



COMMONWEALTH OF AUSTRALIA

SENATE

Official Committee Hansard

ECONOMICS LEGISLATION COMMITTEE

MONDAY, 6 APRIL 1998

CANBERRA

By Authority of the Senate

INTERNET

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

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

CONTENTS

MONDAY, 6 APRIL

Department of Workplace Relations and Small Business

281

SENATE
MONDAY, 6 APRIL 1998

ECONOMICS LEGISLATION COMMITTEE

Portfolios: Treasury; Industry, Science and Tourism; Workplace Relations and Small Business

Members: Senator Ferguson (*Chair*), Senator Jacinta Collins (*Deputy Chair*), Senators Bishop, Chapman, Murray and Watson

Substitute member: Senator Crane

Senators in attendance: Senators Bishop, Chapman, Jacinta Collins, Crane, Ferguson and O'Brien

Committee met at 10.08 a.m.

DEPARTMENT OF WORKPLACE RELATIONS AND SMALL BUSINESS

Proposed additional expenditure, \$13,589,000 (Document A).

Proposed additional expenditure, \$2,276,000 (Document B)

Consideration resumed from 27 February.

In Attendance

Senator Kemp, Assistant Treasurer

Department of Workplace Relations and Small Business—

Mr Robin Stewart-Crompton, Deputy Secretary

Mr Greg Feeney, Assistant Secretary, Maritime

Mr Derren Gillespie, Assistant Secretary, Waterfront/Maritime

Mr Rex Hoy, Group Manager, Corporate Strategy

CHAIR—I call the committee to order and welcome Senator Rod Kemp, the Assistant Treasurer, and officers from the Department of Workplace Relations and Small Business. The purpose of today's hearing is to examine the possibility, alleged in a letter to the committee by Senator O'Brien, that misleading evidence was given at the recent estimates hearings. We will sit for up to one hour. We will discuss matters in relation to that letter that was written by Senator O'Brien and events arising from it. Minister, or officers, do you wish to make an opening statement?

Senator Kemp—No, Mr Chairman.

CHAIR—All right. I will call for questions. I call Senator O'Brien.

Senator O'BRIEN—In relation to the subject of today's proceedings, I have the *Hansard*. Do the witnesses have the *Hansard* of the relevant passages?

Senator Kemp—I am sure they do.

Senator O'BRIEN—Given your intervention last time, Mr Chairman, we would ascertain that. The first passage that I wanted to take Mr Gillespie to is on page 81. There are a series of questions halfway down the page, beginning with Senator Jacinta Collins saying:

Can you tell the committee what expertise and experience the ACIL consultants brought to this exercise . . .

Then go down to not the next Jacinta Collins question but the one after that. It goes:

Were you aware?

Mr Gillespie, you said:

Of?

Senator Collins said:

Of the consultancy?

You answered:

I am not alive to any of the particular terms of any form of engagement that there might have been.

Is that not an answer which gives the impression you were not aware of the consultancy?

Mr Gillespie—I do not think so, Senator. In Senator Jacinta Collins's question, which you drew attention to initially, there was a specific reference about the consultants and the reference to the cost. My response is that I was not aware of the particular terms of the form of engagement there might have been.

Senator O'BRIEN—But that is the first question which you talked about. In answer to the first question I mentioned, you said:

I think that it had been indicated earlier that any contractual matter is a matter for the portfolio of the Minister for Transport and Regional Development.

Mr Gillespie—Yes.

Senator O'BRIEN—Then from Senator Jacinta Collins came the question:

So what you are saying is that you are not in the position to be able to advise us on the reasons that the Department of Industrial Relations was bypassed for advice in this area, despite the fact that this department has been providing that advice for years and has expertise in this area and also with the new legislative regime? You are not able to tell me why you were bypassed?

And you said:

The fact is that you have alluded to a contract within that portfolio, and I think that is where that matter must be properly dealt with.

Mr Gillespie—Yes.

Senator O'BRIEN—But then it does not go to the question of a contract. Senator Jacinta Collins simply says:

Were you aware?

You asked her for clarification, quite rightly, and she clarified:

Of the consultancy?

Mr Gillespie—Yes.

Senator O'BRIEN—I would suggest to you that your answer there would give any reasonable person the view that you were not aware of the consultancy.

Mr Gillespie—Senator, I think my response was pitched to my saying I was not alive to the terms of any form of engagement. If you look further, Senator Collins asked:

Mr Hoy, are you aware of the ACIL consultants?

I am using the term 'consultancy'. Senator Collins used the term 'consultancy' and I responded to the formal document that engages people to make a consultancy. Mr Hoy responded that he was aware of the consultants and over the page, on E82, I said:

I think the plain fact of the matter is that within the portfolio of Transport and Regional Development there was a contract let to do some work, the details of which I am certainly not alive to.

I am not denying the existence of a consultancy. I say over the page:

I think the plain fact of the matter is . . . there was a contract—

and I say on page E81:

I am not alive to any of the particular terms of any form of engagement—

In other words, I am not denying the existence of a contract or a consultancy.

Senator O'BRIEN—Can we come to that passage because I wanted to ask you some specific questions about that passage. The point that needs to be made is that you were asked whether you were aware of the consultancy and at that time, August 1997, you had had a briefing on 9 September 1996 on the ACIL 1 report—

Mr Gillespie—Yes.

Senator O'BRIEN—and read the report on 23 December—

Mr Gillespie—Yes.

Senator O'BRIEN—and went to a meeting on 18 December where the report was discussed with Minister Reith and Minister Sharp.

Mr Gillespie—I'm sorry?

Senator O'BRIEN—You were at a meeting on 18 December with Minister Reith and Minister Sharp where the report was discussed?

Mr Gillespie—This is in 1996? I cannot recall the context of that discussion, frankly, Senator. I have indicated I was at a meeting but I do not think I have indicated as to what was discussed.

Senator Kemp—It should also be recorded that the discussions that you may have with a minister would be regarded typically as being confidential.

Mr Gillespie—Senator, my observation was in the context of the formalities of a consultancy and the existence of a contract. My answer was pitched to the question: was there a consultancy? I was not alive to the detailed terms of the consultancy.

Senator O'BRIEN—Mr Gillespie, a lot of your answers appear to be pitched to the question of a contract but that question is not pitched to the question of whether there was a contract or not. The specific question was: were you aware of the consultancy? Clearly, you were, yet you chose to give that answer.

Mr Gillespie—But, sorry, I have not denied the existence of a consultancy.

Senator O'BRIEN—You have not answered the question then; is that what you are saying?

Mr Gillespie—No, I did not say that either, Senator. I apprehended that question to be in the context of the observation that Senator Collins had made previously about the formal existence of a consultancy or contract. I have not denied the existence of a consultancy.

Senator O'BRIEN—In fact, your answer would lead the ordinary person to the conclusion that you were not aware of the consultancy, wouldn't it? In the context of the questions and your answers, that is the conclusion that a person listening to your answer would arrive at.

Mr Gillespie—My answer was:

I am not alive to any of the particular terms of any form of engagement that there might have been.

The department acknowledges there was a consultancy. Over the page I acknowledge that there is a consultancy. In other words, I accept that there was a consultancy at that stage; that there had been a consultancy. I just was not alive to the terms, the detailed particulars, of that consultancy.

Senator O'BRIEN—You did not know it was with ACIL?

Mr Gillespie—I do not think my answer denies the point that Senator Collins made about the contract with ACIL.

Senator O'BRIEN—Okay.

Mr Gillespie—And then Senator Collins refers on page E82 to:
'Contract to ACIL Economics and Policy Pty Ltd:—

Senator O'BRIEN—And the discussion with Senator Alston, yes.

Mr Gillespie—Yes, but then I say:

I think the plain fact of the matter is that within the portfolio of Transport and Regional Development there was a contract let to do some work . . .

So, I am not denying the existence of a contract or a consultancy with ACIL.

Senator O'BRIEN—Okay.

Mr Gillespie—What I said to the committee was I was not aware of the detailed particulars of that contract.

Senator O'BRIEN—No, not necessarily. What you said was—this is going to the second passage that you referred to on page E82:

I think the plain fact of the matter is that within the portfolio of Transport and Regional Development there was a contract let to do some work, the details of which I am certainly not alive to.

I suggest, from reading that sentence, that the details you say you are not aware of are the details of the work?

Mr Gillespie—I am sorry, Senator. I was saying there that there was a contract let to do some work and the details of the contract I was not alive to.

Senator O'BRIEN—Mr Gillespie, if that is what you intended to say, surely you would have said that there was a contract, the details of which you were not alive to?

Mr Gillespie—I said that there was a contract let to do some work—a contract—the details of which I was not alive to. That was the pitch of my response. I was not talking there about the details of the work.

Senator O'BRIEN—Again, Mr Gillespie, that answer would lead the ordinary person to the view that the details of the work performed under the contract were matters that you were not aware to. I use the term 'aware to' because we discussed it at the last hearing—the term you use, 'alive to', as meaning 'aware of'. Do you accept that?

Mr Gillespie—As I put it at the time, my view is that that refers to the contract.

Senator O'BRIEN—That is an interpretation that you now seek to put on that answer. But I put it to you that, in fact, the ordinary person listening to that answer would connect the word 'work' with your passage 'the details of which I am certainly not alive to'.

Mr Gillespie—You may want to import that interpretation to it. My view is that I was referring at the time to the fact of the contract, the details of which I was not alive to. The committee is aware of the fact that the department was aware of the contract.

Senator O'BRIEN—This is the ACIL 1 contract?

Mr Gillespie—Yes.

Senator O'BRIEN—You have been briefed on the work performed under the contract?

Mr Gillespie—In September.

Senator O'BRIEN—In September 1996. This is August 1997. You read the report on 23 December 1996.

Mr Gillespie—Yes.

Senator O'BRIEN—In August 1997 you said that you were not aware of the details of the contract, yet you knew essentially what was performed under the contract, so you knew what the contract was about.

Mr Gillespie—I was not aware of the details of the contract—

Senator O'BRIEN—You had not read the contract. Is that what you are saying?

CHAIR—Let Mr Gillespie finish his answer, Senator O'Brien. Do not cut in until he has finished.

Mr Gillespie—I was not aware of the details of the contract let to do that work.

Senator O'BRIEN—You mean that you had not seen the actual contract?

Mr Gillespie—I do not think that I had seen it, Senator.

Senator O'BRIEN—Is that what your answer was intended to convey?

Mr Gillespie—Indeed. I was not aware of the contract.

Senator O'BRIEN—Right. You had seen the report and you had been briefed on it, but you had not actually seen the contract which gave rise to that report, and that is what your answer was intended to convey.

Mr Gillespie—But it is in the context of being aware of the contract, because Senator Collins had asked earlier, 'Was the department not aware of this consultancy?' There had been a specific reference to the terms of the contract, at least an element of the contract, and my response was directed to the particulars of the contract. Just to clarify this, I think that Mr Hoy had previously said that the department was aware of the ACIL contract. He did say that he was aware of it and I was aware of the contract. In this context, focusing on and working on the assumption that we are talking about the consultancy—

CHAIR—Mr Stewart-Crompton, I think that you want to say something?

Mr Stewart-Crompton—Thank you, Mr Chairman. I did not want to interrupt Senator O'Brien's flow, but it seems a logical point to just mention that, since we have gone back to page E81 and the passage that Senator O'Brien refers to where Mr Gillespie starts talking about the contract, it follows from a question in the middle of page E81 from Senator Collins in which Senator Collins asked:

Can you tell the committee what expertise and experience the ACIL consultants brought to this exercise—at a cost to the taxpayer of over \$80,000 so far—and what expertise did not currently exist within the department?

This started a process of discussion about the contract. Mr Gillespie then said:

I think that it had been indicated earlier than any contractual matter is a matter for the portfolio of the Minister for Transport and Regional Development.

Then we saw the development of the questions that flowed from there. But I thought it was worth drawing to the committee's attention that Senator Collins did ask a question which, from my recollection, officers sitting at the table took to be a question about the contract and why

ACIL was given a contract, when the Department of Industrial Relations was, in the senator's view, capable of providing appropriate advice. That then led to a series of discussions about the contract.

When the department responded to the chair's request for comments on the matters raised by Senator O'Brien, we went back over the transcript and we took the view that this part of the questioning commenced with a series of questions about the contract and that Mr Gillespie had confined his answers—or the two answers that Senator O'Brien has particularly drawn attention to—to the terms of the contract. There were wider questions asked then and later about the consultancy, and the terms of the consultancy, and Mr Hoy mentioned that he knew of it and that he was aware of it. It seemed to us, when we went through the transcript, that it was a reasonable interpretation of Mr Gillespie's comments to say that he was talking about the terms of the contract and not reflecting on the wider work done within the consultancy.

Senator O'BRIEN—I have read the response from the department with the letter from Dr Shergold but I do not think that that explains it. I have already had the exchange with Mr Gillespie about that passage, about whether he was aware of the consultancy. I do not think it is in doubt that he was. I understand the nature of the response, that you are saying that he was not actually answering that question. He was answering that he had not seen the actual contract upon which the consultancy was based.

Mr Stewart-Crompton—Yes, it was a very specific and narrow answer.

Senator O'BRIEN—But not to the question that was asked.

Mr Stewart-Crompton—No. I take your point that, depending how you look at the answer on E82, you could say there is some ambiguity in it. If you see the clause 'the details of which I am certainly not alive to' as qualifying the word 'work' I think it is equally open to an interpretation that it is a reference to the contract let to do some work in the previous clause in that sentence. I certainly do not want to get drawn into a kind of fine semantic argument because, clearly, the best person to know what he meant was the officer who gave the answer.

To my mind the worst that could be said about that sentence is that it is ambiguous. In the context, when we went through the series of questions and answers, we did not think the ambiguity gave rise to the interpretation that Senator O'Brien is putting. It seemed to us that the officer was bringing his response back to a fairly narrow answer to a question about the contract.

Senator O'BRIEN—We have already had an exchange about what an ordinary person might interpret that answer to mean, having heard it rather than read it.

CHAIR—When you say 'an ordinary person' what do you mean? Do you mean the senators who are here?

Senator O'BRIEN—Yes, we are only ordinary people.

CHAIR—I was just wanted to be sure.

Senator CRANE—We can ask the same question 10 times and get the same answer.

CHAIR—I understand that but we have allowed the time for this so I must let Senator O'Brien have the call.

Senator O'BRIEN—I will just get my reference so we are not talking about the wrong thing and talking at cross-purposes. On page E83 is the passage where, I understand, you say you answer with the intention of referring to the second ACIL.

Mr Gillespie—Could you give me the passage reference?

Senator O'BRIEN—This passage is on page E83, in general, and from the foot of E82. It is the fourth question down. You are asked by Senator Collins:

To your knowledge does the ACIL plan fit with the terms of the workplace relations act or does it contemplate action outside the legislative framework?

You say:

I do not have any insights into any of the work that ACIL may have done under that contract.

You mean by a second ACIL contract?

Mr Gillespie—Yes.

Senator O'BRIEN—You were asked the next question:

Right. Are you aware of the strategy being developed by the ACIL consultancy?

Sorry, that concerns Mr Hoy's answer.

Mr Gillespie—Senator Collins asked that question and Mr Hoy responded.

Senator O'BRIEN—Yes. He said:

No. Not the details, no.

Mr Gillespie—Senator Collins came back later—'not aware of anything to do with the strategy'.

Senator O'BRIEN—You say:

I am not alive to any detail of any strategy that might be being developed.

Is that what you are referring to?

Mr Gillespie—Yes, I thought you were moving to that point.

Senator O'BRIEN—It is on page E83.

Mr Gillespie—Yes.

Senator O'BRIEN—'I am not alive'—so we interpret all that to mean 'I am not aware of any detail of any strategy that might be being developed.'

Mr Gillespie—Yes.

Senator O'BRIEN—You say that we should understand that as a reference to the second ACIL contract?

Mr Gillespie—Yes. Senator Collins said:

Are you aware of the strategy being developed by the ACIL consultancy?

My responses are in the context of ACIL 2.

Senator O'BRIEN—There is actually a statement—it is not a question—from Senator Collins which immediately precedes your answering statement:

Mr Gillespie has already told us that he is not aware of anything to do with the strategy.

Where should I refer 'the strategy' back to?

Mr Gillespie—Senator Collins says:

Right. Are you aware of the strategy being developed . . .

Senator O'BRIEN—By the ACIL consultancy?

Mr Gillespie—Yes.

Senator O'BRIEN—So that is where you say it is ACIL 2?

Mr Gillespie—My interpretation is that the discussion of ACIL 2 commenced at about the foot of E82:

Are you aware of whether the department is to have any involvement in a further contract?

My perception of this leg of the discussion is that it is about ACIL 2.

Senator O'BRIEN—ACIL 1, if I can call it that, is the smaller of the two ACIL consultancies.

Mr Gillespie—The initial ACIL consultancy.

Senator O'BRIEN—Yes, the first one.

Mr Gillespie—The 1996 consultancy.

Senator O'BRIEN—It was described by the department of transport as a consultancy to provide advice to the minister and to the department regarding an industrial relations strategy for the implementation of waterfront reform et cetera.

Mr Gillespie—Yes. I think you were referring there to Senator Collins's observation at E82.

Senator O'BRIEN—I am actually referring to a document from the department of transport.

Mr Gillespie—But I think the senator used those words at the top of E82 as well.

Senator O'BRIEN—The department of transport described the second consultancy as a follow-on from the consultancy commenced in 1995-96.

Mr Gillespie—1995-96 or 1996?

Senator O'BRIEN—That is what their words are.

Mr Gillespie—It must have been 1996.

Senator O'BRIEN—The 1995-96 financial year.

Mr Gillespie—Yes.

Senator O'BRIEN—This is the \$600,000 consultancy.

Mr Gillespie—This is the second one.

Senator O'BRIEN—This is the second one.

Mr Gillespie—This is now described as the follow-on consultancy by the department of transport.

Senator O'BRIEN—These are the department of transport's words.

Mr Gillespie—Yes.

Senator O'BRIEN—Take the liberty to look at it. This is the answer we have received for details of consultancies.

Mr Gillespie—Yes.

Senator O'BRIEN—What I am interested to know is, given the interconnection of the two consultancies and the fact that you had actually read the first report, which was to provide advice to the minister and the department regarding an industrial relations strategy for the implementation of waterfront reform, do you still say that we should not have understood your answer to have been that you were not aware of any strategy at all but simply that there was a strategy arising out of the second consultancy?

Mr Gillespie—I think I clarified at the top of E83 by asking, 'Are you referring to the contract?' I understood then that we were talking about ACIL 2. Senator Collins referred to the strategy being developed by the ACIL consultancy. There was only one extant consultancy.

We had clarified that we were talking about ACIL 2 at that point and my responses were pitched at ACIL 2, having purposely tried, I thought, to clarify that what we were talking about at the top of E83 was the second consultancy. Senator Collins then went back to the ACIL consultancy. My view is that that can only be a reference to the extant consultancy: 'I am not alive to any strategy that might be being developed under that consultancy.' Without having the dates immediately available, I think it commenced in July and—I stand to be corrected on the months—concluded at the end of October 1997. So in August 1997 I was responding in that context. I think you are asserting a view of continuity which, frankly, I did not see between the two consultancies.

Senator O'BRIEN—You were not aware that the second consultancy was a follow-on from the first?

Mr Gillespie—We were not aware of the terms of reference. At that stage—I do not have the material here—my understanding was that there were, at or about the same time, other consultancies commissioned.

Senator O'BRIEN—The Webster and Davies, et cetera, consultancies?

Mr Gillespie—I think so. I am referring to the context of the existence of a range of contracts which had been commissioned in another portfolio with the specific reference here, as I took it to be from Senator Collins, to ACIL 2 and the strategy being developed by the consultancy—that is, the one that existed at the time—'I am not alive to any detail of a strategy being developed.'

Senator O'BRIEN—So you were aware, to the extent that the first consultancy developed a strategy as it was tasked to do, according to the advice we received from the department—

Mr Gillespie—I think the committee has had the benefit of descriptions from the commissioning organisation about what that was.

Senator O'BRIEN—Yes.

Mr Gillespie—There was preliminary work done and no plan or anything of that developed nature. I think you bring a perspective that says there was a strategy.

Senator O'BRIEN—Yes.

Mr Gillespie—I am talking here about the work under ACIL 2.

Senator O'BRIEN—I am going on the advice we got from the department. You have the advantage on me that you have read the consultancy report and had a briefing. We have been denied that. The actual document that we have received—

CHAIR—I am not sure that it is a matter of being denied it, Senator O'Brien. It is a matter of whether it is proper to have it.

Senator O'BRIEN—Whether it is proper to have it or not, we have been denied it. I think what the department did tell us was that that document was to provide advice to the minister and the department regarding an industrial relations strategy.

Mr Gillespie—This was to the department of transport?

Senator O'BRIEN—Yes, and you had read the report and had a briefing on it. This is ACIL 1 we are talking about.

Mr Gillespie—What we were talking about at E83 was ACIL 2.

Senator O'BRIEN—Well, I accept that is the construction that you now say should be placed on it. What I—

Mr Gillespie—That was the construction I was working on at the time, Senator, having tried to clarify what the contract was that we were talking about, and having been asked, ‘Are you aware of the strategy being developed by the ACIL consultancy?’ There was only one extant consultancy with ACIL.

Senator JACINTA COLLINS—How is that consistent with my comments on E87, where, now that I have checked that, I expressed my contempt—I think that would be a fairly generous description—of the process of asking questions during these estimates hearings.

Mr Gillespie—Whereabouts on page 87, Senator?

Senator JACINTA COLLINS—The first reference to me on page E87, which is essentially a statement of my frustration in seeking to get information of any nature in relation to both consultancies regarding ACIL.

Senator Kemp—Senator, I have read that. I find it a bit difficult. What is the point you are making there?

Senator JACINTA COLLINS—The point that was being made there was that we had spent several hours asking the department questions in the Economics Legislation Committee estimates process and we could not get responses. We could get responses from the estimates committee dealing with transport. If anything, that was a statement of frustration that we simply could not get information. The next round of estimates demonstrated that information was with the department in relation to those consultancies. In that statement, I refer to both ACIL consultancies.

Mr Gillespie—Senator Collins, does that not relate back to E78 to your observation, probably two-thirds of the way down the page, where it says:

I will go firstly to a copy of a letter—

Are you referring to the—

Senator JACINTA COLLINS—No, I am referring to the secret plan, which could be ACIL 1, ACIL 2 or it could be from the previous round of estimates—to the fact that a particular unit was set up within the department to address strategies in a number of industries, but we could not get any information about what those strategies were. That is what I am referring to.

Senator Kemp—Senator, you may be unhappy with the information that is given—

Senator JACINTA COLLINS—That is why we are here, Minister.

CHAIR—No, that is not why we are here.

Senator Kemp—No. We are not actually; that is not—

Senator JACINTA COLLINS—Inconsistent information.

Senator Kemp—Well, that is a different matter. The information that was given was provided by the officers. Now if you are not happy with that, we understand that.

Senator JACINTA COLLINS—We are not happy with the inconsistency.

Senator Kemp—That is occasionally the nature of the estimates process. We give the best answers that we are able to give and you either like those answers or you do not.

Senator JACINTA COLLINS—I think the point is that you do not.

Senator Kemp—I am sorry about that, but it is hardly a big deal.

Senator JACINTA COLLINS—The point here is that the best information was not given at the time.

Senator Kemp—Well, we are here because you are worried, as I understand it, about the inconsistency of the information which has been given.

Senator JACINTA COLLINS—Yes.

Senator Kemp—I do not think what you have referred to us there deals with that issue. What that refers to is that you are unhappy with the level of information which you felt you should have received.

Senator JACINTA COLLINS—And the next round of estimates has demonstrated that we were given false information.

CHAIR—Mr Stewart-Crompton, do you have anything to say?

Mr Stewart-Crompton—Thank you. I remember this exchange which is recorded at pages E86 and E87 very well, because it seemed to be prompted by remarks that I made, which set me back a bit. But the senator did make some comments which clearly demonstrated that the senator felt quite frustrated at the process that had taken place. I have to say that, on behalf of the department, I do not think the department did anything that was improper in the estimates, and I think our answers to the questions that were given were correct. That is my view.

In the two passages on E87 that Senator Collins has referred to, the senator made quite a long statement or series of statements about the process, but actually asked one question, which is halfway down page E87, referring to a letter from the minister to the then head of the department, Dr Rosalky. The question was:

. . . have further instructions been given since this article came out, that no information on this area is to be made available?

I responded:

I am not aware of any further advice from the minister beyond that which he has already given.

I would simply like to say that, whilst I appreciate the sentiments and I understand quite clearly the sentiments expressed by Senator Collins at the time, the senator did not go back in either of those two statements to ask a particular question about the reports but simply, as I took it, expressed considerable discontent with the lack of information that the department had been able to provide.

Senator O'BRIEN—Can we just have a look at that, Mr Stewart-Crompton? There is a statement there in the paragraph you refer to which starts:

Now the question is . . .

Senator Collins says:

I find it difficult to comprehend that ACIL was contracted to do a project on industrial relations in 1996 and the department has no outcome of that plan—

that is clearly ACIL 1—

when a further contract is being considered for \$600,000 in the same area.

And that is ACIL 2.

Mr Stewart-Crompton—Yes.

Senator O'BRIEN—Clearly, at that stage the department or one of its officers had been briefed and had read the ACIL 1 report. Why did you not respond to that then?

Mr Stewart-Crompton—Two things: firstly, I was not aware of the briefing.

Senator O'BRIEN—Yes.

Mr Stewart-Crompton—Secondly, there was not a question asked. There was a statement made by Senator Collins which led to the question at the end of the next passage. In the first passage to which you referred, the last sentence says:

I find it difficult to comprehend that ACIL was contracted to do a project on industrial relations in 1996 and the department has no outcome of that plan when a further contract is being considered for \$600,000 in the same area.

Senator O'BRIEN—Yes.

Mr Stewart-Crompton—I did respond to the comment by saying that decisions about the contracts were a matter for another department—

Senator JACINTA COLLINS—And that this ground had already been covered.

Mr Stewart-Crompton—That is right. What I wanted to indicate by my response at that time was that the outcome, whatever it might be, from the contract would be a matter that would be delivered to the commissioning department not to our department.

Senator JACINTA COLLINS—But your department we now know was aware of the outcome?

Mr Stewart-Crompton—What is said here is:

I find it difficult to comprehend that ACIL was contracted to do a project on industrial relations in 1996 and that the department has no outcome of that plan for the contract being considered.

As best as I can recall, I took that to be a question about the delivery on the contract by ACIL to the commissioning department. The responses that my colleagues had already given were to the effect that our department was not the commissioning department, that it was not a contract between our department and ACIL, that it was not a contract to which our minister was a party and that all matters to go to the content of the contract, the management of the contract and the delivery of any report or material out of the contract would be a matter for the then department of transport. That is what I was trying to say then.

Senator JACINTA COLLINS—Mr Stewart-Crompton, I appreciate what your answer was dealing with there, and I appreciate that at the time you were not aware that the department had been briefed on the outcome of ACIL 1. But that is not the issue. There was an officer before the committee at that stage who had been briefed about ACIL 1 and who did not respond to that question-come-statement, whatever it is you want to call it.

CHAIR—I am not sure that officers are obliged to respond to statements. In fact, I read that very carefully and it was a statement. I find it difficult to comprehend. There was no question asked. It was a statement. You could not necessarily expect an officer of the department to respond when a question is not asked.

Senator Kemp—I do not think that the question was actually put to the officer that you have in mind.

Senator JACINTA COLLINS—The next point we went to was that this ground had already been covered. The ground that had been covered was seeking information about the maritime strategy, not seeking information about the details of ACIL 2. I think that statement there makes that point quite clearly. Even Mr Robin Stewart-Crompton thought that the issue, in a broader sense, had already been covered.

Mr Stewart-Crompton—I think Senator Collins is referring again to my answer on E87 where I said:

At the risk of going over ground that my colleagues have already covered, decisions about those contracts are not a matter for this department.

That aspect of other officers' evidence is what I was referring to, not any other matters which they had raised.

Senator JACINTA COLLINS—We are talking about my statement referring to no outcome of that plan.

Mr Stewart-Crompton—Senator, your statement there seemed to me, and still seems to me, to be a statement that—

Senator JACINTA COLLINS—You responded to.

Mr Stewart-Crompton—It was strange that ACIL should be contracted to do further work on industrial relations matters and a contract was being considered for \$600,000 without the Department of Industrial Relations, as it then was, having something out of the contract. The contractual obligation was with the department of transport. The new contract was a matter for the department of transport. That was the point that I was trying to make in my response.

Senator JACINTA COLLINS—I do not think there was any reference to the contract there. I think the reference was a project and an outcome of a project. We certainly were not addressing the issue of the terms of the contract at that stage.

Mr Stewart-Crompton—I retrospectively apologise if I gave too narrow a response to your statement, but I did pick up the introductory words in which you talked about ACIL being contracted to do a project and a further contract being considered.

Senator JACINTA COLLINS—Yes, talking about a policy approach and strategies and things much broader than the terms of a contract.

Senator Kemp—Senator, I wonder if you can just clarify it for me. I thought Senator O'Brien said the first part referred to ACIL 1 and the second part referred to ACIL 2.

Senator O'BRIEN—Yes.

Senator Kemp—Is that right? So you were referring to the contract.

Senator JACINTA COLLINS—No. We were referring to the projects, ACIL 1 and ACIL 2.

Senator O'BRIEN—The department had no outcome of that plan? That is not the contract; that is the outcome of the contract.

Senator Kemp—I think that we are getting into semantics.

CHAIR—I just intervene here and suggest that people can always put interpretations on answers to suit their own political aims or any other aims. The officers have given one interpretation. If senators choose to put a different interpretation on it, there is nothing we can do about that. But I would like to draw us back to any other issues that you might want to raise, bearing in mind that we said one hour, which means that we must finish when the hour is up.

Mr Stewart-Crompton—I just want to go back to one aspect of something I said. Particularly given the nature of this hearing, I think it is terribly important to be accurate in what I say. I think I said earlier that I was not aware of the ACIL briefing. In fact, I was not aware of the content of the ACIL briefing. Since the August hearing, I was reminded that the ACIL briefing took place, and I recall the fact that the ACIL briefing took place. But I did not participate in the ACIL briefing and I did not know the content of the ACIL briefing, nor did I have any foreknowledge of what the ACIL consultants might be briefing about. It would be inaccurate to say that I knew nothing at all of the existence of the ACIL briefing.

Senator O'BRIEN—Just to clarify that, you knew that there was a briefing?

Mr Stewart-Crompton—That there was to be a briefing.

Senator O'BRIEN—Yes.

Mr Stewart-Crompton—Then after the event I knew that there had been a briefing that had taken place but I did not know the content of the briefing, nor did I know anything about what was proposed to be discussed or what had been presented. I did not think that I should let my response stand the way it was.

Senator O'BRIEN—Mr Gillespie, going back to that answer on page E83, which we have had some discussion about, you said:

I am not alive to any detail of any strategy that might be being developed.

Mr Gillespie—Yes.

Senator O'BRIEN—You yourself on 10 March signed off a minute to the minister, which you call the strategy paper.

Mr Gillespie—Yes.

Senator O'BRIEN—And you were the officer in the department who was actually developing the strategy.

Mr Gillespie—I was working on providing policy advice to the minister on the waterfront area.

Senator O'BRIEN—And the department of transport participated in the development of another paper which you provided to Mr Reith on 27 February.

Mr Gillespie—There were consultations. Have you got your *Hansard* reference there, Senator?

Senator O'BRIEN—I do not have a *Hansard* reference because this comes out of answers to questions on notice.

Mr Gillespie—Yes, there were discussions between the departments.

Senator O'BRIEN—I have been advised that you actually amended the strategy paper agreed with the transport department without discussion or reference to the department of transport officers. Is that correct?

Mr Gillespie—I do not think I am really in a position to comment on the development of the provision of advice.

CHAIR—I think that is a matter of advice to the minister.

Senator O'BRIEN—I am not asking for the advice. I am asking whether you amended the document without reference to the department of transport.

Mr Gillespie—I am not really in a position, I do not think, to talk about the policy development process in the provision of advice to the minister.

CHAIR—In fairness, Senator O'Brien, I think we have gone over this issue before. There are some things when the departmental officers are giving advice to government that they cannot comment on. I do not think it is right for you to draw interpretations from the answer which says that he cannot comment.

Senator O'BRIEN—I think I would understand if I were asking, 'Did the paper say X or Y?' But I am asking a general question about whether the paper was amended by an officer from one department without reference to officers from another.

CHAIR—It is still a matter of advice to government. If the officer indicates that he is not in a position to be able to comment on that or offer any advice because it is advice to government, then that is the answer he must give.

Senator O'BRIEN—Mr Feeney, were you involved in the preparation of the strategy paper that I have just referred to?

Mr Feeney—The 23 February paper. We were involved in consulting with Mr Gillespie on issues associated with the paper, yes.

Senator O'BRIEN—Did you actually see the paper?

Mr Feeney—We had a copy of the paper after the event.

Senator O'BRIEN—Were you in any way involved in the development of the paper? Did you see it in its formative stages?

Mr Feeney—Yes, we did.

Senator O'BRIEN—When you saw the final paper, was it changed without consultation with you?

Senator Kemp—Mr Chairman—

Senator CRANE—That is out of order.

CHAIR—Hang on, Senator Crane.

Senator CRANE—Well, it is out of order.

CHAIR—Let me rule on it. I was about to when you butted in. I am just saying that is not a question that the officer can reasonably be expected to answer.

Senator JACINTA COLLINS—Mr Chairman, on your point of order—

CHAIR—It is not a point of order; it is a ruling.

Senator JACINTA COLLINS—Well, on your ruling, surely one of the issues that has been before us is that the ACIL contract was not a matter for the Department of Industrial Relations. Senator O'Brien's questions are not going to the issue of the government's policy formulation process. They are going to the issue of whether officers of the Department of Industrial Relations were in fact involved in the contract development and the formulation process, contrary to evidence given to us previously.

CHAIR—Mr Feeney, in an endeavour to answer, said that, yes, he had. But he was then asked whether it was something that had been altered. That is not a question, I do not think, that is the province of this committee to determine, if it is about giving advice to government.

Senator O'BRIEN—I do not know whether debating the matter will take us any further. Clearly the question is not going to be answered, judging by the responses of the two witnesses. I have been advised that Mr Gillespie amended the strategy paper by deleting the strategy option and increasing the attractiveness of the confrontationists option—

CHAIR—Perhaps you would care to tell us where you got your advice from?

Senator O'BRIEN—That was not the question that I was seeking to put to him.

CHAIR—If you could tell the officer where you got your advice from, the officer might be able to indicate whether or not it is appropriate to answer.

Senator CRANE—For the purpose of this discussion, I place on the public record that, before this committee and other committees that I have sat on either in opposition or now in government, in terms of development of policy and positions, these details are not made public.

Senator O'BRIEN—The details of the policy?

Senator CRANE—No, the details of the development. Your question was: was it altered? Consistently when we were in opposition and since we have been in government, when it comes to that particular development, the officers have consistently said before us that it is not open for information to the committee. I think it must be noted that there has been a consistent approach on this, at least for the eight years that I have been in the Senate.

CHAIR—I think that was the point that I was making when I ruled that it is not that the officers at the table refuse to answer questions; it is just that they are not in a position to be able to answer these questions.

Senator O'BRIEN—Going back to Mr Gillespie and your answer. The position you take now—

Mr Gillespie—What page is this?

Senator O'BRIEN—I am sorry. This is the passage:

I am not alive to any detail of any strategy that might be being developed.

What you are asking us to accept is that, given all of your involvement, what you were doing there specifically was only referring to the second ACIL consultancy?

Mr Gillespie—That is right. Above it, Senator Collins asked:

Are you aware of the strategy being developed by the ACIL consultancy?

I said:

I am not alive to any detail of any strategy that might be being developed.

Senator O'BRIEN—Senator Collins said:

Mr Gillespie has already told us he is not aware of anything to do with the strategy.

That was the impression you had given her in the answer on the previous page. Then you, I guess, strengthen that up by saying:

I am not alive—

That is, 'I am not aware of'.

to any detail of any strategy that might be being developed.

Mr Gillespie—Yes, and I answered that in the context of ACIL 2, as I said.

CHAIR—With respect, Senator O'Brien, I think Mr Gillespie has also answered it two or three times today. You can keep asking the questions, but I am going to have to start ruling on repetition if we get too much further along the line of repeating that same response time after time with reference to a question.

Senator O'BRIEN—With respect, Mr Chairman, there was repetition in the way the questions were answered which involved constant reference to a contract even though the questions were not about the contracts. But it does not serve any purpose if you and I have a debate about it.

CHAIR—We will not have a debate, I promise you.

Senator O'BRIEN—Thank you for that promise, Mr Chairman. The situation is that I do not have a great deal more to put. I think it is fair to say that I am not, at this stage, able to say that I am convinced that there was not an intention to mislead, but I would want to review the *Hansard* of today's proceedings before making my decision as to what I do with—

CHAIR—That is a debating matter which we have to take up elsewhere.

Senator O'BRIEN—I understand. I thought it would be appropriate to give the committee the benefit of my thinking on the process now, rather than simply walk out and leave people wondering. What I am saying is that I do not have any more questions. I still want to review the *Hansard* to determine whether I see this matter go further.

CHAIR—As chairman, can I say that we have the means of giving you the opportunity to ask questions of the department. It is not usual that we recall estimates for a special hearing after the matter has been canvassed pretty thoroughly in the estimates hearing, but you made it clear that you wanted to ask further questions of Mr Gillespie and others in relation to what you interpreted as misleading answers. As I said earlier, it is also fair to say that people can put what interpretation they like on answers. Some people will put a different view on an answer from others, if it suits their own particular ends.

Senator O'BRIEN—Can I just correct one statement. I took this action on the recommendation of the Clerk. So, yes, I did do that.

CHAIR—That is a matter I will discuss with you. It was not on the recommendation of the Clerk. Let us be open about it. You quoted some sections of the *Hansard* to the Clerk who then gave you an opinion on those sections of the *Hansard*?

Senator O'BRIEN—On the procedure.

Senator CHAPMAN—And the options available.

CHAIR—And the options that were available to you. There were two options available. We have availed you of the first option, which was that Mr Gillespie come back for the committee, which we have already done. I imagine that the Clerk and his advice suggested that there were two options available and this was one of them. Now, having given you the opportunity to ask the questions of this particular case, I would have thought that you might have to seek advice as to whether the other option was still relevant. That is entirely up to you and it will be a matter for the Senate or the President to decide. Did you want to say something else?

Senator O'BRIEN—Only that both options remained open on the advice that I had from the Clerk. What I was seeking to do was to say that I would review whether I would pursue the matter any further. That was the purpose of my statement.

CHAIR—If that is the case, there being no further questions, I thank Mr Gillespie, Mr Stewart-Crompton, Mr Feeney, Mr Hoy and the minister for their time this morning. I declare this additional meeting of the estimates committee closed.

Committee adjourned at 11.06 a.m.