



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND
AUDIT

Reference: Community education and information programme

WEDNESDAY, 17 MARCH 1999

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

INTERNET

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

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

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Wednesday, 17 March 1999

Members: Mr Charles (*Chair*), Senators Coonan, Faulkner, Gibson, Hogg, Murray and Watson and Mr Andrews, Mr Brough, Mr Cox, Mr Georgiou, Ms Gillard, Mr Griffin, Ms Plibersek, Mr St Clair and Mr Somlyay

Senators and members in attendance: Senators Coonan, Faulkner and Hogg and Mr Charles, Mr Cox, Mr Georgiou, Mr Griffin and Mr Somlyay

Terms of reference for the inquiry:

To:

- review government information and advertising arrangements to assist in determining appropriate guidelines for taxpayer funded programmes;
- examine whether the legislative provisions of the appropriation Bills governing the use of the Advance to the Minister for Finance and Administration ensure appropriate scrutiny where Parliamentary and general public interest indicate a matter is likely to be contentious;
- review the guidelines for the assessment of requests for copyright of Commonwealth developed material, particularly when such material may be used for party-political purposes during an election period; and
- review related matters raised in the Auditor-General's *Audit Report No. 12, 1998-99, Taxation Reform - Community Education and Information Programme*.

WITNESSES

BARRETT, Mr Patrick Joseph, Auditor-General, Australian National Audit Office	2
BARTOS, Mr Stephen, General Manager, Budget Group, Department of Finance and Administration	48
BEASLEY, Mr David, Director, FIRM Team, Department of Finance and Administration	48
BELCHER, Ms Barbara, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet	36

BROWN, Mr Roger William, Assistant Secretary, AusInfo, Department of Finance and Administration	63
COCHRANE, Mr Warren John, Group Director, Performance Audit Business Unit, Australian National Audit Office	2
DAVIES, Mr Richard, Senior Communications Adviser, Government Communications Unit, Department of the Prime Minister and Cabinet	36
HAGAN, Dr James, General Manager, Commonwealth Treasury	16
HELGEBY, Mr Stein, Branch Manager, Budget Coordination, Department of Finance and Administration	48
HENDERSON, Mr Alan Gilbert, Executive Coordinator, Government and Corporate Group, Department of the Prime Minister and Cabinet	36
LEWIS, Mr Michael Kenneth, Executive Director, Performance Audit Business Unit, Australian National Audit Office	2
MACPHEE, Mr Ian, National Business Director, Performance Audit Business Unit, Australian National Audit Office	2
SMITH, Mr Greg, Executive Director, Commonwealth Treasury	16
WILLIAMS, Mr Gregory Malcolm, First Assistant Secretary, Government Communications Division, Department of the Prime Minister and Cabinet	36
WRIGHT, Dr Diana, General Manager, Resource Management Framework, Department of Finance and Administration	63

Committee met at 10.10 a.m.

CHAIR—The Joint Committee of Public Accounts and Audit will now take evidence as provided for by the Public Accounts and Audit Committee Act 1951 for its inquiry into the Community Education and Information Programme. I welcome everyone to this meeting this morning. The conduct of the Community Education and Information Programme before the last election attracted some controversy, which resulted in an audit by the Auditor-General and ultimately in this inquiry. It should be noted that in his audit report the Auditor-General concluded that in conducting the CEIP the government acted legally and officials acted ethically. It should also be noted that the Privacy Commissioner made a finding that any legislative breaches that occurred were technical in nature. However, none of the findings have been tested in the courts, and the JCPAA is not a court of law.

Controversy aside, the audit of the CEIP raised a number of broader issues, and it is consideration of these by the committee that may lead to improvements in the management of the Commonwealth resources. These issues surround the arrangements and guidelines which assist those responsible for the government's information and advertising arrangements. The Auditor-General has suggested a series of principles and guidelines in his audit report, and these will be tested in the inquiry.

The committee will also examine, in the context of the CEIP, the provisions governing the use of the Advance to the Minister for Finance and Administration. The AMFA allows money to be released for urgent and unforeseen expenditure and has been reviewed by an earlier Public Accounts Committee in 1988. It is timely, therefore, that the committee is revisiting the guidelines for the use of the AMFA.

The final issue raised by the Auditor-General and of interest to the committee is the assessment of requests for copyright of Commonwealth developed material. Current guidelines available to Commonwealth officers focus mainly on whether the material is to be used for commercial purposes and give little guidance when the material is to be used for other purposes.

Today, after the Auditor-General, the committee will receive evidence from Treasury, which was the agency responsible for the CEIP, and then the Department of the Prime Minister and Cabinet will appear. PM&C is the department responsible for government information and advertising arrangements. This afternoon evidence will be given by officers from the Department of Finance and Administration, which is the department responsible for the administration of the AMFA. The hearing will then conclude with witnesses from AusInfo, the agency within DOFA responsible for the Commonwealth's copyright concerns.

Before swearing in the witnesses, I refer members of the media who may be present at this hearing to a committee statement about the broadcasting of proceedings. In particular, I draw the media's attention to the need to fairly and accurately report the proceedings of the committee. Copies of the statement are available from secretariat staff present at this hearing.

[10.14 a.m.]

BARRETT, Mr Patrick Joseph, Auditor-General, Australian National Audit Office

COCHRANE, Mr Warren John, Group Director, Performance Audit Business Unit, Australian National Audit Office

LEWIS, Mr Michael Kenneth, Executive Director, Performance Audit Business Unit, Australian National Audit Office

MACPHEE, Mr Ian, National Business Director, Performance Audit Business Unit, Australian National Audit Office

CHAIR—Welcome. We have, of course, received various information and submissions from the Audit Office and we have also had a private briefing. Do you have any further documents or additional material you wish to make available now, and do you have a brief opening statement you would like to make before we start asking you questions?

Mr Barrett—I do not think we have any additional material other than that which we have provided since the last time we spoke on this matter. I do have some comments that I would like to make. I note your comment about being brief, but I think it is important to put this inquiry in some perspective.

As you are aware, at the end of October last year I tabled Audit Report No. 12, *Taxation reform: community education and information programme*, which we now call CEIP for short. In view of the significant public interest in this matter at the time, I agreed to conduct a limited scope performance audit of the CEIP. As background, the Leader of the Opposition in the Senate, Senator Faulkner, requested me on 18 August last year to conduct an audit of funds expenditure on the programme. I went back to Senator Faulkner on 21 August to say that I would seek legal opinion and explanations of the issues as a basis for determining whether I should proceed to a full audit in the public interest. Latterly on 7 September I advised this committee, the Prime Minister, the Leader of the Opposition and Senator Faulkner himself that I had decided to proceed to a limited scope audit. I had expected at that time that it would not take very long to do but reminded those interested that under section 19 of the act agency officials were able to have up to 28 days in which to provide any written comments on the report. However, I would be seeking from the chief executive officers of those agencies a response as soon as possible so that we could get the report completed in a reasonable time period.

I believe that I should draw again to the committee's attention the fact that the Auditor-General Act makes provision for me to have regard to the audit priorities of parliament as determined by this committee. I pointed out in correspondence that we value the committee's views on possible audit topics and that we have long had discussions with the committee on our audit programme. I recognise that there may be circumstances leading to a request for audit consideration at particular times with varying degrees of urgency, but I did suggest to Senator Faulkner that as a matter of course he consider discussing potential topics at least

with the chairman of this committee in the first instance. Of course, that would be my preferred *modus operandi*.

I just reiterate that, as this committee would know, we do go to considerable trouble to discuss with all interested parties a programme of audits, bring that to the committee for any suggestions that they may have and harnessing any intelligence they have from other committees and members of parliament which they have looked at themselves to decide whether or not this committee would suggest to me that I should take up particular topics for audit. That seemed to me to be a very wise thing to have done as part of the new legislation. Nevertheless, in the circumstances, as I said, after determining the public interest in this matter, I proceeded to a limited scope audit.

The issues actually raised in the audit were the legality of the use of taxpayers' funds on CEIP, the use of the Advance to the Minister for Finance and Administration to fund expenditure on CEIP, use of public servants to staff a telephone call centre, use of Commonwealth copyright for party political purposes, the alleged combination of CEIP material with electoral advertising and the conduct of Commonwealth sponsored mail-outs, and the use of confidential pensioner and veterans names and addresses for dissemination of party political material.

In short, as you indicated at the outset, Mr Chairman, the Australian National Audit Office found that the government's advertising campaign was legal and that the officials acted ethically. However, given a range of public views that were put in the media and elsewhere over the perception of the use of public funds for party political purposes, I indicated in the report that this was really a matter for the parliament and the government to resolve as it impacts directly on the interaction and the relationship between the government and the parliament—in other words, it really was not a question for an audit office or for bureaucrats.

Also, if parliament had concerns that the use of the Advance for the Minister for Finance and Administration could be used to circumvent appropriate parliamentary scrutiny, this was again a matter for parliament and the government to resolve. In fact, I am very pleased to see that the committee has decided to conduct an inquiry which will consider these issues.

In the interests of brevity, I will not go on to some of the other issues, which no doubt we will canvass, but I will mention the guidelines we put forward for the consideration of the committee or parliament or government. Interrelated with that is that the guidelines, depending on what they contain, may have implications for the use of the Advance for the Minister for Finance and Administration and, as you rightly said, the issue of copyright, which we suggest needs to be looked at in terms of appropriate guidelines. We await your questions.

CHAIR—On this issue of political and party political, do you or any of your colleagues have a view on what you would consider an appropriate universal definition?

Mr Barrett—No, the guidelines themselves have an indication of the elements that may prevail in circumstances that would indicate that advertising is more likely to be party political than political in nature, and they go to tone, content and the nature of the

environment in which the advertising is made, et cetera. In that respect, whatever guidelines parliament or the government may decide on—if indeed there are to be guidelines—we suggest that, as much as possible, a distinction be made between what is broadly political and what is party political in tone and content. Certainly, anything that could be perceived to advantage a political party would, by definition, be party political. But, as our audit office colleagues in the United Kingdom have observed, any particular programme that is advertised as part of letting the general public know the attributes and wisdom of implementing that particular programme adds to the advantage of the particular incumbent government and the party or parties that form that government.

Clearly, it is very difficult to make a decisive distinction, but I do think that it is not beyond the capabilities of a group, particularly a parliamentary group, to decide, in a commonsense manner, about tone and content and whether something is perceived to be party political as opposed to broadly political in nature.

CHAIR—The Department of the PM&C supported your intention as suggested in the principles and guidelines. They did draw attention to the very real difficulty of interpretation and they cited several examples: measles immunisation advertisements might not be seen as unbiased, explicit antismoking advertisements definitely might not be seen as objective and any campaign to promote the understanding of a government policy could be regarded as not being free from partisan promotion. Do you have any views on those criticisms?

Mr Barrett—I do not take them as criticisms, I take them as sensible observations. In fact, I think we refer to issues such as health and security in the report. Clearly, areas of national interest are where—

CHAIR—Is not tax?

Mr Barrett—Yes, but in terms of immediacy and whether it is identified with a particular party or not. This is the question. The analogy that we intimated in the report is one that I think is apt in this case and that is what has, in the past, been green and white papers. Green papers set out an intended policy and include options. They are then subject to parliamentary and public debate, et cetera. A white paper, on the other hand, is a clear intent of the policy of the government of the day. Whether it was in the process of being implemented or debated in parliament, it certainly was the basis for any legislation. I would certainly make a distinction between a particular programme that was to be debated as to its policy content and the options for its delivery and one that the government had committed itself to and was putting legislation into the parliament.

CHAIR—I have one last question and then I will let my colleagues have a go. Following on with that issue, explicit antismoking advertisements might not be seen as objective. Hypothetically, one political party could support an antismoking campaign and another might not support it. In that context, would the health issue be seen as not political?

Mr Barrett—You are really asking me to step into the shoes of politicians here, and that really is not my job.

CHAIR—Is that then the point, that what you were trying to say in the audit report is that the parliament itself is the only vehicle for deciding whether an issue is political or party political or not political at all?

Mr Barrett—I know it is not definitive, but I come back to the issues about tone and content and the advantage to a particular party. In many cases it would be reasonably clear to people of goodwill and could be defined as such. It is clear that, if there were a national interest matter or a health scare, no-one in this parliament or the bureaucracy would deny that the government should be out there advertising that something should be done. It may be an urgent immunisation programme or something of a quarantine interest. No-one would object to ensuring that the public has full information and knowledge. The immediacy of the event also determines in part that question as to whether it is perceived to be political or party political in nature.

CHAIR—Are you really saying that we could codify a set of rules and regulations surrounding this issue?

Mr Barrett—No, we are not saying that. In fact, that is the reason we have gone for the kind of guidelines that we have. In most of these areas it does depend, as I said, on people of goodwill—I do not have a better term—to make decisions under guidelines of this kind that may suggest it would be better in these particular instances not to proceed. Alternatively, the decision may be to proceed because it does not offend, is a matter of public interest and the political content, which it clearly has, is not of a kind we should not necessarily see as being part of a legitimate government activity.

CHAIR—Is it not up to governments to make that decision?

Mr Barrett—Governments in power obviously make decisions for governments' purposes. But I have always considered that parliaments also had a role in that respect and that there are areas where government has stepped back to allow parliament to have a say in areas where it was going to take a decision. At the end of the day, the numbers count, as we all know, but there are areas in which—and I do not need to quote them to you—there is multiparty agreement. That has been so, for instance, in immigration areas and with certain aspects of security, et cetera where a common discipline has been agreed to be on whomever is in government to observe particular guidelines.

All we are saying is that, considering that this has been an issue not only for this parliament but for just about every parliament of this country and of the United Kingdom and for New Zealand parliaments and for Canadian parliaments, this has been a constant matter of public interest and therefore it is not, in that sense, one that can be dealt with in a simple way. Everyone is trying to get some sensible guidelines and arrangements so that, at the end of the day, public interest concerns are met and the government of the day can get on with its business of governing.

CHAIR—Thank you for that.

Mr GEORGIU—Mr Barrett, I have a couple of observations. You said there must be some things that are so far beyond question. You spoke of the immunisation campaigns. Can

I just say that some of those campaigns, while having been widely regarded as being in the public interest, have since been opposed, so an issue of something that is unequivocally agreed to by everyone is quite difficult to find in contemporary society.

Secondly, I would like to ask you for an elaboration of the perspectives of the British audit committee in terms of the observation—from what I understood you to say—that inevitably there is an element of benefit to a government just from running advertisements which are broadly uncontroversial. This is something that concerns me in terms of definitions within some guidelines and what falls outside, because I think there is a fairly fundamental problem of definition there.

Mr Barrett—Again, if we had the wisdom to make distinctions in the terms that the chairman indicated earlier—codification—you could have expected that we would have done so. I come back to notions that content, tone and presentation should not be party political—clearly, avoidance of party political slogans or direct expressions of policies/opinions of opposition parties or groups, and opinion should easily be distinguished from fact. There is a host of descriptors of that kind where people of fair mind would say, ‘That is reasonable.’ That is about as good a definition that you are going to get from me today.

Mr GEORGIU—I can tell the difference between a straight-out attack on the Liberal Party by the Labor Party asking for a vote. That is a political ad and I have seen such. My question is that the British audit committee did reflect on the difficulty—as I understood your introductory comments—in that the line of benefit to incumbents is a difficult one to draw even when no issue of political partisanship arises. I would like to have an elaboration of that to put into the issue about consideration of guidelines.

Mr Barrett—In fact, as you know, the guidelines that we have suggested are largely derived from the guidelines that actually came out of the UK and New Zealand systems, although we did have the advantage of seeing guidelines from the province of British Columbia in Canada, Victoria, New South Wales, Queensland and Western Australia. I do not know if one of my colleagues can put a finger on this comment by the UK Audit office.

Mr GEORGIU—Yes, please, because that was important.

Mr Lewis—I could perhaps draw the committee’s attention to paragraph 2.16 of the audit report where we say:

. . . in the UK in particular, there is recognition that the effectiveness with which the Government communicates its policies and presents information about them carries political benefits. As long as the communication of policy is conducted in accordance with existing Civil Service and Government Information Service guidelines, such benefits are accepted . . . as part of the inherent advantages that can accrue to the government party or parties.

Mr GEORGIU—So there is some notion of benefits naturally flowing from non-partisan campaigns. I have one final question. The Labor Party has put in a submission that, in view of the party, the use of the Community Education and Information Programme to promote the coalition’s taxation policy was not for a purpose of the Commonwealth and was therefore unlawful. Would you respond to that observation from Audit’s perspective?

Mr Barrett—I can start off by simply saying that, in the first instance, I considered that this was going to be a legal issue. I thought that we were going to deal with it fairly simply, and that is the reason that I said that I would probably deal with it by an exchange of letters and not go on to a full audit. As it turned out, we had to have an audit.

Mr GEORGIU—But this focuses specifically on the legal issue.

Mr Barrett—That is right, and the legal opinion—and my opinion and that of my colleagues, whom I will invite to make a response—is quite clear that this was for the purposes of government.

Mr GEORGIU—And legal.

Mr Barrett—As such, that was a legal opinion, otherwise I would not have reported to parliament saying this was a legal opinion that we obtained. In fact, we went further. We actually went out and got a legal opinion other than from the Australian Government Solicitor on the issue.

Senator FAULKNER—Mr Barrett, can I take you to section 44 of the Financial Management and Accountability Act, which requires agency chief executive officers to ensure ‘efficient, effective and ethical use of Commonwealth resources’. I want to compare and contrast that with your conclusion in paragraph 28 on page 13 of your audit report in relation to the management of programmes being ‘efficient and effective’. So we are comparing ‘efficient, effective and ethical’ in the FMAA with your use of the words ‘efficient and effective’, the obvious difference being that the word ‘ethical’ does not appear in paragraph 28. I wonder if that was because you considered that consideration of the ethics would be a matter that might be outside your mandate.

Mr Barrett—This is a difficult area for an Auditor-General, basically because there is no specific obligation for the Auditor-General to report unethical behaviour to parliament, but the public—and, I suspect, the parliament too—certainly expects a high degree of ethical behaviour from its Public Service. As you know, there are guidelines to guide the behaviour of public servants, and in fact we are just setting out a new set of values that public servants have to adhere to. The Australian National Audit Office has actually contributed to and been highly supportive of the issue of public sector values and ethics.

We actually did get legal advice in relation to Audit Report No. 2 of 1995-96 on matters relating to the proposed sale of ANL. That legal advice indicated that it was doubtful whether questions of integrity and propriety were themselves generally matters of economy and efficiency and, therefore, proper subjects for an efficiency audit. However, it is possible that particular matters of integrity and propriety could be relevant to an organisation’s efficiency in discharging its responsibilities, including ensuring that improper actions do not occur or are not covered and appropriately dealt with. In short, the advice said that elected public officials were not subject to efficiency audits. I know you are not making the point, but I am making that point in relation to ministers and ministers’ actions.

All that being said, there is no question that my office, as a matter of course, would look at ethical considerations as an endemic part of accountability. We would certainly raise

issues where we considered there to be ethical breaches with the agencies concerned. However, I am mindful that there is this requirement, in terms of an efficiency audit per se, to draw some relationship in reporting to parliament on the impact that ethical breaches might have on the efficiency with which resources are being used. That is in fact the thrust of the performance audit—administrative efficiency.

Senator FAULKNER—Let me come back to the issue of section 44 of the Financial Management and Accountability Act, requiring CEOs to promote ‘efficient, effective and ethical use of Commonwealth resources’ and your conclusion of paragraph 28, which goes to the issue of management programmes having to be ‘efficient and effective’—the word ‘ethical’ not appearing. What I want to know is: did you deliberately drop the consideration of ethical issues?

Mr McPhee—Perhaps I could respond in part. That reference in paragraph 28 is basically shorthand for the explanation in the explanatory memorandum to the Auditor-General Bill, which explains performance audit. I would refer to that where it says:

The aim of a performance audit is to examine and report to the Parliament on the economy, efficiency and effectiveness of the operations of the administration of the Commonwealth and to recommend ways in which these may be improved. The Auditor-General’s performance audit functions do not extend to examining or reporting on the appropriateness of government policy.

So the reference in this paragraph is a shorthand of the formal provisions in the act, as explained in the explanatory memorandum.

Senator FAULKNER—Thanks, Mr McPhee, I am aware of that. We had Mr Georgiou a moment ago making a pretty limp political point about the issue of legality, quoting a sentence out of the Australian Labor Party submission to this committee, and we can deal with that when we hopefully have the Australian Labor Party before the committee. But I think it is reasonable, Mr Barrett, to say that the core of the complaint that I lodged with you did not go to legality—that was certainly an issue I raised. The core of the complaint that I lodged with you went to the issue of the appropriateness, the ethics, the propriety and the reasonableness of this expenditure. I use the word ‘ethics’. I want to focus on this issue as to whether you did consider this expenditure of public moneys to be ethical and to be proper and reasonable. As I understand it, you did not consider this issue. I want to be clear on that because I think it is a very important matter for us to clear up, if we can, as a threshold issue.

Mr Barrett—You can take for granted—and you should—that the Audit Office will always look for issues that bear on the application of Public Service values and ethical conduct. Without question I can assure this committee that there would not be any audit undertaken in the Audit Office that did not at least keep its eyes and ears open for issues, whether a breach of Public Service values or ethical conduct. That is a different matter, Senator.

As I said to you—and the reason why I did quote to you the legal advice in relation to the ANL matter—the advice said that elected public officials are not subject to efficiency audit. Therefore, by definition, I would add, they are not subject to any comments that I might make about their behaviour. I am talking about elected officials.

In relation to public servants, of course when we looked at the conduct in relation to call centres, mail-outs, use of AMFA and the like, yes, we did consider whether there were any breaches of ethical conduct. Frankly, we did not see any.

Mr GEORGIU—Paragraph 30.

Senator FAULKNER—I am well aware of what the report says, thank you, Mr Georgiou. Can I take you to paragraph 2.12, which says:

Correspondence received by the ANAO questioned whether the advertisements were party-political, and therefore not for the purposes of the Commonwealth.

The next sentence says:

However, it is not within the Auditor-General's mandate to judge the nature of the advertisements—

and this is something that was canvassed a moment ago—

(that is, whether they are political or party-political in nature).

Again, that was the core issue that I raised with you as the Auditor-General in relation to my grave concerns about what I considered to be a blatant misuse of public moneys on the eve of the last federal election. There in 2.12 you make quite clear your view that it is not within your mandate. Let me ask this question: why do you say it is not within your mandate to make that judgment? How do you justify that?

Mr Barrett—I will come to that, Senator. I now think I need to make the statement I was going to make earlier but did not. I want to explain to the committee that, when I decided to undertake this audit, the comments made by Senator Faulkner were one element. In fact, the decision to proceed with an audit was made on public interest grounds, because I considered that there were a range of interests—as we have indicated in the report now—that needed to be advised to the parliament, at least as a matter of information for the parliament. So in no way do I accept that this is a report in relation to the matters raised solely by the senator.

Obviously, as it came from a senator, we have taken due notice of the request and the observations made. I have already referred to a legal opinion that said that elected public officials are not subject to efficiency audits and I have also indicated in the report that there are no guidelines that parliament could use or that an Auditor-General could use as to the content of advertisements to determine whether an advertisement is party political or is legitimate government expenditure.

So what that comes down to is 'Whose view?' I am simply saying that my view on the matter at this stage, without any guidance from the parliament or from the act or anything else, is really not worth anything more than anyone else's view about whether a particular advertisement is party political or legitimate government expenditure. I say more than that in the report. In fact, I say that it is not possible for me or anyone else, unless they happened to have been in the room at the time, to get inside the heads of those who made the decision as to their motivation.

I can simply go on the facts of the situation, and the legal advice is that this was for a legitimate government activity. I am not here to defend the situation at all, but I simply observe that it was an announced programme that had actually commenced in the previous year and was subject to considerable public interest—as the chairman said earlier—and debate. In the normal course of events—and the question was rightly put by Mr Georgiou in relation to the UK situation—it is very difficult for anyone to say that actions by governments do not advantage governments, particularly when it is a very popular programme. And any subsequent advertising for a popular programme has, I suspect, by definition to advantage the incumbent government. I do not think anyone would question that.

But, as to the motivation behind the advertisement, I am simply not in a position to know whether the decision that was made took into account that this was going to be of benefit to the party or whether it was more driven by the fact that it was a question of making sure the public was informed. The legal advice that I have got would suggest that it was for legitimate government purposes and, frankly, I cannot have any reason for having a different view.

Senator FAULKNER—I wish to respond to, and ask further questions on, a couple of those points. I appreciate the point you made about there being other complainants apart from me. I am not being arrogant about this. I certainly understand that is the case. I notice that in the report the executive summary is headed ‘Request from the Leader of the Opposition in the Senate’ and goes for three paragraphs, and it indicates:

Members of the public have also written raising similar issues in relation to the programme.

On that point, did you receive more complaints from members of the public than is normally the case in relation to a limited scope audit?

Mr Barrett—Yes, far more. To put this in perspective, we usually do not get a great number of letters from the public except for letters that indicate areas of concern, where they think audits ought to be done—letters of the whistleblowing variety. We do get a range of those, there is no question of that, but for any particular audit done—unless my colleagues have longer memories than mine—I cannot recall since the time I became Auditor-General such a number of letters as have come in relation to the issue at other times when we have been conducting an audit or were at the start of an audit.

Mr Cochrane—That is a fair statement.

Mr GEORGIU—You have all had a few submitted.

Senator FAULKNER—Yes. We certainly have a significant number.

Mr GEORGIU—How many were there?

Mr Lewis—It would be approximately a dozen letters to us—plus, as we said in the report, a number of comments by the media: editorials and those sorts of comments.

Mr GEORGIU—But there were a dozen letters.

Mr Lewis—Which for us is a lot.

Mr GEORGIU—Do not go into your electorate office when an issue is running hot!

Senator FAULKNER—We have just heard in relation to the Australian National Audit Office the significance of the number of complaints that were received. It is ‘unprecedented’—I think that is what you said, Mr Barrett.

Mr Barrett—Certainly within the time that I have been Auditor-General.

Senator FAULKNER—Thank you. I make the point to you that I do not fall back on only my complaints. It is just that you highlighted it in your own executive summary.

CHAIR—Excuse me for a second. I do not want to interrupt you, but we are almost out of time with ANAO, and two other committee members wish to ask questions, so could you be brief.

Senator FAULKNER—I am sorry, but I consider these to be very important witnesses and—

CHAIR—I understand that.

Senator FAULKNER—I have not yet concluded my questioning with ANAO. I am trying to move through it apace.

Mr Barrett—I am sorry, but I think I need to make something clear, Mr Chairman, if I may. It is not the letters, the media comments or the phone calls. It is not those concerns. I can assure you and this committee that I looked at the issues of public interest. The fact that you raised them is in a sense—if you do not mind me saying so—neither here nor there.

Senator FAULKNER—I appreciate that. That is the point I am making. I accept that.

Mr Barrett—It is the issues, and the issues that have been brought out in this report are the ones that I considered to be important. I am assuring you that we did look at the issues of ethical behaviour, and we have indicated that there is no evidence that those who were responsible for the various aspects of the advertising campaign did not behave ethically. But I am not commenting, and cannot comment, on the ethical behaviour of ministers, elected officials.

Senator FAULKNER—I do appreciate what you are saying, Mr Barrett. What I would like to ask you is this. If such advertisements were party political in nature—‘if’ they were party political—would that make them unethical?

Mr Barrett—Depending on your views about ethical behaviour—and my views are probably more narrow than anyone else’s—I would have to say yes.

Senator FAULKNER—Thank you.

Mr Barrett—That would be the distinction that I would think that any guidelines would make. And I suggest to you sincerely that any parliamentary committee applying those guidelines would in fact come out with a similar view, and that would be the reason for not in fact endorsing government expenditure, when the matter was blatantly party political.

Senator FAULKNER—I agree with you completely, Mr Barrett. I come back to paragraph 2.12 in your own report where you say:

... it is not within the Auditor-General's mandate to judge the nature of the advertisements (that is, whether they are political or party political in nature).

In other words, you say that it is not within your mandate to judge whether they are ethical or not. Frankly, I am not convinced. I accept that you have put this in your report in goodwill. I am not convinced about your interpretation of your own mandate, but I am utterly convinced that, if they are party political in nature, they are unethical. I note that you say that it is not within your mandate to judge that, hence you have not in fact investigated what I considered to be the core element of the complaint that I made, regardless of what other individuals did.

Let me ask you this. You say that the CEIP was an announced programme of government. Yes, that was true. What it did, of course, was to expend massive amounts of public moneys to promote an election policy of the Liberal and National parties on the eve—literally a couple of weeks in the lead-up to the issuing of the writs—of the 1998 federal election. So, while the Community Education and Information Programme—which could be anything—was an announced programme of government, what this programme did and what these moneys did was to promote at taxpayers' expense a party political advertising campaign, the incumbent government's election policy, on the eve of and in the lead-up to the last federal election.

We cannot have it both ways. You have said that if it is party political it is not ethical. You have said that you have not got the mandate to judge whether it is party political in nature. My question to you is: what do you suggest the parliament does, in the circumstances of the Auditor-General saying that it is outside his mandate, to fix this problem where we have a government in office that is willing to exploit and to behave in such an unethical, improper way and to continue to misuse taxpayers' money? What are your suggestions to the committee on how the parliament can right this wrong?

Mr GEORGIU—Stop putting words into people's mouths.

Mr Barrett—With respect, that is a political judgment and I cannot comment on it. It is a judgment about what was in the minds of the people who took the decision to use Commonwealth funding for advertisements in this area. I am repeating myself, but the answer to the senator's question is in the report. We believe that a bipartisan committee of both houses—it could be this committee but I am not suggesting it—should draw up and oversee a set of guidelines and address the issues of whether there are particular matters or particular circumstances in the federal parliament when elections are drawing near (even

though we do not have a fixed term parliament, at least at the present) that warrant guidelines that indicate a different kind of behaviour from that, say, early in the term of the government.

That is a political question; it is not a question for auditors. This is what I keep on saying. The fact of the matter is that the mandate does not indicate that I am here to judge the political nature of the decision, and that is really what it is. There are no guidelines, and my colleagues in other state areas observe the same situation—that at the end of the day it really is a matter for the parliament and for government. The fact of the mandate is that I am not here to judge what is political, and that is really what the senator is asking me to do.

As I have already indicated, there are no guidelines and no indications in my act for me to have done so of my own volition. If there had been a set of guidelines, I would have looked at those guidelines and I would have reported to parliament whether, in my view, the guidelines had been breached or not. Therefore, in that sense, yes, I have a mandate and I would have done so, but I had not a mandate to decide what is political or not.

CHAIR—I will make one tight response, Mr Barrett. You commented on Senator Faulkner's statement. I assure you that not everyone on this committee shares Senator Faulkner's view. Some may, but I can assure you that I do not.

Senator FAULKNER—I think he might have assumed that, Mr Chairman. I will conclude with a question on paragraph 30 of your audit report. While we have a situation where, effectively, in my view, it has been made quite clear that you cannot consider the ethical use of public moneys, you make this conclusion on paragraph 30:

... on the basis of the evidence available and legal advice, the ANAO concluded that the Government acted legally and officials acted ethically.

I wondered whether you used very deliberate language in that particular paragraph by omitting to say that the government acted ethically.

Mr Barrett—At the risk of repeating myself yet again, I have answered your question as to why I considered that I was not able to make comments on the conduct of ministers. It is not within my mandate, which has been endorsed by the parliament in legislation. I can assure you that these words were used deliberately because there were concerns about whether or not public servants had acted ethically on a range of matters, and on the evidence available to us we determined that they had so acted.

Senator COONAN—Mr Barrett, you suggested that you might have been assisted if there had been some guidelines. You suggested that some objective criteria would be good if you could capture them. In fact, you said there should be a clear differentiation between fact and opinion in such a programme.

Mr Barrett—Yes.

Senator COONAN—I am suggesting to you that, in my view, it would be almost useless. If you take this very simple statement, 'The tax system is unworkable,' is that a

matter of fact; is it a matter of opinion; whose opinion; and to what extent? If you agree with me that that demonstrates very clearly that it is almost impossible to form a view on that statement, is it not the case that, unless there is expressed bipartisan support for an advertising campaign to explain a government policy, any government would be liable to be regarded as advocating its own interests and, in those circumstances, unless you can capture something with particularity to judge it, it is best left to the political process?

Mr Barrett—I think the last part of your sentiment is expressed in the report. At the end of the day, the report said clearly that this is a matter for the parliament and the government to resolve, and I agree with that. What we were indicating was that other constituencies at least have had a go at doing guidelines. How useful or not they are, time will tell, but at least we have some guidelines which have been promulgated. We have tried to adapt those to the Australian federal parliament situation and suggest that a hopefully bipartisan group should have a look at them, get other views on them and say, ‘Well, at least this is a framework in which we can operate.’ At the end of the day, I totally agree with you, there has to be bipartisan support to say, ‘Yes, we think this is party political, or just political in nature, but acceptable in the definitions we are talking about in the United Kingdom and elsewhere.’

Mr COX—I want to go back to Senator Faulkner’s last question. You used very specific language. You said that the government had acted legally—I presume on the basis of technicalities of what is legal—and that officials had acted ethically and that you did not have a mandate to judge whether the government has behaved ethically in this matter. I want to make it absolutely explicit: in your report you have not given the government ministers—elected officials—clearance that they acted ethically?

Mr Barrett—I have given government officials clearance in that sense. We said clearly that officials have acted ethically. What you are saying to me is that, because we did not put in a similar comment about government, the presumption is that they did not get a good report card. All I can say is that we did it because of the reasons that I gave earlier, that we are not entitled to comment—in fact quite the reverse; we are not supposed to comment—on the activities, the intentions or otherwise of elected officials. In essence, I come back to the point that there are judgments here and intentions. I was not in the cabinet room and I was not party to any of these activities, and therefore I—or anyone else who was outside that—am not in any position to make a judgment.

Mr COX—So you specifically have not said that ministers have behaved ethically?

Mr Barrett—I have said that ministers have behaved legally on the basis of legal advice.

Mr COX—But you are not able to say that they have behaved ethically.

Mr Barrett—I am not in a position to say. I am precluded from making a conclusion about the ethics or otherwise of ministers.

Mr COX—So that is an open question as to whether ministers have behaved ethically?

Mr Barrett—That is your conclusion, Mr Cox.

Mr SOMLYAY—Was the first letter you received from Senator Faulkner before the election was called or after?

Mr Cochrane—It would have been before the election.

Mr Barrett—It was before. I think it was 18 August.

CHAIR—Thank you very much, Mr Barrett and colleagues.

[11.17 a.m.]

HAGAN, Dr James, General Manager, Commonwealth Treasury

SMITH, Mr Greg, Executive Director, Commonwealth Treasury

CHAIR—Thank you. We have not received a submission, but we have asked you to come along and talk. Would you like to make a brief opening statement about the issues we are discussing here today?

Mr Smith—We did not make a submission because we saw the substantive terms of reference as not being matters that the Treasury would bring any special insight to, and the matters relating to the CEIP we felt were fully canvassed in the Auditor-General's report, and so we have nothing further to add at this time.

CHAIR—One of the issues that was canvassed in his report was the issue of whether or not—or how one judges whether—a particular issue, a particular advertisement or a particular advertising campaign by government is political or party political. Have you got any views on guidelines for such consideration?

Mr Smith—The Treasury has not developed a view about any particular proposed guidelines. We are aware that there are not any guidelines. However, we do in our everyday work have in our minds a distinction between the two. I am sure that the distinction between the two can involve some grey areas from time to time; but, broadly speaking, I think the distinction is clear enough, and we have always sought to avoid overtly partisan or party political statements in the work that we do.

CHAIR—If your minister, the Treasurer, regardless of which political party, proposed an advertising campaign that, in your view, was designed to be party political and therefore unethical, would you advise the minister?

Mr Smith—It has obviously never happened in my experience, so I am asked a hypothetical question.

CHAIR—It sure was.

Mr Smith—I have no doubt at all that, if we took a view that material was overtly party political, we would advise the minister, yes.

Mr COX—You were responsible for managing the public information programme, or the person who was actually managing it was reporting to you; is that a correct conclusion?

Mr Smith—I had executive oversight of the CEIP and still do because the CEIP continues now, and it is a programme that falls within my jurisdiction within the Treasury.

Mr COX—So it is your ultimate responsibility?

Mr Smith—I would not say it is my ultimate responsibility, but it certainly comes through me. There are people more senior than me in the system.

Mr COX—But you are qualified to talk about its content?

Mr Smith—I can do my best on the content. It depends on the nature of your questions. As you know, it is a very large campaign.

Mr COX—One of the documents is, I suppose, what you might call a white paper. Were you responsible for the content of that?

Mr Smith—The responsibility for the government's publications, ultimately, rests with the government.

Mr COX—Is there anything in this document that you would say is inaccurate?

Mr Smith—I am not aware of any inaccuracies in the document, but I certainly would not comment on government documents.

Mr COX—I draw your attention to the tables at the back which purport to show how people will be affected by the whole of the tax reform package. I would like to take as an example a single person on an income of \$5,000. The tax package suggests that that person will be better off as a result of the tax reform package because of an increase in social security payments. If you were a person who was asset rich on a \$5,000 income, so asset rich that you did not qualify for any social security payments, would you then be better off as a result of the tax reform package, all other things being equal?

Mr Smith—Mr Cox, I am not sure that I am in a position to go through specific examples like this. I obviously do not have the document with me. I do not know which cameo you are referring to, nor do I know which assumptions are underneath the cameo. It will not do you any good to give it to me, because I am simply not that sort of a person. I am not able to recall all of that information. I am aware that there is wealth compensation, for example, that is to be provided to significant numbers of people. I do not know whether you were going to the question of wealth compensation.

Mr COX—If you were not a superannuant and therefore eligible for wealth compensation, that you were only eligible for a tax cut if you had sufficient income and because your income fell below the tax free threshold you were not going to get any income tax relief, because you had assets above the limit for the assets test you were not going to get any compensation in terms of social security payments, then you would agree that it is pretty hard to see where you would be better off?

Mr Smith—It is certainly the case that if, for a period of time, someone has no or negligible income—no entitlements for, usually, a short period of time—they are unlikely to get benefits. That is correct. But, of course, you are then picking on a period of time. Typically, not very many people live on no income or negligible amounts of income for very long. So I would say that what you are going to is the individual rather than a group case.

Mr COX—There are probably a large number of people in this group.

Mr Smith—In a particular week in time, it would not be unusual for people to have no income. But it would be pretty meaningless because you are providing a tax system for the long haul. Essentially, what you try to do is represent the effects of that tax system on a reasonable basis rather than something artificial or contrived.

Mr GEORGIU—Mr Chairman, can I ask where this is all leading? We do have some terms of reference that constrain us.

Mr COX—I will get to the point in the next two questions. If prices have gone up as a result of a GST being imposed on food and other necessities for the first time, individuals who find themselves in these circumstances are likely to be worse off for the time they are in those circumstances; would you not agree?

Mr Smith—I am not quite sure which circumstances you are now referring to.

Mr COX—I am referring to the same circumstance I have been throughout. A person who is not a superannuant, is eligible for any wealth compensation, has assets which make them ineligible for any increased social security benefit, has an income below the tax free threshold and is therefore not eligible for a tax cut, does nevertheless have to spend a substantial part of their income on necessities which have not hitherto been subject to indirect taxation but now will face increases in the prices of those goods and services and will be worse off.

Mr Smith—Again, that would depend. You have left out a few things, so I will mention them. There is also significant family assistance provided in the package.

Mr COX—This is a single person.

Mr Smith—So you have identified this person as not having any eligibility for family assistance.

Mr COX—I did; this is a single person.

Mr Smith—Single people have children.

Mr GEORGIU—Mr Chairman, really, the terms of reference do not go to an unpicking, or an attempt to unpick, more accurately, of individual cameos.

CHAIR—Thank you, Mr Georgiou. It might be helpful if we really got to something substantive that could help us deal with the inquiry we are undertaking.

Mr COX—I think you have probably proved my point—that there are losers. You were managing, or were ultimately responsible for, the research programme which accompanied the CEIP. Can you explain to me why you were testing propositions such as ‘Everyone’s a winner’?

Mr Smith—You are quoting, obviously, from some research. I presume that was a message that was being tested.

Mr COX—Yes. The research was released by the Treasurer on 11 November. It is one of the many studies done by Worthington di Marzio, and that is obviously one of the messages that was being tested—that everyone's a winner.

Mr Smith—And I have no difficulty with that.

Mr GEORGIU—I defer to Senator Faulkner, who is concerned that he would not be heard.

Senator FAULKNER—No. I am not going to be deferred to by Mr Georgiou. I have had better people defer to me than him. You are on, Pedro.

Mr GEORGIU—The Auditor-General's comments were, I think, that your estimates of expenditure were 'arguably optimistic'. How was the advance of \$390 million to the Treasurer drawn down? Are they 'arguably optimistic' estimates of underexpenditure? How do you actually expend the advance to the Treasurer? There was an observation about Treasury's estimates of expenditure being 'arguably optimistic' in terms of the 1997-98 and 1998-99 financial years. Are there many 'arguably optimistic' estimates of expenditure in terms of the range of people who draw down on the Advance to the Minister for Finance and Administration, in your experience?

Mr Smith—The comment that you are referring to is about the presumption that the moneys which the government had decided to spend in 1997-98 may be spent in a later year. The Auditor-General took a view that we were arguably optimistic in believing that that would in fact occur. He took a view that we were arguably optimistic in the days between 4 May and 6 May and, because he used the word 'arguably', I cannot argue with him. But I did not form a judgment in those days that it would certainly not be possible to spend the moneys in that period. I did not even consider the judgment, because the government had made a decision to spend the moneys in that year.

As a public servant, there is always a judgment to be made when one gets a government decision as to what point or whether one goes back and questions the decision or whether one gets on with the job and implements it. In recent years, in my experience, governments expect us to get on and implement decisions and put our focus on that, and that has been my experience of all governments.

So there was that little window there—a window, incidentally, which is slightly false, because the official cut-off time originally for the bills for appropriations was in fact 1 May, even before our first meeting. The Auditor-General—and I obviously do not question anything he has done—draws attention to the fact that there were later dates at which the stuff went for printing, so one could have tried to change government decisions in theory. Sure it is arguable, but we in Treasury felt that it was not a judgment that, without the benefit of hindsight, we could have been expected to have come to.

Mr GEORGIU—There was one other point that said that, even given all this, you should have projected forward into 1998-99. What is your response to that?

Mr Smith—I know that there is a guideline that is referred to in the Auditor-General's report which uses the words 'where it is certain' that there is an amount to be spent in that year. I had a government decision saying that it was to be spent not in that year, and I had no basis at that time for forming a view that there was a certain amount that would be spent in that year. I repeat: I did not consider the question at that time, because we were getting on with the job of implementing. But, with hindsight, I doubt whether I would have formed a judgment at that time along the lines that have been suggested.

Mr GEORGIU—Even with the benefit of hindsight?

Mr Smith—Even with the benefit of hindsight.

Mr GEORGIU—So, from this perspective, you say, 'I did my best within the context; the guidelines were such as to require certainty about insertion into the following year,' and you were not certain. I think I understand. Thank you.

Senator FAULKNER—Mr Smith, could you tell us whose idea the CEIP was in the first place?

Mr Smith—From my point of view, Senator, it was the government's idea.

Senator FAULKNER—Do you know how that was communicated to Treasury or who communicated it?

Mr Smith—As a cabinet decision.

Senator FAULKNER—Given the parameters at the time of the cabinet decision in relation to the projected size and cost of the programme, did that change or evolve after the cabinet first made a determination in relation to this?

Mr Smith—Sorry, did—

Senator FAULKNER—It is a cabinet decision. Did the cabinet decision go to the projected cost of the CEIP at the time?

Mr Smith—It allocated a specific amount at that time, and then subsequently further amounts were allocated.

Senator FAULKNER—Is that all on the public record?

Mr Smith—I think it is covered in the Auditor-General's report.

Senator FAULKNER—What about the timing? Did the cabinet decision actually go to the timing? Apart from, I suppose, tying it into the announcement of the government's tax

policy, was there any other detail provided to Treasury via cabinet or via government in relation to the timing of the programme itself?

Mr Smith—Yes.

Senator FAULKNER—Could you tell us what that was?

Mr Smith—That the allocation was for 1997-98. That was explicit.

Senator FAULKNER—I suppose you kept in pretty close contact with government on the planning of the CEIP. You said you had significant responsibility for this, and I gather you had a project manager or a campaign manager. What is the correct terminology to use?

Mr Smith—We had two people at different times as project leaders. The way we looked at it was that the Treasury was asked to administer a programme essentially of information provision and education, which we did, for the government. As you would know, aspects of the decision making in that process for all government communications involve the government directly and also the Ministerial Council for Government Communications and the Office of Government Information, et cetera. So there are other players in the production of such a project.

Senator FAULKNER—But did the day-to-day responsibility devolve to a project leader? Is that the correct terminology?

Mr Smith—The Treasury's work was basically undertaken by a small team led by a project leader, who reported to me. As I say, we had more than one.

Senator FAULKNER—More than one? Do you mean—

Mr Smith—Sequentially.

Senator FAULKNER—Sequentially. So that we can define it a bit more clearly, when you say the Treasury's work—you have used that terminology a couple of times—what was the work outside Treasury that interfaced with Treasury's work?

Mr Smith—I have mentioned the MCGC.

Senator FAULKNER—Yes.

Mr Smith—And the government. I think at the time OGIA was in the Department of Finance and Administration and, of course, they also had a role.

Senator FAULKNER—I think I understand the ministerial committee, but what about the interface with the government more generally? What do we mean by that? Are we talking about the Treasurer's office?

Mr Smith—The tax reform was being conducted in a very secure way in terms of information and only a very small number of ministers were involved. Essentially, we saw

ourselves working on this with the Prime Minister and his office and the Treasurer and his office.

Senator FAULKNER—So when you say ‘government contact’ it was in fact pretty limited—just to the Prime Minister and his office and the Treasurer and his office. When you say ‘government’, is it reasonable for me to now understand that that definition is as you have just described it?

Mr Smith—Yes, in my experience that is frequently the interface that we have in tax matters.

Senator FAULKNER—How did the contact with your own project team work on a day-to-day basis? I use the word ‘interface’. There may be a better word, but I cannot think of one off the top of my head. Can you tell us how this interface worked with government?

Mr Smith—The process had so many dimensions I am not sure I can give you a nice simple answer. For example, we would seek clearance of materials from ministers and/or their officers. We would work with them directly. It just depended on the particular case.

Senator FAULKNER—What if there was a concern about an issue being political, or party political, in nature? Given that there was such a strong interaction between government and the bureaucracy on this, how would you deal with such a situation?

Mr Smith—I think everybody involved in the project was very keen to ensure that we did not stray into what I presume you would regard as party political, although everyone has a different definition of that—so I cannot be certain that you and I would have the same view. But everyone that I dealt with was conscious of that. We were quite studious in seeking to avoid what I would call overt party political content.

Senator FAULKNER—It must be pretty hard when you are working hand in glove with the Treasurer’s and the Prime Minister’s offices, must it not?

Mr Smith—In my experience, they are as equally committed to this objective as as we are.

Senator FAULKNER—Why do you draw that conclusion?

Mr Smith—Based on the direct contact I have had with them and with previous ministers’ officers, and being one myself in times past. Essentially we would regard it as a breach. Of course, they do not want the difficulties that would arise from a breach any more than the rest of us do.

Senator FAULKNER—But would you be in a strong position to judge that, given that you were not directly involved in the project team—the project team was just reporting to you?

Mr Smith—I kept an eye on things as often as I could. Obviously, I had many other duties and I was not full-time. I attended a number of meetings and briefings. I had a look at

material from time to time—more on a sample basis, I suppose, than other members of the team. There were other Treasury officials—unfortunately, none of them are still with us—directly involved in the teams. They were also playing that role.

Senator FAULKNER—What do you mean by ‘none of them are still with us’? It sounds horrible.

Mr Smith—They are still with us in that sense.

Senator FAULKNER—I am sure they are relieved to hear that!

Mr Smith—They are no longer currently engaged within the Treasury.

Senator FAULKNER—Does that go to all the Treasury’s officers who were involved in the project team?

Mr Smith—We only had three involved substantively. None of them are currently working in the Treasury in this area, or anywhere else in Canberra. One of them is on secondment to another employer for a sustained period, one of them is on maternity leave and the other one is on an overseas posting.

Senator FAULKNER—Are you aware of any Treasury officers, at any level, expressing doubts to more senior Treasury officers about the propriety of this campaign, either at an initial stage or subsequently?

Mr Smith—I would not use that language at all, no. I would say that the need to ensure that we did not stray into overtly partisan material was something that was occasionally commented on, but I do not believe that it was ever out of concern. I would not use the word ‘concern’. It was out of a general understanding—and one that I can recall hearing explicitly from members of ministers’ offices as well—that we must not do that.

Mr COX—Did you have any concerns about covert party political activity?

Mr Smith—I don’t know what you mean.

Senator FAULKNER—I deliberately used the form of words I did, and I appreciate you would not necessarily use the same form of words. I asked you the question framed in that way quite deliberately. I do not know whether you are reinterpreting my question or just interpreting your answer in the context of the words that I used.

Mr Smith—I guess I am making sure that I am not misinterpreting in answering your question, because your question was phrased in a particular way. I am ensuring that my answer does not in any way mislead.

Senator FAULKNER—We appreciate that. How much contact would the project team have had with the Prime Minister’s office and the Treasurer’s office? Was this, in your view, absolutely integral during the work of the project team?

Mr Smith—I would say so, yes.

Senator FAULKNER—How much of it effectively was being run out of the Prime Minister's office and the Treasurer's office? They really did the work, didn't they? It is fair to say, is it not, that the project team was just cover?

Mr Smith—I would have to reject all of those comments. It was basically an operation which actively involved all of the people. After all, it is the government's programme. It is being developed in the build-up to an announcement and release of a product, a policy product. It has to be accurate. Everyone in the Treasury, et cetera, who is involved is trying to ensure its accuracy. The clearance of the material ultimately—the authorisation and so on—is for government, so obviously they need to be involved as well. I would see it much the same as I would see our policy work, which is that we do it integrally with the government.

Senator FAULKNER—You had a couple of project leaders, you said, sequentially. How big was the actual project team on the CEIP?

Mr Smith—There were about six people at most times. I should stress that, because we were dealing with large numbers of materials, we would bring in people to assist in drafting and with fact sheets, for example. We had people working on the call back centre—and that was another large number of people—et cetera. The six would not be the total number of people engaged in community education information. That was the core number of people administering the programme.

Senator FAULKNER—Can you tell me who the key operatives were in the Prime Minister's office and the Treasurer's office that you were in regular contact with?

Mr Smith—The principal participant from the Treasurer's office was the head of the office, Mr Gaetjens. The principal person engaged from the Prime Minister's office was Mr Nutt, who I think is the principal private secretary. Mr Nutt is also a member of the MCGC, so his involvement has more than one dimension.

Senator FAULKNER—It went a lot broader than just the key political operatives, or the principal advisers, or the senior advisers in the Prime Minister's and the Treasurer's offices, did it not? Let's be fair about this.

Mr Smith—Let's be fair about it, Senator?

Senator FAULKNER—Yes.

Mr Smith—Let's be accurate about it.

Senator FAULKNER—Indeed, let's be accurate about it.

Mr Smith—In my experience, it was Mr Nutt, full stop, pretty much from the Prime Minister's side. On the Treasurer's side it was the press secretary and one or two other

people came in. There are tax advisers there, for example. They would come in and play a part, particularly in the clearance of materials in the case of the tax advisers.

Senator FAULKNER—So it was Mr Smith and others from the Treasurer's office.

Mr Smith—Basically the others would be the tax advisers.

CHAIR—Where are we heading?

Senator FAULKNER—We are heading in an interesting direction to look at the issue of the Auditor-General's mandate, the nature of the CEIP and a range of other issues that I think will be of interest not only to the committee but also, more broadly, to the parliament and the community. I am sure you would agree with me that these are matters that, albeit embarrassing—

Mr GEORGIU—No, just not good.

Senator FAULKNER—You are entitled to come to those conclusions, Mr Georgiou. We know that you have focused on the second paragraph of the ALP submission. I commend the whole submission to you.

CHAIR—Please do not squabble.

Senator COONAN—Will we reach a conclusion?

Senator FAULKNER—One of the things that interests me—and I think you are aware that this has been raised on previous occasions, although I do not believe it has been answered satisfactorily, Mr Smith—is the extent to which, given this process and some of the issues raised in the Auditor-General's report, those who are members of either the Prime Minister's staff or the Treasurer's staff and those on the staff of ministers have access to the research data that relates to this campaign. I think you are aware that this issue has been raised previously.

It might be useful, for the benefit of the committee, for us just to understand—given the sensitivities in relation to research data—what processes you put in place at the level of the Treasury to ensure that there was not any misuse at all of that research data.

Mr Smith—I am not quite sure where the imputation of misuse is to be taken.

Senator FAULKNER—I am just asking you what procedures were in place to ensure that there was not any improper use. I do not think there is a particular spin on that question—there was not intended to be. I just want to know from a Treasury perspective how you ensured that this did not fall into 'the wrong hands'.

Mr Smith—The approach we took was the standard approach for this sort of work which is that we conducted the whole exercise, the tax reform development and the CEIP development, within the confines of the security of our building and that of the ministers' offices. There were special arrangements put in place for documents to be contained in

special security folders that were specifically developed for the tax reform, so essentially security steps of the kind that we also take for budget material or other similar exercises.

Senator FAULKNER—But how can I be assured, or the committee be assured, that none of this research material fell into the hands of the party of government, the Liberal Party? Can you assure the committee that that did not occur?

Mr Smith—It would not be for me to make that assurance, Senator. I cannot give you any assurances. We did what we would normally do. We required the research firms and so on to sign their secrecy statements and all these things but, of course, apart from those procedures it is impossible for me to police it.

Senator FAULKNER—If it did fall into the hands of, say, the party of government or any political party, would that be improper in your view?

Mr Smith—It is not a question that I have considered but I would have assumed that it would not go there, that it was only for the purposes of the Commonwealth that it was being done. Therefore, I would have thought that at that time at least it would be improper. I do note that it has all been publicly released subsequently and I suppose it is now in the possession of all political parties.

Senator FAULKNER—Yes, sure. And you would know why it was released, Mr Smith. You would understand the processes that led up to its release and where they emanated from. I am sure you know all that background, as I do.

Mr Smith—Are you asking me if I know the background? Is that the question?

Senator FAULKNER—I am saying I am sure you know the background.

Mr Smith—I have a general familiarity with the background.

Senator FAULKNER—I thought you would. If I can just come back to my question, and I do not want to put words into your mouth, I understood you to say that if such information, prior to its public release, had fallen into the hands of any political party—in this case I am most concerned about the party of government, the Liberal Party—that would be improper.

Mr Smith—I must say that I am not sure that I can answer that. You are asking essentially for a judgment. It would certainly be improper if it came from our contractors. It would be improper if it came from the Treasury.

Senator FAULKNER—Who is paying for it?

Mr Smith—It is a government programme done for a Commonwealth purpose and I would have expected that the information is in the possession of the government. As you know, the government ultimately decided to release it so, in that sense, the government is exercising a decision at some point that it is perfectly proper for it to be provided to other

persons. You are asking me could they have made a decision to provide it at some other time or in some other circumstance. It is not something I have considered.

Senator FAULKNER—I am not quite asking you that. I understand that much of the research, if not all, has been released—certainly a significant amount has been released. Once research is released it is there for the benefit of all. It is publicly available and any political party or individual or other organisation can use it as they see fit. I appreciate that. What I am concerned about is what the Treasury did to ensure that there was not any partisan advantage when this was particularly sensitive—that is, just before and during an election campaign as opposed to after it had been publicly released for the benefit of all—to ensure there was not a partisan advantage to a limited number of political operatives who might have had access to it. I think that is a pretty important issue in relation to ethical behaviour and integrity in government. I think you have indicated to me that you cannot really let me know whether that occurred or not.

Mr Smith—For example, had we received an FOI request for this information and one that did not require its public release but rather its release only to the applicant under the FOI, it is not something that I can answer right now. I do not know whether we would have released it or not.

Senator FAULKNER—I did not ask you about FOI. I understand that.

Mr Smith—The point I am making is that they are within the scheme of relevant considerations as to whether it would be appropriate for something to be handed over or not to a particular applicant. Your question is so broad that it brings to my mind these types of questions.

Mr SOMLYAY—Why was the information and the research confidential? Whose decision was it to classify it as such?

Mr Smith—It was confidential essentially because the tax reform had not yet been announced at most of the period that that was being undertaken, and subsequently it was a programme that was in train. So, therefore, we typically in that environment take a view that the material should be confidential so as not to mislead.

Senator FAULKNER—Just on a specific issue in relation to moneys expended, do you know how much was spent on design work for material with Commonwealth copyright, graphics, advertising copy, layout and publication design specifically?

Mr Smith—I do not have that break-up with me. I think we have provided some of these break-ups before.

Senator FAULKNER—I believe you have but I do not believe you have provided that one.

Mr Smith—I cannot remember. I have only got the very high order break-up with me today between advertising and direct mail and that type of thing.

Senator FAULKNER—Perhaps you might take that on notice for me. Specifically, I am interested to know whether any of those costs in relation to design work, copyright, graphics, advertising copy, layout and publication design have been recovered?

Mr Smith—Sorry—recovered?

Senator FAULKNER—I am interested in this in relation to AusInfo who are coming before us at a later stage.

Mr Smith—Do you mean as in sold?

Senator FAULKNER—Yes.

Mr Smith—I see.

Senator FAULKNER—Do you know in a general sense?

Mr Smith—I am not aware of it at all but maybe there is something I am not aware of.

Mr GEORGIU—How many copies did you sell of the actual document through AGPS or whatever it is called now?

Mr Smith—I do not know.

Mr GEORGIU—I remember there was very heavy demand for it.

Mr Smith—I do not have the revenue figures at all.

Senator FAULKNER—I would not have thought there would have been.

Mr GEORGIU—There was, believe me.

Mr Smith—I am sorry; I do not have the revenue figures.

Senator FAULKNER—It is in a sense relevant to—

Mr Smith—Most of the material, of course, is provided for free. Obviously, there are AGPS publications and I could get that figure, whatever it is.

Senator FAULKNER—Did Treasury, to your knowledge, ever seek any advice on the propriety of the CEIP processes from the government division of PM&C, or PM&C more generally, in relation to these sorts of issues about probity, ethics and the propriety of such an expenditure of public moneys?

Mr Smith—As far as I can recall, the only advice we sought was legal advice from AGS. I do not recall seeking it from PM&C. I think AGS is the only place that we sought advice from on those sorts of matters. We have provided the committee with copies of the legal advices that were requested by the committee.

Senator FAULKNER—What was the reason that was not sought from PM&C? You just did not think it was necessary?

Mr Smith—The advice from the AGS included a general question of whether they felt that there was anything that we would need to take into account. What came back from that was some information about the AMFA and, I think, a general clearance on the FMA. The overwhelming focus was the Broadcasting Act and the electoral acts, although in the case of the broadcasting law, of course, it was not an obligation on us. It is an obligation on the licensees under the Broadcasting Act.

Senator FAULKNER—What is the current running total on cost of the CEIP? You said you have the broad parameters.

Mr Smith—It is about \$12.6 million for the period; \$12.63 million is the latest figure. It is still not completely final but it is about \$12.63 million. In addition, since we have decided to activate some further community education since the election, we have committed at this stage \$109,000 for further expenditures, principally on publications and the call centre that we are operating still.

Senator FAULKNER—Would you be able to table the document? Is that all the information it contained? Have you just read that into the *Hansard*? If there is any other information you might be able to provide to us—

Mr Smith—Yes, we decided that we would only bring along things that you would ask us to table so I am more than happy to.

Senator FAULKNER—It seemed to me that you were just fishing there for someone to ask you to table the document. It might save a bit of questioning. On one other thing, you sought advice on the FMA—as in, I assume, Financial Management and Accountability Act?

Mr Smith—Yes.

Senator FAULKNER—Could you just inform the committee of what the nature of that is, or is that material that is already contained in the tabled document?

Mr Smith—I think it is—one of the summary advices just referred generally to this. There was very little on that because there was nothing that particularly emerged.

Senator FAULKNER—What I am interested in is why you felt it would be useful.

Mr Smith—The reason for that is quite clear, Senator. You are the reason for that. I recall reading a newspaper article with that referred to, and I thought ‘That’s a left fielder; I’d better check that.’

Senator FAULKNER—I have been accused of left fielders before.

CHAIR—Mr Smith, going back to tax policy issues generally, would it not be normal for the Treasury and PM departments to be the lead departments in any taxation reform considerations?

Mr Smith—Yes. As I mentioned earlier, it is quite usual for the Prime Minister's department and/or the Prime Minister and the Treasurer and the Treasury department to be the main portfolios involved in these things. In fact, as we continue to implement the tax reform, the tax task force is represented by the Prime Minister's department still.

CHAIR—Are there any particular parallels or differences that you could draw between the ethical and practical considerations of the way the Treasury approached the task, in coming up with this tax reform package, and the demolition job that Treasury did in 1992 or 1993 on a document called Fightback.

Mr Smith—The Fightback exercise was a specific direction from the government of the day, including a direction that went to methodology. Essentially, we produced factual information based on a specified methodology for the government of the day. I am not quite sure what further parallel to draw from that. This exercise obviously is much broader. It involves the generation of policy ideas rather than the critique of a particular, already developed policy idea. We used similar methodology, although we did, on this occasion, exercise our preferred judgments on the methodology rather than accept necessarily a specified methodology.

CHAIR—But it was ethical for Treasury to do that even though it was our party's policy?

Mr Smith—I think it is long accepted that the Treasury can be asked to analyse policies, from whatever source. The Charter of Budget Honesty now codifies some of those matters, but we have been asked—as have other departments, of course—to do this type of work in the tax area for many years.

Senator FAULKNER—But you would accept, would you not, Mr Smith, that that is not what this particular audit report is about? It is about whether it is appropriate or not for public moneys to be spent on advertising such policies of political parties—which of course is the nub of the issue that we have before us—as opposed to whether it is ethical. I accept what you say: it is and has been common practice, and I think accepted practice, that costings of—

Mr Smith—It has been common practice to advertise tax proposals and it has been common practice for the Treasury to develop tax proposals.

Senator FAULKNER—But, with respect, Mr Smith, that is not right. There has never been a case in the history of the Commonwealth of Australia where a policy being put to the people at an election—a policy of one party, one of the major political parties in Australia—has been promoted via use of public moneys. That has never happened in the history of the Commonwealth of Australia. With respect, I think the answer that you gave previously is inaccurate. This is unprecedented. It has never before occurred in the history of the Commonwealth.

Mr Smith—That a proposed policy has been advertised by government?

Senator FAULKNER—You talked about tax policy, to start with. I am talking about where a policy of one party has been promoted on the eve of a federal election using a massive amount of taxpayers' money. This has never occurred before in the history of the Commonwealth of Australia.

Mr GEORGIU—Is that an assertion or a question?

Senator FAULKNER—No—

Mr Smith—It is not what I said, Senator.

Senator FAULKNER—No, it is a response to Mr Smith's answer, which I am actually taking issue with. I think that on that particular occasion the answer that Mr Smith gave was inaccurate, and I am pointing out that.

Mr Smith—I think your restatement of what I said would have been inaccurate, but it is not what I said. I said this was a government policy, not a political policy or a party policy. I said it was a government policy and there have been occasions in the past when government policies have been advertised, including tax policies. That is all I said.

Senator FAULKNER—Can you recall any occasion when a government policy that has basically been the key issue of a federal election campaign has been advertised on the eve of, in the lead-up to, a federal election campaign? Has this ever happened before in the history of the Commonwealth of Australia?

Mr Smith—I am not in a position to answer that because I have not studied the question. But that was not my claim. Nor, as I have said on previous occasions to the Senate committees, was it possible for us as public servants to predict that this was the eve of an election campaign. The government had not announced the election and so we could not proceed on that basis. I appreciate that it is true with hindsight, but it was not something that we could have proceeded on as a basis.

Mr GEORGIU—Can I follow this up? Some major programmes like Working Nation, which expended substantial millions of dollars, could have been on the eve of an election.

Senator FAULKNER—They were operating programmes of government, not policies going to an election and you know that, Petro.

Mr GEORGIU—If you can tell me the date at which elections are about to be held, that is fine.

Senator FAULKNER—That is a different issue; I cannot read Mr Howard's mind.

Mr GEORGIU—You have just made a pertinent point.

Senator FAULKNER—But I can tell you that Working Nation was an operating programme of government and was advertised accordingly, and you know it.

Mr GEORGIU—It was the sale of a package and, in my recollection, it consumed almost \$10 million.

Mr SOMLYAY—Mr Smith, are there any parallels between 1998 and 1985 in the advertising of the tax summit?

Mr Smith—I am aware that the Treasurer has made some public statements which set out a number of parallels he has drawn between the two, including that it was a government proposal, that there were call centres, that there was advertising and that in real dollars it was similar to the amount originally allocated by the government. I am aware of those statements but it is not something that I have personally studied. I am aware that he has put that on the record.

Senator FAULKNER—Did you ask your question in relation to the tax summit?

Mr SOMLYAY—The expenditure on advertising for the tax summit.

Senator FAULKNER—Mr Smith, was your answer relating to the tax summit? I am sorry, I missed your answer.

Mr Smith—In a nutshell, my answer was only to refer to what the Treasurer has said.

Mr SOMLYAY—That would have to be right.

Senator FAULKNER—It would be true to say that, in relation to the tax summit, a number of options were put before the Australian people—not one option which happened to be the Liberal Party's policy on the eve of an election.

Mr GEORGIU—So if a number of options are put and one is preferred and shoved down people's throats that is okay.

Senator FAULKNER—It was put after an election, not on the eve of an election. It was not a gross misuse and abuse of taxpayers' money. It was not a corrupt process.

CHAIR—I do not think we are advancing the cause of the inquiry at the moment. Mr Cox has a question.

Mr COX—I have two lines of questioning. Firstly, I want to finish off on the subject of the research.

CHAIR—Do not forget that we have PM&C.

Mr COX—Yes. I understand from reading the transcripts of the Senate committees that all this research was passed to the members of the ministerial council on government advertising before the election.

Mr Smith—As you know, we referred to the Treasurer and members of the council for the purpose of this campaign, so we referred to it in that sense. We have given written answers to questions which we took on notice and which make it clear that we have no record of handing those specific reports to the MCGC. In fact, in several cases the reports were received by us after the last meeting of MCGC before the election. So it would have been impossible to hand it to the committee as a whole.

Mr COX—But members of the committee received it. Did you make any effort to ensure that it was not handed on further, for example, to the parties of government?

Mr Smith—Once we give things to the minister's officers we do not have any further process ourselves.

Mr COX—I would like to talk about the Advance to the Minister for Finance and Administration. The first decision to spend \$10 million on the CEIP was made by cabinet, you said. Did cabinet also decide that the source of those funds would be the Advance to the Minister for Finance and Administration?

Mr Smith—That is correct.

Mr COX—You said after that that a series of subsequent decisions were made to increase that amount from \$10 million to higher amounts.

Mr Smith—It was not a series. There was one further decision which involved three elements.

Mr COX—When was that decision taken?

Mr Smith—I think it was taken on 28 July—I am reading from the same page that you have open. I believe the Auditor-General reported it as 28 July. I am sure that is true. I do not recall separately from that.

Mr COX—So the government then made a decision to effectively double the size of the programme.

Mr Smith—It also modified the nature of some elements of the programme. Use of the words 'doubling of the programme' needs to be taken in the context that some of those moneys were specifically allocated for the health insurance rebate—I think \$2 million—which had not been originally factored in.

Mr COX—Had any of the research been completed and given to the government before that decision was made to double the size of the programme?

Mr Smith—You have again used that phrase. Yes.

Mr COX—That research had been reported to the government, so the government was responding to the research and had decided, on the basis of the research that it had done, that it should double the size of the programme.

Mr Smith—No, I think that would be simplifying things very dramatically. We gave advice to the government that we expected the call centres could cost somewhat more than we had imagined. We were wrong about that, as it turned out, but we became quite concerned about the volume of potential inquiries. Of that extra \$10 million, \$5 million was specifically for call centres and \$2 million was specifically for the health rebate, which is an additional initiative within that package. So only \$3 million was for an increase in the spend on advertising, from memory.

That was our advice, not based particularly on research; at this stage I think we had mainly the qualitative research. As we were pretty much, as you can imagine, on a steep learning curve, not having run a programme of this kind before, it was based on establishing a view as to how much we would need to get optimal coverage of the various elements of the campaign. I do not know that it relied particularly on research.

Mr COX—Was any of the previous \$10 million going to be spent on call centres?

Mr Smith—The \$10 million did not set out what it would be spent on, so we had to develop from scratch, essentially, a view as to what we would spend it on. I think we had imagined that they would be less than a couple of million, perhaps only a million; we were not sure. But we had no real information at this time.

Mr COX—So how much have you actually spent on call centres so far?

Mr Smith—In the end we only spent \$1.13 million, because the inquiry load just did not match our fears.

Mr GEORGIU—You were unduly optimistic.

Mr Smith—We are occasionally unduly optimistic.

Mr COX—Or fearful.

Mr Smith—Well, it is a pretty hard thing to predict. As you can imagine, the level of public interest in matters sometimes is surprisingly low.

Mr COX—It was not my experience going around the community that the interest was low.

Mr Smith—But they were not ringing us as heavily as we expected.

Mr COX—They might have been ringing me.

Mr Smith—But we are now getting more, which is why we have reopened it. We have reopened it because I think as you move into the implementation stage people become more aware of how it may specifically impact on particularly their business. They need information, so we have reopened it.

CHAIR—Have we finished with Treasury?

Mr COX—Not quite. On the question of urgency, given the juxtaposition of the election, it is very hard for a fair-minded person to conclude that the urgency was not related to the election. Since it was, according to your view, an information and education programme, was there any consideration given to conducting it after the election?

Mr Smith—Not at this time, no. The information we had was that the government allocated \$10 million for 1997-98. They did so in the month before the budget. We did not know when the election would be. So the government essentially established the campaign by that decision. We had no commencement date. Of course, we knew that the Prime Minister had said that he would release it before the election, so we knew that the election was not going to be called before it was released. Apart from basic information like that, we had to wait for advice as to when in fact the launch was going to occur. We did not actually get that in the end until late July.

Mr GEORGIU—Mr Chairman, can I observe that this was during a period in which the Leader of the Opposition was predicting an imminent election once every two months from the end of 1996 on.

Mr COX—That is fairly irrelevant. Since this was supposedly for Commonwealth purposes and it was purely to provide information and education to the public, not to change or influence a political outcome, it would have been quite open to the government to conduct this massive information and education campaign after the election, and indeed after there had been time to properly scrutinise the expenditure in the parliament through additional estimates.

Mr Smith—On the question about whether or not it would have been open, it seems to me that if the government was going to release the policy it would be appropriate to communicate it at that time. I think that would be more usual than to have a long lag. Hypothetically, I suppose the government could have done whatever it wished. But it made sense to the government obviously to communicate the policy at the time it was released.

On the question of whether or not it could have got into an appropriation, that would have been possible if the government had made this decision to spend the money in 1998-99. In fact, the expenditures in 1998-99 will be in an appropriation, because we are spending money and in the end did spend it and that will be in an appropriation. But they made a decision to spend it in the previous year. I am not in a position to make hypothetical judgments about whether it could have been otherwise. Clearly this was the government's decision.

CHAIR—Thank you very much, gentlemen, for helping us with our inquiry. We will let you go back to other productive tasks.

[12.29 p.m.]

BELCHER, Ms Barbara, First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet

DAVIES, Mr Richard, Senior Communications Adviser, Government Communications Unit, Department of the Prime Minister and Cabinet

HENDERSON, Mr Alan Gilbert, Executive Coordinator, Government and Corporate Group, Department of the Prime Minister and Cabinet

WILLIAMS, Mr Gregory Malcolm, First Assistant Secretary, Government Communications Division, Department of the Prime Minister and Cabinet

CHAIR—Welcome. Thank you for coming today and thank you for your submission. Do you have a brief opening statement you would like to make before you ask you questions about it?

Mr Henderson—I have got some brief comments to offer, firstly regarding administrative arrangements and, secondly, regarding the Auditor-General's suggested principles and guidelines for government advertising.

In regard to administrative arrangements, at the time of the CEIP the Office of Government Information and Advertising was part of the Department of Finance and Administration. OGIA was restructured and the function was transferred to PM&C in the administrative arrangement order of 21 October 1998. OGIA has since been renamed the Government Communications Unit.

In regard to the principles and guidelines suggested by the Auditor-General, if the ANAO suggestion were to be adopted, under present arrangements we assume it would be the Government Communications Unit that would be responsible for administering the guidelines. As the ANAO report acknowledges, albeit in a footnote on page 27, there have been 'guidelines in place for a number of years that address the process required to manage a government advertising campaign.'

The latest version of these guidelines was issued in February 1995. In our view, the CEIP complied with those guidelines. Moreover, we believe that the Community Education and Information Programme would have complied with the guidelines suggested by the ANAO.

It appears that the Auditor-General's main concern about the existing guidelines is that they do not address the issue of party political content. That is true, and it is guideline 3 in the Auditor-General's suggested guidelines that is designed to address the party political issue. The main point we have emphasised in our short submission is that the various issues identified at the first point under guideline 3 highlight the subjectivity and difficulty of interpreting whether a particular information campaign would or would not be seen as party political. Ultimately, these are issues that need to be addressed and resolved at the government and parliamentary level.

CHAIR—Thank you very much for that. I refer to the point you raise that is of interest to the committee—that is, guidelines and a resolution—if there is to be any resolution—between what is deemed to be political, party political and government. You said in your submission that:

The Department is committed to the proper use of public resources and to the avoidance by public servants of any activity that is directed at the support of a particular political party. The Department supports the two underlying principles and the objective of the guidelines suggested by the Auditor-General.

You went on to say:

Moreover, the Government Communications Unit considers that the proposed guidelines reflect what has been the general practice in government advertising—

and I assume you mean over a long period of time. Could you speak to that and expand on it for us?

Mr Henderson—I am not able to comment over a long period of time from the perspective of responsibility for the Government Communications Unit but certainly that is our view in regard to the CEIP. Speaking more generally, it does not seem to me to be a particularly distinctive arrangement that has applied in this case. Mr Smith has indicated a lot of features of this present programme that have been common over a long period of time.

CHAIR—You went on in your submission to give us some examples of practical challenges in interpreting the guidelines. You said in some there will be difficulties in interpreting any detailed guidelines and that:

In practice, interpretation is likely to be resolved more appropriately in the Parliamentary and political sphere.

Having said that, do you have any view of how?

Mr Henderson—How?

CHAIR—I assume what you are saying is that any attempt to codify what is political or party political has, inherent within it, difficulties which are not able to be resolved, at least in your mind. Then you say:

In practice, interpretation is likely to be resolved more appropriately in the Parliamentary and political sphere.

How might we, the parliamentarians, and those involved in the political sphere come to any resolution of these issues?

Mr Henderson—I can best address that question by illustrating why it is difficult for officials to administer guideline No. 3 especially. The question of the timing of an election has already been alluded to this morning. Under our system, it is very much in the hands of the government and the Prime Minister of the day in particular. Guideline 3—under the first dot point and I am looking at pages 58 and 59 of the report—refers to a number of factors bearing on whether a campaign would be declared to be party political. One of those—at the top of page 59—is:

* how, when and where it was communicated;

If a campaign is immediately prior to an election, that is seen as relevant to whether it is party political. But, as the discussion earlier this morning indicated, we are not in a position to know precisely when an election is going to be called.

Senator COONAN—Nor would you know in advance the effect it had, would you?

Mr Henderson—Most certainly.

Mr GRIFFIN—But you would have some idea of what the intended effect is, or rather the government would as it would be making a decision about when the election would be called. It may not be your decision which makes it party political but it is somebody else's.

Mr Henderson—The question was related to how the parliamentary system would resolve this. I could not really answer that. I was making it clear that guidelines as subjective as guideline No. 3 mean that officials are not going to be in a position to resolve it. From where we sit, that means that the issues can only be played out in committees like this, in the parliament, whether it be at question time, in Senate estimates or whatever. You are all familiar with the processes through which these things can be played out at a political level.

Senator COONAN—What you are really saying is that these sorts of guidelines are not capable of precise definition.

Mr Henderson—That is right, and it is guideline 3 which is the distinctive element of the guidelines, namely addressing the question of 'party political'. That is the key difference between the set of guidelines that we already have.

CHAIR—The Auditor-General has told us he believes he is unable to make that judgment. You are telling us that you as department officials are unable to make that judgment. I am just asking you if you have any view about how we might go about framing some mechanism—if that is the will of the committee—to suggest to governments of current and future persuasions how the split between what is political, party political and government might be more readily resolved in advance, not in retrospect, to give you more guidance on how to operate.

Mr Henderson—In regard to guideline 3, the second last dot point on page 59 says:

* Material should not directly attack or scorn the views, policies or actions of others such as the policies and opinions of opposition parties or groups.

In respect of an advertising campaign, I think it would be fair to say that staff in the Government Communications Unit would be able to offer opinions on matters of that sort.

We are not saying that all elements of guideline 3 are impractical. But, in relation to some of the earlier elements relating to timing, we are saying that the guidelines are subjective. They are not going to enable bureaucratic advice to eliminate the likelihood of controversy associated with advertising programmes. Clearly there could still be scope for controversy.

Mr COX—My suggestion as to a way of putting a clear distinction between what could be construed as party political and putting the party's policy and what could be seen as being a government policy would be to have a guideline which would require the government to actually obtain a head of power to operate the programme, for example by legislating, before it would be able to advertise that programme. Do you see that as being a practical thing that you could administer?

Mr GEORGIU—Can you spell out what that actually means? I did not understand what you were saying.

Senator FAULKNER—What he is saying is: ensure that it has some legislative or other base. In other words, ensure that it is not a party's policy or a partisan policy; it is an operating programme of government. That is what Mr Cox is suggesting, or something like that.

Mr COX—You pass the legislation that makes it clear.

Mr GEORGIU—Then you explain. Okay.

CHAIR—Before he answers the question, just so I have it clear in my mind, are you suggesting that government of whatever political persuasion not be able to advertise government policy in advance of any future election, whenever that might be—and they probably would not know either—unless there is legislation on the floor of the house of the Senate?

Mr COX—Unless the legislation has been passed.

Senator FAULKNER—If he is not suggesting it, I certainly would, because we are dealing with a shonky old operation with this government. If you want to promote your political party's policy, pay for it yourself. Do not ask the taxpayers to foot the bill.

Mr GEORGIU—So if you were in 1985 and you were trying to get up option C then you should not advertise it because it has not been passed? Is that the point that is being made?

Mr COX—In 1985 a range of options were advertised.

Mr GEORGIU—It was not passed.

CHAIR—We are not really asking PM&C anything; we are having a debate. I am guilty too.

Mr Henderson—Mr Chair, I would have to say that the discussion is helpful for us in clarifying what the proposal is.

CHAIR—If it is clarifying it for you, good luck. I am left in the dark.

Mr Henderson—I was quite unclear, with respect to Mr Cox, as to what was being suggested.

Senator FAULKNER—In 1985 you did not have a government that abused the process; you have one now that has demonstrated it will.

Mr GEORGIU—In 1985 you had a government expending money on advertising without precisely what you required. You had rules in operation for six years in the act.

Senator FAULKNER—In advance of the tax summit and after the election.

Mr GEORGIU—So that is okay?

CHAIR—I will stay out of this debate. Has that clarified Mr Cox's question for you?

Mr COX—Do you think that would make it any easier to administer the guidelines?

Mr Henderson—So we are only advertising programmes that have been legislated by parliament?

Senator FAULKNER—That is one possibility, is it not, Mr Henderson? That is one approach that this committee could recommend to government. The first issue is: is it proper and ethical for a government to engage in party political advertising? That is a real threshold issue and I suppose that would be my first question to you: is it ethical for any government to engage in party political—in other words, very partisan—advertising? Is that proper in the view of the Department of the Prime Minister and Cabinet?

Mr Henderson—All I can say in relation to that is that, with the guidelines that exist and with the guidelines that were proposed by the Auditor-General, we would see the CEIP as not being inconsistent with those guidelines.

Senator FAULKNER—But it is a very different issue. The Auditor-General has come before the committee this morning and in direct answer to a question I asked—that is, is party political advertising paid for by government ethical?—he said no. His words in the *Hansard* can speak for themselves. I am asking you the same question. I am not talking about the CEIP; I am talking about the more general issue. The Auditor-General, in paragraph 2.12 of his report on page 26, says:

... it is not within the Auditor-General's mandate to judge the nature of the advertisements

(that is, whether they are political or party-political in nature).

The Auditor-General made it absolutely clear this morning that, if they are party political in nature, they are not ethical. What I am asking you is: is that a view shared by the Department of the Prime Minister and Cabinet? Or does the Auditor-General find himself isolated when he says that party political advertisements are unethical? Is he on his own?

Mr Henderson—We have to define the boundary. It is fine to say that party political advertising may not be ethical—I am just checking that you are listening to my response.

Senator FAULKNER—I am listening but a member of the committee passed me a note, which I am sure he would not want to have on the public record.

Mr GEORGIU—Unfair.

Senator FAULKNER—We pass it that way.

CHAIR—Let him answer the question.

Mr Henderson—The issue is: what is the definition of party political? We are taking instructions and, as was explained this morning, the Treasury was taking instructions from a government. The first test, I would have thought, is that we do not work for party headquarters; we work for incumbent governments.

Senator FAULKNER—With respect, Mr Henderson, you seem to be unable to deal with the threshold issue. You need to for one moment put the CEIP out of your mind and just talk about whether in principle a party political advertising campaign, paid for by government, is ethical or not. That was the question the Auditor-General addressed himself to and he made clear his view that such a campaign, if it were party political, would not be ethical. I understand we are asking these questions in the context of a Public Accounts and Audit Committee inquiry into the CEIP but, without the political spin, it was a more general question.

Mr GEORGIU—Basically there is an argument about definition here as to what constitutes party political advertising. But there is an underlying thing behind the senator's question, which is: do you think it would be improper for the government to spend not on advertising the purposes of government for the purpose of government but rather on advertising for the purposes of the Liberal Party or the Labor Party?

Mr Henderson—Do I believe that that would be ethical?

Mr GEORGIU—Yes.

Mr Henderson—I do not believe that would be ethical.

Senator FAULKNER—That is a different question.

Mr GEORGIU—I am just trying to help.

Senator FAULKNER—Mind you, it is a similar question, but it is a different question from the one I asked. Your response is fundamentally the same as the Auditor-General outlined in his report. The point that I make to the Auditor-General is of course that, given that he thinks it would be unethical for such advertising and given that he took the view that he did not have a mandate to judge the nature of the advertisements as to whether they were political party political in nature, the whole thrust of the complaints that I for one placed

before the Auditor-General were not dealt with. The core element of my concerns—and, for that matter, those of the federal opposition—were not dealt with by the Auditor-General—

Mr GEORGIU—That is not so.

Senator FAULKNER—and that is, of course, a matter for the Auditor-General. But I was interested to understand whether the Department of Prime Minister and Cabinet shared his view.

Mr Henderson—We do share his view, but the essential point we are making in our submission is that the borderline between party political and acceptable government advertising is a subjective matter. It is very much a matter that is in the eye of the beholder. We do not consider that guideline No. 3 makes it crystal clear. I think the points made at the beginning of that guideline highlight why it is a subjective matter. What may appear with the benefit of hindsight to be on one side of the line at the time—as Mr Smith was making clear in his evidence earlier—may not appear to be on that side of the line in advance of an election.

CHAIR—Mr Cox, did you have your question answered?

Mr COX—No, I do not think I did. Mr Henderson, when you gave your preliminary statement, you indicated that you would have some difficulty administering those guidelines set out under No. 3 as proposed by the Auditor-General. I have suggested to you that there can be an objective test put between what may appear to be party political—even though public servants may have been directed to advertise it by the government—and what is clearly an ongoing or a commencing Commonwealth programme: that is, something for which legislation has actually been obtained. Would that objective test make it easier for you, as the executive coordinator in PM&C who has oversight of the Government Communications Unit, to administer a set of guidelines?

Mr Henderson—Mr Cox, I might ask my colleagues whether either of them has comments on that. My first thought, though, is whether in fact all policies or programmes require legislative action and, in that sense, how consistent such a rule would be. I can see that it makes a distinction, but I am not sure whether it might not create more problems than it solves. Ms Belcher may have a comment.

Ms Belcher—I will certainly pass over to Mr Williams, as head of the GCU, in relation to interpreting the guidelines, but I think it would be objective and very easily measured: if it has got royal assent, then go ahead. So it would certainly provide an objective measure. I think it would move away, though, in a number of ways from past practice over many years and perhaps raise some issues about whether the legislation being in the parliament rather than being passed might be an easier rule. For example, on budget night it has been traditional, for I do not know how long, for ministers to send out packages of information to people on their proposals with no legislation of its own, but in the appropriations bill and not yet passed. Would that be all right or not? Under your guidelines, no. But I cannot argue with the objectivity of what you have put forward; it would be very clear-cut.

Senator COONAN—It would be just a matter of what it would exclude, I suppose.

Ms Belcher—Yes, that is right.

Senator HOGG—Would it be possible to put that guideline up and make certain exclusions?

Mr GEORGIU—Yes, it applies to them, but not to us!

Mr GRIFFIN—You are excluded, Petro!

Mr GEORGIU—No, I think it is just so funny that, after 15 years of using no guidelines at all, all of a sudden you go bananas.

Senator FAULKNER—It is not true that there were no guidelines, is it, Mr Henderson?

Mr Henderson—No. There are guidelines.

Mr GEORGIU—Fair enough.

Senator FAULKNER—Yes, there are guidelines. Could you tell me the date when the last guidelines were put in place?

Mr Henderson—February 1995.

Senator FAULKNER—That would have been during the life of the previous Labor government. Thank you.

Mr GEORGIU—That is true, yes, and I refer you to the fact that the guidelines do not go to the matter we are talking about. Through you, Mr Chairman, can I ask a question regarding the relationship. Mr Henderson, my difficulty with the discussion we have been having is that it does not actually deal with what the Auditor-General regards as guidelines. The examples given of suitable uses for government advertising include informing the public of ‘new, existing or proposed government policies’. Do you see any difficulties by running on No. 3 and ignoring No. 1, which says that material should be ‘relevant to government responsibilities’, because that specifically embraces proposed government policies and not policies that have been legislated through? Which side of the fence do we jump to?

Mr Henderson—Indeed. The underlying principles in the Auditor-General’s guidelines refer to the public having equal access to comprehensive information about government policies, programmes and services. The Auditor-General has encompassed information about policy in his principles, and he goes on to say in the second principle that governments may legitimately use public funds for informational or educational programmes to explain government policies, programmes or services. So the Auditor-General in his guidelines is in effect saying that he believes it is appropriate for public moneys to be spent on advertising government policies.

Senator FAULKNER—He may take that view. I do not know, because I did not ask him. If anyone is interested, they could ask subsequently. But he may take the view, of course, that a government policy, as he defines it, is not one on which a government is

seeking a mandate or on which it is basing its re-election campaign. Who knows? I do not know what the Auditor-General means in relation to that. I am not convinced, by the way, that it is necessarily beyond the ken of the best minds of the bureaucracy and the parliament to come up with a set of guidelines that might mean that we could overcome the problem of the massive abuse that took place prior to the last election. I for one am willing to at least attempt it.

Mr GEORGIU—That brings up another issue of acknowledging the massive abuse of power prior to that.

Senator FAULKNER—And your abuses prior to the election, too.

CHAIR—Hang on a minute! Can I ask a question. If we accepted Mr Cox's policy prescription—that the only way the government can advertise anything is if legislation has been passed in the parliament, and then the government can advertise that programme that is authorised by the legislation—and a government did such a thing as passing legislation through the parliament and then going to an election but then never implementing the policy that was defined in the legislation, would that be unethical?

Mr Henderson—The legislation is passed by the parliament—

CHAIR—We have new policy procedures on government advertising. The policy and procedure as Mr Cox has suggested it says that government will not advertise unless there is legislation passed on any particular issue and that, once it is passed, they can advertise that issue.

Mr COX—Say that it passes a law to set up a home loan subsidy scheme before an election.

CHAIR—Let us say that a government passes a law for tax reduction. The government puts through the legislation, advertises the programme and goes to an election, but then withdraws the legislation and never implements the policy: would that be ethical?

Mr Henderson—Ethical? That would have to take account of why they did not proceed with the legislation, I would have thought.

CHAIR—Okay. Does anyone have any further questions before we eat?

Senator FAULKNER—I want to ask one thing. I think we have all been aware for a long time that getting an appropriate set of guidelines is no easy task. I think you are also saying, Mr Henderson, that that is the case, because there are some subjective judgments at the moment in terms of interpretation. As I said before, that is the challenge for this committee and for others to meet.

I want to ask you specifically: would it be correct to interpret from your comments a view that the CEIP advertising campaign may be viewed very differently depending on the timing of an election, and the timing of an election is not within the gift or knowledge of the bureaucracy? I think you are suggesting that. Is that fair?

Mr Henderson—Yes.

Senator FAULKNER—Are you also suggesting, in relation to the CEIP advertising campaign, that it might have been considered reasonable if it were not on the eve of the last federal election campaign? Are you drawing that conclusion as well?

Mr Henderson—What we have said is that it is consistent with the existing guidelines and we have also said, consistent with what the auditor suggested, that one of the factors is the timing. If that campaign had occurred towards the beginning of a term of office, that would have been an important consideration, in my view, in evaluating it. But I have not said anything more than that. The timing is one of the factors, and that is exactly what the auditor is saying.

Mr GEORGIU—New South Wales is the one jurisdiction in Australia that has time-certain elections. Does anybody know what happens in New South Wales with respect to government advertising? There is an election on a fixed date. We even have a Labor government in power. What is the position with respect to government advertising where that time-certain element is at least resolved? Does anybody know? Is there any experience?

Mr Henderson—The only point I would add to that is that the ACT is in a similar situation.

Mr GEORGIU—My apologies. What is happening in New South Wales? It has a Labor government, so they should be doing the right thing.

Mr Williams—The only thing I can recount is an article from one of the advertising press—I think this was reported in January; I would need to drag out the article—which indicated that, as the New South Wales government was entering into the caretaker period, a subcommittee of cabinet would be set up to examine advertising and determine which advertising would proceed during the caretaker period. That is the only advice I can provide to the committee.

Mr GEORGIU—Can we get some more information on that? If in a time-certain period they are still making discretionary judgments—and we do not have time-certain elections—I would be very interested to know.

Mr SOMLYAY—When does New South Wales determine that the caretaker period starts?

Mr Williams—I would need to dig up the article. The article was in January, I think.

CHAIR—Could you come back to us on that?

Mr Williams—I can dig that out. The other issue is that, at the Commonwealth level, there has been a tradition of there being a bipartisan agreement on which advertising would continue during the caretaker period and on which advertising would cease. It was certainly acted upon for last year's election. I can only explain with precision about last year's election.

Senator HOGG—That is once the election is called?

Mr Williams—That is once we enter into a caretaker period, yes.

Senator FAULKNER—That is true. As one of the parties to the agreement, I can confirm that and confirm also that the bipartisanship blew out the window two days prior to the election when the decisions were made in relation to advertising and the Victorian gas emergency. So, yes, in a general sense that is true. I think no-one on any side of the parliament would argue that it is not reasonable to continue that sort of advertising—for example, defence recruitment—through an election campaign. Another example I can inform the committee about is breast cancer screening. There is a range of issues that will find bipartisan support in the parliament and can be easily and properly dealt with under the caretaker conventions—and were, within certain limitations, during the period of time when the caretaker provisions applied.

Mr Williams, you would be aware that in relation to this particular programme that is before the committee at the moment—in other words, the CEIP—a range of advertisements were run on both electronic media and in the print media after the caretaker period began. That has been progressed in other forums, as you know, but it is true to say that they ran. It is also fair to say that there were attempts I think in large measure to stop a lot of that material running, but it is proper to say that, in the case of the CEIP, funded advertising on both electronic and print media did run at the commencement of the caretaker period. I think that is fair to say, isn't it, Mr Williams?

Mr Williams—That is correct, Senator. As I responded in part at estimates—and we are preparing a response to a question on notice—the reason the advertising continued after the caretaker period was essentially due to circumstances beyond our control. Instructions had been issued for it to cease. In some cases it was a human failure in the organisation that meant the advertising went to air. In other cases, it was just a production process—where newspapers had been printed and their distribution could not be stopped.

Senator FAULKNER—I would make the general point that the application and provisions of the caretaker conventions perhaps are elements that this committee needs to think about, but I would not put it at a much higher level than that. I suppose I should ask Ms Belcher, who I know is an absolute expert in the caretaker conventions, but is it fair to say that they are pretty well codified, which is a little different from some of the issues that we are grappling with here?

Ms Belcher—Yes, there are always elements of judgment involved, even there. But, yes, they are well understood.

Mr GEORGIU—I would like to lock into the point about advertisements during the caretaker period. Was an instruction issued that the ads should be taken off immediately?

Mr Williams—Instructions were issued on Sunday, the 30th, and I think the caretaker period commenced on the 31st.

Mr GEORGIU—Instructions were issued when?

Mr Williams—The way we place government advertising is through a master placement agency, which does all the booking and placement. Instructions were issued to that master placement agency and they, in turn, issued instructions to media outlets, both print and electronic. We succeeded in having virtually all the advertising in the electronic media off the air by Sunday evening. The majority of the press ceased on the 31st, but there were cases with some regional newspapers and some ethnic newspaper where it continued because the newspapers had already been printed on the weekend and it was obviously not practical to stop that distribution. The instructions were clearly issued on Sunday, the 30th.

Mr GEORGIU—I just wanted to clear up the impression that there was some attempt to keep stuff running after the caretaker period. Long introductions leave you with the impression.

CHAIR—Thank you very much for coming and talking to us. We would appreciate that additional information if you can find it.

Proceedings suspended from 1.09 p.m. to 2.00 p.m.

BARTOS, Mr Stephen, General Manager, Budget Group, Department of Finance and Administration

BEASLEY, Mr David, Director, FIRM Team, Department of Finance and Administration

HELGEBY, Mr Stein, Branch Manager, Budget Coordination, Department of Finance and Administration

CHAIR—I welcome representatives of the Department of Finance and Administration to today's hearing. We have received your submissions, which we thank you for. Do you have a brief opening statement you would like to make on these issues into which we are inquiring?

Mr Bartos—The Department of Finance and Administration welcomes the report by the Auditor-General into the Community Education and Information Programme. We note in particular that the Auditor-General has found that the CEIP constituted a legitimate Commonwealth purpose under section 81 of the Constitution. The Auditor-General also found that the approval of funds from the Advance to the Minister for Finance and Administration met the legislative conditions that the requirement be urgent and unforeseen. I would also say that we particularly welcome the conclusion that, to quote from the report, 'the government acted legally and officials acted ethically' in relation to the CEIP.

It might help the committee if I briefly explain, without going into very much detail, how the Advance to the Minister for Finance and Administration works. The AMFA is an appropriation that is agreed by the parliament that provides governments with flexibility to meet unexpected needs. It is issued only on a needs basis, based on agency applications and provided that they satisfy the legislative conditions: firstly, that the Minister for Finance and Administration is satisfied the expenditure is urgently required and (a) was unforeseen until the last day on which it was practicable to include appropriation for the expenditure in the bill for the appropriation act before the introduction of that bill into the House of Representatives, or (b) was erroneously omitted from or understated in the bill for the relevant appropriation act; and, secondly, particulars of which will afterwards be submitted to the parliament.

As this committee will be aware from the evidence that we have provided, the details of all amounts issued from the advance are provided to the parliament through the tabling of monthly statements, and a statement of issues that remain as a final charge to the Advance to the Minister for Finance and Administration at 30 June is tabled annually. I believe the committee has a copy of that, but we have a further copy of the report for the year ended 30 June 1998 if the committee wishes to refer to that. What that indicates is that, in recognition of the extra financial flexibility that is provided through the Advance to the Minister for Finance and Administration, there is a higher accountability requirement in place for advances for new services.

It is also worth mentioning that the Department of Finance and Administration has quite stringent internal guidelines that we apply to ensure compliance with those legislative conditions. The guidelines were approved by the Attorney-General's Department, and a copy of that approval has been provided to the committee. They have been tested on numerous occasions and they have been found to be pretty sound internal guidelines. Again, the committee has a copy of those, and they are quite extensive and quite detailed guidelines that are issued for use by budget officers of our department in their consideration of applications.

In the case of the Community Education and Information Programme, the guidelines were found by the ANAO to have been applied properly in order to legitimately fund the policy of the Commonwealth. It is also true to say that those guidelines recognise that there is a duty on the delegate to pay special consideration to items for which there is no existing appropriation, as was the case in relation to the CEIP. It is also worth mentioning that the responsibility for providing the information that supports the request for funds from the AMFA lies with the department that makes the application.

I might summarise and finish these opening remarks by indicating that the ANAO found that the framework and the administration of the advance were appropriate in this particular case. It is a framework that is used for all requests for issues from the Advance to the Minister for Finance and Administration. I think it would be a fair conclusion to say that it is a robust framework that can be applied to this and any such cases where there is a need for funds to meet unexpected contingencies.

CHAIR—Thank you for that. Would you mind taking us step by step through the procedures that you use in considering an application for use of AMFA?

Mr Helgeby—I would be happy to do so. The guidelines identify, within the parameters of the legal basis for AMFA, a number of circumstances where AMFA may be appropriate; in particular where funds are found to be insufficient to pay overseas accounts, where initial payments are needed in association with an emergency or a national disaster, where government decisions were made subsequent to the finalisation of appropriation bills, and where errors were made in calculating a figure included in the appropriation bills.

The normal procedure for an agency that believes it is in a situation where it needs to call on the Advance to the Minister for Finance is to provide the department with an application stating the reasons for that application and the amounts required. Those applications involve a statement from the authority for the request and the provision of additional information, where relevant, to enable the delegate to make a judgment. Essentially, the role of the delegate is to look at that information provided by the department relative to the guidelines and make an assessment about whether or not the criteria are satisfied. Those criteria, essentially, as stated in the guidelines, come down to conditions of funding being urgent and unforeseen.

CHAIR—On page 4 of your submission dated 12 February you said:

DOFA rejects any suggestion that Cabinet decisions to use AMFA may bypass the role of the delegate. Cabinet decisions, on their own, are an expression of policy intent and do not determine whether the criteria for the issue of

AMFA have been satisfied. Before AMFA is issued, the Minister or his delegate must make a judgement about satisfying the criteria laid down by Parliament.

Could you expand on that?

Mr Helgeby—This is correct. Cabinet decisions, by themselves, do not justify the appropriation of money through the AMFA. Rather, the delegate has to form a judgment against the criteria which are set out and against the guidelines as they are set out. That is an issue, I think, on which the Audit Office commented. In fact it made reference to a 1988 report, quoting the Department of Finance, as it was at that time, which noted that:

. . . it was rare for a Cabinet decision to specifically say that funds from the AMF will be provided. However, even if it did, the officer approving the advance on behalf of the Minister would turn their mind to be satisfied that it was urgent and unforeseen.

So, the role of the delegates, regardless of the decision made by government, is to satisfy themselves that the criteria are met.

CHAIR—But in your statement, you said:

Before AMFA is issued, the Minister or his delegate . . .

Do circumstances ever arise where the minister, on his own, would make a determination that AMFA was appropriate?

Mr Helgeby—To the best of my knowledge, the minister on his own has not made such a determination in recent times.

Mr SOMLYAY—When the minister makes a delegation, can he override it?

Mr Helgeby—A minister can do that.

Mr Bartos—A minister is always in the position to do that. But the practice has been that the decisions in relation to this have been made by delegates of the minister. However, under the legislation—that is, the provisions that are set out in the appropriation bills that appropriate the moneys for the Advance to the Minister for Finance and Administration—that is a power that is given to the Minister for Finance and Administration. But practice has been that it is a delegated authority.

CHAIR—Do you believe that operates satisfactorily, or that there should be some legislative change to specify the role of the delegate, for instance?

Mr Helgeby—The role of the delegate is specified in the guidelines as they are set out. Those guidelines have been tested with the Auditor-General over a number of years. The AMFA, in various forms, has been around, possibly, since 1901, so it is a tried and tested mechanism. My view would be that the mechanism has been found to be satisfactory and to work appropriately. In particular, in this case, it has been found to have met the requirements of the case.

Mr COX—Which of you was the delegate in relation to the first AMFA approval for the CEIP?

Mr Helgeby—I was.

Mr COX—Given that this is new expenditure and that it has a higher test, did you consult with the minister before you approved it?

Mr Helgeby—For this particular occasion, I draw the committee's attention to the guidelines, which are clear. I will just find the relevant section. The guidelines are clear under the heading 'Under what legal authority is AMFA being sought?, (i) urgency', where it says:

Issuing AMFA for new Bill 2 items can in effect avoid Senate scrutiny and circumvent the prerogative of Parliament to determine the amount and purpose of appropriation.

They then note:

- . Because of the sensitivities associated with many new Bill 2 items, authorised officers of the Minister for Finance and Administration have been/are loathe to exercise to the full extent their powers of approval and have looked to the Minister for a decision as to the "urgency" of such expenditure.
- . This hesitancy has not been applied to Bill 2 items:
 -
 - . where the Minister for Finance and Administration has been party to the expenditure proposal and it is clear enough that AMFA would be required to implement that decision.

This particular case falls into that category. It was clear the Minister for Finance and Administration was party to the expenditure proposal. It was also clear at that time that the AMFA would be required to implement the decision. The basis for that judgment was that it was unforeseen in the meaning of the term that funding was required after the last date at which it was possible to be included in the appropriation bills.

Senator FAULKNER—Mr Chairman, is the document from which our witness has just quoted before us?

Mr Bartos—I believe the committee has been supplied with that document.

Senator FAULKNER—Can someone point us to which page you were on?

Mr Helgeby—I am actually reading from an Internet page, which is page 5 of 12.

Mr Bartos—My version, not being an Internet version, is done page by page, and the particular section I believe Mr Helgeby was reading from is quoted as a point towards the top of page 6. He quoted from that reference to the Minister for Finance and Administration as being party to the expenditure proposal. It is in the middle of page 6.

Senator FAULKNER—Where it says, 'Because of the sensitivities'?

Mr Helgeby—Yes, from there onwards.

Senator FAULKNER—And you quoted from, ‘Because of the sensitivities’ through to the end of the second dot point, have you?

Mr Helgeby—I have quoted the first of those points. I have quoted the beginning of the second major dot point about hesitancy, and then I have gone to the last of the subpoints under that, which talks about the Minister for Finance and Administration being a party to the expenditure.

Senator FAULKNER—I see. Thank you.

Mr COX—So the Minister for Finance and Administration did not seek opposition approval to use AMFA in this way, as in the second dot point?

Mr GRIFFIN—With regard to what we think of the GST becoming a natural disaster, if not yet.

Mr COX—The first dot point is a natural disaster.

Senator COONAN—It is humanitarian aid.

Senator FAULKNER—It is certainly not humanitarian.

Mr COX—We think it is neither natural nor humanitarian but, in the second dot point which says:

. in special cases where the relevant Minister has sought the concurrence of the Opposition to the proposal;

I take it that the minister for finance did not do that?

Mr Bartos—These three are alternatives, Mr Cox.

Mr COX—I know; I am just singling them out. What was your judgment about the expenditure being unforeseen?

Mr Helgeby—It was that funding had not been provided in the last available appropriation bills for this item.

Mr COX—Which was 1997-98?

Mr Helgeby—Yes.

Mr COX—Cabinet had made a decision that \$10 million would be used for the CEIP and that AMFA would be used to provide it?

Mr Helgeby—I will go to my chronology. Government approved the allocation of \$10 million on 7 April.

Senator FAULKNER—Mr Cox asked do we read ‘government’ as ‘cabinet’?

Mr Helgeby—I am quoting from the ANAO report, which refers to the government.

Senator FAULKNER—Yes, I know, but he is asking a slightly different question: what does government mean? Well, I am asking it if he is not, and I think he was anyway.

Mr COX—I was, yes.

Mr GEORGIU—Why do you want it so badly?

Senator FAULKNER—It is just that if we are going to go through this seriatim, we ought to get it clear.

Mr Bartos—While it is not our practice to talk about decisions made by cabinet or otherwise, it is fairly clear that there are a number of references to cabinet in paragraphs 3.44 onwards in the Auditor-General’s report. Obviously, the committee can draw its own conclusions from that.

Mr COX—Treasury have already indicated that it was, in fact, a cabinet decision.

Senator FAULKNER—That was a very longwinded way of saying that.

Mr GEORGIU—It means that they have sensitivities that the Auditor-General does not have. I think that is what it means.

Mr COX—So you did not consult the minister at all? Was there any other discussion? For example, was the matter discussed with you by your minister’s office?

Mr Helgeby—As the delegate, I form my judgment based on the documents provided by Treasury and the application of that against the guidelines.

Mr COX—But did your minister’s office ring you or send you a note or come to see you to discuss it?

Mr Helgeby—As far as I am aware, no.

Senator FAULKNER—But you would be aware, would you not?

Mr Helgeby—I would be aware.

Senator FAULKNER—It just seems like a most extraordinary qualification—having heard Mr Bartos’s line about cabinet and government. I appreciate the sensitivities, but wouldn’t a better answer just be no?

Mr Helgeby—No.

Mr COX—Did Treasury speak to you about it in any detail?

Mr Helgeby—To the best of my recollection, no. I was dealing with the documents put in front of me.

Mr COX—So they just came to you in the ordinary course of events?

Mr Helgeby—The normal course of events is that a responsible department will generate documentation which follows the format set out in the guidelines. That will be submitted to us and we will process it on that basis.

Senator FAULKNER—So a responsible department would never seek the views of, say, the Minister for Finance and Administration?

Mr Helgeby—A responsible department would consider the guidelines and would consider whether or not they had a plausible case. They would not generally waste their time and ours by putting up something that was as spurious relative to the guidelines.

Mr GRIFFIN—Ever knocked one back?

Senator HOGG—In how many instances would they be knocked back?

Mr Beasley—We knock back about 10 per cent.

Senator HOGG—So 10 per cent are knocked back? Is that the total global?

Mr Beasley—That is all AMFA applications through to the—

Mr GRIFFIN—Are they principally small ones or large ones or a mix?

Mr Beasley—I could not answer that.

CHAIR—Has that been true historically over time?

Mr Beasley—Since I have been a delegate. Yes, over the last couple of years.

Mr GRIFFIN—Mr Helgeby, have you knocked one back?

Mr Helgeby—The way the delegation is organised is that my delegation is generally exercised for amounts of \$5 million or more. Generally, they would not get to me.

Mr GRIFFIN—So you have not knocked one back yet?

Mr Helgeby—They would not yet have got to me to approve.

Mr GRIFFIN—So there is a filtering process before they get to you?

Mr Helgeby—There is a filtering process.

Mr COX—Who is the filtering process?

Mr Helgeby—The filtering process involves other officers in my branch.

Mr Bartos—There will often also be a prior filter to that where, if an agency is seeking moneys from the Advance to the Minister for Finance and Administration, frequently they will contact their relevant account manager within the Department of Finance and Administration—someone who is in my budget group, but not part of Mr Helgeby's unit. The people they contact will often give them advice about what the criteria are and tell them that, for an application to succeed, it has to be both urgent and unforeseen. Frequently, a department will not pursue an application on the basis of that informal contact.

Mr GRIFFIN—When something gets to your desk, how long does it take—normally, ballpark and on this occasion?

Mr Helgeby—When something gets to my desk? I would generally try to deal with it expeditiously. The purpose of an AMFA application is to meet—

Mr GRIFFIN—Define 'expeditiously'.

Mr Helgeby—If I could complete my statement. The purpose of an AMFA application is to meet funding requirements—generally speaking, where there are bills on hand, which is the most common form of AMFA applications. To delay processing of an AMFA application can be detrimental to the department and the Commonwealth. I generally try to deal with them within a day or two.

Senator HOGG—Were there bills on hand in this case?

Mr Helgeby—In this particular instance, there were commitments which required immediate funding.

Senator HOGG—Commitments are different, of course, to bills on hand.

Mr Helgeby—Yes. We had been informed by Treasury that there were immediate commitments that required funding to the level of \$250,000.

Mr COX—So what you are saying is that Treasury had entered into commitments on the basis of a cabinet decision without there being a proper appropriation and without consulting you as to whether an AMFA would be available and that you were then placed in a situation where you were expected to pay the bills because they were urgent, because the commitments had been made.

Mr Helgeby—No, I am not saying that. I am saying that the information provided to us by Treasury was that they did, in fact, have commitments which required funding of \$250,000.

Senator FAULKNER—Can you tell us what those commitments were?

Mr Helgeby—The relationship between departments and DOFA in relation to the applications for AMFA is that the onus is on the relevant agency to provide accurate and

reliable information. The judgment of the delegate is based on the information provided by the agency. That was an issue that was addressed by the ANAO in its report.

Senator FAULKNER—Can you take us to the relevant paragraph?

Mr Helgeby—At 3.42. The second half of that paragraph states:

The question is whether there was sufficient evidence before the Minister's delegate to justify the decision to approve funds from AMFA. The ANAO's legal advice states that the delegate is in most cases entitled to reach a conclusion on the material presented by the applicant. The test is whether the decision-maker is 'satisfied' by that material not whether it was foreseen by Treasury.

The ANAO further states under 3.43:

... it is not unreasonable that the Delegate relied on the accuracy of advice provided by Treasury.

That is, in fact, the normal course of events—the delegate would rely on the accuracy of the advice provided by the relevant department.

Senator FAULKNER—But that is an answer to a different question. That is helpful, and thank you for it, but the question went to the sum of—

Mr SOMLYAY—\$250,000.

Senator FAULKNER—It is more than that. It is slightly more, isn't it?

Mr Helgeby—\$250,000 was the initial amount sought.

Mr GRIFFIN—What documentation was provided and what did it say about what that money was being spent on?

Mr Helgeby—The documentation was provided in the form of a standard application form which would have had a cover letter.

Senator FAULKNER—I just want to be clear on this. Has Treasury expended \$250,000 at this point?

Mr Helgeby—No. At that point, Treasury were saying that they had two things: they had authority to do things and they had commitments which required funding of \$250,000.

Senator FAULKNER—Let's go through both of them. What does 'authority to do things' mean?

Mr Helgeby—They have a government decision.

Mr SOMLYAY—Not a cabinet decision.

Senator FAULKNER—What is the second element? Can you give us a little more detail about the second element?

Mr Helgeby—The second element is that they were signing to the fact that they had \$250,000 worth of commitments.

Senator FAULKNER—What does ‘commitments’ mean?

Mr Helgeby—Commitments generally mean things that the government has to pay for.

Senator FAULKNER—What specifically are the commitments we are talking about?

Mr COX—What did you okay the money to be spent on?

Mr Helgeby—We okayed the money to be spent on the Community Education and Information Programme.

Mr COX—What were the specific items contained in the documents before you?

Mr GEORGIU—Let us get this into perspective. How many of these things do you actually get in the course of a year, and the availability of \$390 million?

Mr Helgeby—A very large number.

Senator FAULKNER—Can you let us know when the interference you are running has finished so we can get back to—

Mr GEORGIU—I went through the chairman. You do not go through the chairman. Everybody shoots across. When I am finished, I will tell you. Fair is fair. I would like to know how many of these things we are dealing with. For \$10 million out of \$390 million, I would like to know how many of these things actually do cross your desk.

Mr Helgeby—At a rough count, 100 to 200 in a normal year.

Senator HOGG—Would you knock back 10 per cent of those?

Mr Helgeby—The applications relate to individual amounts that require funding because of a commitment or a bill on hand. You may get the same programme essentially coming up for several rounds of AMFA funding, where you go through the same process each time. It would be something in the order of a couple of hundred.

Mr GRIFFIN—How many are subject to an inquiry like this?

Mr Helgeby—I am not aware of any.

Mr GRIFFIN—That is what I thought. I thought you might know, that’s all.

Mr SOMLYAY—Was there any reason for this one to ring any alarm bells with you as a delegate?

Mr Helgeby—No, there was not. The paperwork was done in the normal way. There was a government decision. There had been recently published budget papers which referred to this. They had been published about five or six days prior to this application being received. There was, in my view, sufficient authority for this application to proceed.

CHAIR—This committee has visited the issue of the AMFA before and the Auditor has suggested that we might want to revisit it. Without asking you about policy, because I understand you are not going to comment on policy, I ask: if we are considering somehow tightening the rules, do you believe that the rules as they exist today are adequately administered by department officials so that you are determined that all applications meet the guidelines?

Mr Helgeby—I do believe that. I believe that is shown in this instance as well and borne out by the Auditor-General's findings.

Senator FAULKNER—I return to the question I was asking before about these commitments. Can you tell the committee what these commitments were?

Mr Helgeby—Senator, the role of the delegate here is to make a judgment based on the information provided to them. In this case, there was information provided by the Treasury that they had immediate commitments of \$250,000.

Senator FAULKNER—Did they tell you what they were?

Mr Helgeby—I am not aware that they did, but I am aware that they—

Senator FAULKNER—But you would know if they did, wouldn't you?

Mr Helgeby—Yes, I would.

Senator FAULKNER—As long as we get a clear answer. I appreciate what you are trying to say. I just want to know whether you knew what those commitments were. It is a very long way around for us to try to focus in on where I think you realise the questioning is going.

Mr COX—It is a possible change to the guidelines that the delegate ought to know what the commitments are that he is approving funding for.

Mr Bartos—That is an issue and it is obvious where the questioning is heading on this one. I suppose the concern here is whether, in relation to an application for expenditures of \$250,000 out of a \$10 million programme, the delegate can be satisfied, if he is told that there are commitments, that the requirements of the legislation have been met, or whether he sees a need to go beyond it. In this particular case there was no reason, on the face of it, to believe anything other than that the Treasury was accurate in what it said. Had there been, obviously Mr Helgeby would have gone in search of further evidence.

In relation to some applications for the Advance to the Minister for Finance and Administration, where there is reason to doubt what a department is putting up there is

further investigation undertaken. But in this particular case, on the face of it, there was no reason to do anything other than what Mr Helgeby did in this case.

Senator FAULKNER—That is a theoretical framework, isn't it, Mr Bartos? I suppose many would say that that sounds perfectly reasonable. All I am trying to ask is: did the delegate know what the commitments were—that is the first question—and, if he did, what were they?

Mr Bartos—The delegate knew that the funding was for the specified purpose but did not know more than that—what the funds would be applied to in relation to that programme.

Senator FAULKNER—Do you know now what they were for? You did not know then, when you ticked off on it, but do you know now?

Mr Helgeby—We signed off on 18 May. I know now that there were a range of activities undertaken under this programme. I cannot state whether or not this particular \$250,000 went to one of those activities or to any other of those activities.

Senator FAULKNER—Is it true then to say—you are the delegate—that the only way now that the committee can establish what these commitments were is to ask Treasury?

Mr Helgeby—That is true.

Senator FAULKNER—Unfortunately we have had Treasury before us. I suppose we will have to ask them again through another mechanism. You are making it clear that you did not know at the time and you do not know now.

Mr Helgeby—That is right.

CHAIR—Ultimately the use of AMFA is reported to the parliament, as funds are expended.

Mr Helgeby—Yes.

CHAIR—What relationship in that report is there between the funds that are spent and the funds that are requested?

Mr Helgeby—What the report shows is appropriations from the AMFA under a particular item. I do not think we show amounts remaining unspent against that appropriation as at a particular date in that published document.

Mr COX—In this case there would be a final charge—

Mr Helgeby—Yes, as a final charge.

Senator HOGG—Do you show what the money was actually spent on in a report of some form? Otherwise, it is money out and no ticking off as to why it was spent, where it was spent and how it was spent.

Mr Helgeby—The accounting for funds which is provided under the AMFA is done through the normal ex post reporting mechanisms—that is, through annual reports and portfolio budget statements.

Senator HOGG—So there is no way of identifying the actual need or the reason for the special funding being made available.

Mr GEORGIU—Through you, Mr Chairman: can somebody say that I have got something dramatically wrong? You have an agreement to spend \$10 million and they say, ‘We don’t have an appropriation; we need \$10 million in these tranches.’ You say, ‘Yes, they fit’ or ‘They don’t fit’ and that is it. Is there some misreading of contemporary government that I have missed here? There seems to be, but I am not quite sure what it is. I don’t mind long fishing rods, but this one is not even very exciting.

Mr COX—What we are going to is that the AMFA can be used to circumvent proper parliamentary scrutiny of expenditures. It seems to us, from what we have been told this afternoon, that in this case the delegate who authorised it had no idea precisely what the commitments were. That is a situation that I personally find mildly alarming.

We have a situation where Treasury have been criticised for relying on AMFA for appropriations in the subsequent year in this financial year. I think it is incumbent upon us to get to the bottom of how cavalier they have been.

CHAIR—Has this Advance to the Minister for Finance ever been used back in history? Have the forms ever required the originating department, whomever is going to spend the funds, to tell you what exactly you are going to spend them on?

Mr Bartos—No.

CHAIR—Never?

Mr Bartos—The form has been in place for a while and it is a standard form. Might I also respond to the issue that Senator Hogg raised in relation to the disclosure. It is actually the case that the material that is tabled from the advance to the Minister for Finance and Administration does set out rather more detail than would be supplied in the appropriation bill. So not only do we indicate the department and the appropriation, which is normally just the extent of the information that you would get in an appropriation bill, but we also indicate the purpose of the item. The basis on which the department has applied is also spelt out in the material that is tabled.

Senator HOGG—In this particular case, is that disclosure there?

Mr Bartos—That disclosure is there in terms of the purpose being set out to assist taxpayers to understand the nature of reform to the tax system. I appreciate that the questioning before was wanting rather more dissection of what that purpose was, but I think it would be fair to say to the committee that just that explanation is more than would be provided for most items in an appropriation bill.

CHAIR—You would have to provide a very big volume, I suspect, if you punched in every invoice and every line item and every cent that was spent in reaching that accumulated total.

Mr Bartos—Absolutely.

CHAIR—Would you find that onerous?

Mr Bartos—That would be onerous both for ourselves and also for the department that was applying for the moneys. It also administratively goes in a sense against the notion that this is for moneys that are urgently required, imposing an excessive paperwork burden that would slow down processes and therefore would run counter to the need to provide money urgently.

Mr SOMLYAY—Wouldn't the payment of the minor items be subject to normal audit in the normal course of events?

Mr Bartos—Absolutely. All of these payments are auditable and also have to be fully disclosed by the department after the payment in the normal way of ex post reporting through annual reports.

Mr GRIFFIN—Is there any particular reason why you did the first one, Mr Helgeby, given that you mention you normally do \$5 million-plus when the first one was only \$250,000?

Mr Helgeby—It could have been because I was around on that date.

Mr Beasley—If I recall, I was not around at that time.

Mr GEORGIU—Was there any untoward reason why you did this instead of other things?

Mr Helgeby—No.

Mr COX—Leading through the chronology, you have had Treasury on a number of occasions ask for AMF approval for further moneys for this programme and you knocked them back because they already had sufficient approval.

Mr Helgeby—Unspent funds, yes.

Mr COX—Yes. How do you judge those things? Just off the Commonwealth ledger?

Mr Beasley—Yes. We have a system called the funds allocation control system, which keeps an accurate record of what funds are actually spent against every single appropriation item. In this particular case one of the first checks that we do against each AMF is to check that there are not other sufficient funds available. In this particular case there were funds available to pay the bills on hand.

Mr COX—Did Treasury explain to you why they were seeking further AMF allocations when they still had funds available?

Mr Beasley—No. The only information in front of me was their application.

CHAIR—It just goes to prove, does it not, that the system worked?

Mr GEORGIU—It is a cavalier sort of run-through that everybody gets what they ask for all the time. That is just to make a rhetorical statement in the context of the other rhetorical statements.

Mr COX—Was there any consultation with Finance before, on 28 July, a further \$10 million was allocated by cabinet for the CEIP?

Mr Helgeby—Not that I am aware of.

Mr COX—So there was no consultation.

Mr Helgeby—No, not that I am aware of.

Mr COX—There was no coordination comments put on any cabinet submission as to the cause of this being authorised?

Mr Helgeby—Again I have no knowledge of that.

Mr COX—A cabinet submission to appropriate \$10 million would normally be circulated to all departments, including Finance, for coordination and comment?

Mr Bartos—That would be the normal situation. In relation to this one, as we have indicated before and as Senator Faulkner is well aware, we are not going to go behind government decision making and talk about what cabinet may or may not have done.

Mr COX—But you have already told us that there was no coordination comment put on this cabinet submission.

Mr Helgeby—I have simply said I am not aware of what processes were involved.

Mr COX—Unless it was done by the minister's office.

Mr Helgeby—I am not aware of any process.

CHAIR—Thank you very much, gentlemen.

[2.51 p.m.]

BROWN, Mr Roger William, Assistant Secretary, AusInfo, Department of Finance and Administration

WRIGHT, Dr Diana, General Manager, Resource Management Framework, Department of Finance and Administration

CHAIR—I welcome representatives from AusInfo. We have received both of your submissions. Would you like to make an opening statement before we start asking questions? One of the things that interested me is that in your second submission you advised that no breaches of copyright relating to CEIP material have been brought to AusInfo's attention, either at the time or since, but paragraph 5.2 of the audit report implied there had been alleged breaches of copyright brought to AusInfo's attention. Could you explain that apparent discrepancy to us?

Dr Wright—We have had no formal advice of a breach from the agency concerned. It is usually the agency concerned that alerts us to any breach of copyright and brings it to AusInfo's attention and then we investigate it. That has not occurred in this case.

Mr Brown—No, there was no notice.

Mr GEORGIU—Can I ask one brief question. I am a member of parliament, I go into an election period, I have all the fact sheets and people ask me questions. Would I be in breach of copyright if I copied the fact sheet or pages out of the booklet *A New Tax System* or any other piece of government literature and sent it out to constituents? It is a genuine question.

Mr Brown—I would not have thought so.

Senator COONAN—It is the purpose; so it would not be.

Dr Wright—If the information is already freely available, particularly if it is not an extract and it is not currently for sale commercially, in which case under the copyright laws we would want to charge a royalty, then there is nothing to stop information. The purpose of the guidelines is in fact to maximise the public's access to government information. So, if it is already in the public domain, particularly if it is a brochure which already has the Commonwealth copyright acknowledged on it, then there is no problem.

Senator FAULKNER—When did AusInfo become aware of the unlicensed use of Commonwealth material by the Liberal Party and the National Party?

Dr Wright—I am not aware of unlicensed use. We had a formal request for copyright. Requests for copyright have to be made in writing and this one was received on the 31st. I am not sure what time of day.

Mr Brown—It was in the morning of the 31st.

Senator FAULKNER—But what use of those materials occurred prior to the licence being issued?

Mr Brown—I am certainly unaware of any use that was made of the material before the licences were issued.

Senator FAULKNER—Are you aware of why the Auditor-General deals with this in his report?

Mr Brown—Frankly, no.

Mr GEORGIU—That is why I asked my first question.

Senator FAULKNER—I am sorry; I did not hear what your first question was.

Mr GEORGIU—My first question was: if I have stuff that is available to me as a member of parliament and it is available to the public, if the public ask me about a particular issue, I usually just fax or photocopy and send what is available.

Senator FAULKNER—That might be material that is available, but how it might be misused by political parties is a very different issue, is it not? Do you know why the Auditor-General deals with this issue in his audit report?

Dr Wright—So that we have a common understanding, perhaps you could explain to me your understanding.

Senator FAULKNER—No. It is a serious question. Why does AusInfo think that the Auditor-General covers this particular issue in his report?

Dr Wright—I do not think I can comment on the Auditor-General's intention or understanding.

Senator FAULKNER—Because issues were raised with the Auditor-General about the unlicensed use of this material, that is why.

Mr GEORGIU—By you.

Senator FAULKNER—By me amongst others. The Auditor-General would not want me to put words into his mouth. I do not know who else might have, but I certainly raised this.

Mr GEORGIU—When did you ask?

Senator FAULKNER—If you had read the submissions, Petro—

Mr GEORGIU—I know. There was so many of them.

Senator FAULKNER—That is right. Of course, there is the issue about the time when I became aware that the licence had actually been issued, as you would appreciate.

Dr Wright—I am certainly aware of that. I am not aware of any alleged breaches prior to that time.

Senator FAULKNER—Are you aware of the correspondence that was received by the Auditor-General?

Dr Wright—I am not sure what correspondence you are referring to.

Senator FAULKNER—In relation to the possible unlicensed use of CEIP material by the Liberal and National parties.

Dr Wright—I am aware of the matter being raised by you at the same time that a licence was issued.

Senator FAULKNER—There is, if you like, a lead time between the knowledge of the licence being issued, which I freely acknowledge—I am just digging out the correspondence now. Let me go to some other issues while we find it. Can you tell us how much was actually paid by the Liberal Party and the National Party in relation to the class 2 material under the licence?

Dr Wright—No money has been received and it is our understanding that that part of the material, the class 2, was not used, that it was class 1 material that was circulated.

Senator FAULKNER—What about the costs that have been recovered in relation to the GST promotional campaign—this was briefly canvassed with Treasury this morning—that is, obviously, other than sales of the AusInfo at the bookshop?

Dr Wright—It is not an area that we are responsible for, so I cannot answer that, I am sorry.

Senator FAULKNER—I understand that, but whom would you suggest we ask that question? Treasury thought you might have an idea. Whom would you suggest if you were assisting me in this?

Dr Wright—Can you repeat the question so I fully understand?

Senator FAULKNER—Who would have knowledge on the cost recovery on the GST promotional campaign?

Dr Wright—That would be something that only Treasury could answer. We could only provide information on publications that have been made available for sale through the AusInfo bookshops.

CHAIR—Senator, I thought that was your question before, which she answered, that, under class 2, her understanding was—

Dr Wright—Under the copyright licence we have not received any income. However, should any of the publications have been sold through the AusInfo bookshops then, yes, the

government would be in receipt of revenue. We do not have that level of detail and I do not know how much effort it would take to obtain that information. Should you require information on the sales of publications associated with tax that are available from the bookshops, then we could seek to obtain that.

CHAIR—Do you want that, Senator?

Senator FAULKNER—That would be helpful. I do not want to set you a huge task.

Dr Wright—I do not know what the amount of time and effort involved would be. If it is significant we will come back to you.

Senator FAULKNER—If it is a mammoth amount of time and effort, I do not want to send you off to do it.

Dr Wright—We will have a look at it and come back to you.

Mr Brown—We will take that on board.

CHAIR—Thank you.

Senator FAULKNER—I wrote to Mr Barrett on 24 August about advertisements in the *Parramatta Advertiser* on Wednesday, 19 August. I indicated to him my concern about the inappropriate political nature of the tax reform advertising campaign—the use of the slogan and the graphic and so on. I made the point to him obviously that I was not clear whether in this case the Liberal Party candidate, Mr Cameron, or the taxpayer was paying for these advertisements. If the slogan and the graphic were used at that time, would they have been lawfully used?

Mr Brown—There was no licence granted to use them. Was the date the 19th?

Senator FAULKNER—Yes. I wrote to Mr Barrett on 24 August enclosing a copy of the advertisement. I am happy to show you a copy, if you like. I notice that Mr Gary Gray, the National Secretary of the Australian Labor Party, has appended it to his submission, No. 6, to the committee. I thought you may have seen it. It is in the *Parramatta Advertiser* of Wednesday 19 August 1998. It is just an example. The advertisement uses ‘Tax reform. Not a new tax. A new tax system’. As I say, it uses the slogan and the graphic that appears on the Commonwealth—

Dr Wright—That has not been formally raised with us by Treasury as a breach, so we have not investigated that particular aspect.

Senator FAULKNER—Did the Auditor-General raise that with you?

Dr Wright—No.

Mr Brown—No.

Mr GEORGIU—In terms of the time line, the election was announced on 30 August, so this is in the pre-election period.

Senator FAULKNER—What time was the licence issued?

Dr Wright—On 1 September. But the application was made on 31 August.

Mr GEORGIU—Is the assertion being made that a member of parliament cannot use—

Senator FAULKNER—This appears in a Liberal Party advertisement in the *Parramatta Advertiser*. This is one example of many. I thought I would just pick a good one. We can go through a hundred of them if you would prefer to. There is a substantive issue here. What I wanted to know of the Auditor-General was whether this was a misuse of public funds—in other words, were Commonwealth taxpayers paying for the advertisement—or a misuse of the intellectual property of the Commonwealth, which I suspect is much more likely to be the case. Let me return to my questions to AusInfo. Do not worry about Mr Georgiou; he interrupts the flow of questioning all the time.

Mr GEORGIU—It is called a flow, is it?

Senator FAULKNER—It was, until your interruption. The Auditor-General has not raised these issues with you at any stage?

Mr Brown—No.

Dr Wright—No.

Senator FAULKNER—Did you have any discussion with the Auditor-General? You would have had at least a copy of the Auditor-General's report in draft form, I assume, before it was published.

Dr Wright—No, not to my knowledge.

Senator FAULKNER—Have you had any communication with the Auditor-General in relation to any issues relating to the CEIP or tax advertising campaigns?

Dr Wright—As we stated in our response to requests from the JCPAA, on 24 February we provided a letter from Jeremy Gregson of AusInfo and copies of documentation—the licence for copyright, which is our formal interaction with Attorney-General's on these specific licence issues under question.

Senator FAULKNER—Is it proper for anyone to use the slogan and the graphic, for example—let us talk about that because it is well known to people—prior to the issue of a licence?

Dr Wright—I would have to take that one on notice. I do not know whether the use of the slogan in itself is sufficient to warrant copyright.

Senator FAULKNER—I suggested to the Auditor-General at the time that Mr Cameron, for example, amongst others, ought to be prosecuted for the unlawful use of Commonwealth copyright. This matter never came before you?

Mr Brown—No.

Dr Wright—It is normal procedure for breaches to be formally raised with the agency that has initially developed the material and they will then raise the matter formally with us. We then go to a process of conciliation. This is quite often with a private sector company. Should that not be satisfactory, then the matter is referred to the Australian Government Solicitor.

Senator FAULKNER—Were what I thought improper uses of copyright material by the member for Lindsay, Ms Kelly, and the Liberal Party candidate for Jagajaga, Mr Raunic, raised with you at all?

Mr Brown—No.

Senator FAULKNER—Ms Kelly's advertisements included the Commonwealth's coat of arms.

Dr Wright—That has not been raised with us.

Mr SOMLYAY—So does your letterhead.

Senator FAULKNER—Yes, that is right, my letterhead does.

Mr COX—It does not say, 'Vote John Faulkner, Labor candidate for New South Wales.'

Senator FAULKNER—My letterhead is not actually a paid political advertisement.

Mr SOMLYAY—It depends what you put in the letter.

Senator FAULKNER—So does your letterhead; so do your envelopes.

Senator COONAN—It depends what you use it for, I suppose.

CHAIR—And so say all of us.

Senator FAULKNER—Perhaps all our letterheads do, I do not know, but that is a very different issue, as I am sure our witnesses would appreciate—as one would hope even the committee members would appreciate. But none of these issues have been raised with AusInfo?

Mr Brown—No.

Senator FAULKNER—You must wonder why you are here.

Mr GEORGIU—Because we asked them to be here.

Mr Brown—I prefer not to answer that.

Mr SOMLYAY—Is AusInfo responsible for the copyright on the coat of arms?

Dr Wright—The Department of Finance and Administration is responsible for the administration of the guidelines pertaining to copyright. Attorney-General's is responsible for the policy and also its relationship to the Copyright Act 1968.

Senator FAULKNER—The department of finance prints my letterhead and Mr Somlyay's letterhead—which we really appreciate.

Mr SOMLYAY—In reality, every one of us uses our letterhead for political matters. An legitimate use of our letterhead is for 'the re-election of the member'—as defined by the Remuneration Tribunal.

Senator FAULKNER—You put it in newspaper advertisements, do you?

Mr SOMLYAY—Why not?

Senator FAULKNER—Did you? Have you? We will go after you, too.

Mr SOMLYAY—I am not a witness.

CHAIR—I think I have seen newsletters from Labor Party members that have the Commonwealth coat of arms.

Mr GEORGIU—Of course you have. That is appropriate; nothing else is.

Senator COONAN—You had better warn people against making admissions.

Mr COX—You have a choice: you can have the coat of arms or you can have the logo. If you are going to use the coat of arms and you are going to get the Commonwealth to pay for it, you have got to be very careful what you do with it.

Senator FAULKNER—How would these people get access to a bromide to be able to reproduce the slogan and the graphic? Can you help me with that?

Dr Wright—I do not think that I can pass a view on that, save to say that modern technology can do many things. You do not necessarily need a bromide to be able to reproduce artwork.

Senator FAULKNER—Would you have any idea of whom I should ask these questions? They really are very important issues, and I am sure that is the reason why the Auditor-General has canvassed them in his report.

Dr Wright—I think they are probably best directed to Attorney-General's.

Senator FAULKNER—Right. We had better get them in. Thank you.

Mr COX—I would like ask a couple of questions about your breathtaking efficiency. You say that you got an application for the use of Commonwealth copyright on one day and you approved it the next. The Auditor-General suggests that a typical approval for the use of Commonwealth copyright takes about two weeks. Given that I would have thought that on the eve of an election the use of Commonwealth copyright for what were going to be election ads and suchlike would be a reasonably complex and sensitive matter, I am very interested to hear what sort of considerations you went to before making the approval.

Dr Wright—In the process for approval the areas that are looked at are, first, whether the Commonwealth holds the copyright to the material in question. In a number of cases there can be other materials included in a government publication for which the government does not hold copyright. Those can be more complicated and more time consuming to process than something that has been generated wholly and solely by a government agency. That is one issue which may or may not take time. In the case in question, the material was clearly generated by the Commonwealth.

The second aspect is the complexity and magnitude of the request. This was a very simple request. We need to look at how the information has been made available by the Commonwealth, whether it has been made available for nothing, on a cost recovery basis or on a fully commercial basis. Depending on those issues, we need to look at whether we need to issue a formal licence and whether we need to charge or recover royalties. So each of those is a step which can add to the complexity or make the case fairly simple. In this case it was fairly straightforward because the material was freely available to the public. It was in the public domain: it was available on web sites and it was available in the AusInfo bookshops. Because it was available in the AusInfo bookshops, we had to issue a licence because if that component were used then a royalty would be due. Otherwise if the brochures were used then no royalty would be due because those were made to the public for free.

We have actually done a check of our statistics, and on a daily basis we will turn around two applications a day at least within that time frame because they are straightforward. It is not unheard of. We also take note of any deadlines or urgency. It can be the case that publishers have left things until the last minute and they are ready to do a print run. Clearly, if we can, we do process things in a timely manner.

Senator FAULKNER—How did you become aware of the so-called urgency of this?

Mr Brown—The application.

Senator FAULKNER—Could the applications from the Liberal Party and the National Party be tabled for the benefit of the committee?

Dr Wright—We believe so.

Senator FAULKNER—Thank you. Apart from the applications from the two political parties involved, did you receive any requests, written, verbal or in any other form, from any individual or organisation asking for this matter to be dealt with with alacrity?

Dr Wright—Not to my knowledge. The only advice that we sought was from Attorney-General's, as we have said in our response, to confirm that we did need to issue a licence, rather than just a formal letter, when the material was available for free and that this was the appropriate instrument. But I am not aware of any other requests.

Senator FAULKNER—But, if there had been other requests, would you actually be aware of them?

Dr Wright—If they had been made to AusInfo, we would be aware of them.

Mr Brown—If I could just clarify this—requests from whom in relation to this?

Senator FAULKNER—I said any individual or organisation in relation to AusInfo processing this matter very quickly. I appreciate you have applications from the Liberal Party and the National Party—I understand that; that is quite clear—but I am asking whether you received any entreaties from any other individuals or organisations asking you to process these as a matter of urgency. In other words, was the fix put in by anyone else?

Dr Wright—We would need to double-check with the officers around at the time.

Senator FAULKNER—I would appreciate it if you could take that on notice. Thank you very much.

Mr GEORGIU—Apropos the senator's comments about the printing of advertisements, could I just refer him to the distribution of unauthorised material by Labor members in the lead-up to the 1996 election, which was in technical breach of the Electoral Act. But, since it was part of the process, people said that it was reasonable enough.

Senator FAULKNER—Through you, Mr Chairman: I thank him for that. I will give it all the consideration it deserves.

Mr GEORGIU—Don't take too long.

CHAIR—May I, on behalf of the committee, thank both of you for your comments. Anyone else with questions?

Mr COX—I have a couple of questions. One is that no fee was applied to any of the licences that were given to the Liberal Party or the National Party for the reproduction of this information. Is that the case?

Mr Brown—We do not charge a licence fee.

Mr COX—When you give a licence, do you consider how the material is going to be used?

Dr Wright—The main considerations are whether the material is going to be used for commercial purposes or not.

Mr COX—If a political party—in this circumstance one opposing the Liberal and National parties, on whose policies this \$20 million was spent in promotion—sought a copyright licence to reproduce material for the purpose of criticising that, would there be any difficulty in getting such a licence?

Dr Wright—I am not sure how we would be able to tell that the purpose was for criticising, in that hypothetical case.

CHAIR—Thank you very much for coming.

Resolved (on motion by **Mr Georgiou**):

That the document entitled ‘CEIP 1: budget expenditure by Treasury’ presented by Treasury be taken as evidence and included in the committee’s records as exhibit No. 17.

Resolved (on motion by **Mr Cox**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 3.19 p.m.

