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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
COMMITTEE

Reference: Requests for tender for aviation contracts

TUESDAY, 29 MARCH 2011

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SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE

REFERENCES COMMITTEE

Tuesday, 29 March 2011

Members: Senator Kroger (Chair), Senator Mark Bishop (Deputy Chair) and Senators Ferguson, Forshaw, Ludlam and Trood

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Crossin, Eggleston, Faulkner, Fielding, Fierravanti-Wells, Fifield, Fisher, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Ian Macdonald, McEwen, McGauran, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

Senators in attendance: Senators Mark Bishop, Ferguson, Forshaw, Johnston, Kroger, Trood.

Terms of reference for the inquiry:

To inquire into and report on:

- (a) all details concerning the Department of Defence's Request for Tender (AO/014/09) for the provision of air support to the Middle East Area of Operations, and other aviation contracts let by the Commonwealth, to ensure that value-for-money will be achieved, including:
 - (i) the adequacy of the due diligence process around the choice of potential suppliers from Standing Offer Panels and, more specifically, whether there was existing or any subsequently discovered evidence to warrant non-selection of any of the panel members, or whether the information obtained should have resulted in further inquiry and investigation,
 - (ii) the requirements of tenders and how effectively these will be met,
 - (iii) whether the preferred respondent decision was influenced by any vested interests, outside influences or any other perceived or actual conflicts of interest,
 - (iv) the role of departmental personnel in the tender processes and their adherence to the Commonwealth's procurement policy, as well as any conflict of interest issues arising from the tender process and if any perceived or actual conflicts were declared,
 - (v) the methodology and adequacy of the decision processes and whether the services to be supplied in the contract were determined on the basis of objective and supportable, current and likely future requirements or were structured so as to unfairly advantage a particular respondent,
 - (vi) the integrity of governance around the development of Request for Tenders and the subsequent evaluation process, and whether the governance arrangements achieved their intended purposes, including the processes to manage perceived and actual conflicts of interests,
 - (vii) whether the governance arrangements were adequate and in fact did ensure that there were no perceived or actual conflicts of interest, for any people involved in the lead-up to the decision to tender, and during the tender review, assessment and supplier selection processes, and
 - (viii) whether the respondents, including directors and other key personnel (whether employees, agents or contractors nominated in the tender response) for the proposed contracts, are fit and proper for the purpose of contracting with the Commonwealth and the adequacy and methodology of this process; and
- (b) the adequateness and appropriateness of the processes in determining:
 - (i) whether the respondents and associated companies supplying services to the respondents have the financial and commercial capacity to deliver the services submitted in their responses,
 - (ii) whether respondents have the capacity to deliver the services submitted in their responses to a quality and standard that meets the requirements of the Commonwealth and its regulatory authorities and, if so, whether the department was fully satisfied with the services provided by their appointed foreign carrier when they last provided such services (Request for Tender AO/014/09),
 - (iii) whether the department is in a position to guarantee the security status of all foreign personnel involved in the air-transportation of troops between mainland Australia and its deployment base adjacent to a war zone (Request for Tender AO/014/09),
 - (iv) whether issues relating to respondents, or their related companies of their contracts in South Africa are such as to warrant their exclusion for consideration on ethical or probity grounds (Request for Tender AO/014/09), and

- (v) any other matters relevant to the probity of the procurement processes and the respondents, including the appointment of a permanent and independent probity auditor to oversee the awarding of all aviation contracts by the Commonwealth.

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Committee met at 8.25 am**AISEN, Mr Shaun Michael, Former Executive Director, Strategic Aviation Group****BLAKE, Mr David William, Chief Executive Officer, Strategic Aviation Group***Evidence was taken via teleconference—*

CHAIR (Senator Kroger)—I declare open this public hearing of the Senate Foreign Affairs, Defence and Trade References Committee. The committee is hearing evidence on the committee's inquiry into the Department of Defence's request for tender for aviation contracts and associated issues. This is a public hearing and a *Hansard* transcript of the proceedings is being made. Before the committee starts taking evidence, I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time. Finally, on behalf of the committee, I would like to thank all those who have made submissions and sent representatives here today for their cooperation in this inquiry.

Welcome, Mr Blake and Mr Aisen. Is there anything you would like to add about the capacity in which you appear today?

Mr Blake—I am currently CEO of the Strategic group of companies in Australia—Strategic Airlines and Strategic Aviation.

Mr Aisen—I am the former executive director of the Strategic group. I was a point of contact with the Australian Defence Force for the recent tender processes with Strategic.

CHAIR—The committee has received your submission, which we have noted as submission 6. Do you wish to make any amendments or alterations to your submission?

Mr Blake—No, the submission is fine, thank you.

CHAIR—Would either of you like to make a brief opening statement before we go to questions?

Mr Aisen—I would. It is probably about four or five minutes of additional comments.

CHAIR—Yes, that would be fine, Mr Aisen. Please proceed.

Mr Aisen—I wish to reiterate the issues addressed in the correspondence from Strategic to Dr Dermody, the committee secretary. We believe that many questions remain unanswered. In addition to this correspondence, Strategic is fully aware that the contracted cost for the Adagold Hi Fly current option is approximately US\$15 million below the alternative options provided by Strategic and possibly other respondents from the tender panel. Furthermore, the contracted price of the Adagold Hi Fly option is approximately US\$10 million below Strategic's direct operating costs to provide the necessary services specified by the Commonwealth. Not only is this concerning, but it highlights concerns as to whether tender responses have been considered on a level playing field and whether the integrity of each tender response was fully tested for its compliance and capability.

Please allow me to explain some issues of concern. Firstly, the tender specification appears to have been specifically written for a specific type of aircraft with many questions posed by me to the previous contract management in Defence directly pertaining to Airbus A340 or larger capacity aircraft whilst Strategic was the current provider of differing equipment with Australian Defence. In retrospect, it is apparent that the specific parameters of the tender—namely, a 42,000 kilo payload; 150 cubic metres volumetric capability for cargo—were designed to eliminate the incumbent aircraft and limit the options to only very few aircraft available worldwide.

This successful Airbus 340-300 series is equipped with 11 pallets and bulk hold for just over 150 cubic metres—just meeting the specific criteria of the Commonwealth. Strategic and other respondents did provide Airbus 340-300 options, as this was the smallest type which met Commonwealth criteria. Furthermore, it provided other options allowable in the tender response, meeting the cumulative minimum obligations of the Commonwealth. The Airbus 340-300 includes the full capability of cargo holds of 11 pallets to ensure that 150 cubic metres of cargo space is met.

Strategic is aware that the current contract is now being provided by a Portuguese A340-300, of which only 10 pallets and loose cargo is being made available due to the carrier's need to fly a maintenance kit on its aircraft—known as a fly-away kit. The ramifications of this are that the current tender response would now appear to be noncompliant. The reduction of one pallet position from the Commonwealth reduces available capacity by approximately 10½ to 11 cubic metres to approximately 142 cubic metres.

The question is: why has the Commonwealth allowed this noncompliant option to fulfil the contract? The relevance to Strategic is that we provided an 11-pallet option, which exceeded the 150 cubic metres. This required us to remove the fly-away kit from the aircraft and position essential maintenance items to Al Minhad in the Middle East, Darwin and the east coast ports. Our budgeted costs included in our tender response for this item alone exceeded \$2½ million and were covered by the all-up cost of our tender response. Having had a relationship with Hi Fly previously, Strategic is aware of the fly-away kit and Hi Fly's need to carry a fly-away kit. We knew that this aircraft type, with this fly-away kit, would not be compliant.

The Strategic Airbus A330-200 response included three additional pallets to be provided by commercial services to the Middle East area of operations. This had been in place at the time of the retender and provided cumulative cargo capability of eight pallets on the A330-200 and three

pallets on commercial services. Coupled with two additional containers, this provided the Commonwealth with an additional 10 per cent cargo capability compared to a fully compliant A340 and nearly 18 per cent above the current noncompliant A340.

Whilst noting the savings of the Commonwealth procedures, Strategic notes that the fuel burn of the A340 is approximately 25 per cent greater than that of the previous A330. Based on 65 round trips annually to the Middle East, this equates to an additional four million litres per year fuel burn. At 90c a litre, the Commonwealth would expect to pay \$3.6 million per year for two years for a total of \$7.2 million, assuming fuel prices do not increase, which they are currently.

The Commonwealth has been stringent in applying maximum fuel caps for usage on Strategic in its previous tender. Strategic's fuel use numbers were over expected budgeted figures when it used the Hi Fly aircraft previously. The Commonwealth recouped cost from Strategic for over-expected usage whilst using the Hi Fly aircraft, and Strategic trusts that similar consistency will be assured by the Commonwealth when reviewing the Adagold Hi Fly service. It trusts that a level playing field will be ensured for these reconciliations. Of concern to Strategic, noting that it has repaid the Commonwealth for additional fuel use, is that the Commonwealth does not provide the other solution preferred status if it exceeds stated fuel requirements.

With respect to contingency, Strategic, through experience, has included approximately US\$2 million in costs to recover flights which may have been operationally affected and, in turn, breached the requirements of the tender process. Has the Commonwealth investigated this requirement with all respondents, or did it simply trust that Adagold Hi Fly in this case, or other tender respondents, in good faith, replaced operations which may be affected by aircraft unavailability et cetera?

Commercially, the tender respondents include both airlines and brokers. The obvious question is: how can a lowly capitalised broker undercut three established airlines responding in the process by over 20 per cent and include a healthy profit for itself? Has a previously fully costed, fully contingent service been reduced to a low-cost, no-frills service? We have previously indicated that Strategic believes that its contract price has been undercut by \$10 million. Strategic costs assure that all tender conditions are compliant, including contingency, and that all services accounted for are provided and that there is no recourse to come back to the Commonwealth additional costs.

Brokers on the panel normally receive fully costed charter prices for which they have a margin and resell to the end user. In this case, Hi Fly has provided a wet lease service, which is equivalent to a chauffeured limousine service, to its customer who will then need to add all costs, excluding fuel, which is provided by the Commonwealth, and resell this to the Commonwealth. With five years of previous experience dealing with Hi Fly and then operating as an airline on its own, Strategic is fully aware of what these costs are. These are not limited to air navigation fees, landing fees, ground handling costs, catering, accommodation for up to 40 crew per night, crew per diems, air travel to and from home base, crew ground transfers, engineering, freight forwarding of spare parts, contingency, and Customs brokerage of Commonwealth cargo and weapons travelling on a flight. These costs are significant.

Strategic trusts that the Commonwealth will maintain the contracted price with the current provider and not renegotiate higher prices due to errors in the tender response from the provider.

Ultimately it begs the question of just how this respondent could be so significantly lower than any respondent elsewhere on the panel. It begs the question of whether there was the depth of knowledge with the decision makers to understand whether all aspects of the tender response were provided and appropriately considered or, in the case of cargo capability being provided, whether the successful response was actually compliant.

Our letter alludes to two other important issues with respect to the 2010 response. Why did the Commonwealth specifically require a dedicated aircraft? There is little doubt, as demonstrated in a short-term contract in October and November 2010, that savings in excess of 25 per cent could have been obtained through non-dedicated aircraft. This would have seen the contract remained fully Australian, by Australians and an Australian company. Strategic in its response advised that it could offer significantly beneficial prices through non-dedicated aircraft solutions yet was not requested to provide this information.

Also, with much of the cargo departing from Australia destined for Afghanistan, the Commonwealth over the past five years was fully aware of the economic benefits of moving cargo from the UAE hub ports into Afghanistan. Costs of chartering aircraft ex Al Minhad to Afghanistan are up to 100 per cent, if not more, higher than other options available ex the UAE hub ports of Sharjah and Fujairah. It would seem apparent that the benefits of getting a larger aircraft into Al Minhad are mitigated by the significant increases in cost of connecting cargo into Afghanistan.

With respect to David Charlton, he has seemingly been the focus of three tender processes—2005, 2008 and 2010. In 2005 and 2010, Mr Charlton worked with Defence in the joint movements group. In 2008 he was the CEO of SkyAirWorld, who responded through several brokers in the 2008 tender process. There has been media attention paid to the 2005 process, at which time Mr Charlton was the contract manager at the joint movements group when the higher priced Strategic A330 option was first put into service.

I wish to reinforce the fact that Strategic submitted four separate proposals during the 2005 process for consideration, including an Airbus A330 provided by Hi Fly, Boeing 767 and Boeing 757 options provided by Blue Panorama of Italy and a DC8 option provided by Air Transport International in the United States. All these options were lodged separately for Commonwealth consideration with the A330 being the successful aircraft at that time but meeting much less stringent requirements than what is currently required.

In 2008 Mr Charlton was the CEO of the now defunct SkyAirWorld. SkyAirWorld tendered through several respondents, including Adagold, with an A330, which it did not have in its inventory and seemingly was unavailable to the company whatsoever. During mid 2009, after the demise of SkyAirWorld, Strategic become aware of Mr Charlton's return to joint movements group in Brisbane, very soon after his company's demise. It would seem likely that Mr Charlton may have or could have had access to relevant discussions, conversations and email traffic about potential upcoming tenders or tenders in process.

Strategic highlighted this verbally on many occasions, ultimately putting this in writing in April 2010. It questions why Mr Charlton would have removed himself from joint movements group once he became a way of a potential conflict of interest so soon after the tender was released in March 2010. It also questions Mr Charlton's involvement with Adagold during the

same period, let alone as to how he was involved with other tender respondents at the same time during the 2010 process.

Mr Charlton did work for Strategic and a very short time before setting up SkyAirWorld and seemingly his ability to maintain records and contact with Strategic crews directly and other Strategic company contacts, which was subject to confidentiality clause, has apparently been used to significant advantage, in this case for Adagold at the expense of other parties he was also dealing with.

Our letter refers to several other issues of relevance, but in conclusion better value for the money options were aptly demonstrated by applying less stringent requirements—that is, non-dedication of aircraft and the ability to split the cargo in a short-term tender in October and November 2010. Yet the Commonwealth has proceeded with a non-compliant Airbus 340-300 as it does not meet the minimum 150 cubic metres. The net difference of this tender process was to give the Commonwealth three additional cargo pallets. It currently receives two whilst maintaining consistency of all other parameters regarding passengers and other services. Of interest is much of the other cargo is low priority with many other value for the money and commercial options available. Why then has the Commonwealth agreed to an aircraft which does not meet the minimum tender specifications? If the Commonwealth is now prepared to allow a non-compliant option to provide services currently, then why did it not allow for a non-dedicated aircraft to provide the same scheduled capability, same cargo and passenger capability at better value of money? The benefits could have been fuel savings, cargo delivery options and flexibility whilst maintaining the integrity of all other tender components. It would seem that Strategic and other tender respondents have been potentially penalised by the Commonwealth by allowing this non-compliant option to provide services for its current tender specifications.

CHAIR—Thank you very much.

Senator JOHNSTON—Good morning, Mr Aisen. The first thing I need to take up with you is that the opening statement is not the same as Strategic's submission to the committee. It contains a lot more factual detail. I am wondering if you could provide to the committee today the documentation that I think you have been reading from so that we can provide a copy of that to Defence. Obviously, a lot of those allegations are contained in emails and in the meetings that you have had with Defence but I think that, for the purposes of the committee being fair and reasonable and being able to go forward with Defence this afternoon, we do need to have the documentation that you have been reading from. How do you feel about that?

Mr Aisen—I have no problems with passing that over.

Senator JOHNSTON—We will contact you with a fax number and if you can fax them through we will print them and distribute them to the committee members. Have you ever been informally interviewed by Defence with respect to these allegations?

Mr Aisen—No; personally I have not. To clarify the situation, Senator Johnston, working in the industry we have become fully aware that the specific issue of the 142 or so cubic metres now being provided is very much industry knowledge. It simply comes back to the fact that that

is available under freedom of information—with load sheets, distributions et cetera—and proves that the cargo capability offered does not meet the minimum requirements.

Senator JOHNSTON—What is a fly-away kit, please?

Mr Aisen—A fly-away kit is a maintenance kit which carries essential items. They could be spare wheels or the top 50 components of an item which may break down during a flight and stop it flying. The whole concept of carrying it is that if the aeroplane breaks down in the location we would be able to get the most likely items which break down out of this kit and repair it.

Senator JOHNSTON—Is it a mandated piece of equipment?

Mr Aisen—No, it is not. The operator has two options available to it: (1) it can carry a fly-away kit or (2), as we have suggested in our response, we would actually preposition these same items in three different locations throughout the world to ensure that the aircraft will keep flying and maintain the integrity of the minimum requirements of the tender.

Senator JOHNSTON—What were those locations?

Mr Aisen—We would position the fly-away kit items—three sets of items—in Al Minhad, in Darwin and on the east coast of Australia, either in Brisbane or in Sydney.

Senator JOHNSTON—Have you been interviewed by the Australian Federal Police with respect to the 2005 contract?

Mr Aisen—I have not been contacted at all about the 2005 contract.

Senator JOHNSTON—Thank you for that. Before I go to your submission, let me ask you this. I think there is a reference in one of our reports to nine emails to Defence.

Mr Aisen—That would be correct. I think there are several emails.

Senator JOHNSTON—Could you provide copies of those emails to the committee, please?

Mr Aisen—I should be able to locate most of those emails. I think they may have already been provided previously but I will certainly go and locate what I have on file. Since I have left the company I have had to release lots of my information.

Senator JOHNSTON—I do not think we have got them. I would appreciate it if you could find them and give them to us and also any other material that is on the record between you and the defence department with respect to your complaints as to the probity of this particular contract.

Mr Aisen—Sure.

Senator JOHNSTON—Thank you. Going to your submission, I note you say, at the bottom of the first page in the second-last paragraph:

These concerns related to aspects of the new requirement, particularly regarding pay load impacting on aircraft type and the behaviour of two ADF reserve personnel working within the Joint Movement Group (JMOVGP), which conflicted with the requirements of Commonwealth procurement policy.

Who were the two personnel working within the Joint Movement Group?

Mr Aisen—Where is that reference?

Senator JOHNSTON—On page 1 of a letter to Dr Kathleen Dermody, written by Mr Blake. The whole paragraph states:

In gearing up for the next round of tendering activity by Defence during the early part of last year, Strategic became concerned about certain behaviour within Defence related to the planned new tender.

I will come back to that certain behaviour in a minute. It further states:

These concerns related to aspects of the new requirement, particularly regarding pay load impacting on aircraft type and the behaviour of two ADF reserve personnel working within the Joint Movement Group (JMOVGP), which conflicted with the requirements of Commonwealth procurement policy.

Who were the two personnel working within the Joint Movement Group?

Mr Aisen—I only believe this one person is not a reservist. If I understand this question correctly, I was referring to the contract manager, which was Squadron Leader Cole, asking very, very specific questions relating to the A340 versus the A330. This conversation came up as part of a discussion in relation to the fact that we were going to use an A340 to do a two-week maintenance replacement in May for a Strategic operated aircraft by the Hi Fly A340 which is now being used. We were being asked very specific questions about the A340, including payload and cargo volumetric requirements, which alerted us and made us wonder as to what the intent of these questions were.

Senator JOHNSTON—When was that conversation?

Mr Aisen—They were continuous conversations that happened through February and March prior to the release of the tender document.

Senator JOHNSTON—Okay. You further state:

... Strategic became concerned about certain behaviour within Defence related to the planned new tender.

Is that what you are talking about?

Mr Aisen—I think that is what I am referring to there. My concern was ultimately that there were questions being asked out of left-field literally seeking IP from its current provider as to what other aircraft types could do and what they wanted to do. Furthermore, there were several discussions where the contract manager specifically asked about on-forwarding of cargo from the UAE to the Middle East as well. The concern ultimately was: why were these questions being asked? Furthermore, with our underlying concern within defence, we were certainly aware

that Mr Charlton was working in Brisbane and we were aware that Mr Charlton had a relationship with Hi Fly. We were also concerned that during January and February the new incumbent had certainly made approaches to defence about putting forward the A340 as an option instead of the existing A330.

Senator JOHNSTON—By ‘new incumbent’, do you mean Adagold?

Mr Aisen—That is correct.

Senator JOHNSTON—You subsequently wrote to the Inspector-General of Defence. Do you have a copy of that correspondence?

Mr Aisen—Not in front of me.

Senator JOHNSTON—Could you find it and forward it to the committee?

Mr Aisen—Yes, I could certainly fax that to the committee.

Senator JOHNSTON—Thank you. You state on the second page that Strategic were concerned about the re-employ of Mr Charlton in the Joint Movement Group.

Mr Aisen—Correct.

Senator JOHNSTON—Mr Charlton was in fact the non-voting chair of the tender evaluation board, was he not?

Mr Aisen—In the 2010 process?

Senator JOHNSTON—No, way back in 2005.

Mr Aisen—I am unaware of what Mr Charlton’s position was in the 2005 process. From my perspective, I believe he was the contract manager of the 2005 tender.

Senator JOHNSTON—Okay. You say that Mr Charlton’s re-employ:

...raises serious procurement issues.

What issues do you perceive that it raised?

Mr Aisen—We are concerned that Mr Charlton returned to Australian Defence within about four to six weeks after the demise of SkyAirWorld. We are assuming that it was not done as a matter of public service and that the intent was to take on a job in an area which he knew. But our concerns were also that at that time he had been working with Adagold on a Danish defence contract where we understand that Mr Charlton had attended meetings in Denmark with Adagold executives to try and procure a contract—one which they actually successfully procured—later on after the demise of SkyAirWorld. We are concerned that there was an ongoing relationship between Mr Charlton and Adagold whilst re-employed as a reservist with the Australian Defence

Force in a group which oversees tender specifications, tender documentation and contract management.

Senator JOHNSTON—You talk of a \$93 million SkyAirWorld airline collapse and then you say, in the third paragraph:

This included, we understand, the unexplained loss of \$2.5M of Commonwealth funds by that airline.

What is that about?

Mr Aisen—We are of the understanding that the Indian Ocean contract, which is for the Cocos and Christmas islands, had been awarded by the Attorney-General's Department to SkyAirWorld. We understand that deposits were paid immediately prior to the demise of SkyAirWorld and that ultimately those funds were irrecoverable once SkyAirWorld went into liquidation.

Senator JOHNSTON—You go on to say in the fourth paragraph:

Strategic understands that, as well as his—

Joint Movement Group—

employment, Mr Charlton was also engaged by Adagold, the winning tenderer.

How do you know that?

Mr Aisen—As to the previous conversation, certainly we were aware that previously at the 2008 process Mr Charlton had attended through Adagold and subsequent to the loss of business had been working with Adagold, we believe, through one of his companies to assist Adagold in gaining the Danish defence contract, attending meetings in Denmark within that respect. We also believe that there is an ongoing relationship with Adagold. I cannot say that he was directly engaged by Adagold.

Senator JOHNSTON—In the next paragraph you talk about your complaints. You raise the conflict of interest. Explain to the committee what you did to voice your concerns about the process, what meetings you had, what discussions took place and what outcomes there were.

Mr Aisen—We have spoken with Defence by phone on many occasions, and that was through to the senior staff at Joint Movement Group.

Senator JOHNSTON—Who are?

Mr Aisen—They are Group Captain Barnes, Lieutenant Colonel Hall and Squadron Leader Cole at the three primary services and also the chief staffing officer, Jim Halloran, during Group Captain Barnes's absence just after July last year. We highlighted the fact verbally on many, many occasions that we were concerned that Mr Charlton was back. We also continued to highlight these concerns on a regular basis. It was only after the tender was released in late March last year that we immediately called a long-term relationship we had with Hi Fly up. We

spoke to Hi Fly on the night of 27 March, I think it was, seeking their support to provide an A330 fully optioned to us to allow Strategic to redeploy its A330 elsewhere if successful for that aircraft, only to be told that they already had an arrangement in place with another provider.

Senator JOHNSTON—For this particular contract?

Mr Aisen—Correct.

Senator JOHNSTON—Let us get the time line absolutely pristine. When was the contract detail released?

Mr Aisen—I believe it was on 27 March.

Senator JOHNSTON—At what time?

Mr Aisen—It was released about 10.30 in the morning.

Senator JOHNSTON—What time was your phone call?

Mr Aisen—We made a phone call to Lisbon at around six o'clock that night taking into account the time differences. On that night we had already had that response, 'Sorry, can't deal with you; already something in place.'

Senator JOHNSTON—What was the time of the response?

Mr Aisen—It was a verbal conversation. I believe it was with Mr Tim Hill and Ms Brioso at Hi Fly. We then spent several weeks tried to get on to Mr Mirpuri, the CEO of the organisation, to get a response. We received an email back from him several weeks later which quoted other providers and said, 'No, we won't be posing this as an option,' which we found pretty unusual considering we are actually leasing his plane in May which will replace the A330—

Senator JOHNSTON—Was it eastern standard time or Queensland time?

Mr Aisen—I believe it was eastern standard time.

Senator JOHNSTON—What time was it in Lisbon?

Mr Aisen—If it was five at night Queensland time I believe it was seven in the morning in Lisbon.

Senator JOHNSTON—So it would have occurred in the middle of the night. What time is 10.30 in the morning in Lisbon in eastern standard time?

Mr Aisen—10.30 in the morning in Lisbon is 8.30 at night eastern standard time.

Senator JOHNSTON—So if that plane had been secured it would have been during the middle of the night?

Mr Aisen—I am not saying it was secured at this stage. I am saying that the aircraft was not made available to us.

Senator JOHNSTON—But the inference is that it was not made available to you because it had already been made available to Adagold.

Mr Aisen—Yes, that is correct.

Senator JOHNSTON—Any indication for how long Hi Fly had been secured or had a formal or informal relationship with Adagold prior to that time?

Mr Aisen—I cannot actually specify how long that would have been, but we were certainly aware that approaches were being made in January and February 2010 about options to the joint movements group.

Senator JOHNSTON—How were you aware of that?

Mr Aisen—Open discussions basically with joint movements where I was literally asked questions by the contract manager about the A340's capability. I asked, 'Why?' The response was, 'We always get inquiries from time to time from your competitors trying to put forward other options.'

Senator JOHNSTON—That does not answer the question fully. Why do you think Hi Fly had been approached prior to 27 March?

Mr Aisen—Mr Charlton had an ongoing relationship with Hi Fly. He certainly kept in contact with Hi Fly. Ultimately there were no other A340 operators throughout the world with availability at that time. If you look at the A340 as a complete type aircraft, they are generally not available to charter worldwide. Let me clarify that. The only other operator we became aware of during the tender process who then had some availability was Air Tahiti in Papeete. We are not aware of any other available A340 operators.

Senator JOHNSTON—Who were those conversations with in January 2010?

Mr Aisen—My conversations with Defence?

Senator JOHNSTON—Yes.

Mr Aisen—Squadron Leader Cole.

Senator JOHNSTON—When you made your complaints known you were doing so informally by way of verbal conversations, were you?

Mr Aisen—They were informal conversations; that is correct. We were talking on the phone. Because we had an ongoing contract with joint movements we talked to them most days. Let me go back. Back in June 2009 we became aware through a Defence person that Mr Charlton had rejoined joint movements as a reservist. This heightened our concerns and we became a lot more concerned about what the intent was. Ultimately we had continuing conversations expressing

those concerns in later 2009. They certainly increased in 2010 as more and more questions were asked about the A340 capability and what larger aircraft had—

Senator JOHNSTON—Who were those conversations with?

Mr Aisen—Primarily with Squadron Leader Cole and members of his other group. There may have been conversations with Flight Lieutenant Tanner, but most likely it was with Squadron Leader Cole. But we did have conversations with Lieutenant Colonel Hall, who iterated the fact that they regularly received approaches from other panel providers about what other options could be provided. Basically, with one-year options in the tender, most of our competitors became very aware that Defence would have to make a decision at some time as to whether extend or retender.

Senator JOHNSTON—But you were told that, unsolicited, other options were being put forward to Defence for this contract.

Mr Aisen—We were told that there were always other options being put forward for Defence contracts. The one that sparked me most was the A340 because I was asked questions specifically about payload. Pertinently, when we went to Squadron Leader Cole in writing back in April 2010, we specified in that document a payload of 41,500 kilograms on the sections involved. Squadron Leader Cole literally came back to me and said, ‘Can’t you do 42,000 kilos?’ That became rather pertinent when the tender documentation was released quoting a minimum of 42,000 kilos.

Senator JOHNSTON—What was the date of that interaction with Squadron Leader Cole?

Mr Aisen—That would have been in March. I do not have the date in front of me but I will try to locate the email.

Senator JOHNSTON—In the second last paragraph on page 2 of your submission you say:

Added to this, Mr Charlton, in conjunction with Mr Mark-Warren Clark, jointly visited the Danish Defence Force in early 2009. Mr Charlton quoted Adagold in the 2008 tender process for the MEAO tender ...

Please explain what you meant by that.

Mr Aisen—I think I referred to it in my opening comments. What I meant by that is that Mr Charlton had been involved in tender processes in 2005 and 2010, and both times he was part of Defence when the tender was released, or involved in the process. In 2008 Mr Charlton was running his own airline, SkyAirWorld. Mr Charlton had put forward submissions. We became aware during our tender process response in 2008 that Mr Charlton was probably quoting three separate tenderers with an A330 which was due to come off the production line in Europe and was hoping for a delayed introduction in 2009 if he was successful in finding other methods to provide services in our wake. He was unsuccessful. But at that stage he had established a relationship with Adagold. We certainly become aware that he had gone to Denmark to assist in trying to provide a 737 under the SkyAirWorld banner before he went defunct. Certainly there had been an ongoing relationship with Adagold for an extended period of time, which we are concerned about. Especially with his return back to Defence, we were strongly of the opinion

that his ongoing relationship with Adagold could place him at a great advantage over the rest of the tender panel.

Senator JOHNSTON—Over the page you have set out the 42,000 kilos payload matter.

Mr Aisen—Yes.

Senator JOHNSTON—I do not have any further questions. Thank you.

CHAIR—I thank you both for your submission and for your time today. The secretariat will be in touch with the fax number so that we can get that document from you today.

[9.09 am]

BAKER, Mr Steve, Partner, PricewaterhouseCoopers

CHAIR—Welcome. Do you wish to make a brief opening statement before we go to questions?

Mr Baker—I do.

CHAIR—Please proceed.

Mr Baker—I am a partner of PricewaterhouseCoopers, hereafter referred to as PwC. I was a PwC engagement partner involved in the independent peer review of the Department of Defence Audit and Fraud Control Division's—hereafter called AFCD—probity review concerning the provision of air sustainment services to the Middle East area of operations. I attend the inquiry in that capacity. I understand PwC's peer review report has been included as an attachment by the department to its submission. I would like to make some opening remarks that will touch on PwC's appointment to conduct the peer review, the scope of PwC's work, the way in which PwC undertook its work and the outcome of that work.

Firstly, PwC's appointment. PwC was appointed to conduct an independent peer review of AFCD's probity review under a terms of reference letter dated 18 August 2010 addressed to Mr David Anderson, the assistant secretary of audit of our audit branch. Secondly, the scope of PwC's work. The agreed scope of PwC's work under the terms of reference letter was to conduct an independent peer review focusing on the probity audit processes completed by AFCD. The AFCD processes were assessed in accordance with the principles outlined within financial management guideline No. 14, 'Guidance on Ethics and Probity in Government Procurement', published by the Department of Finance and Deregulation in January 2005. Our review was conducted concurrently with the AFCD probity review and was a review of the processes that they were applying to complete their probity review. Our review was not a review of the underlying tender process in any way and was not for the purpose of providing an opinion on the tender evaluation decisions or ranking of the respective tenderers. I also note our work did not comprise an audit under the professional standards.

Thirdly, PwC's approach to its work. Our approach to the peer review involved our team members conducting interviews with AFCD probity audit team members, reviewing relevant documentation and work papers and assessing the processes by which AFCD determined whether the principles underpinning probity in the tendering and tender evaluation stages were upheld. Interviews were held with the following: the Chief Audit Executive, the assistant secretary of audit, the audit director central, the audit manager central, the Inspector-General and the director of investigations and recovery. The interviews were conducted to ascertain their understanding of what led to the probity review and the associated risks to the Commonwealth; their understanding of the probity review objectives and processes and what their role was in the review; the application of good procurement processes discussed in financial management guidance No. 14, which identifies six principles underpinning ethics and probity in government procurement; whether any inconsistencies were apparent with respect to information provided by

the interviewees and whether individuals had any concerns relating to how the probity review progressed and whether they were kept informed throughout the probity review regarding risks or issues detected.

Fourthly, the outcome of our work. As per the terms of reference, we provided regular ongoing feedback and guidance through meetings with AFCD as our observations were formulated. Six observations were made and submitted to AFCD management for consideration and comment. All of these observations were agreed. In brief, the observations were: (1) the probity review methodology was not defined and documented prior to commencing the review; (2) a listing of all personnel for review should be included within the AFCD probity report to explain their involvement and to identify who has and has not been interviewed; (3) a timeline of key dates should be included within the AFCD report to assist users of the review report; (4) include commentary on the work undertaken by the Inspector-General with respect to David Charlton's handling of procurement documents or related information; (5) include commentary addressing the unsolicited bid received from Adagold; and (6) obtain statements in respect of two unsolicited calls to include within the records.

We also provided a formal report identifying key findings and observations arising from the peer review. The report detailing our observations and comments was issued on 8 October 2010. The report was provided to the Audit and Fraud Control Division. We concluded: (1) we were satisfied that the probity review was conducted in a manner that was consistent with the six principles identified as underpinning ethics and probity in government procurement as per financial management guidance No. 14; and (2) though we had noted some observations, our review of the work undertaken by AFCD did not identify any significant issues, unreasonable observations, deficiencies in AFCD's probity review process which would lead us to conclude that the probity review was not conducted by AFCD in an impartial manner. In closing, I have now come to the end of my opening remarks and I am available for comment.

CHAIR—You have been listening to the evidence Mr Shaun Aisen provided. Having listened to that, is your view that he should have been interviewed?

Mr Baker—I can only really comment on the work that we performed, and the work that we performed was to provide an assessment or an opinion on the AFCD's probity review process. I do not have a conclusion on that.

CHAIR—But looking at what you have said in your review, do you believe that the process would have been enhanced if he had been interviewed?

Mr Baker—Our terms of reference did not require us to make a conclusion on that.

CHAIR—Do you believe the terms of reference were narrow?

Mr Baker—I believe they were quite specific.

CHAIR—Does that mean that you think that the review itself could have been better deployed, if you like, if it had been broadened so that you could verify the process that was undertaken by the AFCD if you conducted your own interviews?

Mr Baker—PwC was engaged to perform a review. That review was identified within the terms of reference. I believe the terms of reference was clear, and it was specific to performing an assessment of AFCD's review of the probity review in accordance with FMG 14 and the six principles. That is what we were engaged to perform and that is what we did perform.

CHAIR—Mr Baker, what concerns me is that when you are conducting a review of material that has been put together on a basis, and you cannot question whether that material should have been broader, then you may be conducting a review with limited information and so your review may end up with a limited outcome because of the scope of the review that you are provided with. What we are interested in is whether in fact the scope that you were given for the review actually did provide significant limitations. And having just heard Mr Aisen's evidence, it is clear that it would have been helpful if he had been interviewed because it may well have provided a different perception of what has actually happened here.

Mr Baker—I can confirm that we were approached to perform a peer review. The peer review was to perform an assessment of the probity review process by AFCD in accordance with FMG 14. That is what we were approached to do, that is what our terms of reference identified and that we agreed to perform, and that is what we did perform. I can only really comment on the work that I was asked to do and the conclusions based upon that.

CHAIR—Over what period of time did you conduct the review?

Mr Baker—We contracted in mid-August. The fieldwork of interviews was performed throughout the third and fourth weeks of August. We completed ongoing discussions which culminated in a formal exit discussion with members of the AFCD team and my team in late August and then we issued the final report, which did not differ from the comments which were made, the observations that were made and the conclusions that were reached, on 8 October 2010.

Senator JOHNSTON—Could we have a copy of your letter of appointment, Mr Baker?

Mr Baker—The terms of reference?

Senator JOHNSTON—Yes, please.

Mr Baker—The terms of reference are attached to our report, which, I understand, forms part of the submission. If not, I can certainly confirm.

Senator JOHNSTON—I think I would like the letter. Who sent you the letter of 18 August?

Mr Baker—It was a discussion, which resulted in the terms of reference.

Senator JOHNSTON—Engagement letter 18 August 2010?

Mr Baker—That is our letter. That is PwC's letter as issued to Mr David Anderson.

Senator JOHNSTON—You issued that to them?

Mr Baker—That is correct.

Senator JOHNSTON—Have I got a copy of that?

Mr Baker—That should be as an attachment.

Senator JOHNSTON—So there were no written instructions to you?

Mr Baker—There were no written instructions; it was a discussion.

Senator JOHNSTON—Goodness.

Senator MARK BISHOP—Sorry, I missed that. There were no written instructions in terms of your appointment to the review?

Mr Baker—There were written instructions. There was an agreed terms of reference as prepared by PwC, which was then duly executed by the Department of Defence. So there are written instructions, which are the terms of reference which have been agreed.

Senator JOHNSTON—But they did not instruct you. You told them what you were going to do.

Mr Baker—That is correct. In discussion, that is right.

Senator JOHNSTON—You sat down, worked out what you were going to do and then you confirmed that in writing?

Mr Baker—We were approached to perform a probity review and—

Senator JOHNSTON—But informally?

Mr Baker—That is correct.

Senator JOHNSTON—Orally?

Mr Baker—That is correct.

Senator JOHNSTON—And you discussed with Defence all of that and then you reduced all that to writing and put it to Defence and they said, ‘Yes, do this.’

Mr Baker—We prepared the terms of reference letter as dated 18 August. That is correct.

Senator TROOD—Was this a telephone conversation you received from Defence?

Mr Baker—No, it was a face-to-face discussion.

Senator TROOD—Were you or one of your partners called in to Defence?

Mr Baker—Myself and one of my directors.

Senator TROOD—So Defence rang you and said, ‘Can you come and talk to us.’ Is that what happened?

Mr Baker—I believe we were already at the office so there was no phone call.

Senator TROOD—So you were there on another matter?

Mr Baker—I do not have the details of the reason why we were there.

Senator TROOD—But you were not there on this matter, were you?

Mr Baker—No, we were not there on this matter.

Senator TROOD—So you were there on another matter?

Mr Baker—That is correct.

Senator TROOD—While you were there on another matter, Defence said, ‘We have got something else we want you to have a look at.’ Is that something like what happened?

Mr Baker—Something to that effect.

Senator TROOD—And then they said, ‘We have got this matter that we want you to look into.’ But they did not give you any documents.

Mr Baker—There were no documents at that stage. There was a request to formulate—

Senator TROOD—So you went away and drew up some terms and they are contained in this letter?

Mr Baker—Which is our standard process, to prepare terms of reference.

Senator JOHNSTON—This is a peer review of \$140 million and you just happened to be floating around and got the job. Is that what you are saying?

Mr Baker—No.

Senator JOHNSTON—Well, you were just casually approached while you were there on another matter—you had not even turned up because of this matter. And you had a discussion with someone who said, ‘We need a peer review of the audit process from a probity perspective.’ You said, ‘Fine, what do you want us to do?’ They told you, you went away, reduced it to writing, sent them a letter and they signed it and said, ‘Go ahead.’

Mr Baker—I do not have the exact detail of the manner in which it was instigated.

Senator JOHNSTON—You were there.

Mr Baker—I was at the meeting when we discussed the request to perform an independent peer review.

Senator JOHNSTON—Do you take any issue with what I have just put to you?

Mr Baker—No.

Senator MARK BISHOP—Senator Johnston just put a lengthy proposition to the witness. It contained no less than six individual points and then he said at the end, ‘Do you take issue with what I have just put to you?’ It is not a bad point that is being raised by Senator Johnston. I think it is much preferable if Senator Johnston went through each of the points individually and then asked if the witness took issue with it so we understand what is being agreed and what is not. I think that is perfectly reasonable.

Senator JOHNSTON—So you cannot remember what you were there for. Was this at Russell offices?

Mr Baker—It was at Campbell Park.

Senator JOHNSTON—Where is Campbell Park?

Mr Baker—It is in Canberra, in Campbell. Do you know it? It is where the Chief Audit Executive and the AFCD team are based.

Senator JOHNSTON—You happened to be there on another matter but you cannot recall what that matter was?

Mr Baker—PwC performs various internal audits for AFCD throughout the year, so it was not unusual.

Senator JOHNSTON—But this is not an internal audit is it?

Mr Baker—This is not an internal audit, no, but we are contracted as an internal audit provider.

Senator JOHNSTON—I will come to that in a moment. Someone said to you, ‘Look, we need a peer review on one of our internal audits.’ Is that correct?

Mr Baker—I was approached to have a discussion.

Senator JOHNSTON—Who by?

Mr Baker—Mr Geoff Brown.

Senator JOHNSTON—Mr Brown. Tell me what he said and what you said: ‘he said, I said’.

Mr Baker—We were possibly going to be engaged to perform an independent peer review. We said we would go away and consider the terms of reference to perform such a review.

Senator JOHNSTON—So you set the terms of reference?

Mr Baker—The terms of reference were to perform an independent peer review; we prepared the terms of reference letter and sent that to the Department of Defence. Yes, we did prepare that.

Senator JOHNSTON—Good. And they said, ‘Fine, go ahead’?

Mr Baker—The terms of reference, as provided, were formally accepted.

Senator JOHNSTON—What were the terms of reference?

Mr Baker—If I could I will just make reference to those terms of reference.

Senator MARK BISHOP—Do you have minutes of that meeting?

Mr Baker—I do not have minutes of that meeting in front of me.

Senator MARK BISHOP—Do you have them elsewhere?

Mr Baker—I would have to look to see if I have the minutes of that particular meeting.

Senator MARK BISHOP—Could you provide copies of your minutes, notes and anything that you, your company or your subordinates have in writing relating to the process that you have just had discussions with Senator Johnston about? Could you make them available to the committee, please?

Mr Baker—Yes.

Senator JOHNSTON—You are unsure whether you have minutes?

Mr Baker—I do not have minutes in front of me.

Senator JOHNSTON—No, I know; but if you do have them you will provide them to us?

Mr Baker—If I do have them I will provide them, yes.

Senator JOHNSTON—Thank you.

Mr Baker—Or notes.

Senator JOHNSTON—What are the terms of reference?

Mr Baker—The terms of reference are as per the attachment to our report, which is dated 18 August 2010; a letter addressed from PwC to Mr David Anderson, the Assistant Secretary of Audit. It is a three-page document.

Senator JOHNSTON—A three-page document—just take me to the terms of reference, if you would be so kind.

Mr Baker—I could read the scope. I think the scope is what we are alluding to there. It is on page 2.

Senator JOHNSTON—Okay, so:

The independent peer review will focus on the probity audit process completed by AFCD to assess each of the above mentioned principles—

fairness, consistency, appropriate competitive process, security, confidentiality et cetera—

Mr Baker—That is correct.

Senator JOHNSTON—

... that underpin ethics and probity which are explained in Financial Management Guidance 14 *Guidance on Ethics and Probity* ...

et cetera. So your terms of reference, briefly stated, were to audit the process conducted by AFCD looking at those six matters?

Mr Baker—No, we were not engaged to perform an audit, so that is—

Senator JOHNSTON—A peer review?

Mr Baker—A peer review: correct.

Senator JOHNSTON—Thank you for correcting me. You are an auditor, are you not?

Mr Baker—By profession, yes I am.

Senator JOHNSTON—What audit qualifications do you have?

Mr Baker—I am a qualified accountant, I am a member of the Institute of Chartered Accountants and I am a member of the CPA.

Senator JOHNSTON—How long have you been an auditor?

Mr Baker—Some 23 years.

Senator JOHNSTON—And you are experienced, I take it, in fraud, the ascertainment of fraud, breach of confidence, conflicts of interest et cetera in the auditing process?

Mr Baker—I would not say that I am an expert in fraud, no. I would say that I have had exposure to fraud and to reviews of fraud within internal audit, but I would not profess to be an expert in that.

Senator JOHNSTON—Okay. This was a peer review conducted pursuant to what standard?

Mr Baker—There was no professional standard as it was not an audit; it was against the—

Senator JOHNSTON—No professional standards?

Mr Baker—That is correct, and that was identified and performed in accordance with the terms of reference letter.

Senator JOHNSTON—Let's cut to the chase: I think your process is perfectly reasonable. I do not have any issue with it, and I am not being critical; but don't you think that a failure to interview Mr Aisen was pretty fundamental to the process being flawed?

Mr Baker—I cannot comment on something which is outside the scope of our review.

Senator JOHNSTON—But you have commented, though.

Mr Baker—I have commented on an observation.

Senator JOHNSTON—You said:

Mr Shaun Aisen from Strategic Aviation was not interviewed ...

Mr Baker—That was an observation which was made.

Senator JOHNSTON—It is pretty important, isn't it? Given what you heard this morning—you were here when he gave his evidence. He has made a number of very serious allegations, and yet he was not interviewed.

Mr Baker—If I could bring us back to the terms of reference: the terms of reference were to form an opinion on AFCD's review against the FMG 14. Within that, we concluded that it was performed appropriately. There were observations, and that observation was one of several—

Senator JOHNSTON—I am a little troubled by your observation in that regard, given what we have heard this morning. It strikes me that if you had seen and interviewed—a proper, formal interview—Aisen, then the probity audit would have had greater integrity. Do you take issue with that proposition?

Mr Baker—They are not the words that we have used in our report. We believe that the observations we made were not so significant as to change our conclusion that the AFCD review

process had been performed in accordance with FMG14, which was what we had been asked to perform.

Senator MARK BISHOP—I understand your conclusion there. Why did you make the observations if they were not material to the performance by the AFCD?

Mr Baker—Part of our terms was to make observations, to make recommendations, of points for consideration by AFCD.

Senator MARK BISHOP—But an observation by definition has to be material.

Mr Baker—Not necessarily.

Senator MARK BISHOP—Of course it does. Why would you make immaterial observations? Why did you make the set of observations—one of which you have been discussing with Senator Johnston—if they were not material to the very specific peer process review you were doing?

Mr Baker—We do not talk about materiality in reviews; however, I guess an observation was made. That observation was put forward for consideration by AFCD—

Senator MARK BISHOP—Why? You have done a peer process review.

Mr Baker—Correct.

Senator MARK BISHOP—You have looked at the rules, the laws, the principles and Commonwealth regulations. You effectively found that AFCD had done their job adequately yet you have made six observations. I asked you why you made the observations and you responded that it was because it was part of the contract with the Commonwealth. I want to understand why you found it necessary to make any observations at all. How were the observations germane to your prior finding?

Mr Baker—As instructed under the terms of reference we were asked to provide regular ongoing feedback and guidance through a suite of formal meetings and to provide those observations to the department, which we did.

Senator MARK BISHOP—But what did those observations go to?

Mr Baker—For consideration by AFCD—

Senator MARK BISHOP—And what were you asking them to consider?

Mr Baker—We were asking them to consider that particular component as identified in our observations for their program review.

Senator MARK BISHOP—Were you making observations that AFCD should have interviewed Mr Aisen and others and should have provided different material to you?

Mr Baker—We were looking at the probity process followed by AFCD so the observation came about through the performance by AFCD.

Senator MARK BISHOP—So you make a set of observations—I think you outlined six in your introductory remarks—but you stand by your conclusion that the probity review process done by AFCD was entirely consistent with all norms of behaviour.

Mr Baker—We believe that of the observations that were made none were so significant for us to not form that conclusion. We do not believe the observations were a fundamental flaw in the process that was followed under FMG14. A term of reference we were asked to look at was compliance against FMG14.

Senator FERGUSON—Why does Mr Aisen get a mention in your report if you did not consider it necessary to interview him?

Mr Baker—Because part of the process we looked at was the documentation and reporting by AFCD. We put forward an observation for consideration by AFCD in that probity review that they should review that.

Senator FERGUSON—So you saw Mr Aisen's name in documentation—

Mr Baker—We would have seen Mr Aisen's name in documentation.

Senator FERGUSON—If you saw his name, why didn't you choose to interview him?

Mr Baker—Under the terms of reference PwC was not engaged to perform anything to do with the tender process. We were clearly engaged to perform under the terms of reference a peer review of AFCD so anything to do with Mr Aisen and others were I believe clearly outside the scope of what we were instructed to perform.

Senator MARK BISHOP—I can understand your logic there, but I do not understand why you made observations at all because you are not linking the set of observations you made to your inquiry apart from saying that Defence have requested you to make observations. I do not understand the link here. In a legal concept I am trying to find the materiality of the observations. You could tell me the sun comes up every morning at six am, but so what? That is what I am getting at.

Mr Baker—The observations that were made were put forward to AFCD for consideration for the AFCD process that they followed.

Senator MARK BISHOP—What purpose did you have in mind in making these observations to Defence?

Mr Baker—For AFCD to consider—

Senator MARK BISHOP—To consider what?

Mr Baker—To consider the process they had performed for documentation—predominantly within the report, as it makes reference to the reference within the report at that stage. Of the six observations, the first one is around the process; the remaining five are predominantly around the reporting.

Senator MARK BISHOP—You are not suggesting that the AFCD process in respect of these six points was materially deficient?

Mr Baker—I do not believe the six observations fundamentally flawed the process of AFCD following FMG14—that is right.

Senator JOHNSTON—You have said that they were designed to improve and strengthen the probity review.

Mr Baker—That is correct.

Senator JOHNSTON—So there was weakness and matters that required improvement.

Mr Baker—I think before that it talks about ‘for consideration to’—

Senator JOHNSTON—Yes, for consideration. In No. 2 you have said: ‘Shaun Aisen from Strategic Aviation has not been interviewed.’ To your knowledge, was he ever interviewed?

Mr Baker—Not to my knowledge.

Senator JOHNSTON—These are shortcomings in the audit that you have highlighted, aren’t they? They are observations, but in common parlance they are shortcomings.

Mr Baker—Not against the terms of reference which we were asked to perform—

Senator JOHNSTON—No, but they could have been done better.

Mr Baker—I cannot comment on something that we were not instructed to perform.

Senator JOHNSTON—You have said ‘improved’ and ‘strengthened’ and you have even used the expression ‘lessons learnt’, haven’t you?

Mr Baker—That was the terminology referred to in our terms of reference.

Senator JOHNSTON—So there was no documented review methodology.

Mr Baker—Before commencement of the review?

Senator JOHNSTON—That is right. You saw that as a matter that could have been done better.

Mr Baker—Correct.

Senator JOHNSTON—Normal practice would be to develop an appropriate review methodology prior to commencing a review. So normal practice was not what you observed.

Mr Baker—In this particular circumstance, because of the timing, it had not been performed.

Senator JOHNSTON—Thank you. You go on to say: ‘In the interests of being seen to conduct a fair and transparent process’—these are your words—‘consideration should be given as to how to address the issue of not having interviewed Shaun Aisen.’ The logical inference from what you have written is that a failure to interview Shaun Aisen would have meant that it was not a fair and transparent process. Is that not correct?

Mr Baker—They are not the words we have used. We have made recommendations for consideration by the department.

Senator JOHNSTON—I am quoting directly from your observations.

Mr Baker—Yes, the observation, but not the inference.

Senator JOHNSTON—You say, and I quote: ‘In the interests of being seen to conduct a fair and transparent process, consideration should be given as to how to address the issue of not having interviewed Shaun Aisen.’

Mr Baker—That is correct.

Senator JOHNSTON—So that, if Shaun Aisen was not interviewed, the logical conclusion is that it was not a fair and transparent process.

Mr Baker—AFCD discussed that and provided a management comment or a response.

Senator JOHNSTON—I am not interested in their discussions.

Mr Baker—That was the process which we followed, so we have made a recommendation—

Senator JOHNSTON—The reason they have got you is that they want your advice—correct?

Mr Baker—Correct.

Senator JOHNSTON—And you have given them some advice. A fair and transparent process requires Aisen to be interviewed.

Mr Baker—The consideration of that, correct.

Senator JOHNSTON—‘We considered that it should be useful to show the key dates to demonstrate to users what occurred at what point in time, particularly with respect to David Charlton.’ So you wanted a chronology.

Mr Baker—We believed that would assist the users of the report.

Senator JOHNSTON—You were not shown a chronology?

Mr Baker—There were chronologies being prepared.

Senator JOHNSTON—Being prepared?

Mr Baker—Yes.

Senator JOHNSTON—You can see the problem that I have with this: they are looking to get their audit up to speed by getting your advice, because you only saw a draft, didn't you?

Mr Baker—We saw a draft and we were performing—yes.

Senator JOHNSTON—So the audit was not finalised when they asked you to peer review.

Mr Baker—That is correct.

Senator JOHNSTON—What did you see to assist you in your peer review? What documents did you see?

Mr Baker—I do not have the exact details of every single document. I can talk about the terms of reference and the process we followed.

Senator JOHNSTON—No. Let me ask this: did you see redacted documents?

Mr Baker—I do not have that information in front of me. I would need to talk to—

Senator JOHNSTON—Please answer the question: did you see redacted documents from Defence?

Mr Baker—I do not have all of the information in front of me to be able to confirm that.

Senator JOHNSTON—Surely you would remember big black marks across various reports and documents if you saw any.

Mr Baker—We had a team of individuals involved in the assignment, so I would need to—

Senator JOHNSTON—Mr Baker, did you see any redacted documents? Do you know what I mean by redacted documents?

Mr Baker—I personally did not see any but I was not the sole performer of the review.

Senator JOHNSTON—You did not see any redacted documents?

Mr Baker—As I said, I was involved in the review. There were other members of my team involved.

Senator JOHNSTON—Did you see the Inspector-General's report?

Mr Baker—Have I seen the Inspector-General's report?

Senator JOHNSTON—Yes.

Mr Baker—No, I have not.

Senator JOHNSTON—Did any of your team have access to the Inspector-General's report?

Mr Baker—I cannot talk on behalf of all members of my team.

Senator JOHNSTON—Okay. You suggested commentary detailing the work undertaken by the Inspector-General should be addressed.

Mr Baker—Correct.

Senator JOHNSTON—Why did you put that in?

Mr Baker—As an observation.

Senator JOHNSTON—Why is there a lesson learnt by not having it there?

Mr Baker—It was an observation, not necessarily a lesson learnt. The observation was we believe it should be considered for inclusion within the report to assist the users of the report.

Senator JOHNSTON—Let us just recap: you saw a document that was the AFCD's draft audit of the probity of the MEAO air sustainment contract. Is that correct?

Mr Baker—While performing our field work, correct.

Senator JOHNSTON—Did you ever see the final report?

Mr Baker—I have not seen the final report.

Senator JOHNSTON—How much work do you or Pricewaterhouse do for Defence?

Mr Baker—Within internal audit? On average approximately \$1 million per annum.

Senator JOHNSTON—What about more broadly? Does the firm have other work?

Mr Baker—The firm has performed other services for the Department of Defence.

Senator JOHNSTON—Do you have any idea how much to the value of, broadly?

Mr Baker—Last year, to 30 June 2010, approximately \$1 million.

Senator JOHNSTON—How many people did you have employed on this peer review?

Mr Baker—There were three people as identified in our terms of reference who were involved in the peer view.

Senator JOHNSTON—Did you supervise them?

Mr Baker—I did supervise them.

Senator JOHNSTON—Who did you deal with in respect of your letter of engagement? Who was the Defence contact?

Mr Baker—For our terms of reference, it was addressed to Mr David Anderson.

Senator JOHNSTON—And he is the assistant secretary of audit?

Mr Baker—And looks after the contractual matters when we perform reviews, correct.

Senator JOHNSTON—Was he involved in the probity audit?

Mr Baker—I cannot conclude because I am not aware. He was involved in various discussions.

Senator JOHNSTON—Can you see the issue I am about to raise with you? You have been contacted by and requested to perform professional services of a peer review by the people who actually did the audit.

Mr Baker—Yes.

Senator JOHNSTON—Is that correct?

Mr Baker—That is correct.

Senator JOHNSTON—And you know them?

Mr Baker—Yes.

Senator JOHNSTON—And you have done work for them?

Mr Baker—Yes.

Senator JOHNSTON—Far and away beyond what you did for them in this instance?

Mr Baker—Yes.

Senator JOHNSTON—So you are peer reviewing people that you have a reasonably long-term commercial association with?

Mr Baker—We have a contractual arrangement with, yes.

Senator JOHNSTON—You have a contractual arrangement? Are you on a retainer?

Mr Baker—No, we have a standing offer contractual arrangement to provide professional services so there is no retainer.

Senator JOHNSTON—Okay, not a retainer but you are contractually bound to them for a period of time.

Mr Baker—Yes.

Senator JOHNSTON—You would have contact with these people on a regular monthly basis?

Mr Baker—Yes.

Senator JOHNSTON—They include Mr Brown and Mr Anderson?

Mr Baker—In my capacity as the engagement party, yes.

Senator JOHNSTON—And they have asked you to review how well they have done their job?

Mr Baker—They are not the terms we have used in our terms of reference.

Senator JOHNSTON—No, it is a peer review.

Mr Baker—They have asked us to perform a peer review. That is correct.

Senator JOHNSTON—On people that you have a relatively long-term commercial relationship with—correct?

Mr Baker—On a division with which we have a contractual arrangement, yes.

Senator JOHNSTON—There is a problem with that, isn't there?

Mr Baker—I do not believe so.

Senator TROOD—Mr Baker, the letter with the terms of reference is 18 August.

Mr Baker—That is correct.

Senator TROOD—Which was a couple of days after you had this conversation?

Mr Baker—It was within a couple of days; that is correct.

Senator TROOD—You set out there not only the scope but also the likely cost of this.

Mr Baker—That is correct.

Senator TROOD—Which is about \$20,000.

Mr Baker—Yes.

Senator TROOD—Was that on the basis of your general professional assessment as to how long it usually takes you to undertake these kinds of probity reviews?

Mr Baker—That was on what we were requested to perform. We identified the number of days, which in this case was 11, and used our standard contacted rates. That is how the figure equated.

Senator TROOD—You were asked to undertake the review. You were not asked to undertake it in a certain period of time, were you?

Mr Baker—We were asked to undertake a review which did have a time frame involved. We came in, as I think Senator Johnston identified, towards the culmination of the AFCD probity process.

Senator TROOD—Did you have a sense or were you advised when you were asked to undertake this work that there was some urgency involved in getting it complete?

Mr Baker—There was urgency in regard to the contract. We were aware of that.

Senator TROOD—When did you discover that there was some urgency and that this could not be a review that you could undertake at your leisure?

Mr Baker—It was in those discussions I referred to earlier. When we were being engaged.

Senator TROOD—Were you told: ‘This is a matter of some importance. It is urgent, so we cannot give you a lot of time to do it,’ or words to that effect?

Mr Baker—That was not said. It was: ‘We need to commence it immediately.’

Senator TROOD—Did they say they wanted you to do it in a week or thereabouts?

Mr Baker—No, that is a product of our terms of reference and the time frame.

Senator TROOD—That was your assessment of how long—

Mr Baker—We were given no ‘it has to be done within a week’, although there was an awareness of urgency.

Senator TROOD—But you had a sense of the urgency involved?

Mr Baker—Yes, for commencement; that is correct.

Senator TROOD—With regard to your observations and lessons learned your first point is that there were time constraints. That was the first point you made about this. That was not a reference to the time constraints under which you were operating but a reference to the time constraints under which the original review was undertaken; is that right?

Mr Baker—That is right, and our observation was of the AFCD process. That is correct.

Senator TROOD—So this had been conducted under time constraints. Is that desirable when undertaking these kinds of reviews?

Mr Baker—The fact is that it was performed within a set time frame.

Senator TROOD—What do you understand the time frame to have been?

Mr Baker—For our review?

Senator TROOD—No, the AFCD review.

Mr Baker—I am unaware of what time frame they put on themselves. I can only talk about the review which we were requested to perform.

Senator TROOD—When you refer to time constraints are you referring to the fact that they said, ‘We have conducted the review and have been trying to get it finished quickly or urgently. There is a contract in prospect here and we need to have it done soon’? I am trying to find out where you got the sense that there was a time constraint involved here.

Mr Baker—Our observation was that planning was being performed contemporaneously with the review. So our observation was: has there been a full plan performed prior to the commencement? The plan was being formulated in a contemporaneous manner. That was our observation. We were able to identify evidence that what would normally be in that plan had been prepared. It was just the time frame of when it was prepared.

Senator TROOD—Did you ever have any understanding as to how much time had been taken for AFCD to do their review?

Mr Baker—We had a general understanding.

Senator TROOD—How long did it take them to do that?

Mr Baker—They had been involved for some weeks as I understand. I do not have the exact details.

Senator TROOD—So you believe that they had been undertaking this review for a couple of weeks; is that right?

Mr Baker—When we went in?

Senator TROOD—Yes.

Mr Baker—Which was towards the tail end—

Senator TROOD—There is nothing wrong with this. I am trying to get a sense of how much work they had already done to reach a point where they had a draft document.

Mr Baker—The draft document is a bit different because that is the actual reporting. We are looking at the reporting and we are also looking at the field work that was completed.

Senator TROOD—So AFCD had been working on this review for about a couple of weeks?

Mr Baker—Approximately.

Senator TROOD—Point 5 of your observations relates to the unsolicited bid received from Adagold. You say: ‘This could be seen as a catalyst for the decision to re-tender.’ But in fact it was the decision, wasn’t it?

Mr Baker—I do not have that information. Forming an opinion on that is outside of the scope of what we were asked to do.

Senator TROOD—But you formed a view.

Mr Baker—We formed an observation with regard to the report, that is correct.

Senator TROOD—You formed an understanding that this seems to have been the pivot point, the stimulus, for the review. Isn’t that what you are saying here? The situation regarding Mr Aisen was a sufficiently important matter that you felt the need to make an observation about it.

Mr Baker—For consideration, yes.

Senator TROOD—And it would seem that the AFCD have agreed with you, because they agree with that observation.

Mr Baker—That is correct.

Senator TROOD—So you have actually identified a key matter that seems to have been the reason for a change in the contracting arrangements. Would you agree? You say: ‘This could be seen as a catalyst.’ Was it the catalyst or not—do you know?

Mr Baker—I do not know whether it was the catalyst. I cannot comment on that.

Senator TROOD—But you think it was sufficiently important.

Mr Baker—We believe it is sufficiently important to make the observation that consideration should be given to that particular—

Senator TROOD—And it was not in the review.

Mr Baker—It was not in the draft report or it was to be considered to be put into the draft report. Our observation is not that it was not performed and not reviewed; our observation is consideration needs to be—

Senator TROOD—An approach by an outside party with whom one of the personnel involved is connected was seen by you as a sufficiently important matter to include in the review, but it was not there in the first place.

Mr Baker—I am not saying it was not in the review.

Senator TROOD—But you are, aren't you?

Mr Baker—We are talking about 'include commentary'. I think we are talking about the report.

Senator TROOD—That is what I am saying.

Mr Baker—The review or the report. I guess when I say review that includes the field work, the investigation and the whole process culminating in the report. Our observation is—

Senator TROOD—But the report distils the investigation, doesn't it?

Mr Baker—It does, yes.

Senator TROOD—You are saying here that this was a material issue and it ought to have been included in the distillation.

Mr Baker—At that point, yes.

Senator TROOD—And it was not.

Mr Baker—At that point, which was—

Senator TROOD—It was not, and if you had not come along it would probably not be in there.

Mr Baker—I do not know that.

Senator TROOD—The people who prepared the AFCD report thought the unsolicited approach was sufficiently insignificant that they were not going to put it in, on what you saw.

Mr Baker—I cannot talk on behalf of AFCD.

Senator TROOD—No, but it was not there, was it?

Mr Baker—At the draft point—at the point in time when we performed it.

Senator TROOD—You suggested it ought to be put in and they agreed to put it in.

Mr Baker—Yes.

Senator TROOD—Thank you.

Senator MARK BISHOP—Mr Baker, I refer to page 1 of your letter, under the paragraph ‘Overview’: ‘AFCD has been instructed by the secretary of defence to conduct a probity audit of the request for tender relating to the provision of air sustainment support to the MEAO following complaints regarding the tender process.’ The limitation in that paragraph is those final five words—‘complaints regarding the tender process.’ In your discussions with Defence which occurred when you were at Campbell, was there discussion concerning other complaints not relating to the tender process but relating to the background that resulted in the tender process?

Mr Baker—I will come back to the terms of reference that we were requested to perform, which was the assessment of AFCD’s review against FMG 14. We were aware of the complaints. However, we were not asked to perform an assessment or an opinion on that.

Senator MARK BISHOP—I understand that. Those five words are at the heart of this issue: it goes to the limitation in this review; it goes to the limitation in the review we discussed in Sydney yesterday. I do not really have a quarrel that proper process has been followed in terms of the tender process to date. I am not going down that path. I want to know the background prior to setting up the tender process. Were you asked to look at potential conflicts of interest at all?

Mr Baker—That was outside the terms of reference we looked at.

Senator MARK BISHOP—Were you asked to look at improperly obtained commercial information?

Mr Baker—What we were asked to do was to perform—

Senator MARK BISHOP—Yes or no?

Mr Baker—That was outside the scope of what we were asked to do, so we were not asked—

Senator MARK BISHOP—Were you asked to inquire into inappropriate disclosure of commercial information to interested parties?

Mr Baker—That was outside the scope of what we were asked to do.

Senator MARK BISHOP—Were you asked to look at any inappropriate or dishonest commercial processes outside the tender process?

Mr Baker—That was outside the scope of what PwC was requested to perform, which was the AFCD probity review.

Senator MARK BISHOP—But this inquiry is around the four matters I just raised.

Mr Baker—Absolutely. It is the component which the PwC report and assessment refers to. It excludes that within our scope.

Senator MARK BISHOP—The PwC review did not look at any of the matters that I just referred to—those four matters.

Mr Baker—We were not requested to perform that.

Senator MARK BISHOP—You were not requested to—no.

CHAIR—As there are no further questions, that is it for today. Mr Baker, thank you very much for attending the hearing.

[9.58 am]

ANASTASI, Mr Adam, Acting Chief Legal Officer, Legal Services Division, Civil Aviation Safety Authority

CHAIR—Welcome. The committee has received your submission, which we have listed as submission 7. Do you wish to make any amendments or alterations to your submission?

Mr Anastasi—No, thank you.

CHAIR—Would you like to make a brief statement before we go to questions?

Mr Anastasi—I have nothing to add to the written submission provided by the authority.

Senator JOHNSTON—Mr Anastasi, where is Dr Aleck?

Mr Anastasi—Dr Aleck is currently in Madrid, Spain, on work—

Senator JOHNSTON—Investigating airlines in that part of the world, no doubt!

Mr Anastasi—Not quite.

Senator JOHNSTON—When is he due back?

Mr Anastasi—I understand he will be back in Canberra, at least in the office, on Thursday. I assume he will arrive in Australia today or tomorrow.

Senator JOHNSTON—He is Associate Director of Aviation Safety. Are you across all of the issues that he has mentioned in his submission?

Mr Anastasi—Yes. The Legal Services Division often gives advice to international operations about matters pertaining to the operation of foreign registered aircraft.

Senator JOHNSTON—You have fully read and understood his letter of 1 March?

Mr Anastasi—I have certainly read it and I understand it.

Senator JOHNSTON—Do you have it in front of you?

Mr Anastasi—Yes, I do.

Senator JOHNSTON—We will go through it a bit. The big paragraph on page 3, on the top half of the page, four lines down, he says:

Charter brokers generally do not hold an AOC—

That is, an air operators certificate—

Or an FAAOC—

which is—

Mr Anastasi—A foreign aircraft air operators certificate.

Senator JOHNSTON—Thank you. It continues:

and may not have any operational control whatsoever over the organisation conducting the air service operations contemplated by the contract.

Explain to me what you mean by that and how that fits into our legislative structure from a CASA perspective, if you can follow what I am trying to get at.

Mr Anastasi—Yes, I do understand. The starting point for the authority is to understand and identify who the operator of an operation is. It is the operator, obviously, to whom we give the air operators certificate.

Senator JOHNSTON—Or the permission—

Mr Anastasi—Or the permission. In that regard, the regulations define an operator to mean the operator who engages in a commercial operation. So what CASA was seeking to highlight here was that, as in this case, there is a charter broker or—

Senator JOHNSTON—This is the Adagold case—

Mr Anastasi—Which is Adagold, which is contracted with the Commonwealth. If it were the case that CASA formed a view that, having regard to all the arrangements, and CASA did review the contract between Adagold and Hi Fly when assessing the application to vary the AOC by Hi Fly; if, for example, there was a view formed that—in fact it looks like—Adagold really has operational control over the aircraft, then we would look at that issue more carefully, make inquiries of Adagold and, in an extreme case, take the view that in reality Adagold is the operator and not Hi Fly. That was not a view that was formed in this case.

Senator JOHNSTON—So tell us what view was formed.

Mr Anastasi—The view that was formed was, of course, that Hi Fly was to be the operator of the A340 aircraft that were added to the AOC last year—

Senator JOHNSTON—When last year? You can take that on notice if you wish to. It is up to you.

Mr Anastasi—I know that there was a second Airbus A340, a Danish-registered aircraft, added to the AOC in October last year, for Hi Fly.

Senator JOHNSTON—What date?

Mr Anastasi—It was 26 October 2010.

Senator JOHNSTON—In relation to when the first A340 was added, I do not have that information in front of me.

Senator JOHNSTON—It is fairly important. If you could take that on notice and let us know—

Mr Anastasi—The application was made in May 2010. I will take that on notice and provide a copy of the AOC to the committee.

Senator JOHNSTON—And any information regarding an application for an AOC for that Hi Fly aircraft prior to 27 March 2010 would be very important, for obvious reasons.

Mr Anastasi—To clarify, they have held an AOC since 2004. In relation to prior to March 2010, you would like a copy of the AOC as it was before that time?

Senator JOHNSTON—Yes, please. What we are looking for is any material changes that indicate quite frankly with you some forewarning or knowledge of a tender to be released on 27 March such that they were getting their ducks in a line—if I can put it like that—prior to that date. That would seem to suggest that there was some leakage of knowledge or information from Defence to this particular tenderer, if you follow me.

Mr Anastasi—I will take on notice that you see if any information concerning any communication regarding adding A340 to the AOC as well.

Senator JOHNSTON—Thank you. We have a situation where Adagold is not the operator. Hi Fly is the operator. May I ask who owns the aircraft in question?

Mr Anastasi—It is wet leased from another company. I do not have the information here. I think it was an SAS—

Senator JOHNSTON—Someone in France?

Mr Anastasi—I do not know the origin.

Senator JOHNSTON—You have it there, have you?

Mr Anastasi—I will have a look at that. This is in relation to the Danish registered aircraft.

Senator JOHNSTON—Okay, is that the one that is used in the current Defence contract?

Mr Anastasi—I understand it was the one intended to be used in the Defence contract. Whether it is the one used or not, I cannot answer that question, but I will assume it is.

Senator JOHNSTON—I am happy for you to take it on notice, if you are having trouble finding it.

Mr Anastasi—Yes, it may be better to do that.

Senator JOHNSTON—So there are two A340s?

Mr Anastasi—Yes, on the Hi Fly AOC.

Senator JOHNSTON—Okay. Could you provide us with copies of each of those AOCs?

Mr Anastasi—Yes.

Senator JOHNSTON—We would like to identify the numbers.

Mr Anastasi—I can give you the most recent AOC which refers to both aircraft, if you want that now.

Senator JOHNSTON—Yes.

CHAIR—If you wish to tender that document, that is fine.

Senator JOHNSTON—There are copies for us?

Mr Anastasi—Yes.

Senator JOHNSTON—Thank you. On the paragraph that I have taken you to, what regulatory obligations do Hi Fly have to CASA?

Mr Anastasi—Hi Fly has regulatory obligations to the aviation legislation—that may be a better way to describe it. The aviation legislation requires any operator to comply with certain rules. Generally, for a foreign registered aircraft the Australia maintenance regulations have no application to such aircraft, but the operational requirements on any aircraft in Australian airspace will generally apply to that aircraft.

Senator JOHNSTON—So operational matters refer to the way they conduct their flying within Australian airspace?

Mr Anastasi—Yes, and complying with Australian rules when operating in that airspace.

Senator JOHNSTON—But maintenance issues do not relate to that regulation because it is a foreign aircraft?

Mr Anastasi—That is correct, but CASA will still review the maintenance arrangements for the aircraft in question. In this case, CASA asks questions of the operator about how the aircraft was going to be maintained and by whom.

Senator JOHNSTON—And have you done that?

Mr Anastasi—Yes, that was all done.

Senator JOHNSTON—Can we have access to those questions and answers?

Mr Anastasi—I do not see why you cannot. I will take that on notice.

Senator FERGUSON—Did the same rules apply when we were using Ilyushin II-76s?

Mr Anastasi—Yes, when that occurred the regulations were essentially the same as they are today.

Senator FERGUSON—So you had to satisfy yourself that the maintenance on those aircraft was satisfactory?

Mr Anastasi—We satisfy ourselves that the arrangements in place are satisfactory. CASA will then, on occasion, conduct ramp inspections of the aircraft. We will inspect the aircraft and look for any airworthiness issues that may arise. When I say the regulations do not apply in relation to the maintenance, it is really that the maintenance rules are essentially applicable to Australian aircraft. Nonetheless, we look at an operator's maintenance manual, which says how they will perform maintenance and in what manner, to ensure that the maintenance is performed at a standard which is equivalent to the Australian legislation.

Senator FERGUSON—Did CASA have any involvement in the decision not to allow us to fly Ilyushin II-76s? I went to Afghanistan on an Ilyushin II-76, but it was not that long afterwards when they were told that they could not carry personnel. Did CASA have any involvement in that decision?

Mr Anastasi—It may have; I am not aware of it.

Senator Ferguson—Could you find—

Senator JOHNSTON—It was an Adagold aircraft, wasn't it, this Ilyushin?

Mr Anastasi—Yes, I think I did read something somewhere where they did operate that aircraft type early on in the piece. But my research does not go back that far. I have really just focussed on the—

Senator FERGUSON—Could you just take it on notice and find out that information for me?

Mr Anastasi—Yes.

Senator FERGUSON—I am very curious if Adagold was involved.

Senator JOHNSTON—That is if there were some maintenance and safety issues with respect to Ilyushin aircraft as provided by Adagold in the performance of a previous contractual

relationship with the Commonwealth—not just with the Department of Defence, but right across the board. We would be obliged if you could provide us with that information.

Mr Anastasi—Yes.

Senator JOHNSTON—You say that:

Such charter brokers have no regulatory obligation to CASA, and CASA has no authority to regulate the conduct of those charter brokers.

What do you mean by that?

Mr Anastasi—What is meant to be said there is that if a charter broker is not the operator then obviously the charter broker has no obligations on it as if it were an operator. The only regulatory—

Senator JOHNSTON—Let me just clarify that: because he is not conducting operations, he is not bound by the civil aviation legislative framework in Australia? The operator is the one who is bound?

Mr Anastasi—Yes, other than that there is a regulatory provision which states that, effectively, you cannot hold yourself out as an operator if you are not, in fact, an operator. That applies to anyone.

Senator JOHNSTON—Yes.

Mr Anastasi—But otherwise, yes, the regulations and act do not apply to someone who is not an operator, and therefore there is no need for them to have their behaviour reviewed.

Senator JOHNSTON—In terms of liability pursuant to the act, it is obviously beneficial for an Australian based broker to have a foreign aircraft, because it is the foreign aircraft, which is home based thousands of kilometres away, that is responsible for maintenance and compliance with its AOC.

Mr Anastasi—The liability should not be different whether it is an Australian aircraft or a foreign aircraft. It may well be though—

Senator JOHNSTON—No, the point I am making is that the broker is not carrying any responsibility, or anything like the responsibility that the operator is.

Mr Anastasi—He has a different responsibility. He has a responsibility to the Commonwealth to discharge his obligations under a contract to provide a service. Obviously, that contract has permitted that service to be provided by a subcontractor. He has those obligations but, yes, he does not have the regulatory obligations that Hi Fly would have.

Senator JOHNSTON—Thank you very much: that is the point I am making. You go on to say:

Depending on the nature of the arrangements involved in any given case, it is possible that the Department of Defence may not have a clear or complete understanding of about the *operator* that will actually be performing the air services contemplated by the contract, as opposed to the charter broker with whom the Department will have dealt.

Is this what you are saying: if the Hi Fly aircraft is under maintenance and the contract stipulates an aircraft, it can come from some other source and Defence may not understand about the change of operator?

Mr Anastasi—The contract required Defence to give approval to any subcontractor being used, so on one view Defence should know who is conducting the service. I think more perhaps what was being expressed here was in the request for tender and the contract there was to some extent some intermingling of the concepts of operator and contractor. So on one view the request for tender and the contract assumed that the contractor—in this case Adagold—would hold an AOC but the deed then made it clear that the service could be provided by a subcontractor.

Senator JOHNSTON—Or would be provided by Hi Fly in this instance?

Mr Anastasi—In fact, the deed defined the operator as someone who would be a subcontractor.

Senator JOHNSTON—Yes. Did the deed bind the subcontractor in any shape or form? Was there privity of contract between the Commonwealth and Hi Fly?

Mr Anastasi—No, not that I understand.

Senator JOHNSTON—I have no further questions. Thank you, Mr Anastasi. That was very helpful.

Senator TROOD—At what point does CASA become involved in this process? Do you assume that the aircraft that might be acquired has all the documentation in place and you are not asked to confirm that? Is there a point in the process in which CASA is normally asked to confirm that the proposed aircraft which is to be acquired for a contract is in fact an aircraft with all its documentation in order?

Mr Anastasi—If you are asking whether Defence would pose questions of CASA to seek confirmation of CASA's review of the aircraft, my understanding is in this case Defence did contact CASA to ask if the AOC had been reissued with the A340 on it. Otherwise, CASA has no involvement in the tender process. Our involvement really commences from the point in time when, in this case, Hi Fly made a written application to CASA to add the A340 aircraft to its AOC.

Senator TROOD—I suppose that is what I am asking. At some point in a process of this kind someone has to ask you for approval for the aircraft to fly in Australian air space?

Mr Anastasi—Yes. And we would only take that from the operator. That is what occurred; the operator made that written application, as I said, on two occasions.

Senator TROOD—Is it usual for that request to be made after a contract has been secured or is it usually a request that is made of you beforehand? Say, Defence is proposing to sign a contract. It would not want to find itself in the position of having signed a contract in relation to a particular aircraft and then you subsequently saying, ‘Sorry, you can’t have that aircraft here because there are a series of safety questions about that aircraft.’ I am interested to know at which point typically a request is made of you to confirm that all the documentation for the aircraft is in order.

Mr Anastasi—There is no general rule. We do not ask why an operator is making the application they are making, whether they have work available to it or not. We do see on occasions that an operator seek to add an aircraft type to its AOC in anticipation of obtaining work in a particular sector of the market. It may be in contract negotiations or may have already signed a contract which is conditional on it having the aircraft added to its AOC. So it is not really the case that you can say there is a practice in relation to when someone would make that application.

Senator TROOD—Save for the fact that no aircraft is allowed to operate here unless it is on an operator’s AOC; is that right?

Mr Anastasi—That is correct, or unless it obtains one of those short-term permissions—

Senator TROOD—But at some point approval has to be secured from you and it can occur at any time in the process.

Mr Anastasi—That is correct.

CHAIR—There be no further questions, thank you, Mr Anastasi, for coming along this morning and providing evidence.

Mr Anastasi—Thank you.

Proceedings suspended from 10.19 am to 11.00 am

BARNES, Group Captain Robert, Commander, 1st Joint Movement Group, Department of Defence

BRENNAN, Air Commodore Peter, Director-General Assurance, Joint Logistics Command, Department of Defence

BROMWICH, Mr Ray, Inspector-General, Department of Defence

BROWN, Mr Geoffrey, OAM, Chief Audit Executive, Department of Defence

CREET, Ms Karen, Assistant Secretary, Ministerial and Executive Support, Department of Defence

DUNSTALL, Mr Harry, General Manager Commercial, Defence Materiel Organisation, Department of Defence

GRIGGS, Rear Admiral Ray, AM, CSC, RAN, Deputy Chief of Joint Operations, Department of Defence

LEWIS, Mr Simon, Deputy Secretary Defence Support, Department of Defence

LLOYD, Dr David, Defence General Counsel, Department of Defence

MINNS, Mr Phillip, Deputy Secretary, People Strategies and Policy, Department of Defence

WATT, Dr Ian, AO, Secretary, Department of Defence

CHAIR—Welcome. I remind senators that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim.

The committee has received your submission and is recorded as submission No.5. Do you wish to make any amendments or alterations to your submission?

Dr Watt—No, but I do have an opening statement which I would like to read part of. I will not try the committee by reading all of it, but I intend to read a large part of it. Defence welcomes the opportunity to appear here this morning and we welcome it, in part, because there has been a large amount of comment around this particular tender and some of it is very

misconceived. I am afraid that Defence has been the unfortunate recipient of much of that misconceived comment and we would like a chance to set the record straight.

CHAIR—Certainly, please proceed.

Dr Watt—I would like to begin by emphasising that the tender for the air sustainment service to the Middle East area of operations—or the MEAO, as it is referred—was structured on sound commercial considerations, was fully transparent, was done in an open and transparent fashion, and resulted in significantly improved value for money. Defence makes very significant financial savings from this new contract—in the order of \$16 million a year. It is a reduction of about 32 per cent compared with the alternative of continuing the final-year option available under the previous contract. Also, the new single aircraft solution reduces coordination and management overheads, reduces intra-theatre transport resources and ensures that freight gets to the troops in Afghanistan faster and more reliably. Further, the successful bidder offered very significant savings compared with other tenders.

The decision to retest the market, which was taken with the RFT on 29 March 2010, was sound. Noting the impact of the economic climate of the time on the global aviation industry, there were savings to be had and Defence sought them. Further, the decision to utilise the air standing offer panel for potential providers was appropriate as it provided a valid existing legal procurement framework with standardised terms and conditions with which to engage air charter services.

Defence personnel involved in the tendering process adhered to Commonwealth procurement guidelines and Defence procurement policy. Not one, but three independent reviews of the tender process—by Deloitte, by the Australian Government Solicitor and by the Defence Chief Audit Executive—confirmed that the decision to award the contract to Adagold Aviation for air sustainment services to the MEAO was fair and defensible. Adagold has now been performing those services since November 2010 and Defence is satisfied with Adagold's performance under this contract.

I would firstly like to address a number of key issues relating to Strategic Aviation. On 14 July 2010, Strategic Aviation wrote to the Inspector-General asking that he intervene to independently review the tender and its evaluation. The Inspector-General, who does many of Defence's internal reviews, works for the Chief Audit Executive. Given the seriousness of the complaint, I asked the Chief Audit Executive to undertake an independent review into the concerns raised.

Concerns have been raised with respect to a former employee of Strategic Aviation, Mr Charlton, in his Army Reserve officer capacity. Allegations relating to Mr Charlton that relate to the 2005 tender are subject to a current Australian Federal Police investigation. As the committee should be aware from previous Senate estimates, on 10 September 2010 Defence referred allegations of serious impropriety relating to the 2005 tender process to the AFP. This matter is the subject of ongoing investigation and the AFP, including in my discussions with Commissioner Negus this morning, has requested us not to make further comment on the issue. I appreciate the committee may wish to discuss aspects of the 2005 tender. There are aspects that we think should be discussed. If that is the case, I would ask the committee to agree to go into camera so as not to prejudice ongoing AFP investigations. That is very important. Defence is rendering all possible assistance to the AFP as part of this investigation.

I will currently address allegations in respect of Mr Charlton and his Army Reserve service in 2009-10. The allegations of conflict of interest relating to Mr Charlton were thoroughly examined by both Deloitte and the Chief Audit Executive, and neither examination could find evidence to support the allegations.. Mr Charlton first approached Army Personnel Agencies Brisbane on 20 March 2009, seeking to recommence active Reserve service. The decision to post Mr Charlton to Joint Movement Control Office, Brisbane, a subunit of 1st Joint Movement Group, was made independently by Army Personnel Agencies Brisbane to fill an established manning vacancy. Mr Charlton is a trained movements officer. It was on this basis that he was posted to Joint Movement Control Office Brisbane, with effect from 24 June 2009—almost a year prior to any conflict-of-interest allegations.

Mr Charlton's first parade, his first day on the job, if you like, was on 6 July 2009. From that date, and on the basis of his known private business links with the aviation industry and his previous employment with Strategic Aviation, specific actions were taken by Defence, by Mr Charlton's commanding officers, to ensure he was distanced from any possible conflict-of-interest dealings with air charter work. This included distance from anything to do with the operation of the then air sustainment services contract with Strategic Aviation. Throughout his posting tenure, Mr Charlton remained solely employed in a training officer role and was kept away from all operational matters. On 31 March 2010, two days after the release of the RFT, Mr Charlton reported a potential conflict of interest in connection with the Middle East air sustainment request for tender and, on that day, he ceased parading with the subunit and was employed by Army elsewhere in Brisbane until formally posted out to 1st Joint Movement Group on 30 June 2010. In view of the subsequent conflict-of-interest allegations, these actions were appropriate.

Contrary to allegations made, including this morning, no complex procurement activity occurs at the Brisbane office, and Mr Charlton had no access to Defence electronics systems or documentation relating to the tender. As such, Mr Charlton had no input into development of the selection criteria for the 2009 tender, as has been claimed by Strategic Aviation. Furthermore, at the time of the 2010 tender activities, the main focus for embarkation of personnel and cargo for carriage into the MEAO was Sydney, not Brisbane. During his tenure in Brisbane, only 21 flights out of a total of 100 either originated or terminated in Brisbane. Further, any work undertaken by Joint Movement Control Office Brisbane in support of these flights was restricted to low-level procedural contact activities and local coordination—nothing to do with determining future requirements.

The actions undertaken to ensure that Mr Charlton was distanced from any operational duties that could bring him into conflict-of-interest situations were appropriate and reasonable. Of note is the action to remove Mr Charlton completely from 1st Joint Movement as soon as he declared a potential conflict of interest.

Both the Deloitte and Chief Audit Executive examinations of the allegations surrounding Mr Charlton were thorough. The Deloitte examination was not a quick examination, as has been claimed, because while it was conducted over a relatively short period, from 2 to 15 September 2009, it constituted 996 hours of work by senior staff. Defence had conveyed to Deloitte the importance of completing the reviews as expeditiously as possible to meet the expected contract set-up and transition requirements for the replacement contract. During the course of the assignment, Deloitte noted that additional work would be required and Defence advised that the

assignment should not be compromised in any respect by artificial constraints, time or otherwise. We made it very clear that we did not and we would not constrain a review in any way.

The allegations surrounding the conduct of the tender and contract administration process had already delayed, by the time of the Deloitte review, implementation of the new Middle East air sustainment charter contract. It was prudent, in my view, to have these issues immediately in order to minimise the operational and financial impacts of the delay and to facilitate transition between air charter contractors. It is important to remember that we had a large relief in place going on in the Middle East at that time. These are normal troop rotations but they are significant numbers. I believe the numbers were something like 1,500. We were anxious not to interfere with that relief in place. Further, we had the normal supply chain activity support operations occurring in the Middle East. We were also keen to get the significant financial benefits from the new tender; and, as you have seen from my earlier comments, they were significant.

Finally, and not inconsequentially, we wanted to have the Deloitte advice in place for an incoming government. At that stage we were all expecting an incoming government. Mr Charlton was interviewed during the Chief Audit Executive review and, at the request of Defence, provided a signed statutory declaration. Deloitte did not re-interview Mr Charlton, because they had access to the Chief Audit Executive's recording, a transcript of the interview and the statutory declaration. This was considered sufficient for the purposes of their examination.

I would like to talk briefly about the new air charter requirements. The decision to award the contract to an aircraft broker rather than an Australian regulated airline, including questioning of whether the ADF conducted due diligence on the financials of Hi Fly and of Adagold's capability to substitute Hi Fly aircraft in the case of Hi Fly failure, has been raised. It is not unusual to award contracts to aircraft brokers. At the time of its successful 2005, 2006 and 2008 bids for the air sustainment services contracts, it is my understanding that the extant contractor, Strategic Aviation, apparently held the same aircraft broker status as Adagold holds now.

The major Australian airlines are not generally competitive in tenders for services required by the ADF. In addition, there are few Australian based air frames with seating for more than 100 passengers. To have mandated an all-Australian solution would have excluded 12 of the current 13 air standing offer panellists, who typically comprise the Australian broker, foreign aircraft operator arrangements. In assessing this contract, Defence considered industry requirements consistent with the procurement guidelines.

Based on the evaluation undertaken by Defence's financial investigation services and worked on by Deloitte in conducting fit and proper checks as well as risk mitigation strategies, Defence is satisfied that the preferred tender, Adagold, and associated companies have the financial and commercial capacity to deliver the air sustainment services to the MEAO.

The thoroughness of Defence's process in assessing a broker and a foreign airline together have also been questioned. The evaluation by Defence's financial investigation services was supported by an additional assessment by Deloitte as to whether the respondents and the associated companies supplying aviation services to the respondents had the financial and commercial capacity to deliver the services that they submitted in their responses. They found no evidence to indicate that the potential risks associated with the financial and commercial

capacity of the preferred tender, Adagold, had not been recognised. More to the point, those reviews found that the analysis had been conducted on a like-for-like basis, and some of the issues raised today—for example, did we take into account this aspect or that aspect—were taken into account from that assessment.

I would also like to talk about concerns raised with respect to the requirements specified in the 2010 tender. The increased air uplift capacity set out in the tender was derived primarily from a combination of historical data supplemented by a forecast requirement based on wide consultation in Defence. This included the RAAF, joint logistics and the operational people in HQJOC.

The original Airbus A330-300 sustainment aircraft specified in the 2008 contract had a 10-aircraft powered capacity but a relatively shorter range. The smaller Airbus A330-200 aircraft, introduced at the recommendation of Strategic Aviation under a 2009 revision to the 2008 contract, provided an eight-powered capacity but delivered a longer range and reduced flight times, fuel and stopover costs. By 2010 it was evident that this smaller aircraft was already falling short of the required space needed to handle cargo loads. To overcome this problem, arrangements were made for Strategic Aviation to move freight in excess of the eight-pallet capacity. However, these load-splitting arrangements were found to impose considerable coordination and management overheads on Defence. Over this period, in comparison to the use of contracted sustainment aircraft, deployed commanders reported routine delivery periods of approximately 10 to 14 days in around half of the separate commercial movements of cargo pallets into Abu Dhabi and then onwards to Tarin Kowt or Al Minhad. Defence also found it difficult to accurately track these commercial consignments and therefore lost effective control over the delivery of essential logistics support.

Getting cargo into the MEAO in a timely manner to support our personnel on the ground is obviously an essential priority for Defence, and I am sure the committee would not want it any other way. A single aircraft with the capacity to move all freight requirements into the Australian base at Al Minhad simplifies the supply chain, reduces coordination effort, saves time and resources, and ensures greater certainty of delivery. The use of commercial freight systems cannot do this. The air sustainment services in the Middle East also fly under official Australian government diplomatic clearances, and this ensures concessional treatment that exempts ADF freight from customs restrictions and associated clearance delays, often long delays, that can affect normal commercial flight movements. That is itself a significant benefit.

While a single-aircraft solution was preferred, tenderers were informed that Defence would also consider innovative cargo solutions such as multiple aircraft or aircraft plus freight forwarding if they were deemed to offer significant value to the Commonwealth. This was specified in the RFT documentation and conveyed verbally to participants at an industry brief. As such, the requirements were not so stringent as to deter tenderers, with seven panel members submitting a total of 11 different tender solutions that were all fully evaluated. These included two bids from Strategic, one for a single-aircraft solution and the other for an aircraft plus freight forwarding. Strategic Aviation provided the air sustainment services under a short-term contract for the MEAO from 23 October 2010 until Adagold took over the provision of services on 23 November 2010. Although this short term, temporary contract achieved a saving on the previous contract, which Strategic has put at 20 to 25 per cent, it was strictly temporary because Strategic Aviation did not offer this saving in its 2010 tender bid. It was therefore not relevant to the

evaluation of the 2010 tender and not relevant to the competitiveness of Strategic's bid. Indeed, it would have been completely inappropriate had we taken it into account.

Finally, it was claimed by Strategic Aviation that during the previous contract period aircraft departed Australia at less than full capacity, implying that larger capacity was not necessary. This statement is not correct. While passenger loads did vary and averaged around 100 per flight, the scheduled weekly sustainment aircraft flights into the MEAO consistently departed Australia with all eight available pallet spaces utilised and with significant volumes of cargo moved by separate commercial means. In the initial four months of the Adagold contract for the larger A340-300 aircraft, all 10 available pallet spaces have been consistently utilised on every flight. An average of 20,033 kilograms has been moved per flight, representing about 80 per cent of the contracted maximum payload at an increase of 37 per cent over that moved in the last five months of the previous contract with Strategic.

In conclusion, and regardless of the allegations and queries raised by Strategic Aviation, the independent reviews of the tender process confirm that the process was sound and that there was no reason to invalidate the decision to select Adagold as the preferred tenderer or that the decision was not fair and defensible. I will stop there. We can talk further if you would like about what we are doing to continue to improve our procurement activities—this is an ongoing process in Defence—and also what we are doing to look at the management conflict of interest. That may come out in discussions. We are happy to go to that area should the committee choose.

CHAIR—Thank you.

Dr Watt—One further point needs to be made following committee discussions this morning, unless you wish to talk about 2005-06 in camera now. It is important to remember that there were two tenders—one in 2005 and one in 2006. I think Rear Admiral Ray Griggs should talk about the issue about the flyaway kit and whether we are not getting the freight capacity with the new Adagold aircraft that was specified in the contract.

Senator FORSHAW—Before we go to that, there are some other sections of the statement that you have provided to us which you did not read. You said you were not going to read it all. I just want to clarify if it was your intention to have the other paragraphs or sections included on the public *Hansard*. There is one section which I think—

Dr Watt—There was one section I did not read about the 2005 tender because it was not raised. I think the issue was corrected this morning—that was about Mr Davies. I did not read that because it was originally claimed that there were two reservists they were concerned about. We have no idea who the second reservist was. We learnt this morning that the second reservist did not exist.

Senator FORSHAW—That is why I was raising it. I was not sure whether we wanted—

Dr Watt—That is a matter for the committee. The statement is factual. I will leave it up to the committee. That is why I did not read it, Senator.

CHAIR—Dr Watt, do you wish us to table the document and have it incorporated in *Hansard*?

Dr Watt—I am happy to have the document tabled.

CHAIR—The document, as circulated, is tabled.

Dr Watt—I did not read the material—

Senator FORSHAW—I understand why you did read it.

Dr Watt—at the end, Senator, because that is adequately covered in our submission, and I suspect it is not where the main game is.

CHAIR—Rear Admiral, do you have a statement that you would like to make?

Rear Adm. Griggs—Just to clarify an issue that was raised this morning by Mr Aisen regarding the fact that the Adagold aircraft is noncompliant. The A340-300 aircraft has a total volumetric capacity of 162 cubic metres. It depends on how you stack that aircraft as to how much of the 162 cubic metres you can use. If you use all pallets, it is about 135 cubic metres. If you use all containers, it is 162 cubic metres. An operational decision is made as to how the aircraft is loaded. The bottom line is that the aircraft exceeds the 150 cubic metre requirement. Regarding the issue of the backup kit, the flyaway kit, that Aisen talked about, on the primary aircraft that Adagold operate they do not have a backup kit. They have spares sprinkled in the different ports that Mr Aisen alluded to that Strategic have. They do carry some spares, but they do not have a flyaway kit. In the alternate aircraft, which is currently being used—it is used when the primary aircraft is being maintained, for example—does have a flyaway kit. That flyaway kit is five cubic metres. It reduces the overall capacity of the aircraft from 162 cubic metres to 157 metres, which still exceeds the 150 cubic metre requirement of the contract.

CHAIR—Thank you for that evidence.

Senator JOHNSTON—In your opening address, in the first paragraph, you added some words about probity and integrity of the process. Could you repeat those for us, please?

Dr Watt—If you want me to repeat the exact words, given that I was—

Senator JOHNSTON—Adlibbing.

Dr Watt—adlibbing a little, I would have to come back and get the transcript from Hansard. I think I said words to the effect that it was an open and transparent process, and I did say that it was structured on sound commercial considerations, resulting in significant improvement in value for money, and that we got a good deal.

Senator JOHNSTON—Are those words in writing before you: ‘sound commercial—

Dr Watt—Sound commercial considerations is in my statement.

Senator JOHNSTON—The situation with respect to the inquiries that have been conducted is that we have had Deloitte’s, with approximately half a million dollars worth of investigation. We have had Pricewaterhouse. We have had the internal audit of Mr Brown’s. It strikes me that

there is a fundamental problem with the way we have gone about this contract. Let me put this to you. In 2005 we had a serious problem with this contract. There were allegations of inside information and conflicts of interest. Indeed, the chair of the selection panel went to work for and was employed by Strategic Aviation, the winner of the contract. These matters were obviously so severe that in September 2010 you reported that matter to the Federal Police. We then found out that this person worked for Adagold from some period in 2008 to 2009. You were briefing your own officials into 2009 and 2010 to keep him away from this new sustainment contract. Indeed, Major Bullpitt-Troy and Major Rouwhorst were specifically briefed in January that there was a problem with this man being involved in the joint movement group. Despite all of this, plus articles, information and a 7.30 report on television, there was no probity adviser appointed to this contract. Who was the proposal approver? What was his name?

Dr Watt—I will get that name for you, but there are several things I think I need to say about your comments. First of all, you have me at a disadvantage. I am not able to talk about the 2005 tender, and I am not going to while we are in open session.

Senator JOHNSTON—Okay.

Dr Watt—Secondly, you said ‘you were briefing your own officials into 2009 and 2010’—

Senator JOHNSTON—Defence was.

Dr Watt—Defence may have been; I was certainly not. And I do not know if, indeed, anyone at this table was. I am happy to give you the name of the key person, as you asked. I will ask Mr Brown to do that. But I think the important point to note is that throughout the relevant period Captain Charlton was not involved in the 1st Joint Movement Group and had nothing to do with the establishment or running of the tender. I think that is very important to note.

Senator JOHNSTON—If we cannot talk about 2005, I am happy to go in-camera on that. His experience, knowledge and interaction with Defence is at the very nub of this problem because he as an official, as a working reservist within the Department of Defence in uniform, is employed directly or indirectly through this company for people who are tendering with his employer. In all of that, that you still do not have a probity adviser on \$140 million worth of contract is staggering.

Dr Watt—The review—and I will ask Mr Brown to talk about this—did cover the issue of a probity adviser.

Mr Brown—The recommendation coming out of our report was that going forward for large, complex procurements we should be getting a probity adviser. On the occasion of this one there was legal advice taken—I just have to be careful about legal in confidence—that suggested that—

Senator JOHNSTON—You actually do not, and we will talk about that later. Go on.

Mr Brown—I am an accountant, not a lawyer, so I will defer to your better knowledge on that. The advice was that at the earlier stages it would have been appropriate to have a probity adviser but, given that they had moved on from the Tender Evaluation Board—

Senator JOHNSTON—There was advice at the earlier stages. At what time?

Mr Brown—That was after the Tender Evaluation Board was reconstructed back in, I think, November 2009.

Senator JOHNSTON—There was advice to the Tender Evaluation Board that a probity adviser should be appointed?

Mr Brown—Yes.

Senator JOHNSTON—Was that in writing?

Mr Brown—That was advice received, yes.

Senator JOHNSTON—Legal advice?

Mr Brown—Yes.

Senator JOHNSTON—From whom?

Mr Brown—It was Clayton Utz, as I recall.

Senator JOHNSTON—And why on earth was that legal advice, for which I am sure you paid a lot of money, not followed?

Mr Brown—The advice was that, given that we have moved on into the tender process, it was probably not worthwhile. Had they not relied on the Tender Evaluation Board to go out to tender, it may have been more appropriate.

Senator JOHNSTON—This is the same board that Mr Charlton was a non-voting member of back in 2007?

Mr Brown—No.

Senator JOHNSTON—It was a totally different board?

Dr Watt—We are talking about a completely different tender, Senator, and I think you know that.

Senator JOHNSTON—Well, tell me.

Mr Brown—The evaluation board is a group of potential tenderers that we invite to tender so that they can then come back and stand on the Standing Offer Panel. Sorry, I have been using the wrong words. It is the Standing Offers Panel.

Senator JOHNSTON—It is not the Tender Evaluation Board?

Mr Brown—No. My apologies.

Senator JOHNSTON—Thank you. That is why I have made the mistake.

Mr Brown—Fair point.

Senator JOHNSTON—Thank you.

Mr Brown—We go out to tender for that and we get responses. It is from that board that we can make ad hoc requests.

Senator JOHNSTON—So the Tender Evaluation Board did have advice from Clayton Utz that we should have a probity adviser?

Dr Watt—No. As I have understood Mr Brown to say, the Tender Evaluation Board had advice that, had we been doing the tender over again, we might have had a probity adviser, but also that we had gone sufficiently far down the track of the tender itself that there was no point in having a probity adviser.

Senator JOHNSTON—What was the date of that advice from Clayton Utz?

Mr Brown—I do not have that right in front of me.

Senator JOHNSTON—Did you say November 2009 before?

Mr Brown—The Standing Offer Panel was re-tendered in November 2009.

Senator MARK BISHOP—Can you just tell me what the difference is between the Tender Evaluation Board and the Standing Offer Panel?

Mr Brown—That was my mistake earlier. Sorry, Senator Bishop. The Standing Offer Panel is a group of potential suppliers. We go out to people in the general community and say, ‘Would you be interested in being a supplier to Defence?’ They come back and say yes. There are a whole lot of criteria that they need to meet. That forms the Standing Offer Panel. The Tender Evaluation Board is the group of people that come together to assess tenders for a specific project or operation, such as the MEAO air sustainment contract.

Senator JOHNSTON—The Standing Offer Panel is the one that was too far down the track?

Mr Brown—No, it was in relation to the tender for the MEAO air sustainment.

Senator JOHNSTON—In November 2009?

Mr Brown—No, that was the Standing Offer Panel. As to when the Clayton Utz advice was obtained, I would need to get the details of that. I do not have that on me.

Dr Watt—It was the 2010 tender.

Mr Brown—Yes, it was the 2010 tender.

Senator JOHNSTON—Yes, but what was the date of the letter of advice? You know that I will be asking that.

Mr Brown—It was informal advice that we had received from them.

Senator JOHNSTON—About a probity adviser?

Mr Brown—Yes. They had come back to us, and in their formal advice they said to us: ‘Under different circumstances, in terms of going to tender on this, you would probably have got—but you drew on the Standing Offer Panel, and it was on that basis that it was not absolutely necessary.’

Senator TROOD—Mr Brown, what does informal advice mean?

Senator JOHNSTON—From lawyers.

Dr Watt—We might get Dr Lloyd, from Defence Legal, to answer your question.

Dr Lloyd—Basically, there was oral advice provided by Clayton Utz.

Senator JOHNSTON—It was not in writing?

Dr Lloyd—It was not in writing. It was a conversation which arose in the context of whether a probity auditor should be appointed. In that context, there was a discussion about whether a probity adviser might have been appointed. In the context, a couple of points were made. One was that, typically, where you are going for a request out of Standing Offer, you would not ordinarily have one, but, equally, that was then balanced against the level of the contract. The point was made that they had reached such a point in the tendering process that the benefit had been lost—in effect: if you are going to do it, you need to do it earlier in the process.

Senator JOHNSTON—But you decided not to get formal legal advice with respect to the oral advice?

Dr Lloyd—By you—

Senator JOHNSTON—You: you are general counsel, aren’t you?

Dr Lloyd—No, this was not a matter that was raised with me at the time.

Senator JOHNSTON—Formally?

Dr Lloyd—No, it was not raised—

Dr Watt—Or informally.

Senator JOHNSTON—So how do you know about it?

Dr Lloyd—I know about it because I have discussed it with the Clayton Utz lawyer.

Senator JOHNSTON—Take me through your understanding, because we want to find out who the Clayton Utz lawyer had this discussion with, obviously. When was it, and what was said?

Dr Lloyd—Someone else might be able to answer, but my understanding is that the discussion was in January 2010.

Senator JOHNSTON—Before the tender was released? January 2010?

Mr Brown—March 2010.

Senator JOHNSTON—March 2010?

Dr Lloyd—Sorry, I will have to check because I am not completely confident of the date.

Senator JOHNSTON—Who is?

Mr Brown—It was 23 March.

Senator JOHNSTON—Twenty-third of March; so before we released the tender there was informal Clayton Utz advice that we should have had a probity audit?

Dr Lloyd—The advice was that it was an option that could be considered, but it covered both arguments. Essentially, it said there were arguments why you would—around the level of contract—but equally, they made the point that when it is a request from a standing offer panel that it would be more unusual to have a probity adviser. So it was putting both considerations that you would take into account in making a decision.

Senator TROOD—Why were you having this conversation?

Senator JOHNSTON—Yes.

Dr Lloyd—Again, I was not having the conversation, but I believe the conversation—

Senator JOHNSTON—Who was?

Dr Lloyd—arose in the context of whether a probity auditor should be appointed at the conclusion of the process.

Senator JOHNSTON—Who was having the conversation?

Dr Watt—Squadron Leader Cole.

Senator JOHNSTON—Squadron Leader Cole? Well, let's hear from Squadron Leader Cole.

Dr Watt—He is not here, Senator. I am sure that Rear Admiral Griggs will be able to answer the questions in full.

Senator JOHNSTON—No, I do not want the hearsay. I do not want someone to tell me something that has been vetted, strained, filtered or sanitised: I want the facts.

Dr Watt—Well, Senator, he is not here.

Senator JOHNSTON—Why not?

Dr Watt—He is not here because we do not normally bring junior officers to these hearings.

Senator JOHNSTON—He is a junior officer in charge of \$140 million worth of contract!

Dr Watt—That is not necessarily true, Senator.

Senator JOHNSTON—Goodness me!

Rear Adm. Griggs—As soon as he had that conversation he had a discussion with Group Captain Barnes, who is here, and he could illuminate—

Senator JOHNSTON—Well, let's hear from Group Captain Barnes. Tell me, you are the superior officer for Squadron Leader Cole?

Group Capt. Barnes—Yes.

Senator JOHNSTON—Where is Squadron Leader Cole today? What is he doing?

Group Capt. Barnes—He is providing us with backup information from his workplace.

Senator JOHNSTON—From his workplace; so he is streaming these proceedings live now onto his computer and watching what is going on?

Group Capt. Barnes—Yes.

Senator JOHNSTON—And has he got any capacity to communicate with you in real time?

Group Capt. Barnes—He is communicating with one of my staff, who is outside now.

Senator JOHNSTON—Very good. So we will go through that process through you and your person outside, won't we, to talk to Squadron Leader Cole, because somebody—and you are about to tell me who—has decided that he should not appear. Who decided that?

Group Capt. Barnes—I do not know the answer, for sure.

Dr Watt—The decision was taken by me.

Senator JOHNSTON—Dr Watt, it has been glaringly obvious that to get to the bottom of this very smelly affair we needed to have original evidence. Why have you not brought one of the principal players to the table?

Dr Watt—I brought Group Captain Barnes and I brought Rear Admiral Griggs. As I said, we do not have a tradition of bringing junior officers to these hearings.

Senator JOHNSTON—How do we know what was said on this particular occasion, when you received advice about a probity adviser—

Dr Watt—I am sure that Group Captain Barnes can help.

Senator JOHNSTON—It is not his evidence.

Dr Watt—I think it is important, as you say, that we get to the bottom of issues and—

Senator JOHNSTON—I cannot do it with him!

Dr Watt—Senator, yes you can. I think it is important that we get to the bottom of issues and that we also ignore the innuendo.

Senator JOHNSTON—All right: let's see how far we get.

Dr Watt—All right.

Senator JOHNSTON—When was the meeting between the Clayton Utz lawyer and Squadron Leader Cole?

Group Capt. Barnes—It was a phone conversation and I cannot remember the exact date, so that information is coming now. What I can tell you is immediately after that Squadron Leader Cole approached me.

Senator JOHNSTON—When was that?

Group Capt. Barnes—I cannot remember the exact date. But on that day he came to me and he asked about the requirement for this probity adviser. He indicated to me that—

Senator JOHNSTON—So he had a talk to a lawyer and he is talking to you about a probity adviser?

Group Capt. Barnes—Yes.

Senator JOHNSTON—What did you say?

Group Capt. Barnes—I said on the basis of that advice that it would be unusual to use a probity adviser for a contract being raised against a standing offer panel and then I would go with that advice and we would not have a probity adviser. It was my decision.

Senator JOHNSTON—So there had been a discussion with your subordinate, between himself and a Clayton Utz lawyer, whose name was?

Group Capt. Barnes—I am sorry, I need to refer this as to whether—

Senator JOHNSTON—Of course it is.

Dr Lloyd—The Clayton Utz lawyer's name was Steven Power.

Senator JOHNSTON—Where is he?

Dr Lloyd—He is based in Canberra.

Senator JOHNSTON—Is he here today?

Dr Lloyd—No.

Senator JOHNSTON—Is it proposed that we have the privilege of being able to ask him why he recommended a probity adviser? It is a very long pause, Gentlemen.

Dr Watt—We are very happy to go through that if you would like to.

Senator JOHNSTON—So if the committee has to reconvene you will present him to us?

Dr Watt—Yes, we will.

Senator TROOD—Why was this conversation taking place between Mr Power and Squadron Leader Cole?

Group Capt. Barnes—I suppose it was a matter of trying to ascertain that we were not missing any aspects of the process, so to make sure that we were doing the acquisition in accordance with Commonwealth procurement guidelines.

Senator TROOD—Did this conversation take place at your request or at the request of the defence department or was Mr Power on line on something else?

Group Capt. Barnes—We had been in constant engagement with Mr Power for provision of legal support to develop the request for tender. This was one conversation as part of the provision of that advice or guidance.

Senator TROOD—I see.

Group Capt. Barnes—The requirement was just to make sure that we were not missing anything in the acquisition process. As for the issue with regard to the concern that everybody has here with Mr Charlton, Mr Charlton was divided from the headquarters by two degrees of separation so that was—

Senator TROOD—We are not dealing with that issue just at the minute. We are dealing with this conversation and we want to clarify the circumstances under which it occurred. Your evidence is that this was part of a series of conversations that you had had with your lawyers about this particular contract, is that right?

Group Capt. Barnes—Yes.

Dr Watt—Ongoing conversations in relation to any tender activity are not unusual.

Senator TROOD—I am not suggesting it was. I am trying to understand the process in relation to this particular one.

Senator JOHNSTON—Fortunately, I suppose, these contracts do not end up here on a regular basis.

Dr Watt—We would prefer that no contract ended up here.

Senator JOHNSTON—Exactly. The committee has received redacted copies of a number of documents and there are glaring omissions in the documents that Defence has presented to the committee which clearly would have conformed with and been material to the terms of reference. First of all, who takes responsibility for the redactions?

Dr Watt—I think the redactions were done by the defence department. Dr Lloyd might you want to talk about that. I do not think that they were as you say. Indeed you asked for and have been given, I believe, by now copies of one document with the redactions removed.

Dr Lloyd—Almost all the redactions were removed. It is the Australian Government Solicitor one.

Dr Watt—The reason the redactions have been removed is that when these documents were originally tabled in the parliament, in the estimates committee, we still had commercial issues about our tender and obviously we removed reference to Adagold and so forth because of sensitivities. Now that we have moved beyond that we have removed most of those redactions.

Senator MARK BISHOP—The AGS document I have in the material for the committee still has a lot of redactions in it.

Dr Watt—We provided documents yesterday. I believe we were asked on Thursday of last week whether the documents could be unredacted. We did go through a process of looking at those redactions and we provided them yesterday.

Senator JOHNSTON—Who provided them to whom, so we can track this down because we have not received them?

Dr Watt—We provided them to the committee secretariat, as far as I am aware. I will ask the young lady sitting behind me.

Ms Creet—The secretary of the committee emailed me on Thursday and we responded with a letter dated yesterday. We also provided the Adagold unredacted copy. I can certainly arrange for copies to be provided.

Senator JOHNSTON—So it is in the mail?

Ms Creet—No, it would have been emailed to the secretary.

CHAIR—Okay, perhaps we will get a copy of that.

Dr Watt—We will get a copy across to you now.

Senator MARK BISHOP—Are we talking about the AGS submission?

Senator JOHNSTON—And the Adagold statutory declaration.

Ms Creet—There are two reports. One we were providing with the redactions taken away.

Senator MARK BISHOP—Which one is that?

Dr Lloyd—That is the AGS legal and legal process review.

CHAIR—Not Adagold?

Dr Lloyd—I am not sure what document that is.

Senator JOHNSTON—It is a statutory declaration.

Dr Lloyd—My understanding is that we had a request for two documents.

Senator MARK BISHOP—Is that the Charlton statutory declaration we are talking about?

Dr Watt—No, I think the issue is an Adagold statutory declaration from Mr Clark. Is there any reason we cannot provide that?

Dr Lloyd—I would have to have a look at it.

Mr Brown—The only record that I am aware of, regarding Adagold, is a record of conversation with Mr Warren Clark, the CEO of Adagold. That had not been requested. That was a statutory declaration that he provided.

Dr Watt—And as far as we are aware, that has not been requested and we are happy to provide it.

Senator JOHNSTON—You provided it, but it is redacted.

Dr Watt—We are checking the documentation.

Senator JOHNSTON—I have it as a requested document, but I want to talk to Dr Lloyd first. Have you provided any advice to the secretary about public interest immunity in appearing before this committee?

Dr Lloyd—I have provided advice, yes.

Senator JOHNSTON—Can the committee have a copy of that advice?

Dr Lloyd—It has not been formal advice. It has been more that I have looked at documents. It has been more on the part of the agency rather than directly to the secretary.

Dr Watt—Dr Lloyd may have provided advice to the agency, I am sure he did. I do not recall any advice directly to me on public interest immunity. It does not mean Dr Lloyd did not give me advice.

Senator JOHNSTON—Dr Lloyd, isn't the preferable way of doing business with the committee to indicate that the documents are available but that the committee would wish to deliver them in camera? After all, that is what an in-camera hearing is designed to do: to protect the interests of the innocent bystanders in all of this, plus their commercial interests, as opposed to simply giving us redacted documents.

Dr Watt—I think the point to make about the redactions is that these documents were given to the committee as part of the estimates process.

Senator JOHNSTON—Redacted?

Dr Watt—Yes, but as part of the estimates process.

Senator JOHNSTON—I want to know what the department's understanding of redactions is? When we get redacted documents that touch directly upon the terms of reference it takes the matter no further. We might as well not have the documents.

Dr Watt—I think the point is this: they were given to you under the estimates process, before the committee's terms of reference.

Senator JOHNSTON—Sure, but we have them on this term of reference redacted.

Dr Watt—And when we have been asked to have them unredacted we have unredacted them.

Senator JOHNSTON—Why would you give them to us redacted?

Dr Watt—We gave them to you under the estimates process. We gave them to you before the commercial decision was final.

Senator JOHNSTON—But this is not the estimates process.

Dr Watt—I know, but the copies you have are not ones we provided to you this time around; they were provided as part of the estimates process.

Senator JOHNSTON—I know that, and those are public hearings, but you can ask for the documents to be given in camera if you have concerns. Isn't that the way to do it?

Dr Watt—I think here is the issue: until now, the documents we provided to you were part of the estimates process and were redacted. This is the first time we have provided you with unredacted documents. We have provided them when asked.

Dr Lloyd—The last version we provided still has some limited redactions and the letter offers to discuss the documents and whether you would like to receive them in full in camera.

Dr Watt—We will give you those documents in full in camera.

Senator JOHNSTON—The documents that I would like the committee to have, if I can go through them, are: the unredacted Philips Fox 2005 advice; any additional advice beyond the AFCD audit from the Inspector-General—

Mr Brown—Sorry, Senator, could I just make a clarification. As you are aware, I was up there yesterday, and there is a misunderstanding on the Inspector-General advice.

Senator JOHNSTON—It is you?

Mr Brown—No. He reports to me. The Inspector-General report is actually contained within my final probity review report.

Senator JOHNSTON—Is there a separate report?

Mr Brown—No. It is section 4.2 of my report. That is the work undertaken by the Inspector-General. There is no separate IG report. It only ever formed part of my report. I do not know where that information came from.

Senator JOHNSTON—Thank you for that. The Solicitor-General's report, totally unredacted; the Clayton Utz report, commentary, letter, or whatever it is, unredacted; the AFCD—

Mr Brown—The audit report.

Senator JOHNSTON—There is only one small bit redacted, but I would like that unredacted. I would like to receive a copy of the unsolicited offer that was forwarded to Defence in the month of February 2010; notes, details, records relating to the meeting of September 2009 between defence personnel—I want to know who was there—and Adagold personnel—I want to know who was there; any subsequent faxes or communications between those parties; I would like the freight capacity records on all work carried out by Adagold since they commenced the contract. I pause to note that Rear Admiral Griggs is using containers and pallets

interchangeably. We will come back to that. I would like the written advice from the MEAO in theatre as to delivery delay notifications, as set out on page 14 of the secretary's opening address; the documentation supporting the secretary's statements on page 17 relating to passenger loads and all of that material—all the factual material talking about the number of kilograms; and, lastly, I was going to ask for the legal advice from Clayton Utz regarding the probity adviser, but that is obviously non-existent, so we will just have the lawyer who gave that advice, if we can. I am sure my colleagues will want other documents.

Dr Watt—Senator, when would you like that by?

Senator JOHNSTON—We have plenty of time.

Dr Watt—Tell me what 'plenty of time' is.

Senator JOHNSTON—Probably before the end of April.

Dr Watt—I think we can do that. There is a fair amount of documentation there. We will dig it out.

Senator JOHNSTON—Group Captain Barnes resolved to not have a probity adviser before the issue of the tender. Did he discuss that with anybody up the chain of command?

Rear Adm. Griggs—He did not discuss it with me. Group Captain Barnes is probably best placed to answer that.

Senator JOHNSTON—So Group Captain Barnes is where the buck stops, so to speak, with respect to the probity adviser?

Group Capt. Barnes—Yes, based on that informal legal advice, I made my decision and I have not discussed it up the chain of command.

Senator JOHNSTON—I am very tempted to ask you, 'Would you reconsider your decision if you had the opportunity again?' but that is speculating, so we will not do that.

Group Capt. Barnes—The Defence procurement policy manual does not actually mandate the requirement for a probity adviser. It is to be considered, and that is indeed what we feel we did.

Senator JOHNSTON—Were you aware of the circumstances surrounding the 2005 contract?

Group Capt. Barnes—Yes, I knew of Mr Charlton. As I was about to say before, I had him segregated.

Senator JOHNSTON—Yes, that is right. Why did you have him segregated?

Group Capt. Barnes—One issue was that, because he had worked for Strategic Aviation and had departed there, I am told—it is hearsay, if you will pardon me—under unfavourable circumstances, it would have been unfair to him to have him come face to face with someone

from Strategic if he was involved in an operational part of the unit and actually out there handling one of those 20-odd missions that went through Brisbane.

Senator JOHNSTON—When did you become aware that there was potential for an issue with Mr Charlton?

Group Capt. Barnes—I was aware from early on in my time in the group and certainly before this process of who Mr Charlton was and what his background was.

Senator JOHNSTON—Roughly when would that have been?

Group Capt. Barnes—That would have been roughly in the August-September 2009 time frame. I came into the group in July.

Senator JOHNSTON—Good. Who told you about it? How did you become aware of the Charlton matter?

Group Capt. Barnes—It was probably through my chief of staff, the second in charge of the group, but I am really not sure.

Senator JOHNSTON—Which is whom?

Group Capt. Barnes—At that stage it was Wing Commander Roger Parr, but he had only been in the group for a short amount of time himself.

Senator JOHNSTON—Can you recall what he said to you?

Group Capt. Barnes—No, I am really not sure that it was he who provided me that advice. Certainly I have subsequently seen the emails from the majors that you referred to before as to how he was being managed and how he was being segregated from anything operational.

Senator JOHNSTON—How is it you came to see the emails from the majors?

Group Capt. Barnes—I really do not recall.

Senator JOHNSTON—They are up in Brisbane, aren't they?

Group Capt. Barnes—That is correct. There would have been an email forwarded to me. I would be able to find out when that email was forwarded to me.

Senator JOHNSTON—I would be obliged if you would do that. So in January 2010 you knew that he was being segregated from the process?

Group Capt. Barnes—Yes.

Senator JOHNSTON—In 2009 you knew that there was the potential for a problem?

Group Capt. Barnes—Yes, and it was being dealt with.

Senator JOHNSTON—Did you know that he was in the employ of Adagold?

Group Capt. Barnes—I do not believe that he has ever been an employee of Adagold.

Senator JOHNSTON—Sorry, let me rephrase that. Did you know that he had a commercial relationship, directly or indirectly, with Adagold?

Group Capt. Barnes—No, I do not believe I knew that at the time. I knew that he worked at Strategic Aviation, I knew that he had been involved in the industry and I knew about SkyAirWorld. That was public information.

Senator JOHNSTON—But you did not know about the Danish contract and you did not know about any matters he participated in in 2008 or 2009?

Group Capt. Barnes—No, I do not believe I knew about the Danish contract at the time.

Senator JOHNSTON—Did anybody else in your office? How many people are in your office, by the way?

Group Capt. Barnes—The joint movement group headquarters is within the larger Joint Operations Command headquarters. There are about two dozen staff there, but the vast majority of my more than 200 staff are spread around the country.

Senator JOHNSTON—So there are two dozen staff in your office in Canberra?

Group Capt. Barnes—What you have said is correct. The rest of the 200 spread are around the country. Two dozen are in Canberra.

Senator JOHNSTON—Have you ever personally spoken to or had any contact with Mr Charlton or Mr Davies?

Group Capt. Barnes—I have never met Mr Davies. I met Mr Charlton once for about 10 minutes in Brisbane.

Senator JOHNSTON—Tell me the circumstances of that meeting.

Group Capt. Barnes—It was not a meeting as such. It was almost a social activity. It was his promotion to major. There was no discussion about contracts, Strategic Aviation or any work matters.

Senator JOHNSTON—I am not suggesting that there would have been. When was that meeting?

Group Capt. Barnes—I am not sure. I would have to check.

Dr Watt—We can perhaps help you, Senator.

Group Capt. Barnes—I believe it was 10 July, but I am really not sure. I was in Brisbane for another reason. I was requested to come down and officiate at his promotion. Actually, it may have been about 1 July 2010.

Senator JOHNSTON—Who asked you to do that?

Group Capt. Barnes—It was my OC of Brisbane, Major Lara Bullpitt-Troy.

Senator JOHNSTON—So you flew up there to help celebrate his promotion?

Group Capt. Barnes—No, I was already there for a training activity. I was asked to do that while I was in Brisbane.

Senator JOHNSTON—What was the training activity?

Group Capt. Barnes—It was induction training for Air Force personnel posted into Joint Movement Group.

Senator JOHNSTON—Where was that being carried out?

Group Capt. Barnes—It was being carried out on the barracks at Enoggera, but not actually at the JMCO building, at another training facility elsewhere on the—

Senator JOHNSTON—You went over to the JMCO building to celebrate the promotion to major?

Group Capt. Barnes—Yes, that is correct.

Senator JOHNSTON—What time was that?

Group Capt. Barnes—I believe it was about morning tea time.

Senator JOHNSTON—What occurred in the celebration?

Group Capt. Barnes—It was saying some nice words about the service he provided as a reservist and pinning the rank on his chest. After that it would have been a cup of tea and just a normal social activity. We were probably together for about 10 minutes.

Senator JOHNSTON—Is it usual for a group captain to attend the celebratory matters surrounding the promotion of a person to major?

Group Capt. Barnes—It is normal for a more senior officer, a commander of a group, to officiate at a promotion ceremony; but when you say ‘celebrate’, a social celebration afterwards like in the evening that might involve drinks and dinner, not necessarily so.

Dr Watt—Which Group Captain Barnes certainly did not participate in. Indeed, I have watched CDF in Russell celebrate the promotion of everyone from a corporal all the way through to much higher things. It is a common thing in the military.

Senator JOHNSTON—Okay. Do you recall what was said at the ceremony?

Group Capt. Barnes—No. I would have kept it very broad, maybe even vague. It was the only time I have ever met the man, so anything that I would have said was just generic platitudes, if you like.

Senator JOHNSTON—Well, you knew who he was.

Group Capt. Barnes—Yes, I did.

Senator JOHNSTON—Did you not think: ‘So this is the great David Charlton’?

Group Capt. Barnes—To an extent, but just ‘this is the guy that has run an airline’. So, yes, I had that thought through my head.

Senator JOHNSTON—He has done more than that.

Group Capt. Barnes—Yes.

Senator JOHNSTON—Tell me what your understanding is of him.

Group Capt. Barnes—He worked as a reservist in the group. He deployed overseas. He also did some training immediately after that. He then departed from the group, at some point in time after the 2005 tender. He secured employment with Strategic Aviation.

Senator JOHNSTON—Successful tenderer.

Group Capt. Barnes—He then departed from there on, I am told, unfavourable terms. He formed his own airline. I am told he took a number of the Strategic Aviation people with him when he did that.

Senator JOHNSTON—Been involved in a television program?

Group Capt. Barnes—Yes. I remember even seeing that on television, of course at that time not knowing who he was. So, yes, I knew all that and obviously that his airline has gone broke.

Senator JOHNSTON—When did you become aware of all of that stuff about Charlton?

Group Capt. Barnes—I believe it was in about the August-September 2009 time frame.

Senator JOHNSTON—So notwithstanding all of that and that he had worked for the Joint Movement Group, and that this was probably one of the biggest contracts going around that you were going to deal with, you decided not to have a probity adviser?

Group Capt. Barnes—That is correct, because I had him completely separated from the contracting process.

Senator JOHNSTON—Do you know how many people he knows in your 200 people?

Group Capt. Barnes—Actually, Senator, we have researched that.

Senator JOHNSTON—When did you do that?

Group Capt. Barnes—In preparation for this activity.

Senator JOHNSTON—Very good, Group Captain; I am very impressed.

Dr Watt—You would be very surprised if we did not, Senator.

Senator JOHNSTON—Tell me what you did to research who he knew and who he had served with in your group?

Group Capt. Barnes—My chief of staff surveyed all of the officers commanding of all of the—

Senator JOHNSTON—How did you do that?

Group Capt. Barnes—By email.

Senator JOHNSTON—So you asked them?

Group Capt. Barnes—Yes.

Senator JOHNSTON—Is it not easier to look at their service record and find out when they were together with Mr Charlton?

Group Capt. Barnes—That is a way of doing it.

Senator JOHNSTON—And why did you not do it that way?

Dr Watt—Being in the same group or area it does not specify knowing.

Senator JOHNSTON—But it is a start.

Dr Watt—Not necessarily.

Senator JOHNSTON—It is more reliable.

Dr Watt—As you have heard from Group Captain Barnes, he has a group of a couple of hundred people scattered around the country. He met Mr Charlton once, incidentally, when Mr

Charlton was on his way out of the group. In fact, he may even have been out of the group at that stage.

Group Capt. Barnes—He had actually left. He came back over for that promotion.

Dr Watt—So effectively he was out of the group when Group Captain Barnes met him.

Senator JOHNSTON—What was the question you asked?

Group Capt. Barnes—What involvement have you had with Major Charlton in your time in 1 Joint Movement Group? The focus, I should also say, was somewhat on the people we knew he had worked with on tender evaluation boards and indeed his time in headquarters back in 2005.

Senator JOHNSTON—Why did you not ask: do you know and have you ever met or had a discussion with David Charlton in your service career? Why did not you ask that question full?

Group Capt. Barnes—I would think I would get a lot of false positives. There plenty of people I have met in the service but I have had nothing to do with them.

Senator JOHNSTON—Tell me how many positives you did get.

Group Capt. Barnes—Two.

Senator JOHNSTON—And how many false positives do you think you would have got?

Group Capt. Barnes—Probably a dozen. People may have met him on courses and so on.

Senator JOHNSTON—What with the positions of those two?

Group Capt. Barnes—My chief of staff because they work together when my chief of staff was posted previously into group headquarters and my previous contracting officer because they worked together in about 2003 when the other officer was in the group for about three months.

Senator JOHNSTON—Both very senior members of your team.

Group Capt. Barnes—So was he in terms of his rank—he is a major and that is the equivalent rank to any of my officers commanding of any of the JMCOs.

Senator JOHNSTON—Have you taken a statutory declarations from those two?

Group Capt. Barnes—No, I have not.

Senator JOHNSTON—Why not?

Dr Watt—Senator, I think you have people who have said they have met Major Charlton, as he now is, and might have had some association with him. Also, my understanding is that none

of them have had a significant association during the tender. Is that correct, Group Captain Barnes?

Group Capt. Barnes—That is correct, Sir.

Senator JOHNSTON—Of course they are going to say that. What else would they say? The point is, you have taken a statutory declaration from Charlton and a statutory declaration from Clark. You know that your chief of staff and your contracts manager know him and have served with him and you have not followed it up.

Dr Watt—I think there is a bit of a difference between the statutory declarations taken from Major Charlton and from Mr Clark. If we had not taken those statutory declarations, you and I both know—perhaps I am speculating—that you would be asking me why we had not taken those statutory declarations.

Senator JOHNSTON—I am asking you why you have not taken statutory declarations from these blokes.

Dr Watt—I honestly do not think it is of the same order of importance, particularly when Group Captain Barnes said that Mr Charlton was segregated from the real issue. The fact that he knew some people in Group Captain Barnes' headquarters is so far largely immaterial, unless there is something more to it. These people have said, as I understand it, that they had no significant contact with them.

Group Capt. Barnes—They have had no recent involvement with him other than years ago when they were together.

Rear Adm. Griggs—You may recall in the chief auditors executive probity of review he did outline the measures we took to see whether there had been any interaction between Mr Charlton and those personnel involved in the tender process, including e-mail scans and phone scans, those sorts of things.

Senator JOHNSTON—Bear in mind he has only recently found this information out, has seen it to Mark

Dr Watt—We have only recently asked people but we have done the due diligence on email scans, phone records et cetera long ago.

Senator JOHNSTON—Mr Brown, when did you become aware of the existence of potential previous contact between Mr Charlton and the two officers mentioned?

Mr Brown—I had no specific details about the two officers mentioned.

Senator JOHNSTON—So you have not become aware of them?

Dr Watt—When you say contact you are talking about a past association.

Senator JOHNSTON—Sure.

Dr Watt—No more than that.

Senator JOHNSTON—That is right.

Dr Watt—As I understand it, all Mr Charlton's email records were checked, his phone records were checked. These officers do not seem to appear as far as I am aware.

Senator JOHNSTON—When did you become aware that the chief of staff and the contracts manager had had contact with Mr Charlton in their service record?

Dr Watt—Had had past contact.

Senator JOHNSTON—Past contact—remote past contact.

Dr Watt—Very remote—

Senator JOHNSTON—Arms length contact.

Mr Brown—We became aware on 19 July when we interviewed the staff involved in the tender evaluation process.

Senator JOHNSTON—Where does it appear in the documents you have presented to us?

Mr Brown—It would be in our working papers—

Senator JOHNSTON—No, it is not in the documents you have given us.

Mr Brown—That is right, Senator. It is in—

Senator JOHNSTON—Why not?

Mr Brown—Because it was not pertinent to the actual investigation of the process. We looked to see how the process was run. We identified there had been contact. We have recorded it in our working papers but it was not pertinent to the overall process that we were reporting on.

Dr Watt—We would be very happy to give you those interview reports, Senator.

Senator JOHNSTON—Do you stand by your assessment that the past remote contact between Charlton and Group Captain Barnes's chief of staff and his contracts manager is not pertinent to this inquiry?

Mr Brown—These people have no involvement in the tender process.

Senator JOHNSTON—How do you know that?

Mr Brown—Because we inquired of them. We also know who—

Senator JOHNSTON—Did you conduct a formal interview of them?

Mr Brown—My staff spoke to the individuals—

Senator JOHNSTON—Now Mr Brown, you are an auditor, please.

Mr Brown—And we have a record of that conversation.

Senator JOHNSTON—Who conducted the—

Mr Brown—My staff involved in the audit.

Senator JOHNSTON—Who?

Mr Brown—There would have been either Mr Brinton or Mr Woods—

Dr Watt—Mr Brinton is here, I think, Senator.

Mr Brown—It was a discussion just as part of the audit review process.

Senator JOHNSTON—It was not a formal—

Mr Brown—No, it was not formal. Senator, if you can bear with me for a moment, this was an audit process; it was not a forensic investigation into criminal activity. What we are doing is reviewing the process—

Senator JOHNSTON—Aren't you involved in reviewing and auditing for fraud?

Mr Brown—No, we are reviewing the process that was undertaken—

Senator JOHNSTON—For fraud.

Mr Brown—No, no. At no point in time in the early phase of this was there any allegation of fraud. However, when it became apparent, on 2 September, about the issues pertaining to the 2005 tender, we immediately brought that to the attention of the secretary, who advised that we should pass it on to the AFP. It was not within my remit to investigate the fraud.

Dr Watt—Madam Chair, I think it is very important to distinguish between the 2005 tender, where we referred an allegation of fraud to the AFP as soon as it was brought to our attention, and the 2010 tender where, as far as I am aware, there is no allegation of fraud.

Senator JOHNSTON—We will come back to the 2010 revelation regarding the 2005 contract in a moment.

Dr Watt—We are happy to do so, Senator, but remember that we would like that to be in camera.

Senator JOHNSTON—Certainly. Mr Brown, the title of your branch is what?

Mr Brown—The Audit and Fraud Control Division.

Senator JOHNSTON—The Audit and Fraud Control Division?

Mr Brown—That is right.

Senator JOHNSTON—But this has not got anything to do with fraud?

Mr Brown—No.

Senator JOHNSTON—Why do you call yourselves the Audit and Fraud Control Division?

Mr Brown—Because within my department there is the Inspector-General's department who are specifically tasked with investigating a number of issues, which can include fraud.

Dr Watt—And they do investigate fraud issues, Senator.

Senator JOHNSTON—Who decided that there was no fraud involved?

Dr Watt—I think the issue is that we have not yet seen any evidence of fraud involved. If that changes then it will change. But we have not yet seen the evidence. We are not conducting a fraud investigation—

Senator JOHNSTON—Did you hear the evidence this morning from Strategic?

Dr Watt—I did, and I have read some of that evidence before. And I perhaps should not comment on the veracity of some of that evidence.

Senator JOHNSTON—And I expect you to take up a defensive position.

Dr Watt—I am not taking up a defensive position, Senator. I just do not think I should comment on it, unless you specifically question it.

Mr Brown—The review that we undertook was formulated on the basis that we want to identify if there are any reasons why the tender process should not proceed. The wording is subtle but it is important. We were looking for evidence of why it should not proceed. We were looking at the process that was undertaken in terms of the governance around the tender process. As Dr Watt has just intimated, there was no suggestion of fraud around the 2010 process. Again I want to stress that had there been any I would have immediately brought it to the attention of Dr Watt and I would have expected something to have been done about it.

Dr Watt—And there would have been something done.

Senator JOHNSTON—Why did you not interview Mr Aisen?

Mr Brown—That is a good question.

Senator JOHNSTON—I am glad I have asked one.

Mr Brown—I note the comments made by PricewaterhouseCoopers this morning. Our response to that was that we had received all the emails from Mr Aisen and we had seen all the allegations in the media by Mr Aisen. The time frame has been mentioned several times in various aspects of the work. In this case we were working to try to have a report delivered on the probity around the process of the tender evaluation so that the contract could be signed in time to establish a RIP, a relief in place, which is about moving a lot of our troops into and out of theatre. We were working to try to facilitate that. Coming back to the words I mentioned before, it was looking for reasons why the process should not proceed—not why it should stop, but why it should not proceed. Therefore in relation to Mr Aisen we had a record of all the emails and we had a record of all the allegations. At that point in time we deemed that there was nothing further that we could gain from him. It was a conscious decision. I certainly did not ignore the information, because it formed part of my scope of work.

Senator JOHNSTON—Are you telling me that in his emails and his statements he verified the source of his allegations?

Mr Brown—I cannot remember the specifics. I do not have them.

Senator JOHNSTON—It is pretty important, isn't it?

Mr Brown—I cannot remember the specific details.

Senator JOHNSTON—You would have asked him, just as I am asking you, 'Who told you that Charlton was involved?' You did not ask him that?

Mr Brown—We were looking at a process that was undertaken to ensure that there was probity around it. They had separated David Charlton from the process. I will mention this now: they had signed the conflict of interest. I got advice from Deloitte to say we needed to add that, in other words, bring it up to best practice, which we duly did. We sought to get that done. We acted immediately when that became apparent. So we were looking at the processes that they followed. As to the specifics of who did what, that is more associated with a forensic fraud investigation. I reiterate that we were not doing a forensic investigation.

Senator MARK BISHOP—Mr Brown, that is the heart of the issue. Why did you not simply ask the two witnesses this morning who told them that Mr Charlton had improperly provided information to their competitors which gave them commercial advantage? That is the heart of the issue.

Mr Brown—I am sorry, Senator. We are looking at the process—

Senator MARK BISHOP—I understand the process arguments you have been putting for the last two days.

Mr Brown—No evidence has been given that changes what we did.

Senator MARK BISHOP—It was in the press. It was on *The 7.30 Report*. Everyone knows we are talking about that.

Mr Brown—But that is 2005 and I am not looking at 2005.

Dr Watt—Could I perhaps make two points. It is important to remember that Mr Brown's investigation was about 2010, not 2005. That is the first point. Secondly, we were looking at the 2010 tender and we were looking on the basis that we had no evidence that Mr Charlton was in any way involved in the shaping of the tender, either setting the specifications or the decision making. He was in a box in Brisbane. He was not involved. That is the starting point. We confirmed he was not involved. As Group Captain Barnes said, we confirmed he was in Brisbane doing other things.

CHAIR—Mr Brown, who were Mr Aisen's emails actually directed to?

Mr Brown—The Inspector-General.

CHAIR—Did the Inspector-General respond to those emails?

Dr Watt—We will ask the Inspector-General.

CHAIR—Mr Bromwich, you received a number of emails from Mr Aisen?

Mr Bromwich—Yes I did.

CHAIR—Over what period of time?

Mr Bromwich—I think it was a period of several weeks ultimately. There was a bevy of them over a period of about a week and a half initially starting around 14 July.

CHAIR—At what period of time were these?

Mr Bromwich—If I could perhaps clarify bit of confusion around my title, firstly. Mr Aisen's first email was addressed to a Dr Ian Williams, who was an inspector-general previously but in fact performed the function that the Chief Audit Executive now performs, which includes both the audit and fraud control activities. Following the restructure a couple of years ago, my position was recreated at a lower level than that of Dr Williams but inherited the title of inspector-general. So, on receipt of Mr Aisen's initial email, I interpreted that, having addressed it to Dr Williams as inspector-general, his intent was really to raise those issues with the person who now has that function, which is the Chief Audit Executive.

If I recall correctly, after the initial emails, all of which were responded to and acknowledged, and after the secretary had directed the Chief Audit Executive to conduct his probity review, I sent an email to Mr Aisen explaining to him that the Chief Audit Executive now had carriage of this matter and that he should direct further correspondence to the Chief Audit Executive. He acknowledged and complied with that request but, if I recall correctly, continued to copy me in on the emails that he sent to the Chief Audit Executive. That, broadly speaking, was the process of interaction with me personally.

CHAIR—Were the emails responding to those of Mr Aisen a standard confirmation of receipt, acknowledging that they had been received, or was there a discussion about the content of the emails?

Mr Bromwich—No. They were more in the nature of a polite acknowledgement of receipt of his allegations. I cannot remember exactly at what point but, having determined that we would conduct a probity review, he was advised of that.

CHAIR—So at no point in time was consideration given to contacting him in order to have a meeting to discuss the basis of his issues and explore his comments further to ascertain whether they had any veracity?

Mr Bromwich—No. I will expand on Mr Brown's answer from earlier on. There was nothing in any of the communications that Mr Aisen had with us that indicated that he had source material beyond that which he had provided us. The nature of the concerns that he raised were by definition speculative and conjecture. He was putting together issues and events and posing questions to say, 'It just seems incomprehensible to me that Mr Charlton couldn't have had some involvement that advantaged Adagold in the tender process.' They were of that nature. Had there been any suggestion in any of the correspondence to us that he had further particulars to add to any of the information he had already provided—I stress that in the several emails that he sent he detailed his concerns quite comprehensively, to the point where the later emails were becoming repetitive in relation to the earlier concerns he had raised. Bearing in mind the time constraints that we were under, the judgment that we made at that time was that we really were not going to get anymore productive evidence out of speaking to Mr Aisen directly. We were focused on investigating the allegations that he had made.

CHAIR—Can we have a copy of those emails?

Mr Bromwich—I think they are the same ones that you have asked for from Strategic this morning, but Defence can supply the reverse end of those if you like.

CHAIR—Yes, would you provide a copy of the responses.

Mr Bromwich—Yes.

CHAIR—So, in summary, at no stage was there any request as to whether he had any concrete evidence to back up the suggestions or the observations he was making?

Mr Bromwich—I think, Senator, that if you read the emails you will understand my point. It was clear in the nature of the concerns that he was raising that there was no apprehension of any supporting evidence in relation to any of those matters. It was, if you like, that he was raising what he considered to be unexplained coincidences. Obviously we took seriously concerns that Mr Charlton may have had improper access to information regarding the tender and we took measures to examine his email records, his computer records. That was the support that my branch was, really, lending to the probity review because it required investigative techniques which I am accustomed to employing but which Audit does not normally get involved in. We examined Defence telephone records to establish whether or not there had been any contact between the phones that Mr Charlton would have had access to in his workplace and any known

numbers we were aware of which could be associated with, or give an indication of any improper communication with, any tenderer—including Adagold.

Senator JOHNSTON—Mr Bromwich, what is your background with respect to forensic investigations?

Mr Bromwich—I have been in charge of what is now the Fraud Control and Investigations Branch for about 4½ years. I do not have a formal background in fraud investigation.

Senator JOHNSTON—How would you categorise broadly the allegations contained within Strategic's emails?

Mr Bromwich—They had the potential to be fraudulent.

Senator JOHNSTON—Let us just pause there. 'They had the potential to be fraudulent.' You are aware of the size of the contract?

Mr Bromwich—Yes.

Senator JOHNSTON—How much was it, in your understanding?

Mr Bromwich—I think it was an annual contract worth \$60 million to \$80 million. I am not sure of the exact amount.

Senator JOHNSTON—Would the total, given the extensions—

Mr Bromwich—It was a sizable contract.

Senator JOHNSTON—It was \$140-plus million—a sizable contract.

Mr Bromwich—It could have been worth considerably less and, I assure you, it would have attracted my interest and concern.

Senator JOHNSTON—I am pleased to hear that. Potentially the allegations raised by Strategic were that there was fraud.

Mr Bromwich—If it had been established that Mr Charlton or anybody else had provided inside information to any of the tenderers then, yes, that could result in fraud-like—

Senator JOHNSTON—You have given me the assistance that I require in that you say that these allegations potentially adverted to fraud. What did you do with these allegations?

Mr Bromwich—I was lending support to the probity review by examining the evidence potentially available that might have given some insight into that. Certainly, to build on testimony given previously, had we at any stage either in the audit process or in the support that I was giving identified what I would call prima facie evidence of fraud—as distinct from merely

an allegation which, if true, could amount to fraud—I would have had that matter remitted to me in accordance with my responsibilities for fraud control.

Senator JOHNSTON—Let us just go through the steps. You received allegations that potentially could have adverted to fraud in this particular contract.

Mr Bromwich—Correct.

Senator JOHNSTON—You made that determination. Do you have different coloured files for the seriousness of the allegations you receive?

Mr Bromwich—It is standard practice, whenever we receive allegations, to put them through a process of assessment before we commit to what I would call an investigation level. That is quite a formal process in my organisation. Notwithstanding the fact that I run the Defence Whistleblower Scheme, where we receive reports and allegations of fraud on a daily basis, we try to evolve those reports into a level of concern before we approve what we call a formal fraud investigation. We had not achieved that threshold in relation to the examination of the concerns raised by Mr Aisen, and it never reached that threshold.

Senator JOHNSTON—Who determined whether it would reach the threshold?

Mr Bromwich—I guess because I was supporting the probity review with the commitment of my own resources I was aware of those elements of the investigation or the probity review which were looking at the potential for fraud. That would be my judgment.

Senator JOHNSTON—I am still a little hazy. You have the email allegations. You think they potentially could amount to fraud. You tell me that it did not get over the threshold but there was a potential for it to. How did we get to—

Mr Bromwich—Because we found absolutely no evidence to support any of the allegations.

Senator JOHNSTON—Did you go looking for it?

Mr Bromwich—We did.

Mr Brown—An example would be when the inspector-general did the review of the telephone calls and the emails. Had there been any indication of contact at that point I can 100 per cent guarantee you Dr Watt would have been the first person I would have spoken to.

Senator JOHNSTON—Did you do the inquiries?

Mr Bromwich—My director of investigations was responsible.

Senator JOHNSTON—Who is?

Mr Bromwich—Mr Jason Woods.

Senator JOHNSTON—And what is his qualification?

Mr Bromwich—He is a former New South Wales police detective but has been working as a fraud investigator for the Commonwealth for a number of years.

Senator JOHNSTON—Is Mr Woods here today?

Mr Bromwich—He is not here today.

Senator JOHNSTON—Mr Woods conducted an investigation at your behest.

Mr Bromwich—It was not an investigation. He was conducting inquiries on several fronts. I think it would be fair to characterise it as such. For example, I have an IT forensic capability. It was those staff who were acquiring and examining the records of Mr Charlton's email communications from within Defence and who were looking at the holdings on his Defence personal computer. Mr Woods was personally involved in interviewing Mr Charlton and Mr Clark. The reason for that was because we wanted those interviews to be properly structured, what I would call investigative interviews. Obviously that skill is a skill that resides within my area, so Mr Woods and Mr Brinton jointly conducted those interviews but the interview plan was constructed by Mr Woods in those instances. So we were lending that type of support. I personally examined the allegations relating to South African tender contract irregularities.

Senator JOHNSTON—We will come back to those in a minute.

Mr Brown—The reason Mr Brinton was involved in that was because he was on the audit side of the department. It was to provide continuity between the work that was being done by the investigative side and the audit side. It provided that insight and knowledge of what was going on at that point.

Senator JOHNSTON—So you have allegations from strategic that are potentially allegations of fraud on a large contract and Mr Woods goes out to have discussions with Mr Clark and Mr Charlton.

Mr Bromwich—We called Mr Charlton and Mr Clark in for interviews, yes.

Senator JOHNSTON—And who prepared their statutory declarations?

Mr Bromwich—The statutory declarations were initially drafted on the basis of the content of the transcripts.

Senator JOHNSTON—Who drafted them?

Mr Bromwich—I think it was Mr Woods.

Senator JOHNSTON—Mr Woods drafted their statutory declarations?

Mr Bromwich—He did an initial draft.

Senator JOHNSTON—My goodness me.

Mr Bromwich—With respect, we wanted to do that because we were keen to commit both of those individuals to certain evidence in those statutory declarations. They were then passed back to them in draft form. I think both gentlemen made some changes to those drafts. Then they were signed.

Mr Brown—Those declarations were produced from the recordings of those interviews. They were not taken from notes.

Dr Watt—And they did sign them.

Senator JOHNSTON—Sure. Who were they sworn before?

Mr Bromwich—Mr Clark's was signed before a solicitor.

Senator JOHNSTON—Do you recognise the name of the solicitor?

Mr Bromwich—I do not.

Senator JOHNSTON—Is he a solicitor in the employ of the Department of Defence?

Mr Bromwich—I do not know.

Senator JOHNSTON—Is there a stamp on the document indicating who the person actually is?

Mr Bromwich—Not as far as I can see.

Senator JOHNSTON—What about Mr Charlton's statutory declaration, which has been prepared for him by the Defence department?

Mr Brown—A point of clarification: it has been drafted for him, not prepared for him. There was an opportunity—and it was taken up—for him to review and change it.

Senator JOHNSTON—Drafted for him is even better.

Mr Bromwich—Mr Charlton's was witnessed by a warrant officer class 2.

Senator JOHNSTON—So Mr Charlton has had Defence personnel witness his stat dec. It is on Defence department paper?

Mr Bromwich—Yes, it is a standard-format Commonwealth of Australia statutory declaration.

Senator JOHNSTON—And it was typed up by Defence department personnel?

Mr Bromwich—It was initially drafted by Mr Woods, yes. As I said, it was framed around the transcripts of the interviews we conducted and designed to ensure that it encapsulated information that we considered to be important to have them sign a stat dec for.

Senator JOHNSTON—Has anybody ever asked Mr Aisen or anybody from strategic where the allegations come from?

Mr Brown—No.

Senator JOHNSTON—I appreciate the frankness of that answer. Is that the way, Mr Bromwich, you conduct potential fraud investigations?

Mr Bromwich—We would normally interview somebody making allegations.

Senator JOHNSTON—Complainants?

Mr Bromwich—Complainants. But it would depend on the circumstances. In this instance, I repeat, we were working to a very tight time line.

Senator JOHNSTON—Were you aware of \$1 million a week?

Mr Bromwich—I am not sure I ever computed it in those terms. Without wanting to sound flippant, my interest would be sparked at a much lower threshold than that.

Dr Watt—I think the point that Mr Bromwich has made is that there was an allegation of fraud and we have found no fraud.

Senator JOHNSTON—The question is: did you go looking for it?

Mr Bromwich—I think we went looking for whatever we could. If there had been any suggestion, indication or inference in any of Mr Aisen's numerous communications with us that he had further particulars or information that could assist us—and I go back to my earlier evidence that the inherent nature of his allegations made it clear that they were speculative and based on a coincidence of circumstances rather than necessarily relying on any further evidence. Indeed, I think that has been borne out by both the submission to this inquiry and strategic's testimony this morning. I certainly have not seen or heard anything that indicates to me there is further evidence—as distinct from further assertion—of Mr Charlton's alleged role in the tender process.

Senator FERGUSON—I have been listening carefully to what you have both been saying, and I thought Mr Brown said that he was not looking for fraud.

Mr Bromwich—It was not a fraud investigation. It did not ever trigger that threshold.

Senator FERGUSON—But you said there was the potential for fraud.

Mr Bromwich—Absolutely. All allegations start as a potential, but we do not necessarily commit to a full-blown investigation of those things unless under assessment we think there is

cause to do so. You are looking for probable evidence. We examined his email records. We examined his IT records. We looked for the potential of contact. We interviewed them.

Senator JOHNSTON—His private email records?

Mr Bromwich—No, we could not access those.

Mr Brown—This was not a criminal investigation, which as I am sure you appreciate would not give—

Senator FERGUSON—But yesterday we had evidence from Deloitte, who obviously do a lot of work for the Defence department—something like \$3 million worth of work last year, they said. You asked them to conduct not an audit but an examination of the process, which does not then require other standards to come into play and for which they were well recompensed to the tune of \$591,000. You then ask, in relation to the process that you put underway, PricewaterhouseCoopers to do a peer review, which they insisted was only a review. I understand that PricewaterhouseCoopers also have considerable contractual arrangements with the Defence department to the tune, they said this morning, of about \$1 million. If you are conducting a peer review or an examination, do you think it is wise to choose firms such as that who have a connection already with the defence department and a contractual engagement of \$3 million a year in one case and \$1 million in another. Wouldn't it have been wise to go somewhere else to conduct a peer review or an examination?

Mr Brown—I will take few minutes to answer this because you have raised some very important issues there. In relation to PricewaterhouseCoopers, they are actually our outsource co-partner. If I need specialised skills as part of the audit process, PricewaterhouseCoopers have a contractual arrangement with us through a standing offer panel to supply people at a rate and they do the work for me. They do it for me; they do it on my behalf. In relation to the peer review, I will give you a little bit of history on that. We were doing our process. Dr Watt was away at the time and I met with the acting secretary, Stephen Merchant. I was discussing the issue with him and his advice to me was, 'Look, Geoff, it may be worthwhile having someone else review your work to provide that independent review.' Cognisant of the time—and we are back onto the issue that we had the replacement of the troops coming up and we were trying to meet that deadline—it really was not something that I felt we needed to go out to a formal tender for. I wanted someone who was not involved in the audits that we were involved in to come and review my processes because I wanted an independent assessment, I wanted to make sure I was doing as thorough job as I could. I am not a long-serving public servant—not even two years yet—and I wanted that additional assurance.

I went and discussed it with PricewaterhouseCoopers in my office. They were there because they are normally working on jobs for us at any point in time. I took advantage of that. We had a discussion and I said to the partner at the time, Steve Baker, who appeared this morning, 'Can you construct a terms of reference for me? Whatever you think you need to do to complete the job and make a thorough review, please do it.' He responded to me with that letter to my assistant, David Anderson. I was aware of the content of that and they undertook the review. The review was done to provide assurance that there were no steps in the process that we were not following. We chose them because I could call on them immediately. I am sure the PricewaterhouseCoopers brand is worth a lot more than any one assignment to Defence, so I had

confidence that they would have employed Chinese walls to ensure that the person undertaking the review had not been working on audits in our area—indeed, I know that for a fact.

As to Deloitte's review, again, I went out and spoke to E&Y, who were conflicted out because they were doing a lot of work in DMO. KPMG were conflicted out because they were doing audits on Virgin and as one of the tenderers it would be inappropriate to have them review it. PwC had obviously done the probity review and that left Deloitte. Why do you take a big firm? They have the resource readily available. They have got a depth of resources.

Senator FERGUSON—I did not say you should not take a big firm. It is just that they do seem to have a lot contractual arrangements with Defence already.

Dr Watt—I think Mr Brown highlighted the import point. A question for any firm is: what is the brand worth? One issue about Defence is that no matter where you go, fortunately or unfortunately, lots of people have contracts with us. In the case of a major accounting firm, their business is their brand, not their contracts with us. If they felt there was a conflict of interest because of the contracts they had with us, they would have said so. They did not because their brand is worth much more than whatever current contracts they have. I think there is a point where there are only a limited number of service providers around Canberra or any other town. All users of services rely on the brand. You go to a large provider because their brand is worth a hell of a lot.

Senator JOHNSTON—Can you tell me the total cost of all of the inquiries that we have had into this matter?

Dr Watt—I will ask Mr Brown to do that.

Mr Brown—I will round this a little bit because I cannot remember the exact details. There is the \$591,000 for Deloitte. I think it is about \$20,000 for PwC and the AGS was—I can get that information for you.

Senator JOHNSTON—Was it \$67,000?

Mr Brown—Yes, about \$70,000.

Senator JOHNSTON—So about 600,000 all up?

Mr Brown—A bit more.

Senator JOHNSTON—Sorry, 700,000. In the Deloitte report, the first page virtually covers all of the limitations that they identify. Were you concerned that your consultant was telling you that they were acting under such extensive limitation in the review that they carried out?

Mr Brown—I am glad you raised the point because I was hoping to get onto this. The way these firms construct their submissions is usually to comply with the Australian accounting standards and ethics board. One of the requirements of that is that, for the purpose of clarity, for the avoidance of doubt, you not just refer to what you have been asked to do, but for the avoidance of doubt you refer to things that you would not be doing. In terms of structuring their

terms of reference, they came back to me with, 'This is what we're going to do and, just so you're clear, this is what we're not going to do.' From my point of view, I was happy because they had listed all of the things I had requested them to do.

I would also mention that on the evening of, I think, 8 September I had a meeting with the two senior partners from Deloitte in my office when they approached me about the time required to do the job. I hasten back to a comment I made earlier: I am not a long-serving public servant, and I needed to make absolutely certain as to the appropriateness of the review, the thoroughness of the review because this is an important issue, hence this meeting today. I advised the two partners that should they feel any need to go further, to take more time, to request further information, they were to do it. There were three chartered accountants sitting around that table, and I put a lot of store in that brand, Senator, it is what I trade on. To me it was extremely important that they be allowed to have unfettered and complete access to the documents.

Senator JOHNSTON—So you say that they told you what the scope of the work would be?

Mr Brown—No, I gave them a terms of reference and they wrote back to me confirming the terms of reference and included in that terms of reference, for the avoidance of doubt, what they would not be doing.

Senator JOHNSTON—What they would not be doing?

Mr Brown—Yes, which I had never mentioned with them anyway.

Senator JOHNSTON—So they identified the constriction of the terms of reference in terms that you accepted?

Mr Brown—No, they did not constrict the terms of reference at all.

Senator JOHNSTON—But they told you what they would not be doing.

Mr Brown—But it was not included in my terms of reference.

Senator JOHNSTON—That is the point I am making.

Mr Brown—I had a terms of reference that I sent to them, a scope, and they came back to me reiterating, dare I say almost verbatim, what I had asked them to do and then went on and added further information, which is standard practice for accounting firms. Again, it is for the avoidance of doubt; it is to ensure clarity. In this case, it was even more important because they were critically aware that their report may very well end up in the public domain. Again, you do not want people drawing conclusions from a report that are inappropriate.

Senator JOHNSTON—All right. So you were perfectly happy with them limited to reading documents, reading interviews and listening to interviews performed by others?

Mr Brown—Yes.

Senator JOHNSTON—So they were not to have any sole or independently sourced material before them?

Mr Brown—If they needed to they could have got it. They deemed in their scoping that—

Senator JOHNSTON—They have outlined the limitations.

Mr Brown—Yes, that is right.

Senator JOHNSTON—So naturally they are saying, ‘We will not be doing this.’ And you took no issue with that?

Mr Brown—No, they were relying on the work that we had done remembering—I keep coming back to this—there was a replacement of the troops in place. We have discussed in previous times, in other places, about the timing issue of this. We were trying to get this work completed in a time frame that facilitated the signing of the contract so that the Commonwealth was not exposed to additional costs through an interim contract. Therefore, they relied on our work.

Dr Watt—As you have heard from Mr Brown, it was also made clear to Deloitte’s that if there was anything further they needed to do they should do.

Mr Bromwich—Just to clarify, there is no suggestion that that particular limitation was set out by Deloitte at the outset of the commissioning of the work. It was a limitation that they expressed in their report at the end of the process, when they had formed a view that they did not need to interview those individuals and that they could rely on the Defence product.

Senator JOHNSTON—You see, they do not say that.

Mr Bromwich—No. I am just clarifying for you because of what Mr Brown was saying earlier.

Senator JOHNSTON—They do not say that.

Mr Bromwich—That was a limitation from the outset.

Senator JOHNSTON—Mr Brown, you are perfectly happy with their report incorporating and you are satisfied, notwithstanding those limitations.

Mr Brown—I am very happy with everything, Senator.

Senator JOHNSTON—They said to you:

We believe that the statements made in this report are accurate, but no warranty of completeness, accuracy or reliability is given in relation to the statement and representations made by, and the information and documents provided by Defence personnel. We have not attempted to independently verify these sources.

Are you happy with that?

Mr Brown—Yes, I was happy with that.

Dr Watt—From memory, they had records of interview and so forth. They need to verify the sources.

Mr Brown—Senator, they had full and unfettered access to any documents that they needed, and I made that claim to them on the evening of 8 September.

CHAIR—Mr Brown, I am mindful of the time. I am going to go briefly to Senator Bishop and then to Senator Forshaw, and then there is another matter that we are going to deal with very briefly.

Senator MARK BISHOP—I want to go back to the issue before last. You have told us that costs are somewhere around \$700,000 to date.

Mr Brown—I have the exact amounts with me.

Senator MARK BISHOP—Okay.

Mr Brown—The AGS review was \$74,203, the Deloitte review was \$519,820 and the PwC was \$20,625.

Senator MARK BISHOP—What is the aggregate?

Mr Brown—I am an accountant!

Senator MARK BISHOP—Okay—say, \$600,000 or \$700,000. Plus or minus \$700,000 has been spent so far on a set of reviews, we have had a Senate inquiry going for two days, there has been extensive questioning at estimates, there are something in the order of 25 or 35 officials supporting Defence in all its investigations. I see Mr Krallis is here again this morning—he gave evidence yesterday; he is here today—so Deloitte is still giving advice to the department on matters associated with this.

Mr Brown—Point of clarification: no, they are not. Mr Krallis is here of his own volition.

Senator MARK BISHOP—I see. Mr Krallis is interested, then. Complaints have been received as to the tender process. You have set up a wide set of inquiries. You have done a heap of investigatory work, which Mr Bromwich has outlined, inside the department: emails, phone calls—the lot. No hard evidence has emerged which would warrant lifting up from inquiry to fraud investigation. My question is this because this is the one thing I do not get in this inquiry: why did you not just at the outset, or halfway through, send a seasoned investigatory officer down to Strategic and ask Mr Aisen and the other fellow who gave evidence this morning what the evidence was that enabled them to make such serious allegations? Those serious allegations have led to this whole business, and I do not get why we did not send an experienced copper down there and ask: ‘What’s your argument? What’s your proof?’

Mr Brown—Twenty-twenty hindsight is a wonderful thing, and I wish I possessed it. But at the point in time that I was making the decisions and I was briefing Dr Watt, and Mr Merchant and Mr Bromwich and I were discussing it, we understood that allegations had been made. I want to reiterate that the 2005 issue was immediately referred. But in relation to 2010, our view was that it was supposition, it was accusation and the best outcome, and my recommendation to Dr Watt at the time when I met with him, was that we undertake immediately a probity review of the process.

Senator MARK BISHOP—I suspect, Mr Brown, looking at all the evidence again, that you are right. There is no hard evidence. I suspect no hard evidence is going to be available. But with 35 officials involved in your unit supporting your work we have probably spent the best part of a million dollars.

Dr Watt—There are two questions. Firstly, had we interviewed Mr Aisen it is pure speculation as to whether any of this would have changed—and I do not know whether it would have or would not have; I really do not.

Senator MARK BISHOP—If you sent down an experienced investigator and he could not give you supporting information, wouldn't the recommendation come up 'no further activity'?

Mr Brown—With my background and my experience, my advice would be that we should be reviewing this contract.

Dr Watt—We would have, in all likelihood, still reviewed it because of two things about the inquiry. One is the fraud issue. The other thing is that there were serious questions being asked about the tender that did not relate to fraud. We would have felt we had to go through a review process regardless. Remember the various things we have looked at in the review process that have not been discussed today. We have not heard much about South Africa; we have not heard much about a number of other things. They have all dropped by the wayside. We would still have probably had to do a great deal of work because of the widespread arguments that there were some problems with the tender, even if we had interviewed Mr Aisen. I do not think we would have been spared that. Whether we would have quite finished up where we are now, is speculation.

The other point to make is that hindsight is a wonderful thing. We found no evidence of any fraud in the work we did. You can say, 'If you had looked at it differently you might have found something different, or quicker.' I do not think we would have found anything different. Had there been any evidence you can be assured we would have taken it to the AFP immediately.

Mr Brown—I think the reviews have highlighted some issues. We have spoken previously about my role in Defence, coming from the private sector, and what I look to bring to the organisation with the experience that I have had in the companies I have worked with. We have made a number of recommendations which have been taken up—one of which is a critical one: the development of a risk matrix at the front end. There are a whole lot of additional things that are referred to at the back of Dr Watt's opening presentation. We used the standard Commonwealth documents for the conflict of interest. Deloitte had some very sound and pointed advice; we have made those changes. I would argue and contest that while it has been an expensive exercise—there is no question about it—there has been and will continue to be

significant changes to the way we do business to ensure the robustness and the independence of the processes, and the governance around them. What is the cost? On this occasion it has cost us close to a million dollars—\$700,000. It is improving the process.

Senator FORSHAW—I was going to ask the same question that Senator Bishop just asked. You talked about hindsight and 20:20 vision. I am somewhat perplexed about that because it seems to me as a matter of straight logic—and you are all experienced people—that the first thing you would do would be to endeavour to test the veracity of the allegations. If this was a matter before ICAC or any other investigatory body in the police, that is what they would do.

I preface my next question by indicating that I am not putting this as any criticism: in the answers to Senator Ferguson's questions about peer review and your evidence there, in a similar set of circumstances would consideration be given to the Audit Office undertaking an analysis or a performance review on the tender process? I appreciate the way the Audit Office works; it does have to outsource, and it would probably outsource to some of these firms anyway.

Dr Watt—I did give it some consideration. I did not document it so I cannot say that I wrote it down. So the answer is that I did give it some consideration. I have worked with the Auditor-General over the years and have a high respect for him. We were in Finance together. The first reason for the answer was 'no', because the Auditor-General normally only accepts inquiries that are agreed by the JCPAA—that is the first point. I do not know if he has ever accepted an inquiry from a portfolio secretary that has not been through the JCPAA.

Senator FORSHAW—They do accept inquiries and recommendations from other committees of the parliament, but that is a slow process.

Dr Watt—Sometimes from ministers as well and I know sometimes from the Prime Minister where over the years things have been important but I am not sure. First of all, it would be extraordinarily unusual to do it. Secondly, the time exercise on us was such that we were anxious to get a relatively speedy outcome. The new Auditor-General has due processes to go through. He is an officer of parliament. He has to see those are done—very thorough—but he grinds slow sometimes. Thirdly, in terms of lessons learnt, I always expect the Auditor-General to come in, come through and do the review afterwards. I am sure he will. I am sure he will do it either as a result of a JCPAA recommendation, a committee recommendation or no motion. I figured we would get the lessons learnt one way or another. I think he might be able to find a few things we need to do better. I think we have found a few things we need to be better, but the one point I would emphasise is: there were no fatal flaws in the conduct of the tender.

Senator FORSHAW—I anticipated your response to be that and I understand, given my own experience on other committees, that that would happen.

CHAIR—Thanks very much. I am very mindful of the time, and committee members have other business that they have to attend to. I note your requests for a number of documents to be presented. Whether we revisit this will become apparent as we receive that documentation, so thank you for that. There is one other matter that has been brought to my attention that I consider to be a particularly disturbing matter, and that is that we have been contacted by a witness who provided evidence in camera yesterday. That witness has advised that after nine o'clock last night they had two calls from the ADF. It is of great concern to us because clearly the privilege

of being able to provide evidence in camera is there for a very good reason. This person has confirmed that they did not speak to any individual when they came to the hearing and in fact made themselves scarce before they provided evidence in the hearing. I would like to know, Dr Watt, who was the individual or individuals who attempted to contact this witness last night from the ADF.

Dr Watt—I was made aware of this a little while before I walked into the hearings this morning. I think Rear Admiral Griggs might be better placed, and then I might say something.

Rear Adm. Griggs—My understanding is that Group Captain Barnes contacted the witness.

CHAIR—Firstly, how did Group Captain Barnes know that the witness was giving evidence?

Rear Adm. Griggs—I am not aware if he did or did not; I do not know that.

Dr Watt—Perhaps we might need to clarify that with Group Captain Barnes.

CHAIR—Could you seek clarification of that? Group Captain Barnes, why did you contact the witness?

Group Capt. Barnes—There was some information that I was asked to try and find—information on file. I did not know which companies had presented yesterday. I was focused on the timetable for today, so when I rang I had a joke over the phone with him.

CHAIR—Could we respect the privileges and not use names, please. This is the whole point of us being able to provide in camera evidence.

Group Capt. Barnes—My apologies. I did not realise whether that person had or had not provided evidence in camera when I started the phone call. Because I have spoken to this person before, I made a joke about how I would be doing tomorrow what he did today, and then he questioned how I would know that. Then I realised that it was a different company that presented rather than him. It was an error on my part. I did not know that he was or was not presenting. Anyway, we continued on with the conversation in order for us to try and find the information related to the complaint so we could respond to the complaint. The problem was that the information that I had been given to chase up was not very clear as to what the nature of the complaint was, and obviously I wanted to try and resolve the matter and identify the situation. So it was a mistake on my part. I did not realise that the information was given in camera or not in camera.

Dr Watt—I think what Group Captain Barnes is saying is he did not know the person appeared.

Group Capt. Barnes—And I apologise.

Senator TROOD—What about the second call?

CHAIR—That is right: I understand that there were two calls actually made.

Dr Watt—Now you have an advantage over me, Madam Chair.

Group Capt. Barnes—That is when I got information that the Director-General, Legal Services, had been involved. That is when I thought that what had happened was that it was actually as a result of information being sought as the AFP investigation, and I rang him back and said, ‘Look, again I apologise, but this is where the question came from, so it may not have been to do with the inquiry.’ I felt the need—

CHAIR—So the preceding conversation was because—

Group Capt. Barnes—Was because I thought that the information actually was not to do with the Senate inquiry and I just was trying to ring him up to appease his concern. I apologise for making that call at all—the first call.

CHAIR—You made these calls late last night.

Group Capt. Barnes—Yes, I did.

Senator FERGUSON—Only one?

Group Capt. Barnes—No, I rang him back.

Senator FERGUSON—That is the second call?

Group Capt. Barnes—Yes.

Dr Watt—As I said, I think Group Captain Barnes is telling us that he did not know about the witness being here. He was looking for some information and went back to the 2005 tender for clarification; it went back to the tender debrief that was given after 2005. He rang the witness without knowing who he was, discovered during the course of the conversation that he had appeared, and was then sequentially embarrassed.

Group Capt. Barnes—I got that company and one of the not in camera presentations that was given yesterday mixed up.

Senator FERGUSON—Chair, could I suggest that it probably needs to be sorted out with the person concerned and you and the defence department are the only ones that can do it.

Dr Watt—I would be happy, if I am allowed, Madam Chair, to apologise on behalf of the Defence organisation.

CHAIR—I think a significant level of assurance needs to be given to the individual concerned.

Dr Watt—I will see that is done.

CHAIR—Thank you very much.

Dr Watt—I wonder if I take a minute for 05 and 06 in camera. Can I do that?

CHAIR—Unfortunately, Senator Johnston has gone—

Dr Watt—I really just want to say three sentences, if I can, because there is a misapprehension about 05 and 06.

CHAIR—If you could keep it fairly brief, that would be good.

Dr Watt—I will keep it very brief.

Evidence was then taken in camera

Committee adjourned at 1.19 pm