senator Kemp—It has been answered by the officer three times. I do not know whether I can add anything more to it. I will seek advice from my advisers at the table. But it has been answered three times to my mind because you have put the same question. You are unwilling to accept the answer. You are entitled not to accept it. I do not know what more we can add.

We can never say we will negotiate a sole source contract when it appears to be cost effective to do so. We will not say that. That is correct, is it not?

Mr Hutchinson—That would be a commitment to process over outcome which would go well beyond the policies I understand the government has espoused in respect of purchasing. Certainly, I think it would be fair to say it would be most unusual for a contract of great substance, such as these IT outsourcing contracts that we are now embarking upon, to be awarded on any basis other than competitive tendering, which is a process we are following.

Senator LUNDY—Sometimes.

Mr Hutchinson—In terms of the IT outsourcing process we are now embarking upon, it is the process we are following wholly.

Senator LUNDY—Are you saying there is going to be no more piggybacking of contracts or bypassing of competitive tendering?

Senator Kemp—Oh, Senator!

Senator LUNDY—I am just seeking clarification from Mr Hutchinson because he just made a specific—

Senator Kemp—We had a bypassing of competitive tendering. The officer has responded. This is the fourth time you have put your interpretation on it.

Senator LUNDY—I was asking a rhetorical question.

CHAIR—Hold on. It sounds like the same question to me. Senator Schacht, have you got questions to ask?

Senator LUNDY—Excuse me, can I have an answer to that specific question? It relates to further IT outsourcing contracts.

CHAIR—Senator, you have already been through that several times.

Senator LUNDY—We have had previous commitments from the minister that there will not be any further piggybacking of the IT outsourcing contracts. I am asking Mr Hutchinson if he can inform the committee that that is in fact the case.

Mr Hutchinson—I can give an absolute undertaking that, in the conduct of the IT outsourcing program for which I have been given responsibility, I have been instructed to pursue competitive tendering for all the IT outsourcing contracts and I will do that. There has been no suggestion from anyone that I should not.

Senator LUNDY—That does not answer my question.

Mr Hutchinson—I think your question asked me to comment on a commitment that you said had been given by a minister. I think it would be unreasonable to expect me to make any comment, particularly since I do not have before me the precise terms of the commitment you referred to. I was giving a commitment in terms of my accountability.

Senator LUNDY—I will make it easy for you, Mr Hutchinson. Are there any provisions within the current tender documentation for cluster 3 and the current tender documentation for the DEETYA-EN IT contract that could provide for the expansion of those contracts beyond the original scoping?

Mr Hutchinson—Not beyond the scoping that is provided for in the contract. Senator, what I am fencing around, because of the black and white nature of your question and the grey nature of the world, is that our IT outsourcing contracts explicitly allow for the effects of

administrative arrangement changes that the government or a government may from time to time decide upon.

If, as a consequence of such administrative changes, elements of agencies are moved from one portfolio to another, then the scope exists within our contracts—not extra to the contracts but within the contracts—for the associated work to be taken out of the scope of one contract and added to the scope of another. That is the extent to which we have that flexibility that you refer to as piggybacking but which is merely the application of the flexibility that is sensibly drafted into the contracts.

Senator LUNDY—I go now to the issue of consultants engaged by your office under what has been described in previously provided answers as ‘a restricted competitive process’. Can you describe what a restricted competitive process is and who or which firms were actually given the opportunity to participate in those processes?

Mr Hutchinson—A restricted competitive process is where, based on information available, there is good reason to believe that only a limited number of competitors can do the job. Then you ask only those competitors to provide proposals.

In the case of the Office of Asset Sales and Information Technology Outsourcing, we recently placed general advertisements in the national press calling for people who were interested in providing services to us to register their interest. We now use that register in order to draw up short lists of people we will ask to make proposals rather than opening the competition to anyone who wishes to make a submission. In this way we avoid putting people to the trouble of making submissions when they have no realistic prospect of succeeding.

Senator LUNDY—Part of your strategy has involved you issuing protocols in relation to the initiative that has asked all participants in the process to sign a confidentiality agreement which specifies a clause that puts a media ban in place. Can you explain the justification of putting that media ban in place given the current public debate about the merits or otherwise particularly of industry development components of these contracts?

Mr Hutchinson—The media ban is only a ban on disclosing or discussing information relevant to either information that a person holds confidentially or information relevant to a bid. It does not in any way seek to inhibit proper public debate of the overarching issues that are involved; it merely seeks to retain the confidentiality of the processes.

Senator LUNDY—Has your office at any time advised any participant or potential participant that their opportunities could be limited if, in fact, they speak publicly on any issues relating to industry development relating to the IT outsourcing?

Mr Hutchinson—The answer to the question that I was asked ‘is absolutely not’.

Senator LUNDY—I suppose it goes without saying that the industry is feeling some pressure from OGIT that they will compromise themselves if they make any media comment with respect to any of these issues. Have you given a reassurance to the sector that that is not the case and that they will not be victimised in any way if they speak out about issues relating to their participation or opportunity to participate in the IT outsourcing program?

Mr Hutchinson—I am sorry, Senator, I must have lost the thread of that question.

Senator LUNDY—I am asking if you can give assurances to industry players that they will not be victimised if they do speak publicly on issues relating to industry development and the IT outsourcing contracts.

Mr Hutchinson—I can give a categorical assurance that the Office of Asset Sales and Information Technology Outsourcing will under no circumstances ever victimise anyone.

Senator LUNDY—I am very pleased to hear that and I am sure many of them will be too.

CHAIR—Senator Lundy, you have been asking questions for quite a long time. Senator Schacht, did you want to ask a few questions?

Senator SCHACHT—Mr Hutchinson, I just noticed in the material that you provided to Senator Lundy about Shaw Pittman that it says that they were ‘outsourcing consultants to the South Australian government in connection with its contract for the operation and maintenance of Adelaide’s water and waste water systems’. How long were they involved in that contract?

Mr Hutchinson—I do not know.

Senator SCHACHT—Would you take that on notice?

Mr Hutchinson—Certainly.

Senator SCHACHT—If they had been involved in that contract for up to the last 18 months in South Australia, were you aware of the fact that last year—if they were looking at the operation and maintenance of the water system—the whole system broke down and a pong drifted over Adelaide for about six months which just about drove the population mad. It came down to the fact that the privatised water system had actually been badly managed, badly operated and badly maintained, and it became a major scandal for the government. Were they involved in being the maintenance operator for that contract at that time? If they were and you are paying them \$4 million a year, then maybe you can ask for your money back. We in South Australia would say that very directly.

Mr Hutchinson—Senator, I think the likelihood of anyone engaging a legal firm with speciality in outsourcing to operate a sewerage works is fairly minimal.

Senator SCHACHT—It says ‘in connection with its contract for the operation and maintenance of Adelaide’s water and waste water systems’. That is your answer.

Mr Hutchinson—I will provide a clarification of that answer which I am absolutely certain will go to the question of whether they provided procedural and commercial advice. I very much doubt that they provided any advice on activated sludge or related matters.

Senator SCHACHT—You are saying that because they are lawyers they would not know how to handle sewage. I would have thought that goes hand in hand.

Senator Kemp—Come on, Senator. Even for you, that is a bit weak.

Senator SCHACHT—I would like you to take that on notice. My questions deal with two areas on asset sales. The Prime Minister, the Treasurer and, I think, the Minister for Communications, the Information Economy and the Arts have made public statements in the last couple of weeks saying that they are generally in favour of further selling the public ownership of Telstra. Have you received any direction in the Office of Asset Sales to prepare for such an eventuality?

Mr Hutchinson—No.

Senator SCHACHT—Have you had any discussion with the appropriate ministers or minister on the issue?

Mr Hutchinson—We have not had a substantive discussion on preparing—

Senator SCHACHT—It has obviously been raised generally, but no direction has been given. Is that correct?

Mr Hutchinson—A number of interested parties in the community—investment banks and the like—are making approaches to the Office of Asset Sales and Information Technology

Outsourcing asking when we are going to do it again. I have informed the minister that we are receiving these approaches. That is the nature of the—

Senator SCHACHT—How many approaches have you received?

Mr Hutchinson—I have not counted them, but we get them daily.

Senator SCHACHT—And they are salivating at the thought, are they, of getting another big slice of fees, et cetera?

Senator Kemp—Senator, the question that has been asked is how often they have been approached and the officer has responded to it.

Senator SCHACHT—Has the minister indicated to you that there will be no preparations made before the election on this issue?

Mr Hutchinson—The minister has indicated to me that he does not wish us to make preparations at this stage. He has merely reiterated to us the government's standing position on this—that there will be no sale of any further equity in Telstra without a mandate from the Australian people at the next election.

Senator SCHACHT—But, being a very perspicacious senior public servant, you have not internally made any preparations anticipating an eventuality subject to the election?

Mr Hutchinson—The resource base of the Office of Asset Sales and Information Technology Outsourcing does not permit me to deploy resources in that sort of anticipatory way.

Senator SCHACHT—So there is no-one deployed? And you take all the phone calls yourself?

Mr Hutchinson—There is no-one deployed on preparations for a further sale of Telstra. We have still got one or two officers who are deployed on residual work from the first sale and they are handling these inquiries, as I am.

Senator SCHACHT—They are handling it and you are?

Mr Hutchinson—Yes.

Senator SCHACHT—Okay. I now turn to the preparation of the privatisation of the National Transmission Agency. I have had this discussion at previous estimates and I am just after an update. I have asked this question before and you have provided information, but obviously there will be further cost. What is now the updated total cost to the Office of Asset Sales and Information Technology Outsourcing on the appointment and employment of consultants and various experts in preparing the advice to the government for the sale of the NTA? You can take that on notice.

Mr Hutchinson—We had better take that on notice. We have a provision but it does not immediately come to my mind what it is.

Senator SCHACHT—Have the initial rounds of expressions of opinion for the NTA now closed?

Mr Hutchinson—Expressions of interest have closed, yes.

Senator SCHACHT—How many expressions of interest did you get?

Mr Hutchinson—I prefer to protect that information from the public record for the moment.

Senator SCHACHT—I am not asking you to name them.

Mr Hutchinson—I understand that. At the moment we are not yet in a commercial position where we wish to even disclose the scale of the competitive interest. A significant number—will that do?

Senator SCHACHT—But your idea of a significant number and mine, I have found in the past, may be purely coincidental. You could say significant is two and I would think maybe 15. Nevertheless, I appreciate that you are going to claim commercial-in-confidence. I would have thought you would be in here telling everybody that there is a massive amount of interest, to jack the price up. I thought that would be your job, to get the highest price, so you would tell everybody, including this hearing, that there would be significant major interest from dozens of people.

Senator Kemp—Thank you for your advice, Senator, but I think the officer has given the answer that he wishes to provide.

Senator SCHACHT—Are a number of those expressions of interest from foreign companies?

Mr Hutchinson—Yes.

Senator SCHACHT—Have you yet received a policy direction from the government whether a foreign interest will be allowed to bid for the NTA?

Mr Hutchinson—The position is that foreign interests will be allowed to bid but their application to acquire will be subject to the approval—

Senator SCHACHT—This is terrible sound in here.

Mr Hutchinson—They will be allowed to bid. Their application to acquire, if they are the successful bidder, will, under the Foreign Acquisitions and Takeovers Act, be subject to the approval of the Treasurer, on the advice of the Foreign Investment Review Board.

Senator SCHACHT—But the government is not giving any of these potential foreign investors any guidelines at all such as: ‘You may be able to have up to 49 per cent, or you could have 30 per cent, or you could have the lot’? There are no guidelines given?

Mr Hutchinson—Not at this stage.

Senator SCHACHT—Doesn’t that affect possibly what the bidding would be, if they are not given those guidelines?

Mr Hutchinson—The bidders at this stage must make their own commercial judgment as to their prospects of securing the Treasurer’s approval under the Foreign Acquisitions and Takeovers Act.

Senator SCHACHT—Have you provided any advice to the Treasurer or his office or the department on the level of foreign interest in the bidding arrangement?

Mr Hutchinson—Not at this stage.

Senator SCHACHT—Have they sought any advice?

Mr Hutchinson—Not at this stage.

Senator SCHACHT—I find that a rather odd process, that you cannot give some indication, because I am sure that the price would be a lot different if it was a minority interest compared with a majority interest.

Mr Hutchinson—Senator, it is a standard practice in the acquisition and divestment of businesses within the Australian commercial sector for deals to be entered into subject to

Foreign Acquisitions and Takeovers Act approval. It is unusual for commercial constraints to be applied *ex ante* in the Australian commercial sector.

Senator SCHACHT—When would you go to the next process—asking people to put in a firm tender?

Mr Hutchinson—Within two to four weeks.

Senator SCHACHT—Irrespective of the fate of the bill in the Senate?

Mr Hutchinson—At the moment we have no plans to change our course. If the bill in the Senate is passed, that will work one way; if the bill is rejected, we will re-examine it as necessary.

Senator SCHACHT—Are you informing all these expressions of interest that the bill has not yet been carried by the parliament and that there may be some dispute about whether it will be carried or not?

Mr Hutchinson—That information will be provided to bidders.

Senator SCHACHT—But it has not been yet—in the expressions of interest?

Mr Hutchinson—That information is public knowledge; it is on the public record. Whether we have yet gone and told them I do not know.

Senator SCHACHT—I think it would be useful if you did. If the bill is defeated, you will proceed to make other arrangements to dispose of the asset, will you?

Mr Hutchinson—No. If the bill is defeated, we will seek further instructions from the government.

Senator SCHACHT—The government has given you no instructions yet about what happens if the bill—

Mr Hutchinson—No; I think—

Senator SCHACHT—Minister, has the government made a decision on what would happen if the bill is defeated?

Senator Kemp—Senator Alston was asked this question, or it was raised with him. If the bill fails to go through, he said that we will look at the position when it happens.

Senator SCHACHT—I just thought maybe, as the government does have occasional cabinet meetings, you may have actually discussed it and made a policy decision.

Mr Hutchinson—During the Senate committee of inquiry into the bill, Senator Alston indicated that he would look at that if the bill failed. That has not yet happened.

Senator SCHACHT—The main point I was after is that it is interesting that you have not taken the trouble, apparently, to inform people that the bill is still a matter of dispute in the Senate.

Mr Hutchinson—Senator, as I said, the fact that the bill may be a matter of dispute in the Senate is on the public record. My attention has just been drawn to the information brief that went to parties who have expressed interest. It refers to the fact that the bill is before the parliament.

Senator SCHACHT—Right.

Mr Hutchinson—And that the Senate committee is due to report by 10 March.

Senator LUNDY—I would like to return now to the general question of the outsourcing process. There have been a number of changes announced in the timetable for the outsourcing

program. Can the officers advise the committee of the current timetable for the release of either RFIs or RFTs for the variety of clusters, and what the current cluster structures are?

Mr Hutchinson—With regret, the answer to your question is no. We cannot advise you of the forward timetable because the government has decided not to release the timetable.

Senator LUNDY—Not to release?

Mr Hutchinson—The minister has decided not to release the forward timetable.

Senator LUNDY—So what about the previous timetable—has that been thrown out?

CHAIR—Minister, I think anyone not involved in IT outsourcing can probably go.

Senator Kemp—The officers can make their judgment—I am sure they are rearing to go, though. The only issue before the committee at this stage is IT outsourcing, so officers who are not associated with that may go home. Thank you for coming.

CHAIR—Thank you on behalf of the committee.

Mr Hutchinson—Senator Lundy, the specific answer to your question is no. The minister has decided not to release the specific timetable of each cluster and what its key dates are. The broad timetable which has the project finished within the next one and a half financial years and the broad phasing, as announced by the minister late last year, remains as he announced it then. That is as much detail as we wish to put on the public record at this stage, for competitive tension reasons.

Senator LUNDY—Why was the DEETYA cluster brought forward?

Mr Hutchinson—I do not believe the DEETYA cluster was brought forward.

Senator LUNDY—So it was always scheduled to be the cluster following cluster 3?

Mr Hutchinson—Certainly as long as I have been associated with it it was quite clear that, provided the necessary preparatory work could be done in time—and it was—the DEETYA cluster would come forward after cluster 3 was in the marketplace, and that was done.

Senator LUNDY—With cluster 3 there was a process by which a request for information, followed by a request for tender, took place. With the DEETYA tender there is no request for information; there is just a ‘direct to the request for tender’ process. What are the reasons for that?

Mr Hutchinson—There was, in fact, a preliminary notification to industry of the forthcoming request for tender. The judgment was taken that, in the light of the timetable, and in the light of what we now knew about the industry following experience with cluster 3, there was no particular merit in putting industry through the extra loop of a request for information when they could proceed immediately to respond to a request for tender.

Senator LUNDY—In terms of the timetable, we saw in last year’s budget documents that many of the agencies had savings offset against their IT services on the basis of the IT outsourcing program. Can you advise the committee as to the situation those agencies find themselves in, given that the government’s IT outsourcing program has not stuck to the originally canvassed timetable and that we are now getting very close to the next fiscal year?

Mr Hutchinson—The management of the savings that have been taken from agencies is entirely a matter between those agencies and the Department of Finance. Our role really is simply to implement the projects. I have no involvement in that dialogue about savings being taken from budgets.

Senator LUNDY—In terms of the actual degree of control that the agencies, the different clusters, have had in the timing of the program, have you received any complaint or been advised of any concern from those agencies about the delays with the IT outsourcing program and the effect that has on their budget situation?

Mr Smith—As I explained to you at the last hearing late last year, we had extensive consultations with all agencies in putting together this roll-out strategy. Largely, if not absolutely, the timetables that we have put together meet—without exception, if I recall—the agencies’ timetables that they in particular want to pursue. As a consequence of that I have had no feedback saying, ‘We are concerned,’ because we have been able to manage the process such that it meets their timetable.

Senator LUNDY—With respect to DEETYA, did DEETYA approach OGIT with respect to their readiness to proceed to RFT stage?

Mr Hutchinson—There were discussions between DEETYA and the Office of Asset Sales and Information Technology Outsourcing over a period of time, so that each of us were able to monitor the other’s readiness to move, and a mutual decision was reached on timetable.

Senator LUNDY—With respect to the industry development requirements with the DEETYA contract, is it true that the government has issued a statement, or perhaps the minister has made a statement, to the effect that industry development requirements cannot impose or offset the savings expectation within the IT contracts?

Mr Hutchinson—That would not be an accurate representation of the situation or, indeed, of what the minister has said.

Senator LUNDY—Could you provide me with one, please?

Mr Hutchinson—I am grappling here with rebutting a negative. The situation is this: for a tender to be acceptable it must satisfy the agencies that it can meet their service levels adjusted for risk—that is, the technical capacity of the bidder must be suitable to meet the business needs of the agency. It must also generate at least sufficient savings, in aggregate, to meet the savings that have been pre-assigned to the agencies within the cluster. Only once a tender has exceeded those thresholds can possible trade-offs involving industry development obligations be entertained. That is, quite simply, that only once the tender meets the business needs of the agency, measured financially and operationally, does the government consider trade-offs involving industry development obligations.

Senator LUNDY—But they will consider those trade-offs?

Mr Hutchinson—They may consider those trade-offs if indeed such trade-offs are presented or if indeed such trade-offs are required to reach the best outcome.

Senator LUNDY—In terms of the actual assessment process at that point by the government, we have certainly read in press reports that the decision lies with both the minister for finance and, in this case, the minister for employment and education on that particular DEETYA contract. Can you advise of the actual decision making process in assessing the industry development requirements?

Mr Hutchinson—The tender assessment of industry development requirements is carried out separately from the financial and technical assessments. It is carried out by a team drawn from the Department of Industry, Science and Tourism, the Office of Asset Sales and Information Technology Outsourcing and specialist consultants that we jointly appoint. They prepare an assessment of the industry development offerings and prepare a tender assessment report comparing the offerings.

Senator LUNDY—What requirements are in the DEETYA contract with respect to industry development and how, if at all, do they differ from the requirements contained in the cluster 3 RFT?

Mr Hutchinson—They do not differ—they are the same.

Senator LUNDY—The definition of the small to medium enterprises contained within those industry development provisions seems to be quite broad. Can you give the committee any indication as to the scoping of that definition with respect to the Australian industry?

Mr Hutchinson—I am sorry, I do not understand the question.

Senator LUNDY—I am asking you for a definition of the SMEs as contained in your industry development provisions and how that relates to the nature of that particular sector in the Australian industry.

Mr Hutchinson—Are you asking me to indicate how much of the Australian IT industry, however defined, is occupied by SMEs that would fit our definition?

Senator LUNDY—Yes.

Mr Hutchinson—I am not sure that there is going to be an easy way to answer that question without commissioning the Australian Bureau of Statistics to undertake yet another massive data collection exercise.

Senator LUNDY—The point of the question is that surely in the expensive advice you have obtained from your consultants on this issue you would have a clear idea as to where your industry development provisions are actually targeted.

Mr Hutchinson—The industry development provisions are clearly targeted at small to medium sized enterprises, regional Australia, employment creation, investment and exports.

Senator LUNDY—And how will those—

CHAIR—Senator, it being past 10 o'clock the committee will now stand adjourned. That completes this session of the finance and public administration supplementary hearings for additional estimates.

Senator LUNDY—I will take the opportunity to notify that I will put some questions on notice.

CHAIR—Yes, sure, if you want to put some questions—

Senator Kemp—Senator, we are very happy to take any questions that you have on notice.

Senator LUNDY—I am sure you are, Minister.

Senator Kemp—I don't know! You make an offer and all you get is a facetious reply.

Senator LUNDY—I am eternally grateful.

CHAIR—Thank you, Minister, and thank you, officers, for attending this evening.

Committee adjourned at 10.00 p.m.