



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION
LEGISLATION COMMITTEE

Consideration of Additional Estimates

WEDNESDAY, 17 FEBRUARY 1999

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SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Wednesday, 17 February 1999

Members: Senator Gibson (*Chair*), Senator Murray (*Deputy Chair*), Senators Brownhill, Conroy, Robert Ray and Watson

Senators in attendance: Senators Brownhill, Conroy, Gibson, Lundy, Robert Ray and Watson

Committee met at 6.32 p.m.

DEPARTMENT OF FINANCE AND ADMINISTRATION

Proposed additional expenditure, \$50,035,000 (Document A)

Proposed additional expenditure, \$102,842,000 (Document B)

In attendance

Senator Herron, Minister for Aboriginal and Torres Strait Islander Affairs

Program 10—Office of Asset Sales and IT Outsourcing

Michael Hutchinson, Chief Executive, OASITO

Simon Lewis, Executive Director, Trade Sales

John Edge, Acting Senior Director, Telstra Team

Greg Cunningham, Director, Telstra Team

Jonathan Hutson, Senior Director, Trade Sales

Mark Heazlett, Senior Director, Trade Sales

Tony Eaton, Senior Director, Trade Sales

Robin Renwick, Senior Director, Trade Sales

Rhondda Purtell, Director, Trade Sales

David Yarra, Senior Director, IT Outsourcing

Rod Whithear, Senior Director, IT Outsourcing

Arnold Ellem, Senior Director, IT Outsourcing

John Bridge, Senior Director, IT Outsourcing

Trixie Makay, Senior Director, IT Outsourcing

Matthew Kay, Business Manager, Corporate

Anthony Carrigan, IT Outsourcing

Fiona Johnson, IT Outsourcing

Mark Wentworth, IT Outsourcing

Department of Finance and Administration observer—

Jean-Bernard Carrasco

CHAIR—I declare open this public hearing of the Finance and Public Administration Legislation Committee. We are continuing our consideration of additional estimates and tonight we examine program 10 of the Finance and Administration portfolio, Office of Asset Sales and IT Outsourcing. The committee has set 26 March as the final date for the submissions and written answers to questions taken on notice. For the record I wish to advise that the committee has received written questions on notice from the following senators since the last hearing: Senator Faulkner, to programs 2.1 and 2.2 of PM&C, and Senator Crossin to programs 1.2 and 6 of PM&C.

For the benefit of Hansard, I remind witnesses to identify themselves and their position in the first instance and to speak clearly and directly into the microphone. I welcome Senator Herron, who is standing in for this evening for Senator Ellison, the Minister representing the Minister for Finance and Administration in the Senate and officers from the Office of Asset Sales and IT Outsourcing.

[6.34 p.m.]

Program 10—Office of Asset Sales and IT Outsourcing

Senator LUNDY—Can you explain OASITO's relationship to the industry development part of DOCITA and the National Office for the Information Economy?

Mr Hutchinson—In brief, the industry development role was previously played by the Department of Industry, Science and Technology. It has now been transferred to DOCITA. Their officials play the same role in terms of consultation on policy and evaluation of tenders that the officers of DIST did, and the officers of DOCITA play the same monitoring role that the officers of DIST previously did. They are the changes that arose through the admin arrangements orders changes.

Senator LUNDY—Sorry. What was that?

Mr Hutchinson—They are the changes that arose from the admin arrangements orders changes that followed the last election.

Senator LUNDY—Do you have any contact with anyone in DISR now?

Mr Hutchinson—Do we have any contact with DISR? Yes, we do, because DISR still maintain some interest and DISR are still involved in some of the committee structures at the higher level—involved in the total industry issues rather than the IT industry issues.

Senator LUNDY—So who do you deal with in that department—which section?

Mr Hutchinson—The division head of Industry A in the Department of Industry, Science and Resources.

Senator LUNDY—And what is the nature of the common issues?

Mr Yarra—It is just a remnant interest that DISR has. The main interest has gone over to DOCITA, with the overall IT industry perspective they bring to it, and that has not yet been brought into effect because we have not had a process since the admin arrangements orders to trigger that. The next one will probably be either tax or group 5, so it is not entirely clear how that relationship will work.

Senator LUNDY—So what role did that section have previously?

Mr Yarra—ISR? They had staff outposted to OASITO, in effect.

Senator LUNDY—Is that still the case?

Mr Yarra—It is still the case.

Senator LUNDY—How many officers have you got from that department?

Mr Yarra—Two, and those two are crossing both group 5 and tax at the moment. I presume when the health evaluation starts they will pick up in those spots.

Senator LUNDY—So what are actually tasked to do within OASITO?

Mr Yarra—They are on the ID evaluation team and they participate in that team as any other team member. We have consultants in those teams as well and they bring their perspective to that evaluation.

Senator LUNDY—And their perspective is what?

Mr Yarra—It is the government policy perspective in relation to what ISR used to do and what DOCITA now does in terms of the IT industry.

Senator LUNDY—And are they with you full time?

Mr Yarra—Yes.

Senator LUNDY—What do they do when there is no response to tender evaluation?

Mr Yarra—When that happens, I presume they will go back to their agency, but at the moment they are full time.

Senator LUNDY—And what level are they at?

Mr Yarra—They are at what is now called executive level 2 and 1, which is the old SOG B and C. It is at that level.

Senator LUNDY—And how long do you expect to hang on to those two positions?

Mr Yarra—It depends on the way in which evaluations come in with the RFTs. I think while we have evaluations in progress they will be there full time. We have two evaluations full steam now and one just kicking off with the health project, so they are there for the foreseeable future, because health will carry them through. Then we will have the other groups going out and they may well be there continuously. It may work that way.

Senator LUNDY—We heard from Mr Sutton in earlier estimates hearings last week. What is your relationship with DOCITA?

Mr Yarra—The people that we have on deck are Michael Sutton's people.

Senator LUNDY—And how many—

Mr Yarra—The two people that we have from DOCITA work for Michael Sutton. They are his outposted staff to our project.

Senator LUNDY—And they work specifically on industry development?

Mr Yarra—Exclusively on industry development.

Senator LUNDY—Can you describe what they do?

Mr Yarra—We carve up the bids when they come in; the ID part of the bids is separated out and goes into the ID team. They run the evaluation entirely separately from the other aspects of the evaluation. They specialise in ID and it runs separately. The way we run the evaluation process is that the ID does not come together with the technical and financial evaluation until the very last minute.

Senator LUNDY—So what level position are those two officers in DOCITA?

Mr Yarra—They are the same two that I have mentioned to you before—the same people. It is the EL2-EL1 level—executive level 2 or executive level 1. These are the same people. We have only got two people. They work for Michael Sutton. They formerly worked in what was DIST and they came across.

Senator LUNDY—Sorry, I misunderstood you. When I was asking questions, I was asking what officers you had from DISR.

Mr Yarra—We have none from DISR.

Mr Hutchinson—Senator, we had two from DIST.

Senator LUNDY—You had two?

Mr Hutchinson—We had from DIST, the same—

Senator LUNDY—No, it is my misunderstanding. I thought you said you still had two from—

Mr Hutchinson—No. The same two individuals but they now belong to DOCITA.

Mr Yarra—They have changed departments, yes.

Senator LUNDY—Thank you. And what about NOIE? Do you have a relationship with NOIE?

Mr Hutchinson—There is no direct relationship with NOIE involved in the IT outsourcing at the moment, other than the relationship that comes from NOIE's role in DOCITA, DOCITA's role in IT policy and the linkages between IT policy and IT outsourcing policy, which are fairly pervasive in terms of consultation, but there is no particular apportionment of NOIE's activities to us or of our activities to NOIE.

Senator LUNDY—So how does that link with NOIE manifest itself in your section?

Mr Hutchinson—There is no formal mechanism. It is a link with DOCITA. It takes place on an as-needed basis—consultation among officers at the appropriate level. There is no formal mechanism.

Senator LUNDY—Are the two officers in Mr Sutton's section connected with that liaison?

Mr Hutchinson—No. They have a quasi-executive role, but they are actually evaluating tenders within the policy framework.

Senator LUNDY—You speak of an as-needs consultative process with NOIE. NOIE makes, I suppose, several assertions about their role with IT industry development and the potential for growth in that sector in Australia. Can you identify for me the officers who have that contact with NOIE who can bring that view into your office?

Mr Hutchinson—Senator, as I understand it—and I have obviously no accountability or responsibility to speak for the policy responsibilities of DOCITA, or NOIE, which is part of DOCITA—they have an industry-wide responsibility, an economy-wide responsibility, for IT policy. The industry development aspects of IT outsourcing are a component of that responsibility, but it is a component that is now well established in government policy and is clearly specified. It is not a policy that is under development or under review.

It is therefore, if you like, an element that is carved out and is assigned to my office for implementation purposes only. The policy is set, we are implementing it, and in order to implement it and to ensure that our implementation remains consistent with policy we have officers outposted from DOCITA to support us.

To the extent that there are any questions about policy—we need to be sure we are on track and are actually implementing policy—those questions are referred back into DOCITA at the appropriate level at the appropriate time. If there were to be any revision of policy—and I have no knowledge that there is to be—then we would expect that to be initiated and executed by NOIE and they would consult us. But as I say, there is no formal standing mechanism between ourselves; there is no need for one and therefore we prefer not to have one. Communication is among the officers who need to communicate. Most of that communication will happen at a working level.

Senator LUNDY—Has there been any formal communication between yourselves and officers of NOIE?

Mr Hutchinson—There has been formal communication between OASITO and DOCITA following the change in our admin arrangements orders so that we were all clear that the accountabilities that previously existed between ourselves and DIST were adequately transferred and properly locked in, and that took the form of correspondence at the chief executive level between me and the secretary of DOCITA. That nominated the contact points in our working. There was that formal communication that said, 'Okay, we've got new players in the game. This is how we're going to work.' Those modalities are now set out and it works. But it really is the normal informal networking across agencies that keeps the business of government flowing, not the formal nomination processes.

Senator LUNDY—Can you provide that provide that correspondence you have just described to the committee?

Mr Hutchinson—Subject to reviewing it, yes. From my recollection of it there is no reason not to.

Senator LUNDY—There should not be any reason not to. Has there been any other correspondence relating to industry development exchanged between yourself and DOCITA or yourself and NOIE?

Mr Hutchinson—From me, no.

Senator LUNDY—No, I meant the Office of Asset Sales and Information Technology Outsourcing.

Mr Hutchinson—There is quite likely to have been a whole range of communications that I would not be aware of first-hand. Yes, there are quite likely to be. Does anybody else know?

Mr Yarra—In my experience of group 5, there has not been much traffic yet. All of our dealings have been through the two officers that have been outposted, and that traffic will increase, I assume, as we bring each project to completion. I am feeding in through them and they go up to the hierarchy in DOCITA.

Mr Hutchinson—My informants behind me indicate there has been some communication and correspondence but it is likely to have been of the deliberative nature of government that goes on all the time.

Senator LUNDY—Could you provide to the committee correspondence exchanged between the offices of the Office of Asset Sales and Information Technology Outsourcing and DOCITA and NOIE?

Mr Hutchinson—NOIE is an element of DOCITA, as I understand it.

Senator LUNDY—It is now, yes. Obviously that would preclude anything that cabinet confidentiality is claimed for, but I would expect you to be in a position to table everything else.

Mr Hutchinson—I will undertake to review it all and if I have any reservations about it I will consult the minister and respond as fully as I can.

Senator LUNDY—If you do refuse to disclose anything, Mr Hutchinson, can you cite the specific reason for it—that is, cabinet in confidence and your justification for citing that?

Mr Hutchinson—I will certainly have full regard to my obligations to be as complete in disclosure to this committee as I properly can be.

Senator LUNDY—Thank you. With respect to your management of the industry development assessment process that you have described and the ID team, as you call them, who else participates in that team?

Mr Yarra—We have engaged consultants and they make up the rest of the team.

Senator LUNDY—Who are those consultants?

Mr Yarra—We have consultants from Cutler and Co., Flexible Resources and the Allen Consulting Group.

Senator LUNDY—At the previous estimates hearings evidence was provided by the Office of Asset Sales and IT Outsourcing that a legal firm by the name of Shaw Pittman Potts and Trowbridge was engaged. Are they still engaged with your office?

Mr Hutchinson—Yes.

Senator LUNDY—In what capacity?

Mr Hutchinson—Strategic advisers.

Senator LUNDY—In previous evidence before this committee you cited one of their specific purposes as providing industry development advice to your office. Do they participate in the ID team?

Mr Hutchinson—No, they do not participate in the ID team. Their involvement is in terms of the strategic role of IT, in the overall project, and in the documentation, formulation of the request for tenders, and the form of the contract, but not in terms of the individual industry development assessments.

Senator LUNDY—Just going back to the ID team, you have three consultants. Can you tell me how many officers from each of those consultants participate in the ID team?

Mr Yarra—We have one from Allens.

Senator LUNDY—Can you name them as well?

Mr Hutchinson—The officer from Allens is Dr David Charles, former Secretary to the Department of Industry, Science and Technology.

Mr Yarra—And we have two from Cutler and Co. There are two specified personnel under the contract and they come and go as they need to, depending on the requirements of the evaluation and the workload. They are Scott Minehan and Simon Parker. And from Flexible Resources we have Yasmin King.

Senator LUNDY—Is there anyone else who participates in the ID team that we have not mentioned?

Mr Yarra—That is the total of the team.

Senator LUNDY—Do any officers of OASITO itself participate?

Mr Yarra—Not as formal members of the team. On the group 5 ID team, of course I sit across the whole project and track the progress on the ID evaluation but I am not a formal member of the team. I do not sign the reports, but I receive the report from the ID team.

Senator LUNDY—Can you just give me a brief outline of that ID team's process in preparing their evaluation?

Mr Yarra—The process is set out in the RFT, of course, and off that process they work up an evaluation methodology which is cleared through our probity auditor.

Senator LUNDY—Which is?

Mr Yarra—Stephen Marks and Co. Basically the RFT sets out the evaluation criteria and the report simply addresses those criteria. It goes through a process underneath that to structure that evaluation so that they can come up with considered views on those evaluation criteria.

Senator LUNDY—I suppose I am looking for a little more information about how they structure that report and how that provides for a comparative analysis between bids on the ID.

Mr Yarra—In any evaluation, it is going to be a matter of judgment when you do the comparative analysis. The aim of the evaluation methodology, which is set down beforehand, is to make sure that it is a structured process and that it is a comprehensive process, but ultimately the individual officers form views. We have ID selection criteria but they are set out in the RFT in schedule K. So any report you see will address those explicitly, but you are looking for the process underneath that: how do you form the views against those selection criteria. That is set out in the evaluation methodology, but at its simplest it is simply a matter of analysing all elements of the report against those criteria and forming views—and the committee forms views. It is not rocket science and there is no hidden process or fancy mathematical paradigms or anything else; it is simply a matter of forming a view against the selection criteria, using appropriate expertise on those teams.

Senator LUNDY—Who conducts research in that ID team to actually check out the capabilities, credentials and stuff?

Mr Yarra—They all do, and there are a number of ways in which they gain information apart from reading the bid itself. Of course they bring the bidders in and talk to the bidders, and they may well do site visits. They use virtually any way at their disposal to gather information to test what the bidders are putting in. But at the end of the day the acid test for the bidder, of course, is that they contractually commit to what they put in their bid. That is the big test.

Senator LUNDY—Once that evaluation has been completed—and handed over, I presume, to a broader bid evaluation team—what degree of flexibility exists within the given assessment of an RFT that has been submitted? Do you know what I mean? Once you evaluate it to that stage, is it negotiable with the various tenderers?

Mr Yarra—Let us see if this illuminates it for you and then you can ask the question. I have said that we kept the ID evaluation quite separate from the technical and financial.

Senator LUNDY—Yes.

Mr Yarra—They come together at a certain point. That point is above the evaluation teams. It is in what we call an options committee. That options committee receives an evaluation report from the financial and technical and corporate teams and from the ID team, and those two have never come together before, and it has the job of trading off the ID versus the

technical. The RFT says, of course, that we will always structure the criteria such that the first hurdle has always got to be service and risk, but then the balance can be struck, but it is at that level.

Senator LUNDY—Just in terms of that options committee stage of the evaluation, you spoke of trade-offs. What degree of contact is made with the individual vendors at that point in time?

Mr Yarra—None.

Senator LUNDY—None?

Mr Yarra—It is based on the reports presented to them.

Senator LUNDY—Okay. What happens next? What is the next step in the process?

Mr Hutchinson—Senator, the next step in the process is this. The options committee essentially is there to construct advice to ministers. The advice to ministers is to indicate to them a business case for the outsourcing, to indicate the range of available bids that offer an acceptable business case in terms of price, service level and risk, and the industry development opportunities that are associated with those risks, and to produce an analytical framework which spells out for the benefit and guidance of ministers the trade-offs, if any, between a good business case bid and a lesser business case bid but with better industry development opportunities.

Because the industry development opportunity assessment at the end of the day is a qualitative judgment about how much industry development is going to be yielded by this tender, the government takes the view that that is essentially a political judgment and the options committee is there to advise and inform that judgment. It is an as yet untested process at that level, because as yet we have not had a situation in which the under-bidder on the business case has actually offered a better ID case on the tenders that we have had to date—not a lot, as you know. That trade-off has not had to be made.

Our experience elsewhere in the asset sales side is that quite often the trade-off does not have to be made because the people who really want this business are going to put up the most aggressive service, the most aggressive price and the most aggressive ID option, and the trade-off is a rare one. But we have a mechanism that deals with trade-offs and that mechanism is essentially one of advice to ministers.

Senator LUNDY—So does the options committee actually select the successful tender?

Mr Hutchinson—No. The options committee may nominate the most likely tender because if the choice is blindly obvious—you know, lowest risk, best service, best price, best ID—and that is unarguable, then I guess the options committee comes to that conclusion quite quickly and recommends to ministers that they agree with that conclusion. But in the event that there was a trade-off to be made, the options committee would present the choices to ministers. It may present a recommendation or it may indeed present a range of recommendations by articulating the sorts of judgments that are involved in choosing one over another, but it is a process of guiding and informing and advising on ministerial decisions. It would not of itself be a decision.

Senator LUNDY—Who participates on the options committee?

Mr Yarra—We have an officer from OASITO and we typically have two private sector panel members.

Senator LUNDY—But can you just tell me exactly who these people are?

Mr Yarra—We select them from a panel so they change every time.

Mr Hutchinson—OASITO chairs the options committee and that is usually Ross Smith, who is the executive coordinator reporting directly to me. I apologise that Ross Smith is unable to be here tonight. There are two private sector members from a panel nominated by the minister, who may vary from time to time.

Senator LUNDY—Who has that been in the past, for example?

Mr Hutchinson—Typically we have an options committee process in train. Participants vary from a panel of 30 people who we also use for selecting advisers for the Office of Asset Sales, but people who have served on there are Bruce Keene, Malcolm Irving and businessmen of that stature. Those three people are typically the options committee, and Alan Evans of the Department of Industry, Science and Resources is also on the options committee.

Senator LUNDY—Is he always on the options committee?

Mr Hutchinson—And I think Dr Badger from DOCITA is also on the options committee. In the case of a single agency tender, it is likely that the chief executive of that agency will be briefed by the options committee, or indeed may on occasions sit in on the options committee, but we would like that to be quite thoroughly focused on the single-agency tenders.

Senator LUNDY—Yes.

Mr Hutchinson—With multiple-agency tenders we tend to leave them out.

Senator LUNDY—Is there anyone else that participates in the options committee besides two private sector people, Dr Badger, Alan Evans and Mr Smith?

Mr Hutchinson—No—other than those people who might come into the options committee to brief them on the substance of the reports before them. So if the options committee wants to explore in more detail one of the evaluation reports then the chairman of the evaluation team or the team leader from OASITO will be there to brief the options committee, but that would be an advisory role, an information role—rather like us here—and not a decision making role.

Senator LUNDY—Yes. You mentioned a panel of 30-odd people who were available to participate on the options committee. Is it possible for you to provide the committee with that list?

Mr Hutchinson—I do not see any reason why not. We will dig it out and put it in. I do not believe it breaches anybody's privacy.

Senator LUNDY—Just out of interest, in terms of the private sector people involved in that process, I presume you have a comprehensive conflict of interest test for participants in that process?

Mr Hutchinson—We have comprehensive conflict of interest tests with almost everything we do in our office. Certainly we look at the people and we ask them to—they know the tenderers they are dealing with and they are to advise us if there are conflicts of interest.

Senator LUNDY—So they are able to advise if they have a conflict of interest?

Mr Hutchinson—Most of the people are senior business people, but most of them are no longer in an executive capacity. That is not a hundred per cent the case, but most of them are no longer in an executive capacity.

Senator LUNDY—Are any of them currently working, either in association with or for, firms that are participating in the bidding process?

Mr Hutchinson—There are members of this panel who do have affiliations with the IT industry. They do not get invited to sit on options committees or to work on the IT side of the business, because we know they would have a conflict and therefore they would have to decline. So that is why we have a wide panel, so that when we are selecting people to work on a particular assignment we can steer away from known conflicts.

Senator LUNDY—Yes.

Mr Hutchinson—So we steer away from known conflicts and then we approach them to see if they are free and prepared to do it on this occasion, and they advise us of any conflicts that we do not know of.

Senator LUNDY—Can you provide the committee with information regarding who has sat on the options committee? I presume it would only have been brought into effect for cluster 3 and group 5.

Mr Hutchinson—We have options committees for the tenders that have been dealt with and we have had options committees established for those tenders that are being dealt with now.

Senator LUNDY—Which is tax and group 5?

Mr Hutchinson—Yes.

Mr Yarra—We have got the group 5 ones.

Senator LUNDY—They are group 5 members. Sorry, who are they, again?

Mr Yarra—Bruce Keene and Geoff MacIntyre were the private sector panels. Cluster 3, private sector, was Malcolm Irving and Olaf O'Duill.

Mr Hutchinson—They also do the tax office.

Senator LUNDY—What is their expertise? What was your selection process for bringing those particular people on for group 5 and then three in tax.

Mr Hutchinson—These people are not experts. They are chosen for a high level of business experience and business judgment at the broad level, the sort of business judgment that is applied at board or director level, where they digest expert advice and apply broad community and business judgment.

Senator LUNDY—How did you pull this panel together in the first place?

Mr Hutchinson—The panel had its origins in the panels we have used to engage advisers for asset sales work where we started to develop a panel of people to support us in that function. We found that so useful we developed the panel. The panel has evolved essentially from the knowledge of people in the business community, references by people in the business community—the general process of osmosis.

Senator LUNDY—Yes, we know all about osmosis this week. With respect to the selection of that panel, do you traverse things like political affiliations as part of your assessment or analysis of the relative qualifications of participants?

Mr Hutchinson—Their political affiliations, if any, are unknown to me and irrelevant, except to the extent that there may be people on the panel who might have political affiliations of public record, but I cannot off the top of my head recall any who do. It is not a consideration that we have, so we do not think about it.

Senator LUNDY—How were they appointed to the panel?

Mr Hutchinson—They were appointed by ministerial invitation.

Senator LUNDY—Ministerial invitation?

Mr Hutchinson—Yes.

Senator LUNDY—So the minister wrote to people.

Mr Hutchinson—Yes.

Senator LUNDY—And asked them to actively participate.

Mr Hutchinson—Asked them if they were prepared to make themselves available from time to time to assist in this role.

Senator LUNDY—Could you provide the committee with a copy of the standard letter that was used to make such an invitation?

Mr Hutchinson—Yes. I can recall that letter and there is no problem in providing it. It is a pro forma letter.

Senator LUNDY—Did that letter contain the usual pro forma signing off of no conflict of interest?

Mr Hutchinson—No, the conflicts are dealt with on a case by case basis.

Senator LUNDY—Were they asked to sign off on that invitation? I need to see the letter to see what the nature of—

Mr Hutchinson—Yes, the letter is very general. It is to do with membership of a panel. The appointment is on a case by case basis and the question of conflict is usually not dealt with in correspondence; it is usually dealt with in discussion. Essentially an opportunity arises, or a need arises, and we identify people on the panel who appear to have the right balance and appear to have the skills. We usually identify about eight and start ringing them in alphabetical order until we find two who are available. Then we probe them for conflict. These are very busy people and actually getting them to commit the time is not easy.

Senator LUNDY—So they are actually business people who are out there doing their jobs?

Mr Hutchinson—They are usually retired from an executive capacity, but they are people of a calibre whose services are sought in non-executive capacities, advisory capacities, across a whole wide range of issues in the business community.

Senator LUNDY—I will be interested when we see the list because there are certainly professional associations, affiliations, employment, attached to that, so we can get a picture of the range of people that the minister sees fit to invite onto such a critical decision making committee.

Mr Hutchinson—Let me make it clear, the invitations are issued by the minister. The process of nominating people for that list is wider than the minister deciding one day to invite somebody. There are discussions and there are suggestions put by my office. There are discussions with the minister.

Senator LUNDY—Did you submit a list to the minister's office?

Mr Hutchinson—We sat down and talked with the minister's office—and in some cases the minister—about the sort of needs we had and the sort of people we sought and there were discussions that took place with others—people on the list—about others who had the same skills. It was almost a search exercise that we conducted internally. No, it was not a ministerial list solely. Obviously the minister had some suggestions, as did officers.

Senator LUNDY—You are rapidly qualifying an earlier statement, Mr Hutchinson.

Mr Hutchinson—Sorry.

Senator Herron—That is standard procedure which was done by the previous government as well.

Senator LUNDY—Thank you, Minister. Did you submit a list to the minister's office recommending appointments to this panel of 30?

Mr Hutchinson—The appointments have not been made in one big hit. When we were established we established a list.

Senator LUNDY—Did you submit names to the minister's office, either together or separately, over a period of time on your suggestions for appointments to the panel?

Mr Hutchinson—Once again, these processes take place more in consultation and discussion than by way of the formal submission of a list and the handing down of a list with ticks, crosses and additions.

Senator LUNDY—It is actually reasonably standard practice, from what I understand, that the departments offer or serve up some advice to the minister about prospective appointees.

Mr Hutchinson—Certainly we would advise the minister about prospective appointees and—

Senator LUNDY—Can you demonstrate to the committee that you actually did that, or not?

Mr Hutchinson—I think you are asking me to disclose the substance of advice to the minister and—

Senator LUNDY—No, I am asking you whether or not you provided advice.

Mr Hutchinson—Yes, we certainly provided advice.

Senator LUNDY—You did provide advice on prospective appointees?

Mr Hutchinson—Yes.

Senator LUNDY—You did?

Mr Hutchinson—Yes.

Senator LUNDY—Thank you. In terms of the minister appointing that panel, what degree of formality was associated with those appointments and is there any remuneration involved?

Mr Hutchinson—Yes, I believe there is a specific remuneration tribunal determination of a sitting fee, a daily sitting fee, but the process is a letter of appointment. These are not highly remunerative positions.

Senator LUNDY—I am sure. Could you advise the committee now what the remuneration is for those panel members?

Mr Hutchinson—\$504 per day.

Senator LUNDY—\$504 per day.

Mr Hutchinson—Plus travel expenses at standard rates for statutory officers.

Senator LUNDY—How long would it take for an options committee to consider a—

Mr Hutchinson—It would depend on the volume of the material. The options committee meetings themselves, the formal meetings, would very rarely be more than half a day, but of course the prereading of the voluminous reports might take some considerable time.

Senator LUNDY—So that gets clocked up under the Remuneration Tribunal?

Mr Hutchinson—I understand the usual attribution of time is about two days.

Senator LUNDY—Could you just provide the details of the time taken and costs incurred by those panel members?

Mr Hutchinson—We are getting close to disclosing the remuneration we pay to individuals, which I am not sure—

Senator LUNDY—If it is outside relevant guidelines, Mr Hutchinson, I would not expect you to supply it. If I could leave you with that question and you explore the opportunities, that would be good.

Mr Hutchinson—We will provide you with as much as we properly can.

Senator LUNDY—Thank you very much. You mentioned that this panel serves a wider purpose than just participation in various options committees. Can you describe its wider purpose within the office of asset sales?

Mr Hutchinson—The most active use of it is when we engage advisers to conduct an asset sale, where the selection of those advisers is in the hands of a committee which usually comprises one officer of OASITO and two outside business representatives. They conduct the selection process.

Senator LUNDY—I just want to get this right. Because the options committee actually provides advice or recommendations to the minister, with respect to asset sales the majority of the committee is actually non-bureaucratic; it is the private sector.

Mr Hutchinson—I would argue that all of the committee is non-bureaucratic because we try to run on non-bureaucratic lines.

Senator LUNDY—As in ‘not a member of the bureaucracy’.

Mr Hutchinson—Only one member of the committee is a public servant, yes.

Senator LUNDY—With respect to the options committee, have both Alan Evans and Dr Badger attended all of the options committee meetings?

Mr Hutchinson—Alan Evans attended the options committees for those tenders that had been dealt with in the past. Dr Badger will attend the committee meetings of the options committees that will be held for those tenders now approaching finality. To the extent that documentation has already been provided to those options committees, he would have received it, but those committees have not yet met. So to the best of my knowledge, I do not think Dr Badger has actually sat around a table where somebody has said, ‘The options committee is now open.’

Senator LUNDY—So the options committee is not really five people; it is four people?

Mr Hutchinson—No, the options committee is five people, but those five people have not yet met as an options committee.

Senator LUNDY—Do you perceive that lack of attendance by, I presume, Dr Badger on the cluster 3 options committee evaluation has undermined the process at all?

Mr Hutchinson—Absolutely not, because when the cluster 3 issue was on foot Dr Badger had no role. When the next tenders are on foot, Dr Badger has a role. I am not here to speak for DOCITA but Dr Badger is a former colleague of mine and I have the utmost belief in his capacity to understand the issues, contribute to them and fulfil his role. He is a very senior officer, a very experienced officer, and there is no reason why his contribution will be anything other than positive to the process.

Senator LUNDY—I am not suggesting it would not be. I am suggesting more that lack of the presence of both of those officers—

Mr Yarra—He was not there before because his department was not involved. It was only after the admin arrangements orders that he was brought into the fray.

Mr Hutchinson—And by adding DOCITA to DISR rather than merely replacing DISR with DOCITA, we have actually broadened the range of experience and views that will be brought to bear on those issues, so I think we have probably strengthened the process.

Senator LUNDY—So that would be one example where the earlier questions I asked, about the relationship between the department and the office of asset sales and information technology, could be expressed as part of that selection or that options committee.

Mr Hutchinson—Part of that options committee, yes.

Senator LUNDY—That was the sort of relationship that I was looking for in the earlier question.

Mr Hutchinson—I had misunderstood the earlier question. I thought you were probing the working relationships, rather than the governance relationship through the process.

Senator LUNDY—Are there any other governance relationships that are relevant to my line of questioning?

Mr Hutchinson—The process works through evaluation groups, the steering committee and the options committee.

Senator LUNDY—Okay. Can you tell me about the steering committee?

Mr Yarra—The outsourcing involves agencies. Agencies have an important part of the structure in the evaluation process; that is, the primary organ is the steering committee which is made up of agency representatives and OASITO.

Senator LUNDY—Are any of these private panel members on the steering committee?

Mr Yarra—No. It is agencies and OASITO only.

Senator LUNDY—Anyone from DOCITA or NOIE?

Mr Yarra—No, not on the steering committee. This is purely the agencies. The steering committee's role is to oversee the interests of the agencies in the tender process and to be the committee that makes decisions about things that go public in RFTs and make final decisions on things that go forward in contracting—contractual arrangements, et cetera. They have sovereignty in that sense. They oversee the technical, financial and corporate side of things and the ID is separate.

Senator LUNDY—So they do not consider the ID at all?

Mr Yarra—They do not see it. It only comes together at the options committee level. The steering committee sits below the options committee. The steering committee will forward the evaluation that it has done—or it has arranged for—on the corporate, financial and technical issues to the options committee. The options committee receives two reports: an ID report and a report from the steering committee.

Mr Hutchinson—I need to amend an answer to a question earlier. I have just been told something that I did not previously know. In the process of developing the Australian Taxation Office tender, the options committee did actually formally meet. It formally met to consider progress and to review preliminary ID findings, so there has been a meeting of the committee, and all members attended. It has not met in a deliberative sense but it has certainly met in an information gathering sense.

Senator LUNDY—Why did it meet to do that?

Mr Hutchinson—It needed to do that in order to be fully informed of the process and to be ready for it.

Senator LUNDY—Yes, I will come back to that. Can we continue on with the point?

Mr Yarra—Yes. Below the steering committee, the evaluation is undertaken principally by the agencies, staffed by the agencies—that is, there is an OASITO presence there, but it is all agencies. The evaluation divides up into teams, into a financial team, corporate team and technical team, and they, in turn, produce reports to the steering committee which then consolidate into a steering committee report to the options committee. So there is that roll-up process.

Senator LUNDY—What is the rationale behind not having representatives or even a collective representative of the agencies within the given group or cluster on the options committee?

Mr Yarra—The steering committee only presents to the options committee those vendors in a tender process who meet the service and risk criteria. The ones that do not—

Senator LUNDY—Is that what we have called the short list? Is that the short-listing process?

Mr Yarra—That may result in a short list, but if eight—

Senator LUNDY—But in the sense of advising people who fail to make that cut, how would you describe it to them?

Mr Hutchinson—We would not normally advise people that they failed to make the cut at that point. Sometimes we would have culled the field before we got to that point, because there is quite a lot of effort that goes in on the part of bidders to reach that point and if they are not going to make the final cut we give them the opportunity to get out earlier. If we had four bidders in at the end and only two met the service level criteria right at the end, we probably would not tell anybody who they were until the final decision was made, so we would not actually publicly describe it as anything.

Senator LUNDY—With your reports about short lists, like group 5 and things like that, at what point do they come out?

Mr Yarra—The group 5 was not on a short list. We had a large number of bidders and at a certain point the evaluation teams formed the view that a number of those bidders absolutely failed to meet the criteria. It is a courtesy to stop them being dragged on in the process, which is an expensive process for them, so at that point they were told that they could not meet the criteria and there was no confidence that they could ever do so; we continued on with the remaining bidders who we were confident could meet the criteria, but we had to continue to evaluate them to make sure. That second phase of the evaluation brings in a comparative evaluation between the bidders.

Senator LUNDY—Was the second part of the evaluation publicly described as the short list?

Mr Yarra—It was—and incorrectly described as such.

Senator LUNDY—That is the point I am trying to understand.

Mr Yarra—We did not short-list. We in fact removed those who we were confident had failed to meet the criteria. That could have been 10 or it could have been two or it could have been one. We did not aim to get a short list; we aimed to get out of the process those who

failed to meet the criteria at that point and to stop them spending money in continuing on in the process.

Senator LUNDY—I asked a question about the rationale behind not having a member of the agencies represented on the options committee.

Mr Yarra—The options committee will receive a report from the steering committee. The steering committee will express a view to the options committee on those vendors that it believes can meet the service and risk criteria—and they may rank them; they will probably rank them, too. The options committee will say, ‘Vendors 1, 2 and 3 can deliver the service at the acceptable service levels and risk.’ At that point the options committee says, ‘Thank you very much. We’ll note that advice,’ and then they will do the trade-off with the ID.

Mr Hutchinson—The way the thing is structured is that the agencies, as purchasers of IT services, do not of themselves have an interest in industry development. Indeed, as ID affects them, if they regard industry development as imposing costs on a bid, they may have a negative interest in industry development. The purpose of excluding the customer agencies from the ID discussion is to ensure that the trade-off for the whole of Commonwealth is made by those who have responsibility for, first of all, the Commonwealth budgetary position—the minister for finance—and, secondly, industry development, and in this case DOCITA, for the IT industry and DISR more generally.

So the focus of the discussion is among those who have the accountability and the responsibility for industry development when we are above a threshold, where we are only dealing with clients who are acceptable to the agencies. Clearly, if there were to be a trade-off, there would be a decision to actually reduce the savings to agencies in favour of higher ID, not a decision that the agencies might be expected normally to subscribe to.

Senator LUNDY—Yes. Mr Hutchinson, can I just take you to task on, I suppose, your premise that in fact all industry development initiatives impose a greater cost.

Mr Hutchinson—No, I said if one assumes they do; and, so far, in both asset sales and IT outsourcing we have found an alignment between the best value for money and the best ID, so it is not our presumption that there will be a cost. It is nonetheless a presumption that is not uncommon and it is more likely to be found in those who are paying the bills; it is a prejudice. And sometimes it will arise. We have found it on one occasion in an asset sale.

Senator LUNDY—Sure. I just make that point on the basis that if that is your primary justification but your experience is that in fact it is not the case that it involves cost trade-off you are kind of undermining your own argument.

Mr Hutchinson—If it were to involve a cost trade-off, you would not want to have those who were misaligned in the process, and therefore there is no particular need for them to be in the process anyway. Where we have a multi-agency cluster, that gets a lot of voices around the table, and arbitrating among those voices gets to be very difficult. Where there is a single agency at the table or there are other complex accountabilities, then exceptions may be made. That will be a decision of the minister on a case by case basis.

Senator LUNDY—What about consideration of factors such as transition implications with existing tenderers that may be involved with a given cluster or department? Does that get considered at the steering committee level—those sorts of, again, qualitative assessments about smoothness of transition, particularly given the costs associated with the transition phase?

Mr Hutchinson—In relation to the novation of existing contracts to the outsourced contract, there is a contractual issue. It is handled in the risk and business case. It is an operational

issue. It is handled at the operational levels of the process and is reflected right up. If it becomes a major issue, then it becomes a major issue for the steering committee and ultimately for ministers.

Senator LUNDY—Just going back to the tax options committee that you mentioned having already met, if their role is specifically to consider the reports of the steering committee and the ID team for a given bid, can you explain why it was necessary for them to meet prior to that process having been completed.

Mr Hutchinson—Some members of the committee were new to the process.

Senator LUNDY—Who?

Mr Hutchinson—Dr Badger and the two external business members were new to the process.

Senator LUNDY—Which is Malcolm Irving and Olaf.

Mr Hutchinson—Yes.

Senator LUNDY—But they have done it before.

Mr Hutchinson—No, Malcolm Irving and Olaf O’Duill were also on cluster 3. It was Dr Badger who was new to the process and the outside members who had done it before, I understand from conversations with Mr Irving, were concerned about the likelihood that they may have to deal with these issues expeditiously without much prior preparation. They wanted the opportunity to be briefed on the volume of information, the preliminary findings. Our view is that such a pre-meeting was probably not necessary but we would give it a go and see whether it had any value or would defer to members of the committee in future. The preliminary view inside the office is that it probably did not help very much because the information may change before they have to digest it.

Senator LUNDY—What information were they supplied with?

Mr Hutchinson—They were supplied with the preliminary ID findings, so the ID assessment of itself was approaching finality, or we thought it was approaching finality at that time.

Senator LUNDY—Was it?

Mr Hutchinson—I believe there has been more work done since. Whether that has changed the substance of the views of the committee I do not know.

Senator Herron—Senator Lundy, time is getting on. This is all very educative, I am sure, for both of us, but would you care to tell me the relevance to the question, other than an educative process, in an estimates committee?

Senator LUNDY—It is about process, Minister, and accountability.

Senator Herron—Well, it is about process, but I have not heard any questions about finance.

Senator LUNDY—With all due respect, Minister, if you had followed this issue from the start you would understand the importance of—

Senator Herron—I admit my ignorance, but this seems as if it is going on like Blue Hills.

Senator LUNDY—Just because you are bored does not mean that everyone else is.

Senator Herron—I am not bored. I find it very educative, as I said, but I just wonder whether we can get to the point of what you are trying to achieve.

Senator LUNDY—In relation to the brief that they were provided with on preliminary ID findings, how many participants were there in the tender process at that point in time?

Mr Hutchinson—My understanding is that everybody turned up.

Senator LUNDY—No, that was not my question. How many vendors participated in the tender process?

Mr Hutchinson—Senator, as you know from previous committee meetings, we are not prepared to comment on the number of tenders that are in a process while a process is on foot.

Senator LUNDY—Is the number of vendors participating in the process at the time of the preliminary meeting different from the number of vendors participating in the process now?

Mr Hutchinson—No.

Senator LUNDY—Does your probity auditor, Mr Stephen Marks, have a view on the impact of this preliminary meeting of the options committee on the actual integrity of the tender evaluation process?

Mr Hutchinson—If he had an adverse view I would have heard about it. He has not expressed an adverse view.

Senator LUNDY—Was he aware that the meeting took place?

Mr Hutchinson—Yes.

Senator LUNDY—And did you ask for his advice on whether or not—

Mr Hutchinson—Trixie Makay is the project coordinator.

Senator LUNDY—Come to the table.

Ms Makay—Stephen Marks was actually at the meeting.

Senator LUNDY—He was at the meeting?

Ms Makay—Yes.

Senator LUNDY—Does he attend all of the options committee—steering committee—meetings?

Ms Makay—Yes, I believe he is attending all the meetings.

Mr Hutchinson—He attends all the meetings or, if he is not available, a member of his practice attends all those meetings.

Senator LUNDY—Who else attends those meetings outside the formal membership of the committee.

Ms Makay—The project coordinator from OASITO. The evaluation coordinator for the IT&T services tender evaluation—

Senator LUNDY—Are these people that you have described by name previously?

Mr Yarra—The evaluation coordinator is the person who coordinates the three teams and the services and is supplied on behalf of the agency.

Senator LUNDY—On the steering committee.

Mr Yarra—Under the steering committee. In fact, the evaluation coordinator would report to the steering committee. That person attends the options committee in an advisory capacity.

Ms Makay—Briefs the options committee and then leaves at the end of that briefing.

Senator LUNDY—So that is an officer of OASITO.

Mr Yarra—Of the agency.

Senator LUNDY—Of the agency, okay. And at steering committee level you have described obviously agency representatives. Who else is a member of the steering committee from the Office of Asset Sales and IT Outsourcing.

Mr Hutchinson—OASITO chairs the steering committee, and the chairmanship varies depending on the project, but it is always a Senior Executive Service officer of OASITO.

Senator LUNDY—Does anyone else attend the steering committee meetings?

Mr Yarra—Again, the evaluators in the agencies often attend the steering committee in an observer capacity. When we need to, we would have our legal adviser in attendance to help on RFT drafting issues because what the steering committee is doing through the process, in the lead-up to and throughout the tender process, is just preparing RFTs and that sort of thing. I think they would be the only people who would attend the steering committee that were not on the steering committee.

Senator LUNDY—Do any of the consultants you have engaged—

Mr Yarra—Sorry, yes. Stephen Marks would come to key meetings, and advisers when we need them.

Senator LUNDY—So what about representatives from Cutler and Co., Flexible Resources, the Allen Consulting Group?

Mr Yarra—No. It is a separate exercise. Shaw Pittman, our advisers, of course, have sat in on a number of meetings to provide expert advice to the steering committee when they meet.

Senator LUNDY—So what sort of advice do they provide? Do they provide legal counsel?

Mr Yarra—Shaw Pittman only provide strategic advice, and they bring to the table for the steering committee experience with outsourcing around the world, and the steering committee—

Senator LUNDY—Yes, I will come back to that in a second.

Mr Yarra—Okay.

Senator LUNDY—Who is your legal counsel that participates in those steering committees?

Mr Yarra—Blake Dawson Waldron have a team, and that team is spread out between and dedicated to the groups.

Senator LUNDY—When were Blake Dawson Waldron engaged by OASITO?

Mr Yarra—28 May.

Senator LUNDY—Has their contract been renewed?

Mr Yarra—That contract is a new contract.

Senator LUNDY—A new contract as of 28 May?

Mr Yarra—As of 28 May.

Senator LUNDY—What is its duration?

Mr Yarra—For the life of the initiative. The ‘completion of the services’ are the words in the statement of work.

Senator LUNDY—How are they remunerated for their services?

Mr Yarra—They are capped monthly—both professional fees and disbursements.

Senator LUNDY—What is their cap?

Mr Yarra—\$169,000 a month, \$14,200 for disbursements.

Mr Hutchinson—I think you said \$169,000.

Mr Yarra—For professional fees and \$14,200 for disbursements.

Senator LUNDY—\$168,000?

Mr Yarra—\$169,000 a month.

Senator LUNDY—A month?

Mr Yarra—That is the cap.

Senator LUNDY—What does that work out to as a daily fee?

Mr Yarra—The partners, \$2,500, associates, \$2,000 and a solicitor is—I have forgotten.

Senator LUNDY—They won't appreciate that! You mentioned strategic advice with respect to the role that Shaw Pittman Pott and Trowbridge play. Previously we heard that they specifically provided industry development advice. Do they?

Mr Hutchinson—Specifically they provide strategic advice on the whole initiative. Their industry development advice is not on industry development per se; it is on how the mechanics of industry development obligations integrate into the contractual framework.

Mr Yarra—They would never talk ID in a steering committee.

Senator LUNDY—I beg your pardon?

Mr Yarra—They would never talk ID in a steering committee.

Senator LUNDY—They would never 'talk' ID in a steering committee?

Mr Yarra—No. There is no forum to discuss ID, but at the strategic level with the initiative you have got to fit these two halves together and—

Senator LUNDY—So the officers from Shaw Pittman are the only ones that participate—either observe or provide strategic advice or may be present—at the ID evaluation process and the steering committee evaluation process?

Mr Yarra—They have got a very peripheral involvement in the ID evaluation process.

Senator LUNDY—Well, that is not my question. They are the only group that participate in both processes, or the only people that participate in both processes?

Mr Yarra—I think they are on both sides, yes. Blake, the legal advisers, do of course, because we have to turn the ID into a contractual obligation at the end of the day. So that is correct; Blake as well go across both sides.

Senator LUNDY—Okay. And is that often the same officer, or do you try and apply some sort of—

Mr Yarra—That is up to the team leader for Blake. She has appointed—

Senator LUNDY—Who is that?

Mr Yarra—Alexandra Wedutenko from Blake. She has appointed specialists for the ID who go across the groups and she has appointed specialists for the teams—individual groups—and sometimes they intersect. That is, we have both the team person and the ID person at meetings.

Senator LUNDY—And in terms of Shaw Pittman's contract, last time we heard that the estimation—and you could not be definitive because it was in US dollars—was between \$4 million and \$5 million. Was that contract renewed since March 1998 when we heard that evidence?

Mr Hutchinson—Yes.

Senator LUNDY—When was it renewed?

Mr Hutchinson—I have forgotten the precise date, but around the same time as the Blake contract was renewed, because it followed a renewed market test.

Senator LUNDY—I am sorry, I thought you said that Blake—

Mr Hutchinson—About the time Blakes were appointed because—

Senator LUNDY—In May?

Mr Hutchinson—we recontested all our advisory assignments where we had the legal scope to do so.

Senator LUNDY—So that was in May 1998?

Mr Hutchinson—That is correct, at about that time.

Senator LUNDY—Can you confirm that the Shaw Pittman Potts and Trowbridge contract was renewed in May and not at any other time?

Mr Hutchinson—I think we had better come back to you with the precise details.

Senator LUNDY—Was it later in the year?

Mr Hutchinson—Pardon?

Senator LUNDY—If there is an officer here with the advice, I would appreciate if he could come to the table.

Mr Hutchinson—The officer thinks he has a position but he is not a hundred per cent sure and the officer who handled this is not present. I do not want to just rely on officer recollection on this issue, because it has been important to you for some time. I will take it on notice and come back to you and let you have the details of the time of the market test that renewed the appointment of Shaw Pittman.

Senator LUNDY—Does September jog anyone's memory?

Mr Hutchinson—September 1998?

Mr Yarra—It was certainly around May but we have not got the exact time. It was certainly around that period because the two selection processes coincided. We cannot give you the exact date because the officer is not here. We will get the exact date, but the appointment was not September.

Senator LUNDY—So it is not September?

Mr Hutchinson—There may have been a change in resourcing in the latter part of last year, but not a change in the contract.

Senator LUNDY—What do you mean by that—or August, indeed.

Mr Hutchinson—Shaw Pittman provided a designated core group of people and we have a facility to vary the number of people we have from Shaw Pittman, depending on the amount of work on hand.

Senator LUNDY—So it is not capped?

Mr Hutchinson—No, it is not capped; it is based on the people we deploy from Shaw Pittman.

Senator LUNDY—So that contract may have been adjusted or changed?

Mr Hutchinson—No, the contract was not. The contract was settled. The extent of the resources we use under that contract may vary from time to time.

Senator LUNDY—Right. And what you are suggesting is that that type of variation may have occurred in August or September?

Mr Hutchinson—That type of variation is routine and will occur from time to time.

Senator LUNDY—Okay. Have you got the officers present who can shed some light on what variation took place during the course of the contract?

Mr Hutchinson—For instance, there is one variation that I know took place where, because of concurrent discussions on two tenders, we asked Shaw Pittman to augment their expert negotiating advice. I think earlier this year we brought out an additional Shaw Pittman resource from the United States for a period of a few weeks.

Senator LUNDY—When was that?

Mr Yarra—11 January.

Senator LUNDY—To augment their—what was that?

Mr Hutchinson—Augment their negotiating support group. Shaw Pittman's strategic advice focuses very heavily at the end of a project on negotiating tactics to maximise the value of the contract with the Commonwealth. They have expert negotiators in IT outsourcing.

Senator LUNDY—What is the value of their current contract, or what are the terms and the value?

Mr Hutchinson—I think I will take that on notice because it is a fairly complex arrangement.

Senator LUNDY—I am sure. Mr Yarra, can you advise me? You are fully across the daily rates of Blake Dawson Waldron. Can you advise us of similar details in respect to Shaw Pittman?

Mr Yarra—The Shaw Pittman rates are \$US85,000 for one level and \$US65,000 for the other level from the extra resource that came out on 11 January—

Senator LUNDY—Sorry, \$85,000?

Mr Yarra—US.

Senator LUNDY—US. For how long?

Mr Yarra—That is a month.

Senator LUNDY—A month? So what does that work out to be a day? My maths are not that good.

Mr Hutchinson—There is an average of 22 working days in a month, so it is slightly under \$US4,000 a day.

Senator LUNDY—\$US4,000 a day? How much is that in Australian dollars given the current exchange rate?

Mr Hutchinson—Around \$6,000 to \$7,000.

Senator LUNDY—\$6,000 or \$7,000 a day? Do you get value for money, Mr Hutchinson?

Mr Hutchinson—Yes, we do, on a world market, and given the—

Senator LUNDY—On a world market?

Mr Hutchinson—Given that this is a world scale project and a \$5 billion exercise. This was an issue that was agonised over at great length when we tested the market for these services once the original contract we had with Shaw Pittman expired.

Senator LUNDY—Yes, I remember our exchanges at the time, Mr Hutchinson. You were at a loss as to the justification—or so it seemed.

Mr Hutchinson—In the light of that discussion we went back to the market, we called tenders on a national and international basis. We called proposals. The appointment was hotly contested through our usual process, including two external business advisers, and the conclusion—

Senator LUNDY—Sorry, can we just go to that point of process. Last time we heard evidence that in fact Shaw Pittman were appointed in the first instance without going through a competitive tendering process: they were in fact sole-sourced by the—

Mr Hutchinson—They were sole-sourced by the former chief government information officer.

Senator LUNDY—Yes.

Mr Hutchinson—Correct. On his judgment that they represented value for money.

Senator LUNDY—Yes, I know his justifications, but did you go through a competitive tendering process?

Mr Hutchinson—We did. We went through a competitive tendering process—widely notified, well contested and assessed against the selection criteria, including value for money—and drew very heavily upon the advice of the external business advisers to the process.

Senator LUNDY—So that the panel of 30—

Mr Hutchinson—We had to select the panel—two members of the panel of 30, yes.

Senator LUNDY—So you got together another little panel, grouping, to decide on the contract.

Mr Hutchinson—We do that for every appointment, and I am sure people were selected on a cost-effective basis on merit over their competition.

Senator LUNDY—Can you tell me how many participants there were in that tender process?

Mr Hutchinson—The officer's recollection is that between 11 and 13 proposals were received.

Senator LUNDY—What proportion of those were from law firms?

Mr Hutchinson—Shaw Pittman is a law firm but it is not engaged as legal counsel, it is engaged as strategic advisers. We believe that the rest of the proposals were not from law firms but from either IT consulting groups or consulting arms of multidisciplinary consulting groups.

Senator LUNDY—Were any law firms?

Mr Hutchinson—We think not. If we are wrong, we will correct that on the record.

Senator LUNDY—Yes, if you could follow that up. In terms of negotiating at that end point in the contract, in relation to how you describe Shaw Pittman's role, is that not a role normally performed by—or certainly involving directly—the legal counsel?

Mr Hutchinson—There are various levels of negotiation. There is negotiation over the commercial content of the documentation and the transaction and there is negotiation over the

legal form. The negotiating team comprises broadly legal counsel, Shaw Pittman and OASITO officers plus others as necessary, each of whom plays a different role.

Senator LUNDY—What is Shaw Pittman's role?

Mr Hutchinson—Their role is to focus on the business case, the business parameters and the tax.

Senator LUNDY—So they add up the sums.

Mr Hutchinson—They negotiate the clarification and the detail and the improvements in terms of the substance of the transaction. The legal advisers from Blake Dawson Waldron lead the negotiation on the terms and conditions and on the detailed legal drafting.

Senator LUNDY—Can you provide the committee with an explicit description of exactly what Shaw Pittman do in that process and, indeed, exactly what Shaw Pittman do in terms of their day-to-day contribution to the process within your office? Can you also tell me the names of the Shaw Pittman officers that are currently, I suppose, on call.

Mr Hutchinson—'On call' is actually a very good description; they are there all the time. Mr Yarra will give you the names.

Mr Yarra—Shaw Pittman: Michael Murphy, Norm Fry, Molly Doland and Scott Christie.

Senator LUNDY—You spoke of having to bring out an additional expert to augment a negotiation in January?

Mr Yarra—Yes.

Senator LUNDY—Who was that?

Mr Hutchinson—That was Molly Doland.

Mr Yarra—Molly Doland.

Senator LUNDY—Can you quantify expenditure to date in Australian dollars for the Shaw Pittman contract?

Mr Yarra—This year?

Senator LUNDY—Why don't we start from May or whenever their contract was renewed?

Mr Yarra—If you give me time to dig it out, perhaps, and ask other questions, I might have the information here.

Senator LUNDY—Yes, thank you. Can you also perhaps take it on notice to provide yet again the committee with details of the respective consultants and the values of their contracts and the conditions of their engagement? I know you have done that previously but I am seeking an update.

Mr Hutchinson—You are talking about the IT outsourcing consultancy?

Senator LUNDY—Yes. I think you have already got on notice the details about the panel of 30 advisers.

Mr Hutchinson—Yes.

Senator LUNDY—In terms of the challenges that the year 2000 millennium bug presents or the computer problem presents to existing vendors or potential vendors, what action has OASITO taken to address issues of liability, costs incurred in relation to the remediation and I suppose testing, contingency planning and all that is associated with addressing the Y2K challenge?

Mr Hutchinson—Each contract contains very specific provisions to ensure that the responsibility for the year 2000 matters is clear as between the agencies and the equipment and the installation that they pass over and between the contractor for the equipment and changes they make. Those provisions are progressively varying as between those tenders like cluster 3 that were transitioned well before the year 2000 and between those tenders now evolving that will probably transition shortly after the year 2000. Those conditions are specified in the contract and negotiated, as you would imagine, very tightly. That is the broad framework. I do not know if there is anything more specific you want.

Senator LUNDY—How have you built into your evaluation process, particularly for group 5 and tax, that issue of transition and how it relates to your time frames for the letting or the awarding of those contracts?

Mr Hutchinson—Can we take the senator through the provisions of the anticipated group 5 contract in respect of the year 2000 transition? Senator, I am hesitant here because these are contracts that are presently under negotiation and these are obviously fairly big issues.

Senator LUNDY—I would not want you to disclose anything that compromises the process. I am just trying to get a sense of what process you have initiated to deal with this within your office.

Mr Yarra—Process to deal with what though? Deciding how to deal with year 2000?

Senator LUNDY—Addressing particularly the liability and cost implications of the year 2000 remediation work.

Mr Yarra—We struck a position in our RFT on year 2000. That is the position that has been put to vendors and vendors have been asked to comply with that position. And that position is designed to protect the Commonwealth's interests. As we approach year 2000 we have to modify our approach because you have got a different approach at 11 o'clock on the night of the year 2000 than you have two years prior to that. But the position we have adopted in the RFT for group 5, for example, is the position we have gone to vendors with and the one that they are responding to. We are currently in negotiations with them but those negotiations are not completed; we have not formed our final position as yet.

In relation to the group 5 RFT with the year 2000, the position was that the vendor assumed responsibility. That is the position that we put to them and asked them to respond to. They assume responsibility, not only for the equipment and software that they bring to the project but for the agency's equipment and software that they purchase. It is part of the outsourcing arrangement.

Senator LUNDY—In that respect, in relation to the time delays that have been experienced with the awarding of clusters on group 5, how has that impacted upon that arrangement?

Mr Yarra—I sort of hinted that it is having an effect now that we are getting close to the year 2000; that issue has been put to us by bidders in their response and we have taken that on board, but we have not finalised an agreed position with bidders on that yet. But that is certainly where we started and we are certainly aiming to produce an acceptable outcome from the Commonwealth's point of view, given the circumstance that the year 2000 is just around the corner.

Senator LUNDY—Indeed. With respect to the ATO RFT, I assume you put that out with the same approach contained in it.

Mr Yarra—Correct.

Senator LUNDY—Has that changed?

Mr Hutchinson—Senator, that matter is under negotiation with bidders. Bidders would clearly like us to change it, but it will be a consequence of the competitive process where it ends up.

Senator LUNDY—Is that issue likely to impact upon your projected time frames for the IT outsourcing program?

Mr Hutchinson—No.

Senator LUNDY—So you are obviously working towards a resolution.

Mr Hutchinson—We believe that, within the range of issues around the table and the competitive process that is under way, a workable resolution that is fair to all parties will be reached.

Mr Yarra—It may influence our timing on projects that are right at the point of year 2000, and that is that you would not have a handover that occurred—

Mr Hutchinson—It already has. In terms of our planning, it already has. The senator asked would the year 2000 issue affect our timing, and the answer is no, because our timing already allows for—

Mr Yarra—Takes that into account.

Mr Hutchinson—Takes into account the fact that we would not seek to ask a contractor to transition in late December 1999 and accept liability for the year 2000 compliance of the equipment that they are inheriting. It would be commercial folly to ask anybody to do that. The risk premium would be unaffordable, so where a transition was getting late in the year the transition would be deferred until after the year 2000.

Senator LUNDY—With respect to the ATO bid, there has been speculation, certainly in the press, about the pressures being brought to bear on that particular department, the potential changes to taxation arrangements, et cetera. What capacity does the steering committee have to influence the timetable of the program, given that that is where the agencies have representation in the process?

Mr Yarra—Well, in a practical sense they play a role in the tender process. They make key decisions on release of RFT; they make key decisions in the evaluation process. To the extent that they participate in that process and can cause that process to take more time or less time, there is—

Senator LUNDY—Yes, but you are implying their ability to influence that is really a machinery thing as opposed to a decision making role.

Mr Yarra—That is right. We set a timetable to achieve all sorts of outcomes, but we need to set a timetable to manage a process and they fit into that timetable.

Senator LUNDY—Yes, but did they have a stake in determining the timetable?

Mr Hutchinson—Certainly the planning timetable for the ATO exercise was settled in consultation with the Treasurer's portfolio and the tax office, but once that timetable was set that was the consideration that went into the issues you were dealing with—changes that the tax office has to address in parallel. Once that timetable was settled those considerations would have been dealt with and we would then have advanced the IT outsourcing within that timetable.

Senator LUNDY—In terms of the current timetable for the ATO, what have you got scheduled? Where is it at at the moment?

Mr Yarra—It is in an advanced stage of negotiation. We are looking to finalise the process sometime in March with a handover sometime in May.

Senator LUNDY—Has the ATO expressed any concern to OASITO that you are aware of, or in fact to the minister that you are aware of, about the time frame that is in place?

Mr Yarra—Not that we are aware of.

Mr Hutchinson—Senator, I think it is fair to say that the process of IT infrastructure outsourcing is one that is very uncomfortable for all parties involved. Getting from here to there is not easy.

Senator LUNDY—So they have expressed concerns?

Mr Hutchinson—The gains that the Commonwealth is seeking from IT outsourcing are not gains that are easily achieved, are not gains that are achieved without people making changes that may be discomfoting for them, but everyone involved in the process recognises the Commonwealth's commitment to those changes and is wearing a level of discomfort. People in the process at a personal level from time to time might express views of concern, but there is absolutely no doubt in my mind of the commitment of the Australian Taxation Office at the most senior level to this process and to seeing it through as expeditiously as possible. They are fully aligned with the government's commitment. So to the extent that any concerns may have been expressed, they have been of the nature of personal concerns—

Senator LUNDY—Sorry, just clarifying: there have been concerns expressed?

Mr Hutchinson—Not to me. There may quite clearly have been—

Senator LUNDY—To the office of asset sales?

Mr Hutchinson—No formal concerns have been expressed. Any concerns that have been expressed would be no more than collegiate grumbling about the onerous work that the government makes us go through to earn our salaries. There have been no formal complaints and no formal concerns expressed that would meet your questioning. I guess I am saying that, to the extent that any have been expressed directly or indirectly to you, I think they would be of the nature of understandable grumbling about the difficulties of work.

Senator LUNDY—In terms of that ATO process, who specifically in the ATO is going to have responsibility for the whole transfer of operations or transfer of functions to the new vendor? Is that someone who participates in the steering committee?

Ms Makay—It will end up being the contract manager, and what we have as part of our process is a need to involve people from the contract management area as soon as possible in the evaluation and negotiation so you have that continuity. That is what is provided for within the ATO process.

Senator LUNDY—So who is that?

Ms Makay—It is a group of people that are likely to be involved in the contract management office. There is not any one individual that you should name.

Senator LUNDY—So there is a group of people currently participating in that process.

Ms Makay—Yes. They have a responsibility for working with us during the evaluation, negotiation, development of negotiated schedules concerning transition—all the relevant aspects of the development of the services agreement.

Mr Hutchinson—Senator, I think it is important to point out that the responsibility for contract management passes from us to, in this case, the tax office; and it is entirely a matter for the tax commissioner how he manages that responsibility. We may be aware of it, but it

is his accountability and we would be a bit wary about telling you how he proposes to execute his accountabilities.

Senator LUNDY—Thanks. With respect to the Health Insurance Commission, when is that scheduled to get started, or has it already?

Mr Hutchinson—The group that is based on the health portfolio is in preparation now. Work has started.

Senator LUNDY—Is that a cluster or group?

Mr Hutchinson—It is a cluster or group, yes. A number of agencies are likely to be party to it.

Senator LUNDY—Has that been determined yet?

Mr Hutchinson—The core group has been determined.

Senator LUNDY—Who is the core group?

Mr Hutchinson—Sorry, I am galloping off on the wrong tender. The health cluster tender has actually reached the position where the bids have been submitted. The bids were submitted on Monday, 15 February, and that is the department of health and the Health Insurance Commission.

Senator LUNDY—So tenders have been—

Mr Hutchinson—Received.

Mr Yarra—The evaluation is commencing.

Senator LUNDY—So they are closed?

Mr Yarra—Tenders are closed.

Senator LUNDY—In terms of that process, what is the timetable for evaluating it, dealing with it, et cetera, particularly in relation to year 2000 issues?

Mr Yarra—Mr Whithear is the project coordinator to the health group.

Mr Whithear—Your question, Senator, was the timetable for the health group. Obviously, with these processes there is a range of vagaries that suggest we do not commit to an absolute, definite timetable, but we are targeting an announcement of a preferred tenderer in May this year. I can go through some of the detail below that, but that is probably the major milestone that you might be interested in.

Senator LUNDY—Can you tell me who the two private advisers are on the options committee for the HIC tender?

Mr Whithear—The options committee has not been convened as yet and we would go through the process that Mr Hutchinson described earlier in selecting somebody from the panel of expert advisers.

Senator LUNDY—Thank you. Just with respect to the machinery of government changes that occurred post-election, how has that impacted upon the IT outsourcing program and has it altered in any way your estimated savings projections in relation to the program?

Mr Hutchinson—There has been no change to the estimated savings in aggregate. The effects were—

Senator LUNDY—Have you done calculations or—

Mr Hutchinson—Essentially, the savings position associated with IT outsourcing is that minimum savings levels for agencies were established up front and budget adjustments were

made. To the extent that we achieve greater savings than those, agencies retain those savings: they are not subject to ex ante estimation; they are subject to the outcome of the competitive tendering process. So we have not recalculated in any way, or reassessed or remodelled. The changes that arose from the machinery of government changes were largely confined to changes in the composition of group 5. Mr Yarra has the details at his fingertips.

Mr Yarra—Group 5 had a fairly substantial impact in terms of change with the agencies involved.

Senator LUNDY—Yes, I understand that.

Mr Yarra—Centrelink was affected and so was the health group affected. It has been added and taken away.

Senator LUNDY—Yes, I appreciate that.

Mr Hutchinson—But the process and the model are designed to allow for machinery of government changes, to allow for functions to be removed from scope and added back to scope, either during the process or, more conveniently, during the life of the contract. Insofar as we are able to judge to date—and we think we can judge quite well—the features of the process that allow that to happen survived those machinery of government changes quite well.

Senator LUNDY—When will the announcement be made about the successful vendor on group 5?

Mr Hutchinson—As soon as the successful vendor on group 5 is known. We are talking a small number of weeks.

Senator LUNDY—I will leave it at that and I will take up the option of providing any subsequent questions I have on notice. Thank you.

Senator CONROY—Any volunteers for Telstra? I quote:

ANAO believes that it is good administrative practice that the fees proposed by candidates should be considered and evaluated as part of the selection process when the Commonwealth is able to maximise its negotiating position.

That is from page 40 of the report. I am sure that is familiar. Why didn't you adopt this practice?

Mr Hutchinson—We did, we do, we always have.

Senator CONROY—So the ANAO are wrong?

Mr Hutchinson—The ANAO believe that we did not give it an appropriate weighting in the selection. The ANAO have indicated ways in which we can actually improve the Commonwealth's leverage. We have adopted their suggestions in more recent appointments.

Senator CONROY—So you did not for this one? The impression I got from what you have just said is that you have adopted it now more rigorously or—

Mr Hutchinson—The difference in practice is that when we selected our global coordinators for what we now refer to as Telstra 1, we considered the fees that had been proposed, and the committee came to the deliberate conclusion that within the scale of this project the difference in fees proposed was not a material consideration in terms of the identity of the people we should engage. We therefore took the view that we should engage the people who were offering the best services and then negotiate a fee with them, and that was the course we followed.

Senator CONROY—What was the range of the fees then?

Mr Hutchinson—The range of the fees was fairly narrow. They were all within industry benchmarks and industry norms, and the judgment was that there was no differentiation among them in terms of expected cost-effectiveness because of the fees they put on the table.

Senator CONROY—What is your definition of a narrow range? I am looking at a note that says that they seem to believe the range was \$1 million to \$5 million, which to me is a large range. That is paragraph 2.2 of their report.

Mr Hutchinson—The \$1 million to \$5 million does not immediately ring a bell.

Senator CONROY—Paragraph 2.2.0.

Mr Hutchinson—Sorry, I do not find the \$1 million to \$5 million paragraph. Paragraph 2.20, sorry.

Senator CONROY—Sorry, paragraph 2.20, yes. Thanks.

Mr Hutchinson—The fee proposals that were put before us were very complex. It was not simply a \$1 million to \$5 million fee. It was a fee in various components. Essentially, it was a fee for providing project management services and then a range of selling commissions for undertaking the offer; and, by and large, some proposals submitted very low fees for the project management role but correspondingly higher fees—

Senator CONROY—Bills were up at the other end.

Mr Hutchinson—Yes, correspondingly higher fees. So it was not possible simply to compare the project management fee across contenders. You have to look at the total cost of the offer based on the various fee proposals put forward. When you have looked at the total cost of the offer and the scope that there was for negotiation, to base a decision on the fees proposed could easily have led to hiring people who were apparently cheaper but were resistant to negotiation and going past people who were initially asking for high fees but were more prepared to negotiate later. So we considered fees, as the Audit Office said we should. We took the decision that they were not a differentiating factor among the contenders. We therefore selected—

Senator CONROY—Can you just take me through that process a little bit.

Mr Hutchinson—We looked at fees and considered them as immaterial to differentiating among bidders.

Senator CONROY—You looked at the lower fee to start.

Mr Hutchinson—No.

Senator CONROY—And you made your selection process of the sort of short list. Then you made the point that some were resistant to negotiate a little later.

Mr Hutchinson—No. Had we used these as a differentiating factor, we would have run the risk of being in a position where we may not have got the best value for money by simply taking the initial offer, because it was quite clear to us in the environment we were in that once we had selected people we would be able to negotiate a fee that was better than the fee that they had offered. Essentially the fees that they were asking for were not the fees that they expected to get.

Senator CONROY—Sort of like a union ambit claim?

Mr Hutchinson—In this industry an ambit claim would be a modest description of what some of these people say. The decision of the panel which we discussed with Senator Lundy recently was that it would therefore not differentiate among contenders on the basis of the fee proposal, because the variance among the fee proposal was not meaningful. Therefore we

looked at the calibre of the firms and we selected those who essentially, the judgment was, would do the best job for the Commonwealth in terms of adding value for the Commonwealth; then we would negotiate the best fee we could with those people.

Senator CONROY—So you were not able in that selection process to have a monetary figure in terms of what they were really going to cost you finally? It just seems unusual. Normally cost is one of the main determinants in how you pick and then you marry the quality with the cost along the way.

Mr Hutchinson—Cost effectiveness is the criterion, you see. It is not cost minimisation but cost effectiveness. In these exercises the fees to investment banks are of the order of one per cent, 1½ per cent, or perhaps the total cost is of the order of 1½ per cent of the total funds raised, and the variance in total funds raised can quite easily be much larger than that, depending on the capacity of the firm you hire. These are judgments rather than calculations: if you hire a firm that does five per cent better than its competitors, the Commonwealth gets five per cent more proceeds, which is five or six times as much money as you pay in their fees, so the leverage effect of these fees is enormous and therefore just going for the cheapest might be a mistake. It has got to be cost effectiveness.

Senator CONROY—I accept that. I am just surprised to find that companies are, to use your words, resistant to negotiate, but have made the short list.

Mr Hutchinson—Some are resistant to negotiate; some are very flexible in negotiation. A lot will depend upon how confident they are that we need them—that we need their resources—rather more than that they need to concede price. It is a commercial position. We are in an environment where the benchmark fees we are working to are known to be substantially below the international norms and there is a long-term joust going on between the global investment banks, who we use for these assignments, and the Commonwealth, in which every time we ask them to seek work from us they try to ratchet our fee scales back up towards where they would like to be, the 2½ and three per cents that are prevailing in continental Europe and the four per cents that are prevailing in the United States. They would like to get them there from the one and a bit per cents that we have been operating on in Australia. So there is competitive tension and, depending on how much work they have got and how important the assignment is to them, they might negotiate.

For instance, on this assignment I am convinced in my mind that one of the world's biggest investment banks looked at it and looked at a competing assignment elsewhere in the world at the same time, in a country that pays higher fee rates. That investment bank appears to me—and they deny it when I discuss it with them—to have taken the commercial decision to offer their best team of people to the competing assignment, which they won, and pitch to us with the second eleven. We did not hire them. Their commercial interest was such that the fee rates they got on the competing assignment were almost double what we would have liked to have given them. So we took a decision at the start that fees were not a meaningful differentiator among these people. We selected the people we wanted to work with, then we negotiated the best fee we could with them at the time.

ANAO said essentially, 'You actually took too long to negotiate. First of all you should have used fees as a differentiator and you took too long to negotiate your fee afterwards. You lost your leverage and the competitive tension.' I do not believe we did lose that leverage, but we certainly agree that the fee took too long to pin down after selection. When I say we adapt, we responded to the ANAO's finding. In selecting investment banks to run what we are referring to now as Telstra 2, we explicitly analysed the cost of the offer under each fee

proposal that was put before us—and we had about a dozen on the table. We explicitly looked at fee proposals in the sense that we looked at the high cost ones and said, ‘Is there anything about this firm that would justify us interviewing them, short-listing them, when they have got this sort of offer on the table?’ and we looked at the low priced bids and we said, ‘Is there something about this proposal that says they’re trying to buy the job because they’ve got an inadequate team?’

So we actually looked at those and we actually did discard some firms from the short list on fee and quality grounds. Once we had gone through the selection process and nominated the firms, we essentially put them in a room and did not let them out until they had agreed to a fee proposal. In that sense we wrapped up the fee proposal faster while our competitive advantage was greater and we have done a significantly better fee deal on Telstra 2.

Senator CONROY—I am presuming, given the extra leverage that you would have therefore had, you got a better deal than last time.

Mr Hutchinson—There are two reasons. One is given the extra leverage. When we set out on Telstra 1 we were probing new depths in the Australian equity capital market. This deal turned out to be three times bigger than any Australian equity capital deal that had ever been done before.

Senator CONROY—Tragically, it has got much bigger if you look at the share price.

Mr Hutchinson—We will come to that later.

Senator CONROY—It is tragic.

Mr Hutchinson—Tragic for the Commonwealth?

ACTING CHAIR (Senator Watson)—How is it that you are able to secure a deal so much lower than world benchmarks, because this can have implications in terms of abilities to deliver at long term, can’t it?

Mr Hutchinson—The investment banking market is occasionally very competitive and we have managed to strike it for the appointment of Telstra 2 at a time when competitive tension in the industry at large is so high. Secondly, on a deal of this scale, Telstra 1 and Telstra 2, you get significant economies of scale. The technology that is now permeating investment banking and stockbroking is bringing costs down, and I think historically the industry has had a certain amount of excess profit in it. Certainly, in relation to the risk of using our leverage to reduce fee levels in Australia—the Australian based fee levels—to the level of the front-end salesman fronting the institutions in Frankfurt or Milwaukee, to the extent to which they reckon the margin is such that they are not going to be bothered, that is always a risk.

We had it in our minds, particularly during Telstra 1, that we had our investment bank salesmen fronting these institutions selling Telstra shares on a selling commission of 1.75 per cent, at exactly the same time, or within a couple of weeks, that France Telecom had its salesmen selling France Telecom shares. It was a good comparator company on selling commissions that were 15 per cent or more greater than that. We were worried in relation to those people who had three or four stocks in the bag to sell that day—if our selling commissions were too low, perhaps we might not get the sales push. There is always that risk if you drive the fees too low, and that mistake can be made. I believe that some mistakes of that sort have been made.

We do have an eye to precedent and the sort of selling commissions that have been applied in the other most aggressive selling commission in the world, the UK. Although our costs of offer are slightly lower than theirs are, selling commissions are slightly higher, or have been

slightly higher. It is a judgment. At the end of the day the investment banks we hire have also got their reputations at stake, and if they do not deliver on the deal then we do not rehire them or they look bad in the marketplace, so misdelivering a deal costs badly for them. But it is not in the Commonwealth's interests to put so much pressure on these people that they cannot afford to work for you. You were going to come back—sorry, Senator.

Senator CONROY—I was probably going to have to disagree with Senator Watson's question. Paragraph 2.22 and also footnote 33 on page 38 do not seem to bear out that we have much lower fees. They seem to argue that the management and advisory fees paid for Telstra 1, as you describe it, are significantly larger than fees paid previously for other Australian public share offers and other similar international share offers. You do not agree?

Mr Hutchinson—We have never previously structured a public share offer on this model; therefore there is no comparison, and therefore the comparison the Audit Office has made is not a comparison of like with like. Between the last public share offer we did—Commonwealth Bank 3—and the preceding public share offers, the government has changed the model. Far more work and far more of the project management work is outsourced, and therefore we are not merely engaging the investment banks as investment banks and stockbrokers; we are engaging them as logistics and contract managers and project deliverers on a wider scale. So the project management fee we paid in the case of Telstra 1 was for a different service than the selling management fee that is traditionally paid in an offer.

Secondly, the split between the global coordinators' project management and incentive fee and the selling commissions is different. The selling commissions were, on a world scale, low, because there was an incentive structure in the global coordinators' fee.

Senator CONROY—Does that mean you are implying the project management fee was high?

Mr Hutchinson—No, the project management fee was set to pay for the services, but it also included an incentive structure which was built into the global coordinators' fee because they were leading the transaction; and to the extent that they created value for the Commonwealth in the transaction they got a fee. Essentially between the scoping study which estimated the sale proceeds at \$10 billion and the out-turn at \$14.3 billion, that \$4.3 billion of value added attracted an incentive fee of the order of \$18 million.

Senator CONROY—Why did you decide to pay the global coordinators for shares that were given free of charge to Telstra employees and shares that in fact were never sold?

Mr Hutchinson—We did not pay a selling commission on shares that were never sold or on shares that were given to employees, but the incentive fee in the \$40 million was based on the value of the offer in which we valued the total shares distributed. The judgment involved in including a value for the employee shares was that we did not want to have the global coordinators with an incentive to suppress the demand for employee shares in favour of demand for sold shares, because the Commonwealth was committed to the employee share offer being a success—as it was. Therefore, we ascribed a value to those free shares for the purposes of calculating the incentive payment but there were no selling commissions paid on them. The incentive was based on the value that they drove the offer to, which was essentially the price of the shares times the number of shares that we were distributing.

As to the shares not sold, the unsold shares were essentially a choice of the Commonwealth where a few institutions were so dilatory in settling that rather than enforce settlement, which we could have done, and therefore sold these shares at the \$3.40 issue price, we could say to those guys, 'You didn't pay on time. I'm blown if we're going to sell you the shares at

\$3.40 because they're now at a higher price. The Commonwealth will keep those shares. If you guys can't settle on time, you don't get your shares.' Of course that was a Commonwealth option. We got the order for the shares, the work had been done, but it was a Commonwealth decision not to settle because it was in the Commonwealth's interests not to settle.

Senator CONROY—If you had not sold any shares at all, would they still have got a fee?

Mr Hutchinson—If we had not sold any shares?

Senator CONROY—Given it is on the value and you can change your mind afterwards.

Mr Hutchinson—Had they settled promptly, we would not have been able to change our mind because we had offered to sell them and they had accepted, but some were just dilatory or careless about settlement. No, this is only a decision you can take at the margin. It is not a decision you can take in total. Had we not sold any shares—

Senator CONROY—Have you got a rough calculation of what the fee was for the non-sold and the employee shares?

Mr Hutchinson—The unsold shares—

Senator CONROY—I am talking about the fee that was paid on them. I am probably talking about the fee that was paid on behalf of them even though they were not sold, or to employees—

Mr Hutchinson—There were about 1.6 million shares left unsold. The Audit Office points to that. The value of those was about \$5 million. They were all domestic institutions, so the selling commission would have been of the order of one per cent, so one per cent of \$5 million would be the selling commissions on those shares.

Senator CONROY—And the employee shares?

Mr Hutchinson—There were no selling commissions on the employee shares. There was an element of the incentive payment to the global coordinators paid on the value of the employee shares, and I do not have a figure at my fingertips for that.

Senator CONROY—Why wasn't any of this documented and in the records of negotiations or the signed contract? Why didn't you specify these arrangements?

Mr Hutchinson—Even though the fee negotiations were conducted over some time, the fee was actually settled in a document early and it was reflected in a contract later. Elements of the offer structure were not settled and therefore the interaction between the fee structure and the offer structure was not a hundred per cent clear. I think it was just simply an oversight that understandings that were clearly reached in the discussions were not adequately reflected in the contract documentation.

Senator CONROY—How were they enforced, then?

Mr Hutchinson—Sorry?

Senator CONROY—If they were not recognised, as you described it, how were they enforced? Did everyone accept it by a shake of the hand?

Mr Hutchinson—At the time we came to calculate the fee and had the fee calculation reviewed by the government's business adviser, questions were raised about how these particular issues were to be treated. Everybody around the table said we all thought we had agreed that this was how it would be treated. So there was agreement between the parties that that was how it would be treated and therefore that was what we had given effect to.

Senator CONROY—The success fee component for the project management fees began to kick in when sales proceeds had reached \$8 billion, or \$1.87 per share.

Mr Hutchinson—That is not correct. This is one where the Audit Office is absolutely wrong, and we have told them so several times. Or, if you want to put a pro Audit Office position, this is where OASITO has completely failed to help the Audit Office understand.

Senator CONROY—What was the kick-in price?

Mr Hutchinson—The kick-in price for increases was a sale proceeds of \$10 billion. If they got more than \$10 billion then the benchmark fee would increase. If they got less than \$10 billion the benchmark fee would decrease. So the negotiation we had with the global coordinator was, first of all, what would the benchmark fee be—

Senator CONROY—Yes, what was it below \$10 billion?

Mr Hutchinson—It was about \$22 million at \$10 billion. It reduced to \$16 million if sale proceeds fell to \$8 billion or below and it increased up to a cap of \$40 million if sale proceeds had got over about \$14.7 billion or \$14.8 billion.

ACTING CHAIR—Did the Australian Audit Office give you a copy of their recommendations before they came out in print?

Mr Hutchinson—We were fully aware that the Audit Office was going to find in this way and we told them they were wrong. We told them they were wrong on successive drafts of their document and we have told them they were wrong since. The problem lies between the basis of a calculation and the commercial benchmarking of the fee. We have a graph that says if the proceeds are \$8 billion or less the fee is 16. Then we have a curve that goes up and a cap. Because the bottom end of the curve is at \$8 billion the Audit Office believed that is where the fee was benchmarked, but in fact it was benchmarked a third of the way up the curve in the commercial negotiations. The expected fee at \$10 billion was the centrepiece of the negotiation.

Senator CONROY—If you could help me—you may not be able to off the top of your head—you are saying \$16 million at \$8 billion and so that share price is the \$1.87.

Mr Hutchinson—It was not expressed in share price, but since the share price of \$3.40 was aligned with 14.3, I guess we could do the calculations. It is—

Senator CONROY—I was interested in getting what the share price is worth for those three sort of tiers—if anybody is listening up the back.

Mr Hutchinson—We can do the calculations. It is not as easy as that because 60 per cent of the offer was sold at \$3.30 to retail, although in turn 15 per cent of that was actually sold at \$3.35 because it was unsold and the second instalment was higher and then 40 per cent of the offer was sold at \$3.40. So we would have to work that one through as well.

Senator CONROY—Perhaps you can take that one on notice. I am joking about the calculations. Does the price equate to \$2.50 roughly, or \$4 or \$6? Is it a question of how low it was compared to the fact that the price is up somewhere around \$9 at the moment?

Mr Hutchinson—The price is around \$8.20 at the moment, that is right. It closed at \$8.21 last night but I have not looked at it today. Essentially the \$14.3 billion proceeds were on an issue price of \$3.40. We had just slightly over four billion shares sold, so the \$8 billion proceeds were of the order of just under \$2 a share. The \$10 billion was of the order of \$2.50 or \$2.30 or something like that. I would rather get the calculations—

Senator CONROY—No, that is fine, thank you. I said to take that on notice. You would therefore, I assume, reject ANAO's assertion that you ignored the sale business adviser that the benchmark for success should be increased to at least \$10 billion? I am assuming what you have been saying is that you do not accept that that was the case at all.

Mr Hutchinson—I do not recall receiving advice from the business adviser that the benchmark was different.

Senator CONROY—They seem to have believed that he or she advised you that it should be increased. But you are saying they had the wrong bottom line anyway, so therefore they are wrong.

Mr Hutchinson—That is right, the benchmark. Not the basis of the calculation, which was X rising; the benchmark was an expectation that we would strike halfway up the curve and if they did not get there they would lose money and if they got more they would gain money. So there were sanctions as well as rewards in this fee structure around a particular level.

Senator CONROY—If we can move on to the famous roadshow which, unfortunately, I missed so I am shooting blind, how did you determine the sale budget provision of \$1 million for the roadshow?

Mr Hutchinson—The \$1 million was a notional cost.

Senator CONROY—Notional? Do you have many notional costs?

Mr Hutchinson—Many of our individual elements are initially notional, particularly—

Senator CONROY—When do they firm up?

Mr Hutchinson—The aggregate budget is firm because my friends in the Department of Finance set me a fairly firm budget envelope. How we apportion that among the various elements is quite often dynamic during the sale process because as the sale evolves and pressures emerge, we can shift expenditure from area to area. That is perfectly proper and perfectly within the bounds and perfectly within the rules. For instance, as we realised the success of the direct mail campaign we were able to scale back the advertising budget and, as we realised the emerging weakness of the international investment situation, we were able to scale up the roadshow.

The original budget was based on essentially a two-week roadshow by a single team. The revised budget was a three-week roadshow by two teams. So we went from two roadshow weeks to six roadshow weeks, which went from \$1 million to \$3 million.

Senator CONROY—Are there any economies of scale you have had in terms of—

Mr Hutchinson—No, there are no economies of scale in a roadshow. It is a number of people times a number of days times a number of—

Senator CONROY—There were not any Olympic officials or anything?

Mr Hutchinson—These were not Olympic officials. These were Telstra executives, escorting investment bankers and escorting officials.

Senator CONROY—So you were fully conscious at all times of this blow-out increase decision. You are saying it was a conscious decision. It did not creep up on you. You made an executive decision 'We have got to go from three to six weeks.'

Mr Hutchinson—Essentially we made a decision that the roadshow of two weeks that we had at the time we put the budget together, almost 12 months before, was no longer adequate. It had to be a three-week two-party roadshow; the need to brief institutions had reached that level. We specified it, we called tenders for the provision of the services, and the budget of

\$3 million—it was actually \$3.02 million—was set and approved before the expenditure was incurred. Again, the Audit Office will point out, correctly, that the contracts were signed late, but the policy approvals, the acceptance inside the office were ahead of that.

Senator CONROY—Have you identified any of the roadshow costs that have been inappropriately or improperly charged to the Commonwealth?

Mr Hutchinson—Yes. The Audit Office indicated that there were some problems there. As a consequence of its recommendation we commissioned a firm of external accountants called Acumen Alliance, who are also the office's internal auditors. They have worked with the roadshow contractor and the global coordinators to review in detail all the third-party expenses that were passed through to the Commonwealth. As a consequence, \$146,000 of reimbursed expenditure has been reimbursed to the Commonwealth.

Senator CONROY—Can we get a breakdown of that?

Mr Hutchinson—Yes.

Senator CONROY—On notice if you do not have it handy.

Mr Hutchinson—It is roughly \$100,000 in air fare refunds where—

Senator CONROY—They did think they were Olympic delegates.

Mr Hutchinson—What happened was that the roadshow contractor made all the air travel arrangements on scheduled airlines for all the participants, and because these arrangements changed fairly frequently every time a new arrangement was made a new booking was made and the old one was returned for a refund. At the time the account was rendered to the Commonwealth \$100,000 of refunds had not been processed by the travel agent back to the contractor and therefore had not been passed back to the Commonwealth.

Senator CONROY—Did the contractor indicate they were to come, in the document they supplied to you?

Mr Hutchinson—The answer is no. There was confusion on the part of the contractor. One of their staff had interpreted the contract as being closed, all refunds paid 40 days after the roadshow finished. They were contractually obliged to wrap up the account with the global coordinators within 40 days.

Senator CONROY—But to keep the money?

Mr Hutchinson—40 days is a period too short for these proceeds to come through. Someone in the contractor's office misunderstood and—

Senator CONROY—Previously employed by Mal Colston?

Mr Hutchinson—No, these people were previously employed by a contractor in London. When the management of the company discovered what was happening they, firstly, wrote me a handsome apology and, secondly, offered full cooperation with the review and have refunded the amount to the Commonwealth, including interest. Once they discovered the error, they behaved properly.

Secondly, there was about \$10,000 worth of travel allowances paid to the contractors' staff that was inappropriately charged at actual cost incurred rather than at the Commonwealth SES rates that the contract provided for. That was an error in billing and it was passed through. There were three, within the scale of things, relatively minor expenditures which had been intended to be to the account of the global coordinators by way of hospitality for the Telstra executives but had inadvertently been charged to the Commonwealth, and they have been reversed. And there was approximately \$25,000 worth of use of hire cars where the indications

were that there had been insufficient discipline on the use of hire cars, and an amount of \$25,000 was refunded.

Senator CONROY—That is a lot of discipline—\$25,000 for hire cars. Is there any evidence of fraud in relation to any of these activities?

Mr Hutchinson—That question has been raised. The issue of whether there is any evidence of fraud is not yet resolved. However we have formally asked the accounting advisers who have been through this with a fine toothcomb, and they have formally advised us that in their opinion, while there are indications of poor administration, they have no view that there has been any deliberate intent on anybody's part to act dishonestly. It would appear to be unlikely but, as I say, the fraud processes required of me have not yet been fully acquitted, and I need to go through some more processes and advise the minister.

Senator CONROY—And hopefully he will tell the parliament.

Mr Hutchinson—If there is anything to tell the parliament.

Senator CONROY—On page 56 of the ANAO report reference is made to the following direct costs for the roadshow: \$532,928 for scheduled flights, \$466,601 for private aircraft charter, \$223,546 for speaker team accommodation, and \$136,779 for private chauffeur and limousine services. Can you provide on notice any further breakdown of those costs?

Mr Hutchinson—Yes, Senator, that can be done. In fact, we could—

Senator CONROY—I am happy to take it now if you have got it now. I promise not to ask any questions on it, though. On page 46:

ANAO have found that the exchange rate exposure on \$7.5 million in contract payments was sufficiently material to have warranted a systematic risk management approach. Noting that failure to hedge against this exchange rate exposure cost the Commonwealth \$700,000.

Why do you think you are right and they are wrong?

Mr Hutchinson—We are talking about a deal of \$14.3 billion in which the principal foreign exchange exposure was on the foreign currency receivables for the shares sold in the period between allocation and settlement, and that amount was fully hedged. In the context of \$260 million of expenditure a \$7.5 million expenditure incurred in foreign currency at a time when the outlook for the Australian dollar exchange rate was in fact buoyant, but wrong, the judgment—and it was admittedly a passing judgment—that in the context this was not a material issue was made. The Audit Office think it is wrong. We think it was right at the time. The Audit Office were employing hindsight; we were employing commercial judgment at the time.

However, we have since instituted a requirement on all our transactions that, where possible, we will require all payments to be in Australian dollars. In the event that we cannot secure those payments in Australian dollars, we will require an explicit analysis of the need for hedging. All I have to say is that had that analysis been conducted at that time the answer would have still been, 'Do not hedge.' We have gone back to our advisers and said, 'Please reconstruct the situation at the time this was entered into. Had we asked you for advice on hedging, what would your advice have been?' and they tell us that their advice would have been not to hedge.

Senator CONROY—\$700,000 may not sound much given the sort of numbers you are dealing with, but if you are planning on losing it, I can give you a bank account and you can freely lose it there next time.

Mr Hutchinson—I do not regard \$700,000 as a small sum of money. It is simply that the materiality concept is one of relativity, so relatively, in the scale of this transaction, it is—

Senator CONROY—I mean, when you are dealing with numbers that are just that big, it would be like this little number down the bottom and you would think, ‘Oh, yeah, okay.’

Mr Hutchinson—Simply, there are myriad issues; that one was given attention; it was given attention that the Audit Office considers was inappropriate. We felt and we still feel it was appropriate. The Audit Office thinks we have to increase our attention on that, and we have set up a process where we will do so. Once we have run that process for a while, we will review it and see if it is as cost-effective as the Audit Office thinks it should be.

ACTING CHAIR—Mr Hutchinson, in terms of document that is presented to the committee, the Telstra 1 sale roadshow expenditure, was the conversion from sterling to Australian at rates as the expenses were incurred? Were they at specified rates, or was that at the conclusion of the contract?

Mr Hutchinson—Sorry, can you say that again?

ACTING CHAIR—Yes, I will repeat the question.

Mr Hutchinson—Yes, thank you.

ACTING CHAIR—In the document that you presented to the committee, Telstra 1 sale roadshow expenditure, you have some sterling and Australian equivalents. In relation to the conversion rate of exchange, was that at the rate the expenses were incurred, was it on a progressive basis, or was it on the basis of the time of the final reimbursement?

Mr Hutchinson—The exchange rate was at the time of payment of the account, and it was this exchange rate which was part of the unhedged amount that Senator Conroy was just referring to.

ACTING CHAIR—So the exchange rate we have got here is always fixed in relation to sterling and does not reflect the rate at which the accounts were incurred?

Mr Hutchinson—It reflects the rate of exchange at the time the accounts became payable.

ACTING CHAIR—Thank you.

Senator CONROY—Tenderers who tendered for contracts for the processing of applications were advised of the need to be able to process between 100,000 to 200,000 applications a day. ANAO has reported that the failure to meet that standard in the early stages of the offer resulted in forgone interest of between \$1.2 million and \$2 million. Have you made any attempt to recover this loss from the contractors?

Mr Hutchinson—Senator, the short answer is no. I think it is important to understand that the interest received on applications money for a public share offer, welcome though it may be, is in fact a cost that we impose upon the share applicants because of the length of time it takes us to process the applications. In an ideal world, we would wish to receive fully cleared funds on the final day—but you cannot process that fast—rather than have the money flow in. What actually happened was people were invited—

Senator CONROY—But you took that into account. I mean, you set a standard for them to meet. You knew that there was going to be a—

Mr Hutchinson—The standard we set them to meet was to process all the applications that were received by the closing date in time for the Commonwealth to work out a scale-back formula and make allocations. That was the ultimate requirement of this offer.

Senator CONROY—But they did not have to meet between 100,000 and 200,000 a day?

Mr Hutchinson—The processing standard we estimated that would be necessary was between 100,000 and 200,000, given an expected pattern of arrivals of subscriptions. It is a fact that in the Telstra offer a significant number of subscribers remitted their applications much earlier than is the case in a normal public share offer, so we had a lot of applications that came in early; the processing system had not bedded down and was not processing them quickly, so a backlog built up—an unexpected backlog.

Senator CONROY—How far behind the 100,000 to 200,000 a day did they fall?

Mr Hutchinson—When we wanted it to be 100,000 they were processing 60,000 and on days when the machine broke down it was less. This was the first time a processing centre of this scale had been built in Australia, and certainly its initial performance gave us grounds for considerable concern, but the action we took was not action to penalise the contractor, but action to work with the contractor to ensure that the system was fixed so that we could clear all the applications in the time available, because that was the ultimate performance standard. This was not a profit centre in the operation. It was actually a cost centre. The revenue from applications money was not a major aim—minimising it would have been in the interests of the subscribers to Telstra shares, rather than maximising it, and essentially—

Senator CONROY—That is still a lot of forgone interest.

Mr Hutchinson—It is a lot of forgone interest but if you consider the Commonwealth would have preferred a system that did not require us to get the money too early—

Senator CONROY—Have you met the Treasurer or the minister for finance?

Mr Hutchinson—But we are talking about people having to pay early for shares they do not get for some considerable time. It is prepayment for shares, it is interest on prepayment, so the rate at which share applications arise is fortuitous. We would have liked to have processed them more quickly. We were much more concerned about the processing volume and our knowledge of the volume of applications we had received and matching those against the expected volumes. The important thing for us was that the unprocessed applications were unknown applications. We counted them in but we did not know how many shares were applied for and therefore our knowledge of the build-up of demand was weak, and that was a greater vulnerability for us. Therefore it was more important that we remedy that by remedying the operation of the system than go out just to beat up and sanction the contractor. A penalty of \$1 million to \$2 million on that contractor would have been a very onerous penalty given the size of their contract. The risk is the Commonwealth subcontract—

Senator CONROY—You did not seek to get back the money that was forgone, and they had no penalty for the delays at all in terms of not meeting their ongoing—

Mr Hutchinson—No.

Senator CONROY—I accept that the ultimate, as you describe it, is the end, but if you specified during the period the performance target, they clearly failed it, by a hundred per cent some days, 40 per cent on others.

Mr Hutchinson—There was no contractual obligation on them to maintain a processing range of 100,000 to 200,000. There was a contractual obligation on them to process the lot by the date, and they met that obligation. There was one point in the process where we were concerned that they were not devoting sufficient resources to remedying the problem and we exercised our right under the contract to put them on notice that if within a certain period of time they had not remedied the situation, we would penalise them by a reduction of fee. That was a contractual obligation. So we gave them notice to remedy and the notice had effect

because they remedied. Whether the notice had anything to do with it is arguable, but we gave them notice, they did remedy and the notice was withdrawn because they met what we wanted of them, which was to process those applications in time for us to deal with them in the offer.

Senator CONROY—So you withdrew it at the end?

Mr Hutchinson—We withdrew it once the situation was remedied. We withdrew it, I think, once the processing got to about 250,000 a day; and, because the applications had come in early and the surge at the end was lower than expected, we were able to remove the backlog before the end surge and we processed them all in time.

Senator CONROY—You have advised that you were somewhat surprised at how aspects of the customary settlement process operated in practice, on page 69. Given that you paid millions of dollars to a vast array of experts to advise and assist with this sale process, what were the elements of the sale process that came as a surprise to you?

Mr Hutchinson—The offer was on a scale that was unprecedented. Essentially each institution, and there were several thousand, who had been allocated shares settled by cheque at the last minute, often with a separate cheque for each fund that they managed, so for each allocation you might get multiple cheques, and in some cases the lack of professionalism on the part of the institution in terms of reconciling the number of shares we had allocated to them to the number of cheques they had put together and the capacity to process that was not something I would have expected from an efficient private sector. It works fine for most share offers in Australia where you could put all these things on a desk and a clerk can whip through them in 20 minutes, but when the scale blows out to this, the confusion is rather large. I think everyone was taken by surprise with the sheer volumes of cheques for applications. It was just unexpected, because it was an unprecedented offer. It was three times the size of anything that anyone had ever done before. And you will be pleased to know that we have got some solutions for it for Telstra 2.

Senator CONROY—You will be pleased to know there is no Telstra 2! Did you consider setting a target for after-market premiums?

Mr Hutchinson—It is a very difficult issue. The after-market premium in this case—

Senator CONROY—Is huge.

Mr Hutchinson—at 19.7 per cent is rivalled in Commonwealth public share offers only by I think the Commonwealth Bank 1 sale done by the Labor government where it was 19.6 per cent. It appears larger because it was an instalment procedure and therefore you got a leverage effect. It is very difficult; it appears to be an artefact of the late 1990s and the enthusiasm for telecommunications stocks. We are by no means a record setter in that sense in terms of other floats that have happened since. Setting a target is difficult because pricing is difficult, but it would be fair to say that numbers approaching 10 per cent from the low side would have been more comfortable. But the demand for this offer, the after-market demand for this offer, exceeded all expectations.

Senator CONROY—Was that a yes or a no?

Mr Hutchinson—It was an explanation. In terms of ‘Do we have a firm target?’, the answer is no, and it would not be meaningful to have a firm target.

Senator CONROY—So on the off-chance that Telstra 2 happens, you would not be looking at that either? I am just trying to understand. You have not actually said yes or no, so I will ask you a different question. Have you set one for Telstra 2?

Mr Hutchinson—We have not yet set a target and we have not yet addressed whether we will set a target. What we have done, however, is constructed a fee structure for the global coordinators that has rewards and incentives—rather like the fee structure we struck in Telstra 1—that are linked to the after-market price, and if the after-market price falls outside certain bounds then their fee will vary negatively.

Senator CONROY—Are you satisfied that Commonwealth proceeds were maximised selling the share price at \$3.40?

Mr Hutchinson—I am satisfied that in the circumstances of the offer and with the information we had at the time, the Commonwealth sale proceeds were maximised. With the benefit of hindsight, I would far rather be selling those shares now than in November 1997. But I am not. We were selling them in November 1997 and in the market circumstances at the time and, with all the information we had available, I am satisfied that the price was set at the maximum that was possible on the day with the information available.

Senator CONROY—It is a massive increase in a short period.

Mr Hutchinson—The number that is material is the day one pricing. It is important to understand how this offer was structured. The offer was structured deliberately to create after-market demand by allocating—

Senator CONROY—Why was that?

Mr Hutchinson—And also in order to satisfy the institutions, to satisfy the retail investor.

Senator CONROY—Why was it deliberately structured to create after-market demand?

Mr Hutchinson—Because the interests of the offer and—

Senator CONROY—Given you did not have anything linked to show up the market demand, premium or—

Mr Hutchinson—What we had was the need to have an offer that was successful in the eyes of the investors because of the prospect—subsequently policy—that the Commonwealth would sell more later.

Senator CONROY—So they wanted to guarantee them a bit of capital gain after?

Mr Hutchinson—It is certainly imprudent for the Commonwealth government to sell shares in circumstances where they promptly fall in value once they have been sold and we were looking to a system where we could be sure the value would not fall. As a consequence, the allocations that we made of the shares (a) satisfied the retail investor to the maximum extent possible and (b) left Australian institutions well underweight in the shares.

Senator CONROY—Can I just explore this ‘imprudent’. I have more recent memories of AMP—also in which I have no shares—and AMP have managed I think almost to go down below their position. There has not been a hue and cry; it has not been viewed as imprudent. There may be factors—they have been playing with GIO for a while—but no-one seems to be saying that what has happened is imprudent.

Mr Hutchinson—As a declaration of interest, I hold shares in AMP. I think it is—

Senator CONROY—Are you outraged?

Mr Hutchinson—To my knowledge the shares, which are hovering around \$18.50, are still above their issue price—not that the issue price was a clear thing, because of the—

Senator CONROY—They are below \$40.

Mr Hutchinson—The issue price was not \$40. \$40 was the accidental after-market price. The issue price for capital gains tax purpose was well below \$18.

Senator CONROY—Who decides the level of imprudence?

Mr Hutchinson—There is nobody that decides the level of imprudence.

Senator CONROY—Then how is there such a thing that it is imprudent to have a situation when the share price might fall? I can understand the government being very conscious of not wanting to upset a lot of investors.

Mr Hutchinson—That is why it would be imprudent; that is one of the reasons why it would be imprudent.

Senator CONROY—I am just not sure that the rest of the country who did not buy the shares and who would have liked it maximised a bit more than it apparently was seem to have been slightly worse off while a smaller group of the community are a lot better off. So I am just trying to understand where it is written into anybody's brief—yours or the people you contracted—that they have to make sure they are just a bit below what it might be.

Mr Hutchinson—Senator, throughout the whole offer it was quite clear, and clear to the government, and the government fully understood, that the shares—

Senator CONROY—I am not sure it is clear to the rest of the Australian community that there was this policy to avoid imprudence.

Mr Hutchinson—I think it is an axiomatic policy that people avoid imprudence. It was quite clear during the offer, and quite clearly expected on all parts, that the issue price would aim to be below, preferably slightly below, the aftermarket price. The extent to which institutions were prepared to pay what were on the day apparently very high values surprised most people—surprised almost everybody.

Senator CONROY—Certainly a sustained run now.

Mr Hutchinson—I need to draw a distinction clearly here on the listing premium on the day which made Telstra one of the most expensive telephone companies in the world on its share price relative to all its fundamentals. It was priced towards the upper end of the comparative group, and on the first day it went well above it. Since that time—and this has nothing to do with the float and everything to do with the movement in equity capital markets—there has been a worldwide re-rating of the value of telephone companies, particularly the value of full service carriers that are incumbent. Telstra is probably still among the more expensive in the world with respect to fundamentals where gaps are narrow, but those fundamentals have been re-rated.

Every single telephone company in the world in this group, France Telecom, Deutsche Telekom, Telecom New Zealand, British Telecom, which are main comparative groups, have increased in value by at least this much, and some have increased by more, because the flow of funds in the world equity capital markets into telecommunications companies has driven the price up as the investment community is seeking investments with the attributes of telecommunications companies—investments that are insulated from the Asian downturn, investments that have a degree of security of earnings, investments that are in the growth sector of the economy. There has been a switch in investment philosophy that supply and demand has driven the prices up. That had nothing to do with the float.

There is another force at work in the market, and that is that once Telstra was partially listed, the investment analysts of the world started to take a really keen interest in it and the company started to respond to that interest and the very act of—

Senator CONROY—Does that mean that the travelling roadshow failed to spark the interest?

Mr Hutchinson—The travelling roadshow initiated that.

Senator CONROY—Surely it had all the bells and whistles in the world.

Senator Herron—Senator Watson, the committee was supposed to meet till 8 o'clock. The deal was done with the senators earlier.

Senator CONROY—I appreciate that. I only have a couple more questions on this issue. I have got some questions on the Wool International. I am happy to put them on notice.

ACTING CHAIR—Could you put those on notice?

Senator CONROY—Yes, I am happy to put the Wool International questions on notice. I have just got, hopefully, a couple more minutes and then we can all go home.

ACTING CHAIR—Are you happy, Minister, with a couple of more minutes?

Senator Herron—Yes.

Senator CONROY—Thanks, Senator.

Mr Hutchinson—The end of my answer, Senator, is to say that it is important to understand that the privatisation of itself has caused, in my view, changes in management and coping with company strategy, and a tighter focus to those have added value, so the residue of the company that the Commonwealth continues to own, which was worth about \$29 billion the day before the sale is now worth \$70 billion, and that is value that the Commonwealth has retained and is able to exploit, and value that may not have been created—and I would argue would not have been created—to the same extent had there not been an initial listing.

Senator CONROY—You advised ANAO that the 'sale price of \$8 billion formed the basis of political commitment to the sale'. What did you mean by that?

Mr Hutchinson—At the time of the 1996 election the estimated proceeds that were in the coalition policies were \$8 billion. So the role of the figure of \$8 billion was not other than the extent that the coalition party—

Senator CONROY—So it was nothing more than a figure in the coalition's election platform. It did not form the basis of any instructions to you at all?

Mr Hutchinson—Nobody gave me an instruction that said, 'You must get at least \$8 billion.'

Senator CONROY—Or more than \$8 billion?

Mr Hutchinson—Obviously the instruction was to optimise the price, which we believe we did within the constraints we had at the time. I believe the figure of \$8 billion was the figure that was advised to the coalition parties in the process of formulating their policies but it was probably a conservative advice rather than an aggressive advice. I understand there was some political discussion at the time about whether it was a reasonable price or not. Our own work, the scoping study commissioned after the election, put an expected value in 1996 of about \$10 billion, but with some measures we could increase that up to \$14 billion, depending on how the markets went.

Senator CONROY—But bearing in mind prudence or imprudence. Just a couple more. Given that the retail share issue was significantly oversubscribed, was it necessary for the Commonwealth to give away \$337 million to sell Telstra to private shareholders?

Mr Hutchinson—I do not understand the question.

Senator CONROY—The total cost of proceeds forgone by the Commonwealth was \$337 million.

Mr Hutchinson—Was it necessary for the Commonwealth to give a 10c per share discount?

Senator CONROY—Given you massively oversubscribed.

Mr Hutchinson—Unfortunately, given that the oversubscription was based on an offer to sell the shares at a 10c discount, it was not open to the Commonwealth to withdraw the offer of a 10c discount once it had been accepted. Was the 10c discount prudent? We believe it was, given that it had to be offered with foresight, not with hindsight.

ACTING CHAIR—They are your two questions, are they?

Senator CONROY—If I can just have two seconds to have a quick read to see if I can put these two on notice. I wanted to talk about the green shoe option. I am not sure that it is not late enough at night to drive us all mad.

Mr Hutchinson—I am happy to discuss the—

Senator CONROY—I can probably put these two on notice, and I can put on notice the privatisation of Wool International. Who is going to be the lucky person?

Mr Hutchinson—We have a Wool International person here.

Senator Herron—We will accept it on notice.

ACTING CHAIR—Thank you, Minister. Thank you, witnesses. and that concludes the hearings.

Committee adjourned at 9.08 p.m.