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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND
AUDIT

Reference: Australian government purchasing policy and practice

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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Friday, 12 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: Senator Hogg, Mr Charles, Mr Griffin, Ms Plibersek and Mr St Clair

Terms of reference for the inquiry:

The Joint Committee of Public Accounts and Audit (JCPAA) will examine whether Commonwealth entities, during the last four years, have achieved effective outcomes in the way purchasing policies are implemented, and whether Australian business has achieved more equitable outcomes arising from these policies. The inquiry will have particular reference to:

- (1) the performance of Commonwealth entities in managing and implementing purchasing policies during the last four years;
- (2) statistical information identifying trends in purchasing outcomes during the last four years;
- (3) an assessment of whether Commonwealth purchasing policies have maximised commercial opportunities for Australian suppliers; and
- (4) possible initiatives that could further enhance Commonwealth purchasing policies.

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Committee met at 9.03 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 Australian government purchasing policy and practice. I declare open this public hearing of the Joint Committee of Public Accounts and Audit inquiry into Australian government purchasing policy and practice.

In 1997-98, the total value of purchases by Commonwealth budget funded agencies was about \$8.8 billion. It is essential, therefore, that the purchasing function is managed effectively and appropriate guidelines are in place. Commonwealth agencies must ensure that Commonwealth moneys are spent wisely and outcomes for the Australian public are maximised.

The committee will examine the performance of Commonwealth agencies in managing, reporting and complying with the Commonwealth procurement guidelines. Some of the key areas that will be examined include how Commonwealth agencies interpret and apply the core purchasing principles of value for money, open and effective competition, ethics and fair dealing, accountability and reporting and national competitiveness and industry development.

The committee enters this inquiry with the knowledge that over five years ago a previous parliamentary inquiry noted serious criticisms with Commonwealth procurement. Some of these concerns are being raised in submissions to this inquiry. For example, some of the statements and claims that have been made in submissions include, firstly:

Commonwealth entities have poorly managed and implemented purchasing policy during the last four years, and the recommendations in the Bevis Report were ignored in many areas.

That was from pages 3 and 4 of submission No. 4—Streets Enterprises. Secondly:

. . . it has become apparent that, frequently, the selection of the winning bid is largely based upon price . . .

That comment was from page 3 of submission No. 10—Ballistic Innovations. Thirdly:

. . . unfortunately the 1994 report has largely been a wasted opportunity as the procurement practices by Commonwealth entities have not progressed in a manner that has assisted industry, particularly SMEs.

That comment was from page 2 of submission No. 13—Australian Information Industry Association. Fourthly, page 5 of submission No. 34 from the New South Wales ISO says:

. . . in respect to the principle of national competitiveness and industry development, in broad terms it is our opinion that government purchasing has not helped local industry to become internationally competitive.

Fifthly, the ISONET submission No. 36 says on page 5:

There remain six core principles and policies, but without adequate guidance, purchasers may detect conflict between policies such as value for money and industry development, and opt for the simplest way out.

Sixthly, the ISONET submission continues:

Unless purchasing competency training and accreditation levels are given status in Departments through requiring adequate training for specific posts and providing remuneration incentives to those responsible for purchasing, the use of purchasing power as a facilitator of industry development can diminish significantly.

A key objective of the committee will be to test these and other claims and examine whether Commonwealth agencies have improved the management of the purchasing function and helped maximise the commercial opportunities for Australian suppliers.

In addition to investigating, evaluating and making recommendations on these issues, the committee will also consider the use and uptake of electronic commerce, common use agreements and endorsed supplier arrangements, the views and experience of the business community, the adequacy of purchasing statistics and possible initiatives that could further enhance Commonwealth procurement.

The committee has conducted public hearings in Canberra, Sydney and Melbourne. Today the JCPAA will take evidence from the Department of Defence, the Department of Industry, Science and Resources, the Attorney-General's Department and the Australian Government Solicitor, ADACEL Technology Ltd, the Department of Agriculture, Fisheries and Forestry and the Victorian Government Purchasing Board.

Before swearing in the witnesses I will 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.

[9.07 a.m.]

**BADELOW, Colonel Clive, Director-General, Commercial Support Program,
Department of Defence**

**GAIREY, Mr Mark, Director-General, Acquisition Planning, Defence Acquisition
Organisation, Department of Defence**

**KEARNS, Dr Graham, Head of Industry and Procurement Infrastructure, Defence
Acquisition Organisation, Department of Defence**

**REYNOLDS, Mr Mark, Director, Contracting Policy, Defence Acquisition
Organisation, Department of Defence**

CHAIR—I welcome the representatives of the Department of Defence to today's hearing. We have received your submission, thank you. Do you have a brief opening statement you would like to make before we ask questions about what you are doing or what you have done?

Dr Kearns—Thank you. I would like to make some introductory comments. I know we do not have a lot of time this morning, but it would be good to capture a few key points that might help inform the subsequent discussion that we will have this morning.

We would not have tickets on ourselves if we said that a review into Commonwealth purchasing would not be complete without us. The figures are always treacherous but I would say that something like 60 per cent, on our best estimate, of all Commonwealth purchases of goods and services are made by the defence organisation. To help a discussion of how we are doing our business I thought it would be good to say some words about the scale and risk of, specifically, defence purchasing; the achievements we are proud of, including some of those which grow out of the initiatives of the last four years; and some of the areas where we want to do it better—the challenges.

Under scale and risk, it is useful to capture a few figures about the big end of town in terms of major capital purchasing. For example, we do run about 200 projects. At any one time we have something in excess of \$30,000 million worth of projects—at least in the current period—and we spend about \$2½ billion a year. We have 51 projects that have project costs in excess of \$100 million. This is a unique portfolio. If the committee could guide us on this we would be grateful, but we would think that no other organisation in Australia would manage a portfolio of that scale and with that complexity and risk that goes with the purchase of high technology capabilities.

CHAIR—I would challenge you on that.

Dr Kearns—I would be grateful to know because we sometimes say that, and we hope it is true. But, as I say, more than \$30,000 million is a large portfolio to be managing. More generally, if we look at Commonwealth—specifically defence—purchasing, our submission indicates that more than 200,000 contracts are arranged each year. It is useful to try to

capture the tempo of that in terms of what the organisation has to manage. For example, if we assume that we work an average 40 hours a week—and I hope we are all working a lot more than that—then we are signing a contract roughly every 30 seconds throughout the working year. It is a large enterprise and there is a large constant throughput of activity in the purchasing area.

If we assume 99 per cent success in the management of all of our purchasing relationships, we would still have something like 2,000 purchases that were not going well. If we had a 99.9 per cent success rate, more than 200 purchases would not be going well, yet I think you would agree that as a level of achievement in purchasing that would be a pretty astonishing level of success. I think it is useful to put it that way to capture the context when we hear individual comments that, ‘This contract didn’t go so well,’ or ‘That contract didn’t go so well.’ It is important, among other things, to look at that against the overall scale of defence purchasing.

Many of our defence purchases are long-term relationships. Many of the contracts that we are running now are more than 10 years old. When we look at the purchases we have in play now, some of them, as I say, are more than a decade old. We are running new purchases and we are negotiating contracts as we speak. It means that, when you capture defence at any one point in time, you are capturing quite an era—or, if you like, changes in an era—of purchasing, which I realise does make it complex to try to see how we do business when we have such a range of purchases over time.

Clearly, one size does not fit all. We buy everything from stationery to combat aircraft, and so the approaches we take to purchasing are variable and respect the different kinds of purchases we make. So that is a little bit about the scale and the risk, particularly in the high technology area of defence purchasing.

I want to say a couple of things about the achievements because there are some things that we really are very proud of in our purchasing area. One of those which does not get a lot of attention is unimpeachability—the probity of our purchasing. There is a tendency to pocket that as something which falls out naturally from government practice. I think it is important to stress that that is not just a natural outcome of the Australian character, it is something you have to make, and that that probity is a major achievement for an organisation that spends more than \$5,000 million a year in the purchase of goods and services. The professionalism of the source selection process has been a remarkable achievement when you consider the sheer number of purchases that are potentially contestable, and how few are contested and how few are found to be at fault.

We think our industry programs are very highly developed in the Commonwealth context. I note that Minister Fahey’s recent guidelines on procurements of more than \$10 million specifically exempts the defence organisation from the application of those principles on the grounds of the substantial industry programs we already run. I think that is a reflection of the particular strengths we have in that area. We do go beyond Commonwealth requirements in some areas. We do mandate Australian industry programs for purchases above \$5 million where the requirements have been above \$10 million.

We have our procurement rules, which this government has articulated and promulgated on many occasions, and they are a major guidepost for industry on how, particularly, overseas companies do business in Australia when we buy from them. With industry programs, where we are making purchases of more than \$100,000, we mandate reporting requirements for those purchases, growing out of the reforms of several years ago.

There is a heavy emphasis on sunrise technologies. The high technology emphasis on Defence does dovetail with the importance of information technology in national development. Under 'achievements', I point out our leadership in the Commonwealth in procurement training. For example, last calendar year we trained more than 3,000 procurement officers—far more than the rest of the Commonwealth put together—and we train a lot of other Commonwealth procurement officers as well.

I mentioned challenges. There are things we want to do better. I refer in particular to the Defence and Industry Strategic Policy Statement which was released by government in June last year. That sets out a number of initiatives to improve our performance in purchasing, from research and development to involving industry more in capability development; streamlining acquisition; developing further our Australian industry involvement programs; cultural and communications issues; and exports and international programs. Within the major capital area of our purchasing, we have a business process re-engineering project under way which is aimed at further improving and streamlining the acquisition area. I would be very happy to talk to that issue this morning.

In summary, I will leave you with this thought: if we are not making any mistakes, I do not think we are trying hard enough. We are in the business of trying to capture tomorrow's capability with the decisions we make today. It is, intrinsically, a risky business. If it ceased to be a risky business, we would guarantee a technology rearguard approach to capability development which would be entirely at variance with the government's commitment to capability edge. I do hope very much that the committee, in looking at where we go next and in helping us in that process, will help take us down that path of how we manage risk and how we can most effectively capture the future technologies that we need.

CHAIR—Thank you very much for that, Dr Kearns. I have to say honestly that a number of departments, industry organisations and individuals have told us that as far as they are concerned, since the release of the Defence and Industry Policy Strategic Statement and the implementation of those change requirements, Defence is the model—not that you are not without criticism. We have had individual submissions complaining about Defence procurement, and we have had one lot of witnesses that were vociferous in condemning Defence as not doing anything to support Australian industry development. Let me ask you a stupid question: who do you buy your paper from?

Dr Kearns—I think the largest contractor we have is Boise Cascade, which is the main supplier of Reflex—Australian made paper. To our best knowledge, over 70 per cent of our paper is currently purchased locally.

Senator HOGG—Is that purchased centrally?

Dr Kearns—I do not think so. I think it is purchased through the separate purchasing organisations around Defence.

Mr Reynolds—It is devolved with 186 purchases last year, covering about \$1.8 million worth of paper.

CHAIR—I will challenge one of the things you have said. Our understanding is that the Commonwealth last year spent \$8.8 billion on purchasing goods and services. Defence was about \$4.4 billion of that—in other words, slightly more than 50 per cent. We talked to Telstra in Melbourne a couple of weeks ago, and I think they told us they are spending \$8.3 billion in purchasing of goods and services—and a lot of it very high-tech stuff. Although they are still a GBE, nonetheless that makes them twice the size of Defence in terms of spending.

Dr Kearns—That is a good point, and I am not including the GBEs there. I am using the figure that total Commonwealth purchasing is somewhere above \$8 billion, which is a figure that does not include the Telstra figure. I would be interested to know what Telstra's portfolio of investments are like. They would be a good comparison. I will stand corrected if we turn out to be wrong on that but, as I say, at more than \$30 billion—however the Telstra comparison comes out—we run a remarkably large and complex array of investments, and that is only in the specific major capital equipment area.

CHAIR—We found it interesting that, recently, after a review of their business principles and guidelines, they centralised purchasing for the first time rather than having it totally devolved. So that it is now a core responsibility, reporting directly to the chief executive officer.

Dr Kearns—Right.

CHAIR—Can you tell us a little about the pyramid of purchasing in Defence and how it is structured?

Dr Kearns—I will make a start and then I might ask colleagues to help me out because the picture is one that I am probably not going to capture all of. We do have a central promulgation of guidance to the Defence organisation at large, which is the responsibility of my area. So Commonwealth purchasing guidelines, for example, are captured in major documents such as this tome here on Defence procurement policy; this is our *Defence Procurement Policy Manual*. So we do centrally articulate and promulgate guidelines through this, through instructions and through our training programs in which, again, the Defence Acquisition Organisation is the largest trainer. So the expectations and guidance are sent out from that area.

We also gather figures, and in that sense we monitor the performance of the Defence organisation in purchasing. However, I think it would be fair to describe the purchasing functions as, essentially, being devolved to the 14 groups of which the Defence organisation is comprised, so that they operate within the guidelines but have their own authorities to make the purchases. That would be my first pass at an answer. But I invite my colleagues to add, subtract or make modifications to the picture I have painted there.

CHAIR—Who do you report to?

Dr Kearns—I report directly to the Deputy Secretary, Acquisition, who runs the Defence Acquisition Organisation.

Senator HOGG—Who tests whether the guidelines are being met? Is there any mechanism or is it just a matter of, ‘We’ve got the guidelines, there are the guidelines,’ and no-one ever really follows up that they are being met?

Dr Kearns—The individual organisations, and certainly this means the heads of those organisations, are responsible for ensuring that their members are operating within those guidelines. We do, through the capture of data centrally, have visibility of how we are going, broadly. We are aware, by exception, if particular problems come up. But we do not have one central area that, in a sense, audits the individual purchases. We would be very reluctant to do that where that would involve a substantial encrustation of overheads to the 200,000-plus purchases.

We do mandate, as an organisation, very different levels of industry involvement, for example, in different levels of purchasing. But much of our purchasing is below \$2,000. You will see in the figures that something like 150,000 of our purchases are simple procurements, and we do not audit those centrally in detail.

CHAIR—I thought the figures were disappointing. I found very confusing the huge difference between what is reported on Transigo and what is reported through your financial management information system.

Dr Kearns—It is probably fair to say that Transigo is a subset of the data captured through our own management information system and that the largest point of variation is that our obligations to report through the *Gazette* are for purchases above \$2,000, whereas our management information system captures purchases below \$2,000 as well, where the largest number of individual transactions occur.

CHAIR—I have a question regarding Australian industry involvement. You wrote into the Defence and Industry Strategic Policy Statement that any purchase above \$100,000 requires a justification if it is overseas purchased. How does that work in practice and how do you audit it?

Dr Kearns—We are moving towards, and the industry policy statement foreshadows this, electronic reporting. That reporting will be on the Internet. So, some time very soon, we will have up on the Internet the reporting regime. This is a very important step for us with regard to the Commonwealth principle of reporting accountability because it means that purchasing officers are publicly accountable for whether they have purchased offshore and the reasons for their doing so. Currently, the reporting regime is done on paper and does not have that same automatic external visibility that we will have when the new system is up and running.

CHAIR—Who audits it?

Dr Kearns—Do you mean who tests it for accuracy?

CHAIR—Yes.

Dr Kearns—We rely on the individual command arrangements in the purchasing areas to ensure that their people are reporting on that accurately. We are not currently running, centrally, an audit on each purchase above \$100,000.

CHAIR—Sometimes these things sound good in their high-flying principles. We believe the Australian government purchasing guidelines are nice sounding principles that fall down in practice many times, and other committees before us have believed that. If there is no follow up, no real audit, and you say to a purchasing officer that you have just placed an order for \$110,000 worth of M1 rifles, AK47s—or whatever—and that you have bought them from Russia, who tests that the purchasing officer who placed the order did follow the guidelines and did write a substantive justification on why he bought overseas?

Dr Kearns—There are two additional things that I should point out. Although each individual purchase is not subject to a real-time audit when it is made, the Inspector-General's area in Defence, through its management audit branch, does audit the performance of all programs, including their purchasing areas. So there is that discipline of periodic audit that is carried out through the Inspector-General's area. The second thing is that, through public reporting via the Internet on these purchases, I think we have a very effective discipline on purchasing officers to ensure they are robust in the decisions they have made and the reasons for them.

Senator HOGG—Won't this show up, though, when we get to accrual accounting and you have to report in outputs and outcomes? Will we not start to see where there are problems in the system?

Dr Kearns—I confess that I am not yet sure enough about how the budget statements on accrual accounting will work out as far as capturing the smaller purchases, including the ones that are, say, \$100,000-odd.

Senator HOGG—I was not thinking of those very small purchases. I was thinking of those in the mid range. You would capture those, surely, and you would see that the outcome was not there? The thing that interests me from your statement is that you said, 'If 99 per cent of your contracts go well, then 2,000 are going wrong; and if 99.9 per cent are going well, then 200 are going wrong.' Do you have a measure of how many are going right and how many are going wrong? I think this follows on from what the chair said. We are interested in just how many of these contracts are good contracts and how you test them. If they are not good contracts, how do you remedy the problem?

Dr Kearns—Certainly the impression we have, going back to the 99.9 per cent figures, is that we do not identify numbers like that of contracts going wrong. A lot of buyer-seller relationships will be worked out at the working level, as they should be. An organisation should not rely upon reporting to the highest level every time a purchase of any size hits a snag. So we rely heavily on sensible practice at the purchase officer to seller level to sort out

issues at the time. We tend to find out therefore by exception. We do not have a perception of hundreds or thousands of contracts that are going wrong.

CHAIR—Once you have placed a contract, it has Australian industry development criteria as part of the contract, and the contractor commences to manufacture or supply whatever it is, say, submarines. If one of the bases of selection of the contractor's tender was the fact that they had a very high degree of Australian content, to what extent do you monitor that they actually provide that content in producing the contract?

Dr Kearns—The Australian industry involvement work plans are a contracted item and they form part of the regular and routine reporting that the prime contractor makes to the project office. So their performance against their contracted obligations is part of the deliverables that they have to report in that contract. That enables us to assess whether the information is consistent with the undertakings they make contractually to promise certain areas and levels of Australian industry involvement.

CHAIR—But do you? Is that 100 per cent?

Dr Kearns—If you are looking at the case of major capital equipment, we have industry staff who look at those returns to judge their performance against what they were contracted to provide.

Mr Gairey—Over and above that, in most of the major projects there is an industry cell and among their responsibilities is the actual physical audit of the industry programs that have been contracted. We would have people who would be going out and looking at what the prime is claiming and checking that in a physical sense. I guess one of the difficulties is defining what is Australian content, and that has been a problem over the years. But within each contract there is a definition of what is meant.

Senator HOGG—Is there an Army definition of what constitutes Australian content? It is not a smart question; we are just trying to tease these things out. You are right, there seems to be no straight definition. It is not easy to come to. I am wondering if you people have a definition that you work from.

Mr Reynolds—Within our procurement guidelines we have a straight definition which looks at what is value added in Australian industry. Each of the services is compliant with that definition.

CHAIR—How often will you let a contractor out of the clause? He has tendered on the basis of, let us say, an Australian company producing a subcomponent of whatever—producing something for the sub. What if in the course of the contract he says, 'We stuffed up. We think there is another one that is better and that comes from Germany,' and we say that is okay.

Mr Gairey—Talking again in the major capital area, in that circumstance we would look to the prime offering an alternative proposal so that we achieved the same overall level of Australian content. If he decided that he was no longer going to supply this component from

Australia, then we would be looking to him to provide something equivalent somewhere else in the overall package that would compensate for that change.

Ultimately, if we cannot find some sort of sensible compromise of that nature, most of the major contracts do include, if you like, a liquidated damages provision, which is a pretty blunt instrument as we have discussed before. That is the ultimate sanction, if you like, but we would normally look to negotiating an acceptable outcome for the Commonwealth, which would mean the overall achievement level was retained.

Col. Badelow—As Mark has just said, so far the line of responses to the question has been focused very much on the capital equipment area. The particular program that I represent, which is the Defence commercial support program, is one which is not exclusively but pretty much primarily focused on the delivery of services. As such, we also comply with those particular guidelines, in our case because the services that are required are required to be delivered in Australia by companies that are either Australian or New Zealand registered.

What we found in 100 per cent of cases was that those particular services were delivered by Australians for Australians to Australians. But that is a unique element, because it is a service delivery program directed pretty much because the services are required to be delivered in Australia. We are actually physically separate from the capital equipment area because in our particular area we report up the line. My boss is the inspector-general. That probably reflects a somewhat unique arrangement, although we still adhere to and comply with the same procurement guidelines.

Mr St CLAIR—With regard to the training of procurement officers, you mentioned that you put through about 3,000 or so each year. Do you do that in-house? How do you do that?

Dr Kearns—We contract out the delivery, although clearly within our organisation we design the modules that we want for our procurement officers to do their job. The service delivery of training is done through contractors such as Deakin University and Skilling Australia. They are the two principal contractors at the moment.

Mr St CLAIR—Do you develop the program that you want or do you do that in conjunction with overseas people? How do you keep abreast of what you actually want to train your people with? In other words, how do you get the outcome that you want? Is there enough information in Australia?

Dr Kearns—Yes, we are very up-beat about the training program we have. It is one that is constantly evolving. We think we know best what we need for our procurement officers, who are at the coalface of making procurement decisions, from simple procurements right through to complex and strategic procurements. We take a leading role in designing and redesigning the course curricula and customising it so we can get the best spread of the training modules out to the procurement officers. There is quite a lot of work being done now—some experimentation really—to further customise our training to get the right messages out to purchasing officers.

Mr St CLAIR—Is any particular emphasis given to the component of small to medium sized enterprises in that training section for your procurement officers?

Dr Kearns—I believe it is. Mark Reynolds, what are your impressions about that and the way we deal with SMEs specifically in the curriculum?

Mr Reynolds—Within the modules that we currently run we have particularly the Australian industry involvement courses. They have a specific emphasis on small to medium enterprises. In the simple and complex procurement modules we identify the requirements, as per the Commonwealth procurement guidelines. We have to make sure there are no bars to small to medium enterprises in the way our procurements are put forward—we must not set them up so that there is not an opportunity there. They must balance that with the requirement to meet value for money in all of its forms.

Mr St CLAIR—Do you have a definition of small business?

Mr Reynolds—We have had many.

Mr St CLAIR—We have asked this before, as you have probably gathered. It is interesting to hear the replies.

Mr Reynolds—We have had many over the last few years. Prior to the 1994 report there was the definition for manufacturing and service industries where the numbers were 200 and 50 respectively and a turnover of \$20 million. That was dropped in 1995 because \$20 million with 200 people on your books in the manufacturing industry was not going to get you far. We are now waiting for the release of the Australian Bureau of Statistics report in conjunction with Industry, Science and Resources.

Senator HOGG—Could I follow on from that because that is one of the things that interests me. Whilst a number of the suppliers you would deal would be considered to be a major business within the context of many smaller businesses, on the world stage they are really small to medium enterprises. So does this leave you with a dilemma as to what constitutes a small to medium enterprise, as opposed to what might be conceptually a small to medium enterprise within the Australian marketplace?

Dr Kearns—I am not sure that presents us with a particular set of dilemmas. There are some real issues about the relative size, by international standards, of Australian primes. That is another set of issues. Within the Australian context the small to medium enterprises are a fairly active group as a voice.

Senator HOGG—What I am getting at is that you may well claim to be dealing with a small to medium enterprise, because of the nature of the procurements that you make, whereas it may be perceived within Australia that you are dealing with the bigger end of town.

Dr Kearns—I have not seen any evidence that we have that kind of perception problem. We are very aware of the small players with a hundred or so people, but including tens of people, who work for them. One of the striking things about the defence industry here is the significant role that small, agile companies play, including in the high technology end. They are very small companies in some of these cases.

I think Defence is well aware of the particular role of small players. Indeed, in the industry policy statement we do pick up a number of initiatives that have the small to medium enterprises in mind, including the mandating of prime contractors going to ISONET—and to produce evidence that they have done so—to ensure that they are best able to find the smaller players to team with.

We also reserve the right to pursue details of prime-subcontractor relationships where we are concerned about those. We rearticulate the procurement rules, which have specific references to the nurturing of small to medium enterprises by larger companies, particularly those overseas. Let us put it this way: the big industries are very acutely aware of the procurement rules and our expectations.

Mr St CLAIR—Do you feel it is part of your role to work with some of these small high-tech businesses to develop products that you are actually looking forward to in the future?

Dr Kearns—Yes, and I think that is a good point. We do so. In fact, the Defence Science and Technology Organisation has a number of relationships with high-tech companies that are relatively small companies. The capability and technology demonstrator program, which was enlarged as a result of the industry policy statement, also brings in smaller companies. This is not just a preserve of the big prime contractors; we are aware of the high-tech smarts that are around in the smaller industries.

Mr St CLAIR—The difficulty in trying to come up with a definition of small business—and this is why we ask this—is that the definition is obviously all over the place. As high technology comes more to the fore, which you are more than aware of, you might end up with a small business of three or four people that in fact has the skills to be able to develop a program that is going to deliver your result much better than, say, a large organisation. I just wonder whether you work with them.

Dr Kearns—We do. One of the things that we need to look at is how simply they can contract with us in some of those developmental areas, and I would not say that we have perfected the art there. I think we have to design and run contractual relationships that are very simple and consistent with our need to get what we want—to get what we pay for.

That is an area which we still need to do more work on, because dealing with Defence is a daunting thing for a company. For starters, whom do you call? Part of our job is just to make it as simple as possible to tell people whom to call to find out who may want their product and then they have to deal with us as a contracting entity. We need to make those bars as low as we practically can, particularly with smaller, more exploratory projects where we can contain risk because of the smaller size of them.

Mr St CLAIR—This might be a very simple question for you to answer. What mechanisms are in place for delivery? When you order something, no matter what it is at what level, how do you know that you get what you order? What is the mechanism that does that?

Dr Kearns—You do see the product. We are buying for us and so we are able to verify delivery of products. That is probably the first simple answer, but I would certainly invite my colleagues to answer as well.

Mr St CLAIR—The reason I ask is that a long time ago quite often there were probably instances where things that were not quite necessarily ordered or tendered on were delivered. Obviously that has changed over the years.

Mr Reynolds—With the way our process works now, with our nomination of delivery points for all the purchases—if we keep to the simpler things, the delivery of spare parts or general purpose goods—the area that is going to be receiving them receives a copy of the order and they also receive a copy of the statement from the company of what is in the boxes and those boxes are physically opened and checked.

Mr St CLAIR—Is there any need for the audit of that process?

Dr Kearns—Certainly purchasing areas are subject to periodic audit—as I mentioned earlier—through the Inspector-General's area. That is a good discipline on the process—that all areas are subject to audit.

Mr Gairey—The larger purchases involve quality assurance requirements in accordance with ISO standards, and there is a very strict quality assurance regime applied to them. In addition to that, there is a very extensive test and trials program to evaluate whether in fact you have achieved what was specified but that, as I stress, is at the larger end of the spectrum.

Ms PLIBERSEK—You mentioned that you try to keep the bars low for smaller and newer businesses approaching you with possibly new products. How do you do that? How do you keep the bars low?

Dr Kearns—I mentioned the case of capability and technology demonstrators. That is an interesting one because it is about the smart end, new technologies, where smaller companies may have some things to offer. The first thing is just the information process—getting the news out—and we put out on our Internet site a simple guide to 'CTDs', capability and technology demonstrators. That is just a series of questions and answers to make it easier for companies to be confident that they can embark on that process.

In those particular cases we also seek very short initial proposals, so that they are not required to produce mammoth documentation. That is used as a first pass to see whether the proposal should be taken up further, so that we can commit small amounts of resources by companies to make initial bids. So in a sense a staged approach to purchasing is an important way of keeping the bar low.

I might generalise that point and say that in our tendering we often use staged purchasing. We ask for initial proposals first, which are not as detailed—they are not full contract quality—and then go down the path to request for tender, which are contract quality. But by that time you have weeded out potential sellers who would not have been suitable. Thus, we do not get them to spend large amounts of money for no gain. So multistaged

tendering—multistaged purchasing—is an important part of that tool. That and the information programs, as I mentioned before, are very important to us in lowering the bar for companies to come in and sell to us.

Ms PLIBERSEK—I have another question about electronic commerce. How much of your purchasing is done online?

Dr Kearns—I do not have an answer to that. I will look hopefully up and down the line to see if anybody else can bail me out.

Ms PLIBERSEK—Is it something that you are doing generally? Are you trying to do more of it? Is there some plan to shift to more?

Mr Reynolds—We do not actually do any electronic purchasing as such with the transfer of the documentation and the contracts online, because the systems are not as yet in place to make them secure enough in terms of verification of electronic signatures and recognition of the confidentiality that is needed in those documents as they pass between us.

Ms PLIBERSEK—Do you think that is particular to Defence? We have had a lot of evidence of companies and departments that are doing at least part of their purchasing online?

Mr Reynolds—It may be particular to Defence. I could not answer that one directly. We are waiting to see—

Ms PLIBERSEK—I mean the security level that you require.

Mr Reynolds—No, I would have thought that that was general. The confidentiality of the information that is being transferred between us is of particular concern.

Ms PLIBERSEK—Yet the Victorian government, it seems—from the evidence that we received yesterday—is doing more and more of its purchasing electronically.

Mr Reynolds—Our expectation is that we will come online for electronic purchasing with the business entry points initiatives on electronic purchasing.

CHAIR—What is that?

Mr Reynolds—The business entry point is the Commonwealth's initiative on single entry point work for industry with government. So there will be a single point of entry and they will only have to find that one Internet point or that one telephone number to be able to do business with us.

CHAIR—When is that supposed to happen?

Mr Reynolds—The initiative has been working up since 1997. It is with the Department of Employment, Workplace Relations and Small Business. They have the target set out in

policies such as 'More time for business', where July 2001 is a major breakpoint where they need to be able to deliver the services online.

CHAIR—Let me ask you a question you may not want to answer—and perhaps I should be asking the secretary to the Department of Defence, or a deputy secretary anyway. On page 7 of your submission you said:

The *Strategic Policy Statement* contains several specific initiatives supporting SME participation, in addition to many that support ANZ industry generally.

And at your fourth dot point you say:

Inclusion of the ability for Defence to examine sub-contractor bids to potential prime contractors during the tendering and post-contract phases . . .

That all sounds good. Why then do you continue to tell the Auditor-General that he need not have access to your contractor or subcontractor premises during the currency of a contract?

Dr Kearns—The undertaking there relates to the right to seek information. We certainly have declared to industry our interest in seeking such information where we have a concern about the way in which subcontractor bids are handled. I understand the particular issue in relation to the Audit Office relates, as you say, to the access to premises, which is not a particular issue that we have raised in this initiative in the industry policy statement.

CHAIR—I would have thought that for primes that are tendering against each other, the right of the purchaser to examine quotes from subcontractors, sub-subcontractors and sub-sub-subcontractors would be probably as intrusive as digging through their filing cabinets after they had won the job.

Dr Kearns—As I say, we have certainly said that we are prepared to seek that information. How often we seek it depends on what comes up in the tendering process. It is not our intention to routinely seek it, but to have that possibility should we be concerned about the way in which subcontractor bids are handled.

Senator HOGG—But this is important.

CHAIR—But what you are not answering is: if believing that it is not overly intrusive to seek commercial-in-confidence information from your suppliers, your contractors, why is it then deemed by Defence to be so intrusive to have the Auditor-General, who is an independent person, have a look at the records of contractors and subcontractors once they are undertaking a contract?

Dr Kearns—The language of that initiative, as we have promulgated it, is that we would seek access to that information. It is up to companies as to whether they choose to provide that information or not, as distinct from it being a mandatory calling for documents without any concurrence by the prime contractor or the preferred tenderer. We would expect, say, the preferred tenderer to feel themselves to be under some considerable pressure to be helpful in that regard, but we are seeking that information and not mandating that information.

Senator HOGG—This is important for the whole issue of scrutiny by the parliament. This comes up in this burgeoning area of outsourcing as well. Our ability as parliamentarians, sitting on various committees, to scrutinise the expenditure of government is terribly important indeed, otherwise confidence in the system will fail. I totally support what the chair is putting to you—otherwise, all you do, in a sense, is just breed a contempt of what is happening out there.

Col. Badelow—I might say something from the CSP side, and focus on one word that you mentioned there, which was the word ‘outsourcing’. Within Defence circles, this obviously focuses almost exclusively on the commercial support program. Our particular program does allow ANAO access to contractual records of the delivery of services by an outsourcing forum. We, of course, have been recently subject to an ANAO performance audit which was tabled, or promulgated, as I recall, around 10 July last year.

CHAIR—In your submission you talked about maintenance of M113 armoured personnel carriers and you said that that contract was awarded to Tenix Defence Systems. What do they do?

Dr Kearns—What does that contract cover?

CHAIR—What does Tenix do?

Dr Kearns—I think the short answer is that they are involved in the repair and upgrade contracts for the M113.

CHAIR—What else do they do?

Dr Kearns—What else does Tenix do collectively beyond that particular area?

CHAIR—Yes. Do you know?

Dr Kearns—They are the prime contractor for the ANZAC ship contract. That is the most significant single thing that they have.

Senator HOGG—I have a question about your procurement officers. Some of the evidence we have from other areas indicates that some procurement officers have access to credit card facilities or the like. Do any of your procurement officers have access to credit card facilities for purchases? If so, what are the limits and what checking of the expenditure on those credit cards is made?

Dr Kearns—The short answer is that they do have access to the Australian government credit card. I do not know whether my colleagues can help on the specific arrangements on that, otherwise we will need to take that on notice.

Mr Reynolds—Basically, there is a range of credit card limits depending on—

Senator HOGG—Can you give us some idea of what those limits are? What restrictions do you place on the use of those credit cards? How are they checked to ensure that there is no fraud taking place on those credit cards?

Ms PLIBERSEK—I want to clarify something with regard to my question on electronic commerce. I did not get a sense of what you are doing to prepare for transition to using more electronic commerce. You are just waiting for the business entry point scheme to be delivered, but how are you going to take it up? What are you doing to prepare for that?

Dr Kearns—I would like to pick up on a couple of things there. Certainly some aspects of payment—

Ms PLIBERSEK—Funds transfer.

Dr Kearns—Yes, funds transfer. Some are done electronically now. I think some areas in Defence are already experimenting with full electronic transactions. The business entry point is a big piece of news for us. It is an important set of tasks for us. I think it would be very unwise for Defence to simply await developments. We are in dialogue with the Department of Employment, Workplace Relations and Small Business to define better what we should be doing in that area. As the largest purchaser in the Commonwealth, it does not behove us to sit back there.

I have no doubt that the vision splendid in the business entry point will be full electronic transactions. My impression to date in terms of the initial planning is for activities or levels of electronic presence that are short of full electronic transactions. So our current work is going to be looking at such matters as electronic registration where that applies to companies doing business with us and to the look and feel of the electronic interface that Defence presents. We have to have a single electronic portal.

They are the up-front things. As I understand it, we will be looking at the full electronic payments as a subsequent step. But I agree with the thrust of your question: we have to be very active in that process because of our sheer size as a purchasing area.

Mr St CLAIR—Do you think you should take the lead in that because of your size?

Dr Kearns—I do not think I would look at it in those terms. We have to be one of the lead players but the other department I mentioned is the coordinating area that is, in that sense, taking the lead. We have to work very closely with them and we are involved in some discussions with them now about shaping our role in the BEP.

CHAIR—On page 11 of your submission you said:

In February 1998, Defence commenced automatic batch loading of DEFMIS—

whatever that is—

Dr Kearns—That is the Defence management information system. It records our purchases. Total acronym dominance is the Defence philosophy.

CHAIR—Thank you for the clarification. It goes on:

information on contracts let. This initiative has provided considerable resource savings and almost eliminated errors against Australian-based contracts.

What are you trying to tell us?

Mr Reynolds—In the past our reporting to Transigo has been a manual reporting system by faxes or whatever. By introducing an automatic batching of our purchases each week and sending it electronically to Transigo, we are getting automatic reporting because it is going on the finance system. Being on the finance system, it is not subject to a second reporting process of sending it to Transigo.

CHAIR—But you said it has, ‘almost eliminated errors against Australian-based contracts’. What does that mean?

Mr Reynolds—Australian based contracts are the ones that we can automatically report to—

CHAIR—Right, so if you sign a contract in Taiwan or in Philadelphia—

Mr Reynolds—They are handled by the Washington or the London finance management systems.

CHAIR—One of the things that the committee is really interested in is that there are thousands of companies out there that might supply to Defence because of the devolved nature of your purchasing. You spoke about this briefly. How do we let these people know what it is that we need? Do you think you are doing a satisfactory job of letting industry know that contracts are available and that tenders are on offer, considering the devolved nature of what you are doing?

Dr Kearns—Yes, I do, and I think our active participation in Transigo has been an example of that, where we have been a major—

CHAIR—I will stop you right there because we have had much evidence that Transigo has been an absolute, unmitigated failure. There were 27 tenders advertised over 11 months on Transigo and only three quotes. It was an unmitigated failure, and business and industry tell us that a very high percentage of small and medium size enterprises will not pay the \$50 and do not have online capacity anyway.

Dr Kearns—Defence has been a very good citizen in dealing with the electronic interface that was put to us. Transigo was the electronic interface that was put to us. We have met our obligations actively in doing that and we will now need to look at how to migrate that as the Transigo arrangements themselves evolve. I hope we will be able to get that better. I do believe that the business entry point is the way we will be heading with other departments to make information about us more readily available. Hopefully we will overcome the problem that has arisen with companies not signing onto the subscription element of Transigo.

That is one part of the issue. Importantly, we also have to get our information out about what is coming out in the state of major contracts. We do that not only in relation to the state of contracts through Transigo but also through a whole host of other publications we use. We run active web sites in our own immediate area of the acquisition organisation. We run an active suite of web sites there and we put out quite a lot of publications, including our *Doing Business with Defence*. The major capital area does that and the estate organisation does it. All of the major areas that I am aware of run publication programs.

Bringing that all together in a more coherent way is one of our priorities. In the electronic area, as I mentioned before, I think the business entry point offers a promising way of attacking that. So I think we do a great deal in getting the information out. I do not doubt that all organisations can do it better and BEP is one of the ways in which we will aim to do so. But I am satisfied that we have an active communications profile with industry.

Mr Chairman, with your indulgence I would like to come back to one earlier point. It does relate to BEP and Defence's activity in that. I should say that one of the critical interests in electronic business is security and authentication of identity. That is an area where Defence most certainly is active and is working with the other players, the Department of Employment, Workplace Relations and Small Business in particular. It is a major activity where we have a lot of expertise. We have quite a lot of work under way now in that area in addition to the particular obligations that we will be pursuing on how we appear in the business entry point.

CHAIR—Thank you very much for coming and talking to us today. There was a little bit of information you were going to get us and we would appreciate that. If you could tell us where you buy your paper, in writing, we would appreciate it. Perhaps that sounds like a dumb question but we have had statements made to the committee that Australian government buys overseas paper and does not buy Australian paper. We are testing that. We have asked every department to tell us where you buy your paper. We really want to know because there is no sense in people making bold statements if they are not true.

Senator HOGG—Could you let us know about the contracting process? We do not want micro-detail; we want a macro picture.

Dr Kearns—Is that specifically in relation to the paper purchase issue?

Senator HOGG—Yes, just the paper.

CHAIR—We need to not only test the bona fides of Commonwealth government entities but also the bona fides of business organisations that appear before us.

Dr Kearns—We would be happy to do that. We have a question on notice in relation to the Australian government credit card and the regulations and requirements there. Thank you very much for the opportunity to talk to you.

[10.13 a.m.]

KELLY, Ms Patricia Margaret, General Manager, Pharmaceutical, Aerospace and Supplier Development Branch, Department of Industry, Science and Resources

CHAIR—Welcome. We received your submission this morning, so we, the members and senators, have not read it yet. Would you like to make a brief opening statement?

Ms Kelly—I am aware that the submission has only recently been circulated, so perhaps I could address a few comments to its substance. The department has had an involvement in, and responsibility for, purchasing linked industry development over a number of years. That is particularly the case since the government's response to the 1994 *Buying our future* report.

After that the department embarked on a couple of new activities in this area. One was the endorsed supplier arrangements where we have been responsible for the industry development aspects. The other was the industry impact statements/two-envelope tendering process. Our focus over recent years has been to concentrate the resources we have for this activity into those areas where we believe we can make the biggest impact and that has been in the IT sector and in major Commonwealth purchases. We have also worked with and through ISONET.

As we set out in our submission, we believe that, through the endorsed supplier arrangements and the ISONET programs, we have achieved some important goals. The committee may be interested in a press release our minister put out yesterday detailing the latest outcomes of the Supplier Access to Major Projects Program, which is an ISONET run program with funding from our department.

As from October 1998 the department's role has been more limited. The industry development function for information technology has moved to the Department of Communications, Information Technology and the Arts, so the department's remaining focus is on policy issues in this area, industry development aspects of major Commonwealth purchases, support for ISONET and work with Defence in its committees. I draw your attention to an attachment to our submission—recently released new guidelines on model industry development criteria for major Commonwealth purchases. That has gone out as a Commonwealth purchasing circular and has been circulated to industry. Thank you for the opportunity to put a submission to the committee.

CHAIR—Since you are responsible for Australian industry development, why does it say that you are the general manager of the Pharmaceutical, Aerospace and Supplier Development Branch? How many other development branches are there?

Ms Kelly—The government purchasing function fits into in the supplier development section; we have looked at it as a supplier development function. The other things that are in that section are things like our supply chain partnerships program and ISONET.

CHAIR—With respect, how about furniture, for instance?

Ms Kelly—We have an area of the department that looks at the furniture sector. In fact, we are running an action agenda at the moment with the furniture industry, but that is separate from our government purchasing area. If there were to be, for example, a major Commonwealth purchase of furniture we could call on the expertise of the area of the department that looks at the furniture industry to advise us on what the Australian capabilities might be.

CHAIR—One of the things that concerns the committee is the fact that the purchasing function is now so devolved. About half the Commonwealth budget for purchasing goods and services is spent by Defence. That leaves about \$4.4 billion for all the rest of the departments—not including GBEs. Yet the minister’s press release says, ‘Wow, over \$108 million worth of contracts generated for Australian business since the introduction of the Supplier Access to Major Projects Program in the 1997 budget.’ Would you count that as a major success?

Ms Kelly—In terms of an import replacement outcome, yes, that is a good outcome. It is a good return on the relatively small Commonwealth investment we have made in ISONET services. That is the way we look at it.

CHAIR—The Bevis report said that, across the bureaucracy, we had a culture adverse to Australian company manufacture and supply of both goods and services. What are you doing to try to address that adverse culture and how does the devolved nature of purchasing do anything whatsoever to help either small or medium sized business enterprises or Australian companies that would like to supply to the Australian government?

Ms Kelly—Through the endorsed supplier arrangements, which we have now ceased to administer, companies did have to demonstrate a commitment to industry development in Australia before they could supply the government market at all. We thought that was a fairly effective mechanism for making sure that the companies supplying were putting some effort into industry development in Australia. More generally, we encourage departments by, for example, putting out these guidelines—the requirements that appear in the Commonwealth procurement guidelines.

CHAIR—But you agree that there is no oversight of any of this?

Ms Kelly—No, it is a devolved system.

Ms PLIBERSEK—By what criteria do you judge an endorsed supplier’s commitment to Australian industry?

Ms Kelly—It is outlined in the submission. They are required to provide evidence of their commitment to industry development in Australia through the following mandatory categories: product development, investment in capital equipment and sourcing of products and services locally. They must also be able to provide evidence of their commitment to industry development in at least one of the non-mandatory categories: research and development, exports, networking between local and overseas firms or technology transfer. Another way of passing the endorsed supplier arrangements is to sign up to the Partnerships for Development Program or the Fixed Term Arrangement Program or to be a member of

the telecommunications carrier industry development plan. You automatically qualify if you are in one of those other programs. They are the requirements that small and large companies alike have to meet. As I said, I no longer have responsibility for that program, but I do not think that has changed in the last three or four months.

CHAIR—We understand from a number of companies and organisations that, while on paper there is the requirement that an Australian industry development plan be produced for projects over \$10 million, at times what people tender to supply is not what they supply and that there are no checks and balances in place. Defence tell us that they have some systems in place. Would you agree that nobody else really has systems in place to test whether the contractor meets the requirements of the contract?

Ms Kelly—In some cases that may be true. What we have seen in some cases and what is now encouraged in these model guidelines is that there be mechanisms put in place. The model guidelines are a big improvement on what we have had in the past because they not only set out criteria which agencies should look at in terms of the industry development that could be attached to a purchase, but they also set out models for evaluating those tenders and means of monitoring and compliance. One of the means that we have encouraged agencies to use in large contracts is that there can be a contractual requirement to meet industry development commitments and they can be reported on in the same way as other contract milestones are reported on.

CHAIR—But it is ‘can be’ not ‘will be’?

Ms Kelly—Certainly, that is what the guidelines are now asking agencies to do for purchases over \$10 million. It has happened in the past in a range of cases, but perhaps not as systematically as we hope it will in the future.

CHAIR—We have had differing opinions from different departments about whether the Commonwealth procurement guidelines are a statutory requirement—that is, a legal requirement—or whether they are only guidelines.

Ms Kelly—My understanding is that agencies covered by the financial management act are required to meet the guidelines and that the chief executive’s instructions in those agencies are required to reflect the guidelines. The Commonwealth authorities and companies are not required to meet the guidelines, although in many cases they do follow them because they are good practice.

Senator HOGG—Is there legal opinion to support that? We got into that debate.

Ms Kelly—I would need to check that, Senator.

CHAIR—It says that an official performing duties ‘must have regard to’ the Commonwealth procurement guidelines.

Senator HOGG—There is nothing mandatory there.

CHAIR—Can we get, through you, a legal opinion as to what that means?

Ms Kelly—A legal opinion as to how strong that requirement is?

CHAIR—Yes. We will ask A-G's too.

Ms Kelly—It may be that we will need to talk to the Department of Finance and Administration on that issue. But I am sure that between us we can get back to the committee with the information.

CHAIR—How much money does your department spend?

Ms Kelly—In terms of its own purchasing?

CHAIR—Yes.

Ms Kelly—I would have to take that on notice. I have come prepared to talk about our whole of government activities more than our specific purchasing. But we are not a big purchasing department.

CHAIR—Do you know where you buy your paper?

Ms Kelly—I noted the committee's interest in this and I checked before we came. I was assured that we buy Australian made paper.

CHAIR—One hundred per cent?

Ms Kelly—That is what I was told: all Australian made paper—we are talking about stationery paper.

Senator HOGG—We most certainly are talking about stationery. It is a fascination to this committee!

Ms PLIBERSEK—Can you tell us a little bit about electronic commerce and the whole of government? Are you moving to more purchasing using electronic commerce? Are you currently using e-commerce for funds transfer? Are you purchasing using the Internet?

Ms Kelly—I would have to get back to the committee on the extent of my own department's use of electronic commerce.

Ms PLIBERSEK—I am not particularly interested in percentages. I am interested in what moves you are making towards using electronic commerce more. We had some evidence yesterday that the Victorian government is saving a lot of money using electronic commerce. I am interested whether that is your experience.

Ms Kelly—I can get that information for the committee. I do not have it here.

CHAIR—In your submission, you discussed industry development criteria, major Commonwealth projects over \$10 million. Do you have a view about whether that is a

satisfactory level or whether it ought to be lower or higher? I note that the Office of Small Business reckons it is too high.

Ms Kelly—We thought it was a satisfactory level to capture major purchases. The decision that we have to make is at what level to target our efforts—where we actually get the best return on targeting our efforts. Purchases above \$10 million did seem to us to be reasonably significant. The majority of purchases that we have dealt with under major projects have been significantly above that.

CHAIR—Is that a government policy decision?

Ms Kelly—The \$10 million figure? Yes, it is.

CHAIR—Based on advice from where?

Ms Kelly—Based on advice from ourselves and DOFA. I would have to check, but I think Workplace Relations were certainly involved in the process of putting that advice to government. I am not necessarily saying they supported that advice, but they were part of the process that put advice to government.

CHAIR—You do know that Defence has halved that requirement to \$5 million? Are you aware of that?

Ms Kelly—Yes.

CHAIR—Do you see any potential benefits in bringing the level down?

Ms Kelly—The problem in terms of where we focus our efforts is with major purchases that are not in the IT sector. The IT sector of the Commonwealth makes up quite a significant part of the market and the public sector does too. That means that you can run a long-term sectoral industry development strategy in that sector and really make an impact. In other sectors we are looking at more of a one-off impact because we are not such a big part of the market and it is just more ad hoc. So we think it is sensible to focus our efforts only when there is quite a significant purchase being made.

CHAIR—We have received some information in submissions that, in the IT area, because some of the outsourcing contracts are so large that Australian companies, particularly software houses, are finding it difficult to get Commonwealth business, where before they had an easier shot at it. In addition, some of the contracts are so large that the major contractor, being an overseas company, tends to use their own and the people they are familiar with from their own company or whatever, rather than making the effort of involving small and medium sized Australian companies who, in fact, are moving quite rapidly and might be well advanced. Can you comment on that?

Ms Kelly—Certainly the attempt through the outsourcing criteria has been to ensure that the major overseas primes have strong incentives to use Australian subcontractors. In the cluster 5 group there has been an attempt to encourage consortia of SMEs to bid for that contract, that being one that is perhaps within the reach of some of those consortia. So there

have been attempts to ensure that Australian SMEs do not lose out and do get a reasonable share of the work under those contracts.

CHAIR—I hear what you say. You encourage them to form consortia. We had one submission in a different area that talked about a major continuing contract to supply all stationery and office supplies together with office furniture. There being no Australian company that had such capacity, by its nature the contract was won by an overseas firm rather than an Australian company. I guess the answer from the department is, ‘Well, maybe they should think about forming consortia.’ Are we trying to distort the market? Are we trying to tell manufacturers and suppliers how they ought to operate in the business environment?

Ms Kelly—No, I do not think so. I think it is a matter of communicating what the Commonwealth’s needs are effectively, and I think the market has an incentive to respond on its own.

CHAIR—For simplicity’s sake, let us take a contract for office furniture and office supplies, which are not necessarily natural allies. I think you would agree with that. By telling companies out there, ‘The only way you are going to do business with the Commonwealth is, if you are an office manufacturer or supplier, that you get together with somebody who supplies general office supplies or you cannot have our business.’ I am not sure that we are really going in the right direction.

Ms Kelly—I am not familiar with the particular case, but certainly in the procurement guidelines themselves there is a stipulation that agencies should not specify things in such a way as to make it difficult or impossible for Australian suppliers or SMEs to tender.

CHAIR—But then you were just talking about in the IT area encouraging small and medium sized companies to form consortia to tender on huge contracts rather than bits and pieces of contracts.

Ms Kelly—I think that is a case of the Commonwealth having decided that its needs are best served in IT by going down a certain route and doing it for reasons such as more efficient use of the taxpayers’ dollar, and communicating to industry that these are the kinds of services we will need in the future. The cluster 5 tender I think was specifically structured in such a way to make sure that consortia of SMEs realised that they would be considered for that kind of a contract.

Senator HOGG—We have heard that this way discourages many of these organisations from getting into the R&D that is necessary.

Ms Kelly—Sorry, what discourages them?

Senator HOGG—The fact that they have got to get into clusters.

Ms Kelly—It is not an issue that industry has ever raised with us, that R&D is discouraged through that mechanism. I cannot really comment on that.

Ms PLIBERSEK—Do you still have responsibility for the national industrial supplies office program?

Ms Kelly—We do.

Ms PLIBERSEK—Can you tell us a bit more about the program and how you think it is going?

Ms Kelly—We think it has come a long way over the last four years with the formation of ISONET. The ISOs, back at the time when the Bevis committee was writing its report largely tended to operate as individual state based organisations, and often inquiries that could not be met within the state were not effectively referred elsewhere. ISONET was formed with the department's strong support and has been quite successful in melding that into an effective national organisation where all of the requests or inquiries that they get are looked at on a national basis. We also supported the building of the IRIC database, which is the database of the capacity of Australian suppliers, which has taken us a long way forward as well in that there is a much quicker and more effective mechanism for searching for who might be able to supply the needs of companies.

The other thing that has happened over that period is that we have linked ISONET with our Major Projects Facilitation Program—so many of the very big projects in Australia come to our department to get major projects facilitation status and certain types of assistance. Every company that does that we link up with ISONET, and ISONET has a chance to get in at the very early stage and work with those companies on maximising the use of Australian suppliers. So over the last four years I think we have built what was not a very effective service into a much more effective service, or ISONET has built it with our support.

Ms PLIBERSEK—How do you judge that effectiveness?

Ms Kelly—We judge it in part, as this press release does, by looking at the return we get on the Commonwealth's expenditure on the service. We get quite a high return in terms of the business that flows to Australian suppliers that we believe was at least at risk of flowing overseas. In this latest press release ISONET is claiming a 105:1 return on government funding, which is a fairly good return. Even if you thought there was some element of exaggeration in that, it is a very strong result.

Ms PLIBERSEK—I guess there is a difference from just getting departments to spend money in Australia that would otherwise have been spent overseas. When the ISONET representatives came before us, they gave evidence that in fact it was not just about import substitution; it was about particular purchasers working with particular suppliers to develop products that the suppliers were not already supplying but, using their expertise, they could modify their equipment to produce a slightly different product. Is there any way of judging that relationship—the next step, I suppose, rather than import substitution?

Ms Kelly—There has not been any systematic monitoring of that.

Ms PLIBERSEK—So you have got a set of good news stories basically and that is how you adjudge that that is successful.

Ms Kelly—ISONET itself has been able to give a couple of examples where it has been able to find a supplier who can manufacture something that they did not manufacture before and that meant that something could stay in Australia. But, no, we have not done any systematic monitoring of that. It is more or less hearsay evidence about how that aspect is going.

CHAIR—I have to tell you that almost every department we have talked to, and maybe all, have said they have signed an agreement with ISO, but ISO tell us that a very high percentage—I cannot remember what the number was but off the top of my head it was up there in the 90 percentile—of all their activity is with private companies, not with governments, including state governments. I think they told us that they had only had one hit in the last two or three years of Australian government agencies outside of Defence. I just do not understand how this relationship with ISO is working so well. I am confused. It sounds good and it looks nice when you write it down on a piece of paper, but at this point I remain unconvinced that anything at all is happening out there.

Ms Kelly—I guess the distinction is between ISO's work with major projects and ISO's work with the Commonwealth government. The results in the ISO press release and the supplier access to the major projects program, which we run through ISONET, are not focused specifically at the Commonwealth government but at major projects. If you look at the press release you will see that two of the ones they are quoting are the Sydney Olympics and the Australia Post network renewal project, so there are some big public purchasing projects that we support through this program. But certainly it is the major projects where ISONET is getting the big results, and not necessarily Commonwealth purchasing.

We did encourage ISONET and government agencies, back in 1995, to sign MOUs. What we found, at the end of a period of a year or more of operation of those MOUs, was that there was some limited success, particularly with Defence. But the problem was that a lot of agencies' purchasing is not huge and it tends to be focused very heavily in the services area—which is not ISONET's real strength—and, again, in IT areas. So there was a bit of a mismatch between ISONET's strengths and what the majority of agencies really focused on in terms of purchasing, apart from a couple like Defence. In addition I think they still have active MOUs with Social Security and Joint House Department and a couple of others. So in re-funding them for a new program, we looked at where we would again get best return on our investment—and that was really with major projects, whether they be public sector or private sector. We were not really looking at pushing them to put resources into MOUs with Commonwealth departments, which were not necessarily giving us as good results as we could get with major projects.

CHAIR—So what you are telling us is that, over time, as we have outsourced more and—

Ms Kelly—And devolved purchasing.

CHAIR—as we have taken what were Commonwealth departments and turned them into business enterprises, either private or partially publicly owned, that the nature of purchasing by the Commonwealth has changed?

Ms Kelly—That is right—by Commonwealth departments in particular. Commonwealth authorities and companies, of course, are separate.

CHAIR—Do you or does anybody have any statistics that would inform us what we are buying? What do we get for \$8.8 billion?

Ms Kelly—There are not good statistics. Whenever we have looked at this question, it has been considered that it would be a very large investment of resources, on the part of agencies, to collect good statistics and it would require them to impose more paperwork on suppliers. The best opportunity for the statistics was mooted to be Transigo and perhaps now its successor, and while it may be imperfect I still think it probably presents us with the best opportunity to collect statistical information.

Senator HOGG—So how do we know that we are getting value for money in the whole picture? There are no statistics. There is nothing that tells us that we would put a tick there and say that we got value for money there and value for money there.

Ms Kelly—Certainly purchasing officers and those responsible in departments are required to ensure they get value for money, particularly in large contracts. There are accountability mechanisms, both within departments and through the Audit Office.

Senator HOGG—What is value for money?

Ms Kelly—Value for money is the combination of the best price, the best technical performance, the best service and the best whole of life costing. There are a range of issues that go together to make value for money. It is not just the lowest price.

Senator HOGG—I accept that, but we have been told by suppliers that the only one of the criteria you have mentioned that is in any way considered is price. Lowest price wins the contract. It has got nothing to do with those other elements. I am not saying they are not good elements. This is what we are trying to get to the bottom of. How do we test these things? How do we know that the Commonwealth is getting value for money, given that we are spending huge buckets of money?

Ms Kelly—My direct experience is limited to major projects, not day-to-day purchasing. We have had experience in sitting on what used to be—

Senator HOGG—No; I do not care—major projects or anything: how do we assure ourselves?

Ms Kelly—With major projects that I have been involved with there has always been a fairly rigorous process adopted of setting out that range of criteria, measuring tenderers against each one of them—and industry development as well, normally—and deciding on the successful tenderer, looking at the best overall result. As I say, the mechanisms for checking that are largely the accountability requirements of departments and the openness of the system to audit.

Senator HOGG—Do you have some sorts of criteria which enable value for money to be determined? The simplest thing is to look at price, and that is very easily compared. But how does one look at whole of life? How does one look at service that will be provided and so on? Is there a weightage system that you use, or think should be used or could be used? Otherwise that becomes a very subjective thing, rather than being objective. Of course, a purchasing officer sees all these criteria and says, ‘Oh yeah, that’s lovely, but at the end of the day, we’re under pressure because of the budget; we are going to keep within budget; that’s the amount of money we have got.’ How does one overcome it?

Ms Kelly—I think the experts on that issue are those in the Competitive Tendering and Contracting Branch in DOFA and those in Defence. Our own experience would be that there is not an absolute template that you can apply to every project. For different projects you are probably going to weight things slightly differently.

Senator HOGG—But no-one has been able to show us a weighting system when they have appeared before us. It has just been, ‘Yes, we know it’s there and it’s wonderful, but we can’t tell you what weighting would be applied.’ Do you apply any weighting in your own department?

Ms Kelly—My own department does very little major purchasing. In fact, in the time I have been there I do not think there has been any major purchasing. But with other departments where we have been involved in assisting the purchasing process there tend to be selection criteria such as whole-of-life costs.

Senator HOGG—Does that get a weighting? That is my point. If so, how?

Ms Kelly—That varies from project to project. If technical performance of a system is critical—say it is a system that delivers pensions—that may well get a very high weighting in that particular tender. It may not get as high a weighting in a different tender. The other thing that is sometimes done is that you take the range of selection criteria and do not weight them. Then at the end you can do a sensitivity analysis, weighting different criteria differently and seeing if you come up with the same tenderer. So you are looking at whether you are overemphasising or underemphasising any particular issue. In some instances that is done as a double-check to make sure that the process is giving you robust outcomes.

Senator HOGG—My major concern is that we are getting the proper outcomes, given that there are no defining criteria that are there which will enable people such as us to come to the conclusion that the process is robust.

Ms PLIBERSEK—I want to go back to an earlier answer that you gave. It seemed to me that the devolution of a lot of purchasing has meant that it is actually harder for government purchasing to have regard to industry development. Is it fair to say that is what you were saying earlier in relation to your answer on ISONET?

Ms Kelly—No, not really. What I was saying was that the range of agencies that are now covered by the Commonwealth procurement guidelines have a much more limited scope of major purchasing than would have been the case a decade ago. There are a lot of things that are now Commonwealth authorities and companies that are outside both the particular

Commonwealth procurement guidelines and our focus. They tend to do the majority of major purchases. But that is not to say they do not take into account industry development. Telstra, Airservices Australia and Australia Post all have industry development programs.

Ms PLIBERSEK—But you are relying on their goodwill much more—is that right?

Ms Kelly—We are not relying on an essentially monitored system, but we have never really had the resources to effectively centrally monitor all that purchasing anyway. So, arguably, if you can get agencies to actually take it on board and implement it effectively themselves, you are making progress.

Ms PLIBERSEK—But how do you do that? Has it been your experience that they have been happy to do that? Or is it the case that the power was handed over and now you are running to catch up to try and convince agencies to have regard to industry development and other criteria in their purchasing decisions?

Ms Kelly—This goes back to the chairman's comments about the culture. I do not think the culture in itself is anti Australian suppliers—quite the reverse. But I think the culture is probably risk averse. The performance of people who make procurements, particularly large procurements, is judged on being able to deliver on time and to budget and finding an effective solution. They have a responsibility to do that and to get effective value for money for taxpayers. Therefore, if they perceive an Australian solution to offer a greater degree of risk of not being able to do those things, then they tend to shy away from it.

That to me is the nub of the cultural issue. It is really more of a risk issue and is sometimes perceived as a conflict of requirements on purchasing officers rather than an intrinsic shying away from supporting Australian industry or developing Australian suppliers. I think most purchasing officers ideologically are quite well disposed to supporting those kinds of objectives.

Ms PLIBERSEK—We had some evidence yesterday about what the Victorian government is doing with purchasing using electronic commerce. They said that they would find it very easy to give us statistics on the percentage of goods that are Australian and New Zealand made or sourced on the percentage that was supplied by small and medium enterprises and so on. So I guess I am a little surprised by your comment earlier that you would find that difficult information to give us from a whole of government perspective. What measures are you taking to make that information easier to collect?

Ms Kelly—My department has no capacity to collect any of that information, but it is collected by the Department of Finance and Administration.

Ms PLIBERSEK—On their own purchases or—

Ms Kelly—Through Transigo for all purchases over \$2,000, I understand. With the advent of a universal numbering system for businesses, I understand it is now possible for them to trace back to the size of the business. So reliable data is becoming available and is available on the percentage of purchases from SMEs. I do not think data has ever been

collected on Australian made. I would be interested to see how Victoria does that because the whole issue of how Australian made is judged is in itself problematic.

The policy is not framed in terms of, 'You will buy Australian.' It is framed in terms of, 'Use Australian suppliers and SMEs.' So that is the way the data has been collected. To my knowledge there is not any, and has not ever been any, whole of government data on what is made in Australia in terms of percentage of Commonwealth purchasing.

CHAIR—On page 13 of your submission you discuss the endorsed supplier arrangement program. Can you tell us why we phased out common use contracts?

Ms Kelly—It was not for an industry development reason. The government had a fairly fundamental review of its purchasing arrangements in 1997. As a result of that review, it decided that common use arrangements, particularly the number that we had, were not very effective. A large number of them were being used by a very small percentage of agencies and it made more sense to have an agency arrangement rather than a whole of government arrangement.

There had been an ongoing series of issues about payment of commissions, et cetera on those arrangements. The recommendation that went to government was that we should look at focusing on just those couple of areas where whole of government arrangements might deliver significant benefits to the Commonwealth. In effect what has happened is that we have gone to prequalification schemes in a limited range of areas. Of those prequalification schemes only information technology has an industry development component attached to it.

CHAIR—Why don't the rest?

Ms Kelly—First because, as I said earlier, we use IT purchasing as a means of running quite a significant program in that sector. In other sectors we are not as large a percentage of the market. Also, in other sectors there is probably not so much gain to be made. If you look at furniture, Australian suppliers meet something like 95 per cent of overall domestic demand. So the scope for import replacement or greater industry development in Australia is much more limited in that sector than in some others.

CHAIR—I think the furniture manufacturers said that they supply about 98 per cent of government requirements, didn't they? It was pretty high. I cannot remember the number.

Ms Kelly—Sorry—95 per cent was overall domestic demand across Australia. It is very high.

CHAIR—I gained the impression that we do a pretty good job of buying Australian made furniture rather than overseas furniture for government requirements.

Senator HOGG—I have a question on credit cards. Do you have any guidelines on the use of credit cards?

Ms Kelly—In our department we do for departmental use, yes.

Senator HOGG—For purchasing?

Ms Kelly—Yes.

Senator HOGG—Can we have a copy of those?

Ms Kelly—Yes.

Senator HOGG—I presume that will outline limits and what they can and cannot do?

Ms Kelly—Yes—when they can be used and when they cannot.

Senator HOGG—And what checks do you put in place to ensure there is no fraud?

Ms Kelly—We will supply that information.

CHAIR—Thank you very much. We look forward to receipt of that information.

Resolved (on motion by **Mr Charles**, seconded by **Senator Hogg**):

That the submission of the Attorney-General's Department, dated 12 March 1999 be received as evidence and authorised for publication.

[10.57 a.m.]

CHIN, Mr Victor Michael Norman, Principal Solicitor, Business and Commercial, Australian Government Solicitor

MAY, Mr Simon Peter Vallance, General Manager, Australian Government Solicitor

GOVEY, Mr Ian, Director, Office of Legal Services Coordination, Attorney-General's Department

CHAIR—I welcome representatives of the Attorney-General's Department and the Australian Government Solicitor to today's hearings. We have just received your submission. I was hurriedly trying to read it while I was listening to the last witness. Would you like to make a brief opening statement?

Mr Govey—Firstly, let me thank you for the opportunity to appear before the committee. I hope that the late arrival of the submission will be made up for by some of the comments that my colleagues will make by way of oral expansion on what is said in it.

As would be apparent, we are here representing both the Attorney-General's Department and the Australian Government Solicitor. I thought it might be useful by way of background if I could explain our different roles. I think that would help put our contribution in perspective. My role is as head of the Office of Legal Services Coordination in the department. That office is responsible for the policy regarding legal services that are provided to the Commonwealth and its agencies. We are also responsible for constitutional policy advice.

The department and the AGS have been the subject of a major restructuring that has been going on over some years, but particularly in 1997 when the AGS was set up as a separate administrative unit within the Attorney-General's Department—still remaining legally within the Attorney-General's Department but operating in a de facto sense outside it. That process is in the final stages of being confirmed, with the passage yesterday of the Judiciary Amendment Bill 1998 by the parliament. When that bill commences later in the year, the restructuring of the AGS as a separate statutory authority outside the Attorney-General's Department will be completed.

As a result of that restructuring, the department has had a focus on delivery of policy advice to government and, in some areas, various service deliveries. We also have a continuing role in giving legal advice in some areas, particularly international law and in relation to legislation, for which the Attorney-General and the Minister for Justice and Customs are responsible. But the primary role in giving legal advice and handling litigation and other related legal services for the Commonwealth and the Commonwealth agencies is now performed by the Australian Government Solicitor. The AGS operates on a fully commercial basis and therefore requires a client to provide instructions. It does not have any policy role of its own.

As far as the matters before the committee are concerned, the department does not have any overall policy responsibility. Obviously, that is primarily a matter for DOFA, although

of course the matters raised are of interest to us as well as every government agency. In order to assist the committee on the three specific legal issues that have been raised by the committee, we have instructed the AGS to prepare an advice for the department, and it is that advice which is set out in our submission and provides the substantive part of our written submission. With the agreement of the committee, I propose that Mr May and Mr Chin expand on the advice that is contained in that submission.

CHAIR—Just before they do, could I ask you whether the committee has to pay for this advice?

Mr Govey—I chose my words carefully when I said that the department had engaged the AGS, so we will take—

Senator HOGG—So this is a freebie for us?

Mr Govey—This is a freebie for you.

CHAIR—Thank you very much, Ian, but I would be very disgruntled were it otherwise.

Mr May—From our perspective, I would hope that you would want to pay for our advice—but that is another issue.

CHAIR—On our budget?

Senator HOGG—That is right: we are a poor, struggling committee.

Mr May—Thank you for the invitation to appear today. Mr Govey has already outlined the different structures within the department and the AGS. Perhaps if I can go back a little bit in time, AGS as a body has had in the past some responsibility for setting policy standards in the area of contracting. Following a 1984 decision of the then government, we were given a responsibility for vetting all Commonwealth contracts, and from that point on developed some contracting standards in fairly close cooperation with what is now the Department of Finance and Administration.

But the changes over the period since 1992 with our commercialisation are gradually diminishing the formal role that we have in setting contracting policy standards for the Commonwealth, and I think the commencement of the legislation will bring to a formal end that policy function that we have exercised in the past. Notwithstanding that, we are more than happy to come along and provide what view we can, as lawyers, of Commonwealth contracting practice in order to assist the committee in the work that it is undertaking.

Our role is very much that of lawyers who have Commonwealth officers come to us—and if I can pick up the words of the previous witness—to seek to protect the interests of the Commonwealth. Often the words that are used are, ‘I want to buy this good or this service and I want a contract that protects the Commonwealth.’ If I can read into what the previous witness said, it may also be ‘and protect me’, but that again is another issue.

The foundation for the contract management framework is established when a client department decides to purchase goods or services. Our experience is that there is often an inverse relationship between the effort that gets spent at that time and the effort that needs to be spent later on in dispute resolution, litigation or any other problem in the dispute resolution framework. When a tender and the contract conditions have been prepared with appropriate care from the outset, the contract usually proceeds smoothly. When that work has not been done, quite often the client will run into some problem. It is our view that the Commonwealth contractor should be encouraged to obtain independent legal advice at the earliest stages of the procurement process.

The establishment of client requirements in a tender is a matter of considerable importance. Client requirements need to be specified as clearly as possible. They should be expressed with the greatest degree of certainty while retaining flexibility to ensure that the client can review its requirements in the light of the tenders that it receives. Tender analysis procedures need to be rigorous so that requirements can be settled as much as possible before a contract is formed. Care needs to be exercised by the client to ensure that a contract is not inadvertently formed, as can sometimes occur if the contracting body is not well enough aware of contract principles.

Once that contract has been formed, it is necessarily for the contract to be monitored to ensure that the department or agency receives the goods or services for which it has contracted. This is particularly the case in relation to contracts for the supply of services. Where you have specified goods, it is a relatively simple matter to determine whether or not they have been delivered but the supply of services has its own problems. Clients need to have processes and procedures that ensure that they can effectively monitor contractors' performances at all stages of the contract and take corrective action where necessary.

AGS contracts include standard clauses for monitoring performance and corrective action, with the detail of those clauses being dependent on the magnitude and complexity of the property, goods or services to be supplied. The usual format for those clauses involves requirements for liaison between nominated representatives, regular written reports, regular meetings between the client, the contractor and other suppliers, delivery in stages, progress payments and acceptance testing procedures.

I now move to the question of risk allocation and risk management. It is often said by suppliers that Commonwealth agencies are risk adverse and that Commonwealth contracts necessarily impose risks on suppliers. As legal advisers to the Commonwealth, we do not consider that to be a fair criticism. Commonwealth practice is to apportion risk where it can be best managed. Quite often it will be the contractor that is in a far better position than the purchaser to manage the risk. This matter is dealt with to some extent in *Finance circular No. 6 of 1997* that is referred to in our paper.

Allocation of risk inevitably results in a reallocation of price. Sometimes it might be thought that the concern that Commonwealth contracts are risk adverse might in fact be turned around and expressed as the Commonwealth drives too hard a bargain on occasion, with suppliers having a feeling that their risks are not properly being reflected in price. To that I would say that the Commonwealth tendering process is to make the allocation of risk clear in contracts that are attached to tender documents and are seen by potential providers.

This gives tenderers notice of the proposed allocation of risk. Potential providers should price in the effect of risk allocation and be prepared to negotiate price and risk in the final contract.

Unfortunately, it is not always the case that contractors will comply with the conditions they have agreed to. As I have mentioned, Commonwealth agencies must establish procedures that enable them to detect non-compliance at an early stage and take effective remedial action. Remedial action can be taken in a staged manner. The first step will usually be notification in writing by the client to the contractor with a requirement that action be taken within a specified time. Next, progress payments may be withheld or the contractor may be required to make good. Finally, the purchaser can terminate the contract for the default and seek damages. Considerable care needs to be exercised by Commonwealth purchasers when considering whether or not to terminate a contract. This is a matter on which legal advice should be obtained by all Commonwealth agencies before termination action is taken.

The final issue that I want to touch on in relation to legal contracting issues is the Australian content requirement in Commonwealth contracts. The current procurement guidelines allow flexibility in the implementation of Commonwealth policy. Special contract conditions have been designed to assist in the enforcement of Australian content requirements, including conditions that provide for monitoring compliance with Australian content requirements, withholding progress payments or requiring payment of liquidated damages. It is particularly important that contractors' assertions about Australian content are included in the contract developed between the Commonwealth and the contractor. Our role as lawyers is to ensure, where the policy requires Australian content provisions, that the client is made aware of those terms and that they do obtain the appropriate assertions from the supplier and include them in the contract.

I will move on to the two additional questions that the committee has asked in relation to the Financial Management and Accountability Act and regulations. I will touch first on the interpretation of regulation 8. The committee has asked the AGS to comment on whether that regulation requires Commonwealth officers to have regard to the Commonwealth procurement guidelines or imposes a mandatory requirement for compliance with those guidelines.

It is our view that, on a plain reading of the regulation, the Commonwealth procurement guidelines are something for which regard must be had but that it is not necessary or appropriate to comply with the guidelines in every case. Indeed, subregulation 8(2) provides that 'an official who takes action that is not consistent with the Guidelines must make a written record of his or her reasons for doing so.' This provision clearly contemplates that there will be circumstances in which it is not appropriate to take action consistent with the guidelines after having considered the question of whether or not the guidelines should be followed. What is mandatory is that the guidelines must be considered before any action is taken.

Finally, the committee has asked for advice in relation to section 9 of the FMA Act, providing for the establishment of official accounts. The committee has asked specifically what administrative arrangements apply under the section and whether it is possible for a

supplier to government to have access to an official bank account including drawing rights. In relation to the first question, we will not be offering a view about what those arrangements are. That is really a matter for the Department of Finance and Administration, which is responsible for administering the FMA Act. However, we can provide some advice on the relevant legal issues. That advice is set out at greater length in the submission that we have provided to you today.

In brief, it can be said that the extended definition of ‘official’ for the purposes of the FMA Act does enable a person who is not employed under the Public Service Act to be issued with drawing rights in relation to an official account, and there are some circumstances in which that is done. In fact—and we can provide more detail in due course if necessary—there are some cases where the provision of drawing rights to people who are not public servants is done specifically in order that certain things can be achieved in compliance with the FMA Act. I am referring to the salary packaging arrangements that many departments and agencies have entered into. Thank you for inviting us here today. We would be pleased to answer any questions that the committee has.

CHAIR—Thank you very much for that. Could I ask both Attorney-General’s and the Office of the Australian Government Solicitor to tell us—either here or later—where you buy your paper. I want to know whom you buy your paper from. I know it sounds like a stupid question, but allegations were made that the Australian government buys more than 50 per cent of its paper requirements from overseas sources. We are trying to determine the validity of that statement, so could you please tell us where you buy your paper.

Mr May—I will take that one on notice.

CHAIR—Thank you, I thought you would.

Mr Govey—Likewise.

CHAIR—If you wouldn’t mind. It is for a very good reason—we are testing the credibility of a witness. I was interested—and you repeated it, Mr May, when you spoke—in the last paragraph of item 2 on page 7 of your submission. It says:

This view is corroborated by Regulation 8(2) which provides that an official who takes action that is not consistent with the Guidelines must make a written record of his or her reasons for doing so.

You continue:

This provision clearly contemplates that in particular circumstances an official may consider it would be appropriate to take action that is not consistent with the Guidelines.

How on earth could that arise in, for instance, ethical purchasing practice?

Mr Chin—Basically we think you can look in terms of the actual words of regulation 8 which, when it says, ‘An official who takes action that is not consistent with the Guidelines,’ that is clearly in contemplation. The fact that it makes provision for circumstances in which an official takes action that is not in accordance with the guidelines we think can be taken to be, on the plain meaning of the words, contemplating the circumstances arising.

CHAIR—You did not draft it; you are just commenting on the words?

Mr Chin—That is right. Basically that provision is consistent with the way that the guidelines have evolved over the last few years. The guidelines were issued in the 1980s as a 13-part set of guidelines which people adhered to very closely. Then, in 1997, they were written into a single volume. But in March 1998, and I think you have this from the submissions from ANAO and DOFA itself, they were pruned down to a relatively short document in the context of primary responsibility for procurement practices devolving to chief executives, who would issue instructions. So, basically, the guidelines are now seen as a framework, a touchstone—they are not prescriptive.

Mr May—I suggest that the provision that allows an officer to go beyond the guidelines is there to assist officers who otherwise might read the guidelines as a constraint on their action. So, while the guidelines provide a fairly flexible framework for making purchasing decisions, you might look at that and say, ‘Why would you ever need to go beyond the guidelines?’ Equally, in certain circumstances, an officer might say, ‘I want to go there, but I feel I am constrained by this local content requirement,’ or, ‘I feel that I am not quite making the right balance between value for money on the one hand and another consideration on the other.’ This provides a mechanism for the officer to justify the action they are taking.

Senator HOGG—I find that difficult to come to grips with. If I understand what you have said, that there is nothing mandatory in that officer having to apply the guidelines, why is it necessary to report where you have not complied with the guidelines?

Mr May—I would say that that reason is there in order to ensure that, as I said, the mandatory requirement is in fact to have regard to the guidelines. If that provision were not there, it would be a relatively simple matter for a purchasing officer to make a decision that was not compliant with the guidelines but never have to justify that action. What 8(2) does is to ensure that there is a mechanism that provides some transparent means of demonstrating that officers have in fact considered the guidelines and have not unilaterally or without any basis made a purchasing decision that is inconsistent with those guidelines.

Senator HOGG—Does 8(2) imply where that written advice has to go?

Mr May—On the record.

Senator HOGG—Just on the record?

Mr May—I do not think there is any formal requirement for it to be lodged in any particular place. But I can hazard a guess as to what is likely to happen. If an officer does not follow that procedure, what we see often in tendering and contracting is that a supplier or a potential tenderer will challenge their final decision, and one of the things that will be looked for as the evidence in any challenge will be whether or not there has been a sufficient compliance with 8(2) if in fact the allegation is that the guidelines were not complied with.

CHAIR—This is an important question for us because, as we told you when we wrote to you, we have had conflicting evidence from the departments and GBEs.

Mr May—I understand that Centrelink has now responded and has indicated that it accepts the view of the ANAO. Am I correct in that understanding?

CHAIR—I do not know.

Senator HOGG—I do not know, but the different interpretations around did concern us.

CHAIR—We appreciate the legal advice so that it is cleared up in our mind, and we can consider the issue when we go to make recommendations about whether we would suggest changing any of the words or not and the implications of that.

CHAIR—Centrelink just suggested that we get legal advice.

Mr Chin—I could put that provision in another way. In the law there is this delightful term ‘rebuttable presumption’, which indicates a situation where there will normally be a presumption that one will act in a certain way but it can be rebutted by particular circumstances. It is a common sort of thing that occurs in the law.

CHAIR—Thank you for that. But the guidelines now are so streamlined that I find it difficult to envisage a circumstance where it would be reasonable for a government purchasing officer to deviate from the guidelines.

Mr May—I think it is a de minimus type provision. It would be used on very infrequent occasions.

CHAIR—I cannot envisage a circumstance where it should be necessary. They are pretty flexible; they give you a lot of room to move. Turning back to something we were talking about before, in 1994 I was a member of the House of Representatives Standing Committee on Industry, Science and Technology when we did the purchasing inquiry. We had heaps of evidence from lots of places that Australian government contract documents precluded some companies from tendering for work that they would normally have done for the private sector, were so risk averse as to cause others not to bother and limited the ability of whoever wanted to make any money out of contracts.

I can tell you about that from personal experience. I think I only ever built one Commonwealth contract, but your tender requirements were onerous and were in line with the public works department of the state of Victoria at that time—really horrific stuff. A later development in that industry, for instance, building schools, was that the Victorian government shifted from using the public works department to private provision through contracts by the school councils themselves with a contractor, after an open tendering process run by the architect who had designed the building for the school council, but everything was paid for by government directly. Those contract terms and conditions were much less onerous, the clients got better prices and the performance of the contracts was better. Your advice about these terrific documents—we have not had quite so much complaint this time but, boy, did we get a lot in 1994.

Mr May—I think the point I was trying to make earlier is that the allocation of risk is essentially a matter for the purchaser, not for the solicitor. Our role as lawyers is simply to

draft a contract that reflects the allocations of risk that the purchaser and supplier agree on and, naturally enough, the tender documents that go out will reflect the instructions we have. I think there has been an acceptance over a period of time that some of the allocation of risk that the Commonwealth demanded in the past was perhaps too onerous and there has been a shifting of general practice, which reflects itself in contracts. But as lawyers I must say that we try to draft a contract that protects our client in accordance with the instructions that the client has provided to us. It is not a matter for us to determine the policy that the client must follow in that regard.

CHAIR—So you play no advice role?

Mr May—We play an advice role in suggesting ways in which a client might restructure a contract, for example—to reallocate risk in a way that might not have been thought of before. We can suggest ways in which the penalties for non-compliance might be altered to provide an acceptable compromise on the relative risks between the supplier and the purchaser, but our role is to assist the client to come to an agreement with the supplier that is mutually acceptable to them. We do not see our role as being one of formally setting standards for the Commonwealth about how the Commonwealth will act in all particular cases.

The other thing that has changed in that period has been the move away from standard contracts. At a time when standard contracts were being used, there was a rigidity in that risk allocation which you no longer see, with contracts being dealt with on a case-by-case basis far more frequently.

Ms PLIBERSEK—I have a further question on contracts. As you are saying, they depend a lot on the instructions that you get from the relevant department. Do you think particular departments are doing a better job in providing those instructions than others?

Mr May—It is not an issue that I can comment on directly. We certainly do not prepare a list of those departments that are good contractors and those that are not.

Ms PLIBERSEK—You would have an impression, though.

Mr May—There are certainly some departments that have far more—

Senator HOGG—The laughter at the start indicated that there is a fair idea of who is good and who is bad.

Mr May—That was not exactly my laughter.

Senator HOGG—We are not trying to trap you here. We are trying to get some sort of guidance as to how we can improve the purchasing policies and practices of the Australian government.

Ms PLIBERSEK—Maybe a different way of phrasing the question would be: is there a department that is following best practice in this area?

Mr May—I do not think I could present any exemplars, but I will say that from where I sit—and my role is a management role; I am not day to day involved in contracting—the departments that contract more frequently inevitably are the better contractors and so, when I am dealing with other departments, as a manager I find that there are some agencies that have a far better process about the way they go about purchasing—in our case, legal services—than others that do it less frequently. Michael, do you want to add anything?

Senator HOGG—When you are commenting on that, could you also comment on the issue of training? Is the lack of training in some areas significant when dealing with this issue?

Ms PLIBERSEK—For example, for purchasing officers—whoever is writing the contracts.

Mr Chin—I will comment on the first question in general terms, at the risk of saying something that appears to be self-serving. Rather than things between departments who do or do not do the right thing, I would see it in terms of those agencies that come to us for advice as a first step. Someone who comes to a solicitor for advice already is a person who wants to resolve certain issues and develop a contract that is acceptable. So we help those people, but generally when we see contracts that are criticised out there, they are contracts that we have not been involved in. The usual thing is that, if someone comes to us, we do affect their behaviour; there is a dialogue between us and we affect their behaviour to some extent.

Senator HOGG—What percentage of contracts would you see, anecdotally?

Mr May—Anecdotally, there are still a number of departments which have developed or have had developed for them some years ago a contract that they can use for a pretty standard sort of transaction, and they are still using that standard form of contract in circumstances where, if it were to come to us today, we would say, ‘No, that form is no longer relevant.’

Senator HOGG—Life has moved on.

Mr May—Life has moved on. The FMA Act was something that caused departments to look at those standard form contracts. There are—and I know this anecdotally—a number of departments that are now reviewing their own practices with a view to not simply relying on their own people preparing contracts in accordance with standard forms. Only this week, one department was talking in terms of ‘Our future practice will be that when we are contracting we will be getting legal advice.’ It would not necessarily be from AGS, because it is an untied field, but they will be obtaining legal advice from their panel rather than simply preparing a contract and hoping that it is still right.

CHAIR—One of the things the committee is quite interested in is compliance. We have had evidence of examples, assuming they are all true, of fairly horrific non-compliance issues that have dealt harshly with Australian interests. By that I mean significant contracts where part of the contract terms requires a tenderer to meet Australian content and then in delivering the contract they failed to meet those obligations. One assumes, without advice to

the contrary, that that happened simply because nobody paid attention to it. I do know that that does happen. I can tell you that, in both your contracts for buildings and the Victorian government's contracts for buildings, in the 1980s there was always a requirement for a number of apprentices as a percentage, so that for every four tradesmen you would have one apprentice and you had to keep records and so on. But in 17 years of contracting nobody ever asked me if I had complied with that requirement. I simply had to sign a contract saying that I would. Nobody ever asked me to comply with it; not once. That is an indication of how sloppy contract management can be. Have you seen instances of this? Can you comment about the issue generally?

Mr May—I think there has been a growing awareness of the need for the management of contracts after signing, especially in recent times. In the training that we provide, for example, on general contracting principles, the components of that include how you manage a contract, how you ensure the terms are going to be complied with, how you set up the monitoring mechanisms—in fact, when you are making the contract how you determine what you are actually going to be monitoring. It is no good putting in the provision about apprentices if you are not going to look at it.

CHAIR—It is a great motherhood statement that we are supporting apprentices because we require our contractors to have a certain percentage of apprentices on every job, but if you never enforce the clause it is nothing but motherhood.

Mr May—We do not see the issue arise frequently, because we are not involved much as lawyers in the contract management process. We tend to see it only when an issue comes to litigation or dispute after the contract has been entered into. At that stage what we would have to say to a client was: what sort of monitoring mechanisms did you have? Why did you let the default go on for so long? These will be issues in any dispute resolution. So it is in our interest to ensure that the clients have good monitoring mechanisms put into the contract and have good performance standards built into the contract so that if something does go wrong we have then got the evidence that we can assist them with. As I say, I think there has been over time a developing emphasis from simply getting the contract into existence to seeing contracting as a long continuum that runs from the initial determination of requirement right through to completion.

CHAIR—In dispute resolution of one form or another, have you faced the instance I am talking about where a major contractor signed that it has certain specified Australian content and then turns around and supplies something else?

Mr Chin—I have not had direct experience of that. What we do is provide a framework. We provide the sorts of mechanisms outlined in our submission whereby we go through the sorting out of the sheep from the goats process at the beginning. We ask people to indicate what their record is of compliance and then we ask them to make the offer as to how they propose to comply in this case. Then, when the Commonwealth client selects someone, taking that into account is an important factor. They usually get someone who is going to comply, so usually the issue does not arise. What I am saying essentially is that one of the best ways to manage a contract is to select the right contractor.

Ms PLIBERSEK—Based on their record.

Mr Chin—Based on their record of compliance in the past. I have not been involved in litigation where someone has not complied. But again the people who come to us are the people who want to enforce. We really do not get direct evidence of cases where people do not comply with Australian content requirements.

Ms PLIBERSEK—You mentioned earlier the training that you do. Can you tell us a little bit about that?

Mr May—As part of our commercialisation, we provide training to Commonwealth departments and agencies in a range of legal areas, from admin law to FOI, and one of the areas will be various aspects of contracting, various aspects of commercial law cast at different levels. But we do provide some basic contract training for people at the purchasing officer level, for example.

Ms PLIBERSEK—What sorts of courses are they?

Mr May—Courses about basic contract principles, about tender design—

Ms PLIBERSEK—Purchasing officers have done their training and they come to you for a week's brush-up, or are you talking about a six-month course?

Mr May—These are usually one- or two-day programs to provide a little bit of skill development for people who are performing those sorts of functions, just so that they have got a better understanding of the legal principles that underlie the work that they are doing.

Ms PLIBERSEK—What is the take-up of the training?

Mr May—Quite good from many departments and agencies. Many buy a program and put a number of people through it. In fact, most of that sort of training is sold to the agency—not advertised for individuals to come into. It is provided to a bulk group within an agency.

Mr Chin—Our courses tend to deal with the interface between contract management and legal skills. On an example of the contract manager who does not enforce a provision, we will explain it to them in terms of waiver and estoppel and how down the track, for instance, it will make it harder for them if they want to enforce such a provision. Those are the sorts of issues we deal with, rather than contract management as such, which is the role of the CTC.

CHAIR—You are training on the meaning of the words written into the document and how you get value out of those words when the contract is being fulfilled.

Mr May—What we try to do in that training is to make it meaningful to the person in the circumstance where they are. We use examples out of their organisation so that they can see how it will work in their day-to-day activity.

CHAIR—Thank you very much for your advice. We appreciate the free service.

Ms PLIBERSEK—You should get Centrelink to pay for it.

CHAIR—May it forever continue. We will appreciate your advice about the paper. Thank you very much. You have cleared up an area of some considerable uncertainty before the committee. Now at least we know where we are going.

[11.44 a.m.]

RUSSELL, Mr Ian Robert, Chief Executive, Adacel Technologies Ltd

CHAIR—I welcome the representative of Adacel Technologies Ltd to today's hearing. Mr Russell, we have received your confidential submission. If at any point when we are discussing these issues today you wish to go in camera, would you please tell us and we will either reserve those issues and kill *Hansard* or take them up one at a time. Having said all that, we have read your submission. Would you like to make a brief opening statement?

Mr Russell—Yes. There are two or three things I would like to say. Firstly, as you will see, the submission is detailed as an example. That was done to try to highlight a problem, so if a particular problem came to the notice of the committee you could then perhaps see a way forward to provide some form of mechanism in the future to protect small and medium size companies so that the problem is avoided in the future. So there is no ulterior motive in what we are doing. That has been done, and nothing can be done about that. We have checked that with various government departments, so that issue is a dead issue.

The second issue which I think is very important is that whereas you have been talking about paper and things like that—and I appreciate the size of that, and you were talking about magnitude there—what Adacel is about is intellectual property ownership and the ability to utilise the power that the government has to see that intellectual property ownership resides in Australia if the government has spent a lot of money on developing something here in this country.

It comes back to identifying what is background intellectual property and what is foreground intellectual property. Whilst the government contracts now identify that, I think the easiest way to explain it is to talk about a motor car. If you wanted to buy a motor car here for an Australian government department and you wanted to change the wheels, you could buy the car from overseas where the background intellectual property was and if you wanted a different wheel you could develop that here and put it on the car. What we are saying is that, if you do that in a major contract, you should be able to then ensure that you sell that wheel continually around the world with the motor car as it is developed and sold. As you will see from our example, we do not believe that that will happen unless we get some changes in the way that the compliance with the requirements of Australian industry involvement is changed in some way.

As a third point, one of the problems that we encountered when we went through the exercise of trying to understand the problem which we have described to you was the definition of an Australian company. The definition of an Australian company is very easily understood by lawyers. You can go to the Corporations Law and there is the definition. As long as you are a major overseas company and you come to Australia and you establish a subsidiary, you are an Australian company. What we would like you to perhaps think about in this area of IP is that it is very important that the ability to retain ownership and to exploit intellectual property remains with Australian companies so that they then can take it out and use it not only here in Australia but also in export markets. We feel that, unless there is a more subjective understanding of what an Australian company is, it will be very

difficult to be able to achieve that, because overseas companies can come here, and they are Australian companies, and they are welcome here, but it is more a definitional problem that we have.

CHAIR—You would have heard us talking to the previous witnesses.

Mr Russell—Yes.

CHAIR—Without mentioning the particular incident that you described in your confidential report to us, we have brought that issue up with every department to try to come to grips with this compliance issue. It is an important consideration, because if we are putting into major contracts an Australian industry development requirement, and if the contracting department is then not even testing the outcome of the real contract versus what is specified, then we have a substantial system failure that will bring more companies undone as well as losing them future business, and the committee is concerned about that. Do you think that it is a common occurrence that Australian content requirements of a contract—by the nature of the offer made by the contractor in the first place—are often not being fulfilled?

Mr Russell—I think there are companies that are very good corporate citizens in Australia, that recognise that if they make a commitment they should honour that commitment. There are companies in the aerospace industry that manufacture large planes in the Northern Hemisphere that I believe are very good corporate clients, because I have had experience with them in the past. We will never manufacture wide-bodied aircraft in Australia in the foreseeable future, but Australia is a part of that manufacturing process because it is a worldwide process. A company has brought intellectual property to Australia, and it has helped establish the industry and has allowed the Australian companies to sell that intellectual property not only to them but also worldwide to other companies. So I have to say that there are good corporate citizens.

But there have been, in my experience, some instances where people have given lip-service to the AII thing. It is in the example that we have given you. Rather than talk about other ones, we know this one in detail and we have given it to you to test the water. We have talked to government departments about it. There have been previous inquiries about the validity and the veracity of what is in our submission and it has already been recorded in other government documents. So it is not as if this is the first time that this has come to the attention of the Commonwealth, or a Commonwealth entity, as it were. It has been a disappointing outcome for us. We want to be sure that, in the future, we find a mechanism for compliance. Equal opportunity has a compliance mechanism—and I mentioned how people can be named in parliament if they do not comply with that regulation or that Commonwealth act.

Senator HOGG—Do you think naming in parliament is an effective means to do that?

Mr Russell—I think for certain companies it would be. I think some companies would say, 'Well, yes, that has happened.' But I think you have to make a distinction between the companies. I do not think companies that can bring intellectual property power to Australia—and you are then talking about mainly large multinational companies—would like

to be named in parliament and have it said that they are not good corporate citizens of this country. That is just a personal opinion. With some companies, though, I do not think that that is enough, though. I think you may have to go further. We did provide some thoughts on that, mainly because we have been through the mill and have tried to do something and have not been able to do it as an individual corporation.

CHAIR—Can you tell us who their contract was with?

Mr Russell—Here in Australia?

CHAIR—Yes, the issue you brought to our attention.

Mr Russell—It started off being with the Civil Aviation Authority, which became Airservices.

CHAIR—Is that part of a department?

Mr Russell—Yes, Airservices is now a 100 per cent owned corporation.

CHAIR—So it is now a GBE?

Mr Russell—Yes.

CHAIR—But when the contract was signed was it part of a department?

Mr Russell—Yes, that is my recollection of it. You are going back four or five years.

CHAIR—Yes.

Mr Russell—It was at least four or five years ago. I am pretty sure the CAA at that time was one entity and then it was broken down into two entities: one, the Bureau of Aviation Safety—

CHAIR—I remember being a little bit involved in lobbying for the unsuccessful major contractor—a company in my electorate. I was unsuccessful, but I tried.

Mr Russell—I can understand that, but those things happen.

CHAIR—If you were going to address this issue of compliance, how would you go about it? Let us say that you were this committee and you had the opportunity to write a recommendation which the government would most likely accept. A very high percentage of the time our recommendations are accepted because we operate in a non-party political manner. What would you recommend?

Mr Russell—I believe that if I enter into a commercial contract, no matter whether it is with government or a third party, and one of the conditions of it is that I provide, say, a 12-month warranty, then I have to provide a 12-month warranty. If one of the conditions is that I have to provide a certain amount of work into Australia or lodge intellectual property in

Australia, it becomes a condition of the contract. As you were saying, I do not think you can give lip-service to things like employing four apprentices. Nowadays every government contract condition is looked at, particularly from our point of view, if you are non-performing. If you are performing, it is fine, but if you are non-performing it is drawn to your attention very quickly. But that mainly applies to price, quality, delivery or some issue that has a dollar tag on it that immediately involves somebody writing a cheque or receiving payment.

The more subjective issues in AII that have been put in contracts have never been enforced. You can understand perhaps a customer saying, 'If I am going to enforce this I am going to have to monitor the compliance of it and whether three or four little companies out here obtain benefit from that does not affect the outcome of what I am getting from the supplier.' I think, therefore, it is given lip-service. If you were going to do something about it, you really need the three gentlemen who were sitting here to ensure that, if something is written into a contract about AII, people comply with it or they are penalised.

CHAIR—The Australian Government Solicitor and A-G's will not enforce contracts because those contracts are the property of the department that writes the contract. We talked to Defence this morning and we asked them this question—I do not know whether you were here then.

Mr Russell—Yes, I heard the tail end of that.

CHAIR—Defence said very clearly that they have very strict rules in place to make sure that they get compliance with Australian industry development and Australian content in their contracts and it is rigorously enforced. It is in the strategic policy statement, their purchasing guidelines and in everything they do. They rigorously enforce that. But we have no indication specifically from any other department that those requirements would necessarily be enforced.

Mr Russell—That is the problem. Can I comment on hearsay?

CHAIR—Yes.

Mr Russell—Within the defence department, the current contract with Lockheed for the supply of the C130s is, as I understand it, running late and the defence department have taken a stand and applied liquidated damages, which is perhaps very unusual for them to do with a major contract. I think that is a very positive step. That does something for the individual contract because it puts a commercial cost onto the supplier that affects his bottom line—and that he understands very clearly. That solves the problem of that particular contract. If people can write in liquidated damages, then if you are late or do not comply with an AII requirement that is very specific and should be enforced.

It has to go further than that: if a major contractor offends in that way, do you automatically allow him to tender for a contract of a similar nature the following day when he has already offended once in a particular area—it might be AII—and has thumbed his nose at it even though you charge him for it?

CHAIR—You are sounding like you are becoming very prescriptive.

Mr Russell—Once again, I take you to the point that governments at various times have had preferred tenderers and preferred tenders—you go through the process of establishing yourself and the systems within your own organisation so that you can comply all the time with things like quality and time. You do have preferred tenderers. In the case of tendering for a Defence program, there might be three or four companies that would be acceptable always as principals for that tender. But, if one of them is continually offending the regulations of the country and will not do as you tell them as a customer, I would not get that company to quote the next time. I would say, ‘You are off the list.’ Why would you go through the hassle the second time round?

You asked me to be prescriptive. The only way to do that is to attend to the bottom line. The individual company or commercial organisation understands bottom line and therefore if you have a condition in the contract you must enforce it. If it affects his bottom line, he understands it very clearly. The second stage is that you have to have a deterrent mechanism that says, ‘You cannot go on doing this every time I have a contract with you.’

Senator HOGG—I would like to follow this because it is very interesting. You are looking at a picture where things are fairly centralised, but we have now gone to a stage where things are fairly much devolved. How would one agency tell the other that there has been non-compliance when there is this devolution of purchasing power and procurement through the government? That makes your hypothesis very hard to uphold.

Mr Russell—I do not want to be simplistic about it because I do not think there is an easy solution once you devolve purchasing across people but, if you have a situation with AII which says that this is what you shall do, make it the 11th commandment. Whether or not you work for an agency, if you commit murder you offend the law and if you are caught you are penalised. In other words, if it is so important to Australia—as I think it is and I think the government has shown that it is important because it has had reviews and made statements about it—the only way to make an agency comply is by making it very prescriptive. I used to work for an agency and we used to abide by the guidelines because the board said we had to. You say, ‘They are the guidelines; you offend them and you are out the backdoor.’ You were asking earlier what you do about them. If you are an individual government organisation supplier and you deliberately offend them, then you are out the back door. It is the same as putting your hand in the till. If AII is important—if it is a minor issue then you cannot do that—and you want to make it a major issue for government organisation and ensure that they consider AII all the time, you have to make it a major issue and it becomes the 11th commandment.

Mr GRIFFIN—I am not sure how we would do that. Making it the 11th commandment sounds fine in principle; I am worried how it can be done practically.

Mr Russell—I worked as an executive for a government organisation—the government aircraft factories. We were given guidelines by the government as to how we would work. We had an outside board. Those guidelines were part of the total infrastructure of the company. Everybody had to abide by them.

Mr GRIFFIN—And they did?

Mr Russell—And they did. If you did not, you did not work with the organisation.

Mr GRIFFIN—Was that more a question of the culture of that organisation?

Mr Russell—Culture develops over a period of time. At the moment the position with AII is that there are some good corporate citizens and there are some bad corporate citizens. I agree that the Department of Defence is taking a stance on it, which I think is very good. But it will be one grain of sand in the desert. I know it is a big department as far as spending is concerned, but you need all the other departments to recognise that if you are going to work for the government you have to consider this factor.

I joined a company, I signed a confidentiality agreement and I have to comply with that all the time. If I do not comply with it and something goes wrong—and you do not always find out about it immediately—at least with the government you have an opportunity that, if it is promulgated as the ‘11th commandment’, if somebody does not abide by it, Joe down the backyard who runs the factory that has been hurt by it, like your paper manufacturer, is going to put his hand up and create an awful stink, and it is going to get visibility. You do not get that same visibility with the majority of companies. You get it only when a major company has a problem like that. I think there is a way of doing it, but it means that somebody really has to push the button and say, ‘It is important; the government has said it’s important. If you are going to work for the government, you have to abide by this as well as the other rules you have.’

Mr GRIFFIN—You do not see monitoring it as a problem?

Mr Russell—I think that in the past it was a problem. I think that was the nature of the way the arrangements with the organisations were set up whereas, in our instance, we believed that the department was able to enforce the requirement, and it was only when we put a lot of pressure on them that they started to monitor it and acknowledged that it was not being achieved. But then, as you would have found out through reading things, when they sought legal advice, they said that the wording they had put in place originally was not tight enough to take any action. That is a commercial thing; you cannot do anything about that. Somebody could have said in parliament that it was a bad thing, I suppose.

CHAIR—In 1994 when the House of Representatives Standing Committee on Industry, Science and Technology looked at this issue, we had overwhelming evidence that there was a culture in government departments that actually favoured overseas companies rather than Australian companies. Have you seen a change in attitude over the last five years? Perhaps you do not agree with that synopsis.

Mr Russell—No. The defence department was always the big purchaser that was really involved in AII. Of late, as other departments have done unusual things that are more commercial, like outsourcing, we have seen more of it and it has more focus perhaps from the community coming back to you. But I would think that five years ago there was perhaps not a clear direction of what AII was. At one stage it was, ‘We’ll start the blacksmith’s shop out in the country as a means of doing development, so we’ll get all these little

developments going doing blacksmithing.’ You cannot export that by the way. Once you do that, it is localised and that is where it stays. It might be good for that community, but you cannot take it outside Australia, get your best practices and become world competitive with it.

I think the recognition since the early 1990s is that Australian industry has the ability to do certain things in certain areas. IT is an area, software development is an area, where we are comparable and we can compete overseas. I think that change has happened and it has filtered through to the Department of Defence because their latest papers are now very focused on trying to get sustainable intellectual brainpower development that can be used elsewhere.

We have one instance with an American company we have joined with where we are part of their team for a project here in Australia. It has not been let yet, but it is a bit like the motor car and the wheels: they will sell that project elsewhere in the world and we will always supply the wheels for it. That is the agreement we have reached with them. That has been reached, I think, because the Department of Defence had been pushing them, saying, ‘If you want to be a good corporate citizen, don’t just come here, put your tent up, do your work and get out. Leave some residue here for our industry to continue to work with you.’ So I think there has been a change, yes.

CHAIR—Do you deal with Telstra at all?

Mr Russell—Yes. I would like to tell you something in confidence there. Is that going to be a problem?

CHAIR—We will save that until last.

Mr Russell—That is fine. You have asked other questions about Australian companies, intellectual property, e-commerce and things like that. Being a public company, I should talk to you about that later.

CHAIR—So your overall impression is that things are better?

Mr Russell—I think the Department of Defence is leading the way. I would not say they are better. One of the problems in the Department of Defence contracting area is that they change people too quickly. You talked about training before. If I had been sitting there and you had asked me what I would do, I would have asked them, ‘If you train people and you change them over every two years, what is the benefit of the training?’

CHAIR—We have asked that on many occasions by the way, particularly with respect to JORN and Collins. Are you going to talk further?

Mr Russell—You need not go any further. That is the problem.

CHAIR—Are the procurement guidelines, save the issue we are talking about in terms of compliance, satisfactory?

Mr Russell—I think they are, yes. The new ones that Mrs Bishop brought out are very good guidelines for our industry. I used to be in manufacturing but I have been out of it for some time. I am not really across how the guidelines would support it now, with bringing manufacturing technology here that can then be used to be exported to the world. In the IT-software area, in that sharp-end area, that the Department of Defence focuses on, I think they are in the right direction, as long as they are enforced.

CHAIR—We understand that.

Evidence was then taken in camera, but later resumed in public—

[1.33 p.m.]

DOLAN, Mr Martin, First Assistant Secretary, Management Secretariat, Agriculture, Fisheries and Forestry—Australia

KAVA, Ms Rosanne, General Manager, Business Services Unit, Agriculture, Fisheries and Forestry—Australia

MITCHELL, Mr David, Manager, Financial Reporting and Contracting, Business Services Unit, Agriculture, Fisheries and Forestry—Australia

CHAIR—I welcome representatives of the Department of Agriculture, Fisheries and Forestry to today's hearing. We received your submission and we thank you for that. Would you have a brief opening statement that you would like to make about these issues before we ask you penetrating questions?

Mr Dolan—With your indulgence, Mr Chairman, I have a minor opening remark, which is to draw attention to the fact that the figures that we supplied in our submission related to the former Department of Primary Industries and Energy components and now relate to the activities of other departments. So we could not easily draw a comparison in the transition from the old department to the new one.

CHAIR—That is fair enough. Our first question: do you know where you buy your paper?

Mr Mitchell—Yes, we do. We buy a portion of it—40 per cent—as Australian recycled paper purchased from Xerox. That is Australian recycled paper. Sixty per cent of that paper is currently sourced from Australian owned companies, but they source that paper, which is virgin white paper, from Thailand, Sweden or South Africa.

CHAIR—So 60 per cent of your purchases—

Mr Mitchell—Is virgin white paper purchased by Australian owned companies, but it is sourced outside of Australia.

CHAIR—So 60 per cent of your paper comes from offshore.

Mr Mitchell—Correct.

CHAIR—Why such an imbalance?

Mr Mitchell—That is to meet the requirements in technical photocopying and to meet the customers' requirements in presenting material within and outside the department in a particular format. That is about the extent of my knowledge on the reason why, but there is a process where they go through and obtain competitive quotations based on price on what is supplied in the marketplace at the moment.

CHAIR—I know that all my paper is Reflex and that it comes from Gippsland. Could you seek an answer to that question as to why your department is buying so much overseas produced paper and why you cannot buy it in Australia?

Mr Mitchell—I understand that there is a cost issue in terms of what is sourced from overseas and what is currently provided in Australia. In the last process, there was a price differential of 40c per ream between what was available in virgin white within Australia and what was available sourced from overseas. That was a significant issue, bearing in mind that a ream of paper is about \$3.70 to \$4.10 per ream and that, when you are spending a considerable amount of money in buying that, that has an impact of about \$5,000 to \$6,000 per year in the quantity that we buy.

CHAIR—What is your total purchasing of paper?

Mr Mitchell—It is about \$100,000 per annum.

CHAIR—Okay, we have got all that.

Mr Dolan—If I could clarify this, Mr Chairman: do you want us to investigate further the technical reasons why we get the particular virgin white paper?

CHAIR—Yes, I would.

Mr Dolan—I am happy to provide that.

CHAIR—I am fascinated and I am interested.

Senator HOGG—We are fascinated.

CHAIR—I wonder why you have this particular requirement—and you are now the department of forestry too—while I do not. It does surprise me.

Senator HOGG—Would you know what is different in your requirements from those of other departments?

Mr Mitchell—I have not got the answer.

Mr Dolan—I would be surprised if we had markedly different requirements.

Senator HOGG—Chair, it may well be that the other departments that we have spoken to have been talking about Australian companies that they purchase from, without necessarily alluding to what has been said to us today.

Mr St CLAIR—Which is very succinct.

CHAIR—Would you like the secretariat to write to all the departments—once again over my signature—and get this clarified?

Senator HOGG—I think so. It is absolutely important.

CHAIR—Would you take care of that, Mr Boyd? Very good. The reason for the intensity—it sounded like a stupid, petty question: where do we buy the paper?—is just that the Australian Paper Manufacturers Association makes some very strong claims about the percentage of paper purchased by the Australian government. If your numbers were replicated, it would make their figures correct. General answers we have had, however, have not been consistent with the answer you gave.

Mr Mitchell—I might add that the Australian recycled paper that we purchase is purchased from a multinational.

CHAIR—But it is Australian paper?

Mr Mitchell—Yes, absolutely.

CHAIR—From whom you buy it is a good question. You did say in your submission that approximately 80 per cent of contracts in the local market would favour SMEs. Would you have any idea of whether those are Australian companies or shopfronts for overseas ones?

Mr Mitchell—I know, in the context of paper, that Commonwealth Paper and Paper House are Australian companies—so I am informed.

Mr Dolan—As a more general principle, it is difficult, given the range of companies with which we are dealing, to always assure ourselves of the formal ownership status of various companies.

Senator HOGG—It could be something that is purchased overseas and assembled in Australia, and people take it as being Australian made.

Mr Mitchell—It actually has ‘Australian made’ on the label.

Mr Dolan—There are a number of definitional items that we have real troubles with. Given that a lot of our purchasing is small scale, repeated items, we do not believe the effort that would be required to keep track of that would really give the sort of return that would be necessary. Obviously, for major purchases there is a different range of considerations.

CHAIR—You said that in 1997-98 only 116 contracts out of 3,322 exceeded \$100,000. What sorts of things exceeded \$100,000?

Mr Mitchell—A travel contract, an audit contract—internal auditing services—payments for utilities, payments for rent. IT is a significant component of that—IT hardware and consultancies. Some consultancies are over \$100,000. Broadly, those are the sorts of issues.

Ms Kava—There may have been some scientific equipment also purchased above that amount, but I believe that was from AGSO, which is a part of the Department of Primary

Industries and Energy but no longer a part of the Department of Agriculture, Fisheries and Forestry.

CHAIR—So most of the contracts over \$100,000 were for services?

Mr Mitchell—Correct.

CHAIR—Those would largely be to Australian companies or companies supplying Australian labour for the service?

Mr Mitchell—Yes, certainly. For example, the internal audit services are services purchased from Ernst and Young. Whilst they are certainly a global accounting firm, they involve Australian labour, as you have indicated.

For rent, there was formerly a government property manager but now that is being handed to the Industry Superannuation Property Trust Fund. For utilities payments, we are obviously dealing with Australian utilities. Furniture, whilst not significant, still represents Australian owned companies. In the case of the Edmund Barton Building, I know that they are Australian made items. That is a broad indication of the current state of play.

CHAIR—How do you and your purchasing officers—and I assume that your purchasing is quite devolved—interpret value for money?

Mr Mitchell—We look at the best outcome, considering all relevant costs throughout the procurement cycle in considering that particular procurement activity. So it is the best outcome.

Ms Kava—If I could just add to that slightly, it is a whole-of-life approach, as opposed to just the initial purchase price.

CHAIR—Is that uniformly followed?

Mr Dolan—There are some cases where a whole-of-life consideration does not really apply, obviously. But, as a general principle to be applied to particular cases, it is what we work on.

Ms Kava—Yes, without having done a 100 per cent compliance test of that. But that is certainly our understanding.

Mr Mitchell—May I add, in terms of evaluation of contracts and tender processes, that we do not put cheapest price on the evaluation criteria. We have a range of considerations in assessing value for money.

Mr St CLAIR—Do you weight them?

Mr Mitchell—It depends on the particular process. Each case is different. In some cases there is a weighting. It depends on whether it is services or goods and the particular use and what is required. It is very hard to generalise.

Senator HOGG—One of the criticisms that we have had at this committee is that, in dealing with government or government agencies, invariably, whilst it is supposed to be broader in the sense of value for money, all it ends up with is the cheapest price. Whilst you might go through the hoops on doing the whole process of value for money, at the end of the day the bottom line is cheapest price. How many contracts would you let out that, in the end, are the cheapest price? Have you got any idea? If there are 116 contracts over \$100,000, how many of those, for example, would be the cheapest price? Are you able to tell us that?

Mr Mitchell—In the major contracts that we have been dealing with over the last, say, 12 or 18 months, very few of them go for the cheapest price. There is a whole range of considerations in terms of quality of service, support and the like. Very few actually go necessarily for the cheapest price.

Senator HOGG—Are you able to tell us how many out of a certain number would go? It is just to give us some idea.

Mr Mitchell—I do not have any idea.

Senator HOGG—Take it on notice, if you can. It is just to dispel the statement—the throwaway line—to us that, in dealing with the agencies and the departments, it is cheapest price. If you can give us some evidence that it is not cheapest price, then that will be helpful. What sort of review processes do you have to make sure it is not the cheapest price, or do you just leave it up to the judgment of the procurement officer?

Mr Mitchell—The procurement officer, generally speaking, is the delegate signing off the FMA requirement for approving the commitment and ensuring that government policy is attended to. They have to be satisfied that the procurement activity and the proposals they are going to go with meet the objectives of that program in addressing all the criteria. They would make that decision.

Senator HOGG—Is there a review process of their activities?

Mr Mitchell—No, there is no review process, other than through an internal audit program, for instance, and going through a whole range of compliance with Chief Executive's Instructions and Commonwealth policy and practice. There is no formalised review process of checking their decision making.

Senator HOGG—I was not inferring necessarily on every occasion, but a sampling technique or something similar to that.

Mr Mitchell—In the contracting unit we actually assist the program managers in evaluating the audit trail, their process and the process they have gone through, and come up with an evaluation of the proposals before them. We assist them in doing that and making sure that they can withstand the sort of scrutiny that is required, in both the context of Commonwealth policy and the internal requirements that we have in the organisation.

Senator HOGG—Do you have a set of internal criteria that you use?

Mr Mitchell—Yes, we have Chief Executive's Instructions, which you have a copy of. In addition to that, we have a check list which is an appendix to those Chief Executive's Instructions.

CHAIR—On page 3 of your submission you comment that an internal audit had identified some tendering and contracting requirements that had not been consistently applied in some program areas. Do you want to tell us about that?

Mr Dolan—It was the product of the management approach we had in the department, which was to run a substantially devolved operation for all of our administrative support and other management activities. Over time, we got a divergence in approach, which that audit report clearly picked out. As a result of that and a range of other considerations, there has been a considerable move in the department back towards a more centralised and consistent approach to these overall processes. Mr Mitchell's role in advising and coordinating procurement in the department is one of the steps to pick up those sorts of things.

What had happened was that, basically, within seven operating groups in the department, local practices had grown up. The levels of training were not always as good as they should have been. Occasionally there was some, what you could characterise as, sloppiness in the paperwork which the audit picked up. What we would stress and what is clear from the audit is that there were no major controls or other problems in this. But certainly we had a requirement to tighten up, which we have taken in hand since that report.

CHAIR—So, in order to tighten up, you have gone back to a bit of centralised control?

Mr Dolan—Centralised advice and support, a clearer expression in our Chief Executive's Instruction of requirements and what people are meant to meet in those, and we would expect as a result of this—and we regularly audit these sorts of issues—that there will be an improvement the next time around.

Ms PLIBERSEK—You described that you have established an area responsible for providing advice and support to program managers on contracting and tendering activity. That arose out of this audit process? That was a recommendation?

Mr Dolan—We had some rather unfocused area that was charged with that before that period. As a result of the setting up of our Business Services Unit in particular, we have got a much clearer focus on that. And it was particularly in response to the audit report.

Ms PLIBERSEK—What relationship does that unit have with the other business units? Are the other business units expected to deal regularly with it? Is it left to the managers of the business units how much advice they take from the unit that you have set up?

Mr Dolan—Yes. The Chief Executive's Instruction encourages reference both to that unit and more particularly, in the more complicated cases, to our legal advisers in a range of contracts.

Ms PLIBERSEK—Who are your legal advisers?

Mr Dolan—Within the department, the Australian Government Solicitor is providing services, as a result of a tendering process. They actually put in the best bid. That was an issue of quality as well as cost. So I think it is a good example of where we did not necessarily go for the lowest bid.

Senator HOGG—So there would have been a weightage factor, as Mr St Clair asked before?

Mr Dolan—Exactly.

Senator HOGG—Could you give us some example of that? Could you tell us what the various weightages were in your consideration?

Mr Dolan—Not precisely. I was not directly involved in it.

Senator HOGG—Take it on notice.

Mr Dolan—Yes. We can certainly use that for an example.

Senator HOGG—An example would be good for us.

Ms PLIBERSEK—I wanted to ask you a bit more about the training that the various purchasing officers in each of the business units receive. What sort of training do they get?

Mr Mitchell—Generally speaking, they have access to the training courses that are widely publicised with the PSMPC or through PSMPC's role in coordinating a range of APS-wide training courses. In addition to that, they have access to information on what is available coming in from the CTC unit at DOFA and wider such as the course developed by CIT dealing with a certificate of procurement and so forth. They also have access to information and check lists and advice. We have an internal training module that we provide to line areas, dealing with contracting and tendering process.

Ms PLIBERSEK—You have developed your own training module?

Mr Mitchell—Yes. Because it is localised we can go out to the work areas and give them a session for one to two hours in duration. We can get the key people there, run through what the broad requirements are and give them some handouts and reference material that they can go back and refer to at a later date.

Ms PLIBERSEK—One of the things some of the other organisations that have appeared before us have said is that there is quite a turnover in procurement staff, which leads to a substantial loss of expertise. Is that the experience of your organisation?

Mr Mitchell—Generally speaking, we are finding that the people doing the high level procurement in terms of contracting and tendering are more the program managers, not procurement officers per se. Procurement officers tend to be involved in arranging lower level purchasing where, say, they get three written quotes for the purchase of goods and

services or are using the Australian government credit card as a basis for transacting that sort of procurement. However, program managers are conducting the higher level procurement.

Ms PLIBERSEK—You point out in your own submission that the majority of your transactions are below \$20,000 in value. I understand the distinction you are making that the big-ticket items are decided higher up the line, but if you have lots and lots of small transactions it is—

Mr Mitchell—Again, it goes back to a widely presented set of requirements in the organisation. There is a quotation process to go through in ensuring that you are matching the right sort of effort to the outcomes that you are looking for. In those low level processes, people are seeking written quotes. So at least they are going for a basis of open competition to a certain degree that is appropriate for that level of transaction and they are making decisions based on that in terms of what the requirement is. We are dealing with low level goods and services at that point; so, generally speaking, there is enough information, together with some training that goes with that.

Ms PLIBERSEK—With regard to the training of lower level purchasing officers, one of the issues that we have been dealing with is value for money versus lowest cost. For those smaller but more frequent purchases, is there more of an emphasis on bottom line cost and less of an emphasis on, say, ANZ sourcing or those other issues?

Mr Mitchell—You are dealing with a wide range of goods predominantly at that sort of level. If you are based in Canberra and you are going out into the Canberra market to source that, there are only a certain number of providers there. If you are spending \$200 or \$300 on a particular purchase, then you are going to come down to a fairly basic decision about the price and delivery.

It is a hard one to specifically answer. There is some element of logic, training and available information that people have to assimilate and make some decision on. Value for money is somewhat subjective in terms of how people go about making that decision and what information can support that decision making process.

Ms PLIBERSEK—Using your example of the filing cabinet, how many of your departmental staff around the country would be making a decision about who they were going to buy a filing cabinet from?

Mr Mitchell—Generally not a lot because we have a property unit in the department that arranges major contracts with the providers. They get a certain pricing, delivery, availability and turnover and they usually direct that purchase requirement to that area to fulfil. We have, as I indicated earlier, using property in that particular example, a contract with an Australian owned company to supply an Australian product. We have arrangements like that, but that is not always the case.

Ms PLIBERSEK—Would those arrangements favour bigger national companies?

Mr Mitchell—There is a local supplier for Brownbuilt, for instance, on the filing cabinet example. We would go to the local provider in the Canberra region for our office

requirements. He supplies Brownbuilt filing cabinets. That is generally how that would run. That is a pretty good example.

Ms PLIBERSEK—I have one final question. We have made the distinction between the purchasing officers who have responsibility for these types of purchases and managers who have responsibility for the larger contracts. What sort of training do those managers get in giving your solicitors specifications for contracts and monitoring whether the terms of the contracts are actually being met?

Mr Mitchell—Part of our arrangement with the Australian Government Solicitor is that they provide in-house seminars to managers on contracting issues. It is not just purchasing contracts; there are also memoranda of understanding with other agencies and state counterparts. It is a broad range of legal training, during which they work on contract requirements and dispute resolution as well.

Mr St CLAIR—One of the things we are looking at is access to government contracts by small and medium size enterprises. Have you any definition that you use in your department for small enterprise? Have you got an opinion on what a small enterprise is?

Mr Dolan—The answer to your first question is: as far as I am aware, no, we have no definition in our procurement context. My personal view is that I would have rated small as employing 10 or less staff. Medium seems to be a very extendable order of definition when you come to enterprises.

Mr St CLAIR—Small has certainly had a fairly broad definition too, depending on whether you spend \$10 billion a year or \$100,000 a year.

Mr Dolan—True.

Senator HOGG—It is not a trick question; it is one of the real problems we have come across in this inquiry. There is a diverse range of views as to what a small or medium enterprise is.

Mr St CLAIR—If government is to provide access or to make sure that there is access being given to small or medium size enterprises, the question is: is the procurer aware of what a small or medium size enterprise is? Or is there some facility within the organisation to support that process?

Mr Mitchell—I would add that in procurement we have the policy, with the department located in Canberra and a very limited regional representation through the Australian Quarantine Inspection Service, that they generally deal regionally within their area for the procurement for their operational requirement. Again, people tend to access their regional provider for mainstream operating costs. I think an issue that should be noted in the context of AFFA is that we do not have a significant procurement outside of meeting our operating requirements.

Mr St CLAIR—It is a bit like the Brownbuilt cabinet. You said that you are buying it from the local store, wherever that may be, but you are buying the Brownbuilt rather than making a central purchase from Brownbuilt selectives.

Mr Dolan—Correct.

Mr Mitchell—That is the same with the range of office products as well.

Mr St CLAIR—Do you have any idea what percentage that could be?

Mr Mitchell—No.

Mr St CLAIR—Is there any mechanism in your organisation to record or flag that sort of thing?

Mr Mitchell—Generally speaking, the sort of data that we get is very raw and is based on financial information that is based on commitment or creditor. That is for a whole range of payments that we make, not just purchasing. Financial systems generally cannot deliver that sort of information.

In the past we have relied on information coming out of the purchasing and disposal gazette database to analyse our procurement profile. That is an issue in itself in terms of us accessing that relevant information because, through the gazettal process, we are required to record a raft of information. That is a mandatory requirement in that gazette. That is information which we rely on and we do have some difficulty in accessing that information. We use that source as a base for analysing our procurement profile, as indicated in our submission. That was based on that database, not on our financial system.

Senator HOGG—In the procurement exercise I note that some of your officers would use credit cards. How many are issued with credit cards? They seem to be available for use for purchases only under \$2,000.

Mr Mitchell—Generally.

Senator HOGG—How many? What sorts of checks and balances are there in place to ensure that there is no credit card fraud and so on?

Mr Mitchell—Under the former DPIE we had about 500 credit cards issued within the organisation to deal with a whole range of things, including emergency travel and the like. In terms of checking, there is a process in a controlled environment that is applicable to all payments, including those by credit card. The credit card system is just another payment system in which we separate the cardholder from an independent checking, having supporting documentation together with exception reporting—where we can get it—in terms of the card provider. Not all card providers can provide that level of reporting. It is our internal controlled environment that supports that situation. In addition to that we have an audit program that works through those sorts of issues and does random audits within the environment, which are again monitored by the audit committee.

Senator HOGG—What would trigger the use of a card for purchases greater than \$2,000? Is it any particular thing?

Mr Mitchell—There is no particular trigger. I will give you an example where we are looking at changing a travel payment system within the department to use a single system. The purchase of an airline ticket will go to a government credit card or to a corporate credit card and the supervisor will be involved in monitoring the use of that total travel expense. That may involve purchase of a ticket that is more than \$2,000, particularly in the case of overseas travel.

Mr St CLAIR—Is the credit card issued to a specific person?

Mr Mitchell—Absolutely.

Mr St CLAIR—What is the mechanism in place to prevent that card being used by another person?

Mr Mitchell—A set of obligations that they are required to sign off, saying that they will attend to a series of requirements, and another Chief Executive Instruction on payments, which you do not have there, that prescribes how they are to operate that card. Again, there is an internal audit process in terms of compliance. That is basically the system. Obviously any exception that is picked up out of the system, where that happens, is dealt with. That is basically the controlled environment that is in place.

Mr St CLAIR—Has there been much misuse identified?

Mr Mitchell—In our agency I am not aware of any misuse.

Mr Dolan—The last major external review that I can recall would have been three or four years back, which was a whole of government audit by the Australian National Audit Office. That essentially gave a clean bill of health to the then Department of Primary Industries and Energy. There was a range of interesting looking transactions that our attention was drawn to which were, once we investigated them, entirely appropriate. On the face of it, something like the purchase of shampoo was not seen as something that we immediately thought of until we considered some of our meat inspectors in the states and the sorts of conditions they were in and the cleaning up required afterwards. There was that level of, ‘What’s this about? What are the controls? What are we doing?’ and we got through that.

CHAIR—Even though the Auditor-General was highly critical of 30,000 Australian government credit cards floating around, he did not really find any significant fraud.

Mr Dolan—That is correct.

CHAIR—I do recall that. In your document on procurement, in the section on policy, dot point 6 says:

The department is prohibited from purchasing goods and services from suppliers who do not comply with their obligations under the Affirmative Action (Equal Opportunity for Women) Act 1986.

How would you know?

Mr Dolan—We are provided with an annual list of bodies that do not comply.

Mr St CLAIR—By whom?

Mr Mitchell—The Department of Finance and Administration CTC unit.

Ms PLIBERSEK—That used to be tabled in parliament but it no longer is. Is that not the case?

Mr Dolan—I am afraid I do not know.

Senator HOGG—I think that is correct. I think it used to be tabled but no longer is.

Mr Mitchell—Under the former arrangements, when common use arrangements were in place, there was obviously a process of qualifying for a common use arrangement panel contract where that evaluation was undertaken by the former Purchasing Australia.

CHAIR—The next dot point says:

Commonwealth policies relating to environmentally friendly purchasing and contracting opportunities for Aboriginal and Torres Strait Islander communities are to be observed when undertaking all purchasing activities.

Again, how would you know?

Mr Mitchell—Obviously people, in dealing with an individual purchasing requirement, would have some degree of looking. It depends on—

CHAIR—The point I am trying to get to is compliance, because we have had some major concerns expressed to the committee. Let me ask you a question before I get into that too far. Did you have any contracts over \$10 million last year? Would you have any contracts that required Australian industry development?

Mr Mitchell—No.

CHAIR—Did you have any contracts where the contractor undertook, or the contract itself required, Australian industry involvement?

Mr Mitchell—I am not aware of any.

Mr Dolan—But we are in the process of testing the market for the provision of our information technology services. In that context, those sorts of considerations are very much being taken into account.

Mr Mitchell—It is part of a DOFA process.

CHAIR—The question does not have any relevance then, because the concern is very simply that observance of agreement to meet Australian content is perhaps an accident rather than a foregone conclusion, except for the Department of Defence. It does not apply to you.

Senator HOGG—Is there a high rate of turnover of purchasing officers? That has been one of the other issues that was raised with us.

Mr Dolan—We have had a little discussion about the two levels where that happens. One is for major contracts being handled by our line managers. The turnover there is not particularly great, but at the lower level where there are more procurement officers there is a fairly significant turnover of staff.

Senator HOGG—Does that upset the effectiveness of your purchasing strategies?

Mr Dolan—My view would be no, because our systems, like any, are designed to meet a projected turnover of staff. We have appropriate training for new staff coming in. Obviously there is a potential exposure which we do our best to overcome in those sorts of ways.

Senator HOGG—What about the relationship with the suppliers out there? Is there any dissatisfaction on their part because of the perceived turnover of your organisation?

Mr Dolan—Not that I am aware of. Mr Mitchell may be a bit closer to the details.

Mr Mitchell—I am unaware of any particular issues.

Mr St CLAIR—Why do you have a high turnover? Is it just the nature of the beast?

Ms Kava—There tends to be more turnover at the lower levels within the department.

Ms PLIBERSEK—Is career progression for those people out of the purchasing area? Is there no career progression within purchasing?

Mr Dolan—Certainly our purchasing operations are not of a scale where there is major career prospects for people working in those areas. So lateral movements or promotions out are likely to be into different sorts of areas of specialisation.

CHAIR—Are you still of the view, considering your purchasing levels, that your devolved operation gives you and us the best value for money?

Mr Dolan—If you are asking me to express a personal opinion, I believe that we are making the right moves at the moment to consolidate a range of our—

CHAIR—In other words, recentralise.

Mr Dolan—Indeed. We made something of a mistake when it was fashionable to speak of devolution by not drawing a sufficiently clear distinction between devolution and decentralisation. The arrangements that we are coming towards now are more appropriate. The devolution of decision making power to program managers for the things that relate to

their programs is reasonably well in place now. What is coming back, what is being recentralised, is the over-unit support. We are moving more towards an appropriate set of our departmental equivalents of the old common use contracts to try to work that through. But that is still very much in the initial stages.

CHAIR—No good managing director would ever let go of the purse strings.

Mr Dolan—I think that is a fair comment.

Ms Kava—I could add another point. The contracting unit has been more widely publicised and people are more aware of it. The number of inquiries that we are getting is increasing, so the awareness is lifting. People are aware that there is help there if they have any particular queries or questions.

CHAIR—For whatever it is worth to you, Telstra discovered not long ago that they did not know what they were spending on what. They were spending \$8.3 billion a year on goods and services, and they have centralised purchasing reporting to the chief executive. It is a lot of money. It is almost as much as the whole Commonwealth government is spending, including Defence.

Ms PLIBERSEK—As for the unit that you have set up to give advice on contracting, tendering and so on, would that be the appropriate point of contact for, say, a small or medium enterprise who thought that they had a good or a service that your department should be buying? Is there some way for them to have access to your system? Say I have a great idea and I want to come and see someone in your department. Is there someone whom I could come and see?

Mr Mitchell—Yes. I have been the contact for that a number of times and for providing wider circulation. I can give them assistance about how they tap into the department. It is very hard making an assessment of what program managers' requirements are at any point in time in terms of managers' needs, but I certainly give people assistance about how they can widely publicise what they have to offer.

Ms PLIBERSEK—Publicise that within your department?

Mr Mitchell—Yes, that is correct.

Ms PLIBERSEK—How would they do that?

Mr Mitchell—Generally by providing a wide range of information or information drops.

Ms PLIBERSEK—Are we talking about a pamphlet that is circulated within your internal mail? Are we talking about an email system that makes this information available?

Mr Mitchell—Yes, all of the above, so there is a number of ways that they can access that. There is also a process that we go through in terms of open tender. Where it is above \$50,000 we go out to public tender and people have an opportunity to access us through that

system. That is made available via Transigo. In view of how Transigo is working, we also provide that information via the print media.

Ms PLIBERSEK—So the main way that a small or medium enterprise would have a path into your department would be through that tender process when the needs are already identified. Would you have—frequently or infrequently—a small or medium enterprise coming to you and saying, ‘I’ve got a terrific idea that will revolutionise the way you do whatever you do’?

Mr Mitchell—Infrequently.

Ms PLIBERSEK—That would be a fairly haphazard sort of a thing?

Mr Mitchell—Absolutely.

Ms PLIBERSEK—And most people would not really know who in the department or where to go in the department?

Mr Mitchell—They seem to find me when they come looking.

Ms Kava—Often that sort of inquiry may go elsewhere in the department, but it will come to the Business Services Unit and be referred to Dave’s area.

Ms PLIBERSEK—So other areas of the department know to refer on to you if someone contacts them?

Ms Kava—Certainly. Often they will write to the secretary or the chief executive and they will redirect those inquiries through to us.

Ms PLIBERSEK—Would you say that you have an efficient system of dealing with that? Do you take those approaches seriously or not?

Ms Kava—As Mr Mitchell has said, they are more occasional approaches, so I would not say that we have a structured way of dealing with them, but it is a consistent method.

Mr Mitchell—I welcome an opportunity to have a talk to them over the phone or in person. I generally give them that opportunity when they contact us.

Mr St CLAIR—This is something we have pursued with a number of bodies. Do you feel any obligation at all within your organisation to develop those sorts of relationships and products?

Mr Mitchell—It is important to develop relationships with general suppliers; we strongly support that. Picking someone in favour of another is a different issue. It is about a balance and about giving wider market access, and you generally explain the sort of process that we go through to access the market in general rather than picking up specific people.

If someone has a specific idea—it is generally more in the program area than in general departmental goods and services—we get them in contact with the right area about maintaining some sort of integrity of what they are offering and how they can perhaps go about either accessing that or exploring that further. It is a bit difficult to answer that one, but generally the approach is taken case by case.

Mr Dolan—I think it would be fair comment to say that we could do a better job in explaining to a range of small to medium enterprises what sorts of opportunities might exist in the department.

Mr St CLAIR—It was not a criticism; it was to find out what you felt about it.

Mr Mitchell—The former Purchasing Australia had a ‘meet the buyers’ fair which was usually very good in giving SMEs—or any level of supplier—access to what departments procure.

Ms PLIBERSEK—One of the things that was said to us earlier in the inquiry was that early contact was not just good for current purchasing but good for the direction that research and development was going within companies as well. The example that was given to us in one of our early inquiries was government purchasing of office equipment. Desks was the example that was used. The development of ergonomic furniture was foreshadowed 10 years before it became a common purchase because suppliers had access to people within departments who were saying, ‘Yes, we are looking more at issues of occupational health and safety for workers.’ Is that happening in your experience? I presume, from the way you are looking at each other, that it probably does not happen. Is that to do in part with the devolution of purchasing and not being able to foreshadow your requirements in the same way?

Mr Dolan—I think it is the product of two things. It is partly the product of devolution. In the past, the management of procurement—in what were comparatively small units of a department—in itself did not have a huge procurement budget. The second is that I think we are in the transition away from a range of support and coordination that was managed at the whole of government level. Now departments are adjusting to a rather different framework, so we are in transition. These are issues that I think we are still grappling with.

CHAIR—We get the impression—and I think we have the numbers to support the case—that we are buying more from SMEs than we ever were before, notwithstanding the devolution. Does that have to do with culture?

Mr Mitchell—Supply delivery within a region, meeting need within the region, getting access.

CHAIR—You used to use common use contracts; now they have gone. Are you sorry that they have gone?

Mr Dolan—In some cases, yes; in others, no, I do not think they added particular value. In some cases they provided us with a starting point for negotiating value for money.

CHAIR—But that was the problem—your attitude was exactly what killed the things in the first place, wasn't it? They were a common use contract, it was supposed to be the best price, it was out there and everybody was supposed to use it at that price, but in fact all the departments did was use that as a negotiating tool to drive the supplier further down in price.

Mr Mitchell—I am not aware of them being a panel for best price. They were a panel to access a broad range of services and to have prequalifications, so that would streamline the process, but it was certainly not—to my knowledge in terms of what CUAs were about—a best price arrangement. There was never any of that.

CHAIR—That is what it was supposed to be. It was supposed to be a common price across all the range of departments and agencies.

Senator HOGG—It is not a criticism; it is the reality.

CHAIR—The reality was you that used it as a starting point, and that is what killed it.

Mr Dolan—That may very well be the case. There is another difficult balance, but our experience generally was that, for the more major purchases that we were involved in, we would succeed just as well—if not better—under our own devices. Mr Mitchell knows more of the detail than I do. There were some areas of the common use agreements that we found very beneficial.

Mr Mitchell—IT, furniture, office supplies—a whole range of things were beneficial. It gave you a tap into the market. There was prequalification involved, so it was a case of making that assessment of value for money.

CHAIR—The selected supplier arrangement does not include the office furniture and other things, does it?

Mr Mitchell—It includes major electronic office equipment, like faxes and photocopiers and the like, rather than furniture and chairs.

CHAIR—Not furniture.

Mr Mitchell—That is exactly right.

CHAIR—Or pencils or paper or biros.

Mr Mitchell—Exactly right.

CHAIR—So you are missing that part of it, because it told you where to start.

Mr Mitchell—Yes.

CHAIR—That is interesting.

Mr Dolan—Do you want to add to that?

Mr Mitchell—No, I agree with what you are saying, Mr Chair.

CHAIR—Thank you for that.

Senator HOGG—Thank you very much, that was very good.

CHAIR—It was good.

Mr St CLAIR—It was refreshing to hear someone give a good definition of small business in numbers.

CHAIR—But it is disappointing that now we find out that we are not sure what Australian paper is. We thought we knew.

[2.29 p.m.]

DUNCANSON, Mr Robert Roy, Secretary, Victorian Government Purchasing Board

CHAIR—I welcome the representative of the Victorian Government Purchasing Board to today's hearing. We have received your submission. Would you like to make a brief opening statement?

Mr Duncanson—Yes. Before I do so, I would like to table some exhibits. I will not talk about them at length, but they do provide great detail to some of the other things I might be talking about. The exhibits include, firstly, 'Framework for national cooperation on electronic commerce in government procurement,' which has not been publicly released; secondly, general documents explaining the nature and role of the Australian Procurement and Construction Council; thirdly, 'Australian procurement ministers: national action on small to medium enterprises in government procurement, Perth 1997'; fourthly, 'Helping government buy better: Victorian Government Purchasing Board annual report 1997-98'; and, fifthly, 'A report on the condition of government procurement in Victoria: Annual procurement report 1997-98', which is unique in that we were required to give an overall comment on the status of procurement to the parliament of Victoria.

There are two documents that broadly outline the nature of reforms undertaken in procurement in Victoria since 1994. There is a document here explaining the role and nature of the Procurement and Contracting Centre for Education and Research, which is basically a body set up to provide educational training and professional development procurement to all governments in Australia. The next one is a little brochure explaining the nature of courses that that institution provides. The second last one is a copy of the Victorian Financial Management Amendment Act, and it outlines the powers of purchasing in the Victorian government. The last one is a series of internal reports which talk about the statistics for online tendering on the Victorian government web site, and it has some interesting information about the amount of online tendering that is going on at the moment.

CHAIR—Is that it?

Mr Duncanson—That is all the exhibits.

CHAIR—Is it the wish of the committee that the documents be included as exhibits to the committee? There being no objection, it is so ordered. Please proceed.

Mr Duncanson—Thank you. I want to make three brief comments relating to the electronic commerce for procurement, the national procurement agreements and actions and the nature of Victorian government procurement reforms. Very briefly on electronic commerce for procurement, the most important issue and challenge facing government procurement today is electronic commerce, without doubt. Victoria has a key role in advancing national actions in the specialist area of electronic commerce for procurement. EC can and will put even the smallest business on the national and worldwide stage.

The second comment is about the national procurement agreements. I want to emphasise the role of the Australian Procurement and Construction Council, which is abbreviated as

APCC, in facilitating national actions and agreements on government procurement, as distinct from Commonwealth government efforts in procurement. On major and national procurement policy issues, Victoria works within that body.

The third point, very briefly, is that the overall extent and nature of procurement reforms in Victoria started in 1995 and can be summarised in four points: the first point is accountability. In Victoria the Kennett government made the chief executive officer of each of the departments accountable. So the buck stops with the chief executive officer in relation to performance and procurement and is written into performance agreements and so on, as I understand it. The second point is systems—the tools to do the job of procurement. There is a number of critical issues, the most important of which is electronic commerce for procurement. An example of that is the extent of lodging of tenders online, which is already going on.

Another example is a system called PURIST, which is an acronym for Purchasing Information System of the Victorian government. It is a system that sits across the top of the accounting system of the whole of government accounting management system which has been introduced over the last few years. The PURIST system has kicked into gear only in the last few months. On electronic commerce, Victoria chairs the National Working Party on Electronic Commerce for Procurement.

The third point is training. Once we have given them the systems, we need to train them on how to use them. There is a range of initiatives there, but the one that is of most interest is the Procurement and Contracting Centre for Education and Research. Essentially, it is a provider of services that are available for all governments. It provides competency based procurement training, from school level right through to masters level, and a recent emphasis in that is on contract management.

Finally, the fourth point is accreditation. In Victoria we reward performance. The procurement powers are retained centrally within the Victorian Government Purchasing Board but devolved on the basis of departmental performance. To use an analogy, the procurement powers are held as a rope and we feed out the rope to the departments. As they perform, we feed out some more. But, if at any time we need some sort of state-wide initiative, we have the ability to haul it back if we wish. That has not happened, but the capability exists.

By way of summary, the key issue, we believe, facing us is electronic commerce for procurement. It is certainly the best opportunity to make major changes to the way we do procurement. The role of the Australian Procurement and Construction Council and the national framework area for procurement are worth having a good look at because of the amount of work that is already there. I guess the key point is to try and avoid the rail gauge problem, where we are replicating different things in different ways.

Finally, Victoria is playing a key role in supporting the efforts of all governments in procurement particularly, in Victoria's case, through electronic commerce and the training and professional development capacity of governments to deliver those services for procurement.

CHAIR—Thank you for that, Mr Duncanson. To what extent is the purchasing function within Victorian government departments centralised or decentralised?

Mr Duncanson—It is about halfway to where we want to be—from centralised to fully decentralised, we are about halfway. The qualification of that statement is in some of those documents I tabled. So, if you have a five-step accreditation process, half of the department is on level 3 and half are on level 2. So they have gone from level 1 to level 2 to level 3, and there are levels 4 and 5 remaining.

Mr GRIFFIN—How decentralised will they be then?

Mr Duncanson—They have unlimited restrictions. They can purchase anything they wish. There are no \$1 million limits or anything like that.

Mr GRIFFIN—That is on a departmental basis?

Mr Duncanson—Yes.

Mr GRIFFIN—But, within a department, do those levels relate to the question of what occurs within the department itself as to whether in fact their head office does things or whether they are done at a local level?

Mr Duncanson—No. Essentially, in each department we set up what is called an APU, an Accredited Purchasing Unit. They are like mini-VGPBs in each of the departments. They can set their own departmental rules under that.

Mr GRIFFIN—So you do not have any statistics, then, on the question of how decentralised within departments this is going to be?

Mr Duncanson—No, but the working knowledge is that it varies, depending on the nature of the department. The two central agencies, obviously, are very Melbourne bound, whereas the Department of Natural Resources and Environment is very decentralised.

Mr GRIFFIN—So the gradings you are talking about relate to the question of whether, on a global government basis, there is decentralisation to a department?

Mr Duncanson—Yes. To achieve level 5, they really have to have their act together with electronic commerce systems in place. The people making decisions have to have achieved training at certain levels. They have to have committed to rolling out training right through the department. So it is quite a rigorous arrangement.

Mr GRIFFIN—Is there a manual attached to that?

Mr Duncanson—A very big one, yes.

Ms PLIBERSEK—Mr Duncanson, we have had evidence from a number of federal government departments today and in the past and it seems that the usage of electronic commerce varies from department to department. Some departments, it seems, have very

minimal use and that seems to be restricted to occasional funds transfer; there is no extensive use of electronic commerce. One of the points that the VGPB made yesterday was that there are substantial savings to be made in the area of purchasing by using electronic commerce. Can you comment on that?

Mr Duncanson—Electronic commerce is a term a bit like IT—it describes a lot. There are many facets of it. If we are just talking about electronic commerce for procurement transactions, we have got a number of reports which basically found that the cost of each individual purchase order has dropped by 50 per cent for those departments that have implemented electronic commerce. We have got evidence that it works at the purchase order level. Strategically, at the other level, how you structure up, how you go looking for suppliers and all that sort of stuff is in its infancy. But within a couple of weeks we will have appointed a supplier to provide a fairly comprehensive service, and we will piloting that extensively, I guess. Hopefully the year 2000 bug will not stuff up too much of it. We are working particularly with South Australia and Western Australia on that project. So that the overall strategic look at procurement for purchasing—the way you source material, do online tendering, pay over the Internet and that sort of stuff—is all wrapped up in that.

Ms PLIBERSEK—Would you say that Victoria has a different approach to this compared with the other states and the Commonwealth government? You mentioned that you are working with South Australia and Western Australia on this. Would you say that Victoria's approach is significantly different?

Mr Duncanson—Not particularly. Victoria chairs the national working party, and I presume we have got that because we have been active in the area. With the nature of the Internet and electronic commerce, if you open up the gates in one state, you basically open them up for everybody. It makes sense to get rid of the rail gauge problem and have a national view on it. All jurisdictions are aware of that, and the documents I have tabled refer to it.

Ms PLIBERSEK—They may be aware of it, but are they taking up the opportunities that it offers?

Mr Duncanson—Generally speaking it is ad hoc and there are different approaches, but what we are trying to do on a national agenda, if you like, is to get each state to take up a critical part of an overall strategy.

Ms PLIBERSEK—Are they doing it?

Mr Duncanson—They are. There are variations, depending on when elections are and all of that. You get different variations on the theme but, generally, it is moving in the right direction.

Ms PLIBERSEK—And the Commonwealth government?

Mr Duncanson—I am not particularly right across what the Commonwealth government is doing, but it strikes us that recent changes have militated against its efforts in electronic commerce.

Ms PLIBERSEK—What would you say those recent changes are?

Mr Duncanson—I am not sure exactly who is making Commonwealth government procurement policy on electronic commerce. It is not clear to me.

Ms PLIBERSEK—But, from what you are saying, there have been some recent changes. You might not know the details of the recent changes, but they imply to you that the take-up of e-commerce is not a priority?

Mr Duncanson—If we keep qualifying things, if you get down to the guts, if we are talking about electronic commerce for procurement, I am not exactly sure what is going on. If you are saying electronic commerce generally, that is a different ballpark of course. There are all sorts of privacy issues and other things. What we are trying to talk about is the application of electronic commerce for facilitating purchasing. Certainly at officer level there is cooperation, and when it gets to the national forum, in the corridor discussions that happen, there are variations on the theme. Generally, it is moving, but I would not say the initiatives are coming from the Commonwealth. But we are biased.

Mr St CLAIR—Is confidentiality a problem in the procurement side of the commerce?

Mr Duncanson—No. Within the structure there are all sorts of working parties working on different aspects of it. The authentication and registration processes, privacy and all that have been dealt with for some time. There are still some technical issues outstanding but, on a scale of one to 10, 99 per cent of the issues are sorted out.

Mr St CLAIR—Is there a culture of fear of using it, do you think, within government departments of all descriptions?

Mr Duncanson—Wow, what a question! Yes! But it basically gets down to the individual as to how they approach the change that is on them because of the technology.

Mr St CLAIR—The individual at the procurement, right down to the bottom level, to the person who is doing the buying?

Mr Duncanson—Your question was very broad based. The answer is both. I like to tell the story that the year after I left university they brought in computers and I figure that anyone who is older than me does not know much about them. That is not a fair statement, but what I am saying is that senior managers in particular either really know it or just do not want to know about it. By and large, the don't-want-to-knows are more of a majority than those who can deal with it.

Mr St CLAIR—But then we have a lot of training being given to procurement officers who come into various things and are obviously very au fait with the electronic world. I am just wondering whether individuals are being given the opportunity, firstly, by their departments when coming down or within the training scheme?

Mr Duncanson—In Victoria there is a raft of training. We start out by saying that you must provide awareness training so that they are aware of the issues. That is almost

compulsory across the board. And then it goes into the detail of contract management and so on—and depending on the appropriateness and people's own enthusiasm as to whether they enrol in it. We have found that the uptake is much more than we anticipated. We were looking, for example, in the case of some courses to train 500 people, and we have trained a lot more than that. It is difficult to say, but I would think the initial view before training is that procurement is a backroom operation and it is some subset of accounting or something. After they have done the awareness training, they start to realise how strategic procurement is, that it has a first effect on the bottom line.

Mr GRIFFIN—Is your training harder and more detailed than in other states in the Commonwealth—or different?

Mr Duncanson—I do not have specific knowledge of that, but what we have done in building the courses is to make sure that all courses are based on competencies so they have the ability to be run in any jurisdiction and get credit to university courses and so on.

Mr GRIFFIN—How much training would a procurement officer with a major department be required to do to reach those competency levels?

Mr Duncanson—There are a lot of courses. If you were a manager with the ability to buy goods fairly freely, you would be wanting to do a number of the courses.

Mr GRIFFIN—If I come in fresh into your department and I want to be a procurement officer and I get into the stream to do so, just ballpark me as to how much training would be required.

Mr Duncanson—I would probably say the one-day awareness course and one other course which might be over two or three days to give you awareness and some technical knowledge.

Mr GRIFFIN—And then going on from there, if I wanted to go higher and the opportunity was there?

Mr Duncanson—You could go into contract management—tender specifications and so on.

Mr GRIFFIN—And those training programs are additional and go for a week or so?

Mr Duncanson—It is all modularised. It is not like a degree course where you just lead on in. You can pick and choose what you need for your skills base. I think that is why they have been reasonably popular: you do not have to lock away two weeks to go off on a training course; you can knock them over fairly quickly.

Ms PLIBERSEK—Mr Duncanson, I do not know whether I was reading it in this report or in an earlier submission, but there is a mention that the courses provided are actually being run in other states as well. Why don't other states have their own training organisations?

Mr Duncanson—That is so they do not have to reinvent the wheel. The Northern Territory and Western Australia just threw \$10,000 on the table and said, ‘We will do that.’ Why would we want to go to the effort of redoing it? So the money they put in enables us to go off and develop other courses.

Ms PLIBERSEK—What were they doing before they had you?

Mr Duncanson—PACCER was initiated by Victoria, but it is running under the auspices of the APCC and we are trying to encourage all jurisdictions to become involved in it. Four have and some have not. There is even interest from New Zealand, but whether or not they come in is another issue.

Ms PLIBERSEK—So you do not know what the other jurisdictions are doing? I know there are other courses available through other organisations. Do we presume that they use them?

Mr Duncanson—If I can use an example within the Victorian government: occasionally a large department will get somebody in who thinks they can do better, so they will set up their own courses and commission people to write them and all the rest of it. So, if you like, we have bit of managing the break-outs, but that comment about managing the break-outs means we believe that the PACCER way of doing it is a good way of doing it because it is generic, unbiased and all the rest of it. In other jurisdictions where you do not have PACCER, they basically have an ad hoc approach to the way procurement is delivered, and they do not have to do training to get something. In Victoria you need to do training in order to get more procurement power, so there is an incentive to go and do it. That does not apply in other jurisdictions, with the exception of South Australia where the model is being followed.

Ms PLIBERSEK—You mentioned earlier, and we spoke yesterday, about the five levels of delegated spending power—I do not remember what you called it. If I remember correctly, the description you used is that you give people freedom but with strings attached so you can pull them back if they go wrong. We have had evidence from some departments where authority for purchasing has been devolved quite substantially and, it seems, pretty quickly really. Then departments have realised that it becomes a little difficult to keep track of spending and to make sure that their other aims are being met in terms of purchasing. There has been a running after what they have let go and attempts to then pull it back into a more manageable and, in many cases, more centralised model. I am talking now about federal departments. Do you think that the Victorian model of a staged approach is so much better than the federal model? What do you think has gone wrong with the federal model, if there is something wrong with it?

Mr Duncanson—I am not across the detail of the way the Commonwealth government do it. It is a policy matter for them how they structure their own affairs.

Ms PLIBERSEK—But aren’t you able to make a comparison from your broad knowledge of what is going on?

Mr Duncanson—We believe that the way we are doing it is a sophisticated and enlightened approach which says, ‘Here’s a bunch of incentives for you; if you achieve them, you assume some powers,’ rather than saying what appears to be the case in some jurisdictions—not just the Commonwealth—where they have said, ‘Let’s devolve the powers fully to the departments,’ and they just do their own thing. New Zealand, for example, does it that way.

When it comes time to try to do a deal with Shell on the supply of fuel, the more purchasing power you have in control, the better bargaining position you have when buying fuel. If Shell is able to fragment up the departments and go and see, say, the tax office and go and see this department and go and see that, then the departments have less bargaining power—that sort of situation. So both models have advantages and disadvantages, but we think we have got the balance right. We used to have over 300 contracts for this and that. We even had contracts for toilet paper. But the Victorian Government Purchasing Board now manage only about 14 strategic contracts, and the rest is devolved to the departments.

Ms PLIBERSEK—How did you decide which contracts to keep and which ones to devolve to departments?

Mr Duncanson—Initially we made some guesses. Some of them are obvious: cars, fuel, computers, et cetera. But, as time has gone by, we have regular accredited purchasing unit forum meetings where the people who are making these decisions in the departments meet and say, ‘We wouldn’t mind a contract in such and such,’ and if the general feeling around the table is that it is a whole-of-government rather than a departmental issue then that becomes a strategic contract whole of government and we take it on. So it evolves.

CHAIR—What is your legal position? Are you a statutory authority, a government department or a business enterprise?

Mr Duncanson—We are a government department; we are essentially the same as DOFA. We are part of the Department of Treasury and Finance in Victoria. That is the administrative arm, but the Victorian Government Purchasing Board has these particular powers under the act that I have tabled, and rather than reporting to the bureaucracy that board reports to the minister. So the minister receives advice from a board that has a majority of external—private sector—members on it, and the 14 or so staff who support all that are staff of the Department of Treasury and Finance.

CHAIR—What statutory authority does the Victorian Government Purchasing Board have?

Mr Duncanson—It is defined in the amendment act that I tabled, but essentially it says that the board has the powers to determine supply policies. That is probably the key phrase, so everyone has to abide by those. It has the effect of regulation.

CHAIR—You have procurement guidelines which you issue. Are your guidelines negotiable? That is, are they voluntary or are they a legal requirement?

Mr Duncanson—Before the Victorian Government Purchasing Board, there were no supply policies in a written form. There was an old state tender board; it was a central authority and it rubber stamped and those sorts of things. When we came in our first commitment to the departments was to put the rules in writing, which we did. We probably erred and we wrote mandatory and non-mandatory aspects into them. What we have done recently is we have separated out the must do from the best practice. The must do stuff is very short and succinct, and the best practice is very voluminous and goes into a whole range of things.

But, to get to your question, we cut a deal with the agencies and said, ‘We will run all draft policies past you before we take them to the board for approval and subsequent approval by the minister.’ So they got to see them all and participated in the drafts that went to the board, and they were very happy with them in the main. There was some tweaking done by the board and possibly by the minister, but generally it is a cooperative effort.

CHAIR—What are those core items that are ‘must do’?

Mr Duncanson—The standard stuff you see—over \$2,000 you must get a couple of quotes and all of that. Other than those standard sorts of things that all departments have, there are a few things unique to Victoria which are really worth having a look at. One is that they are obliged to report annually to us on their compliance to the supply policies and guidelines—whatever they are at the time. So the head of the department has to sign off and say, ‘We have complied with all supply policies and guidelines.’

CHAIR—Do you have an Australian development component in the guidelines anywhere—industry development?

Mr Duncanson—No, there is discussion of it. The official position, as I understand it, is that they will not use procurement in any way to subsidise industry development. But that is not spelt out.

CHAIR—So there is no emphasis whatsoever on buying Australian?

Mr Duncanson—No, because 97½ per cent of purchases are Australian anyway. There is very little reason to be absolutely protective in that sense. The performance is there.

CHAIR—How do you know?

Mr Duncanson—In Victoria, as I have mentioned, in the last few months, we have built this purchasing information system. Prior to that, we did not have all agencies but we had the majority on them. For example, if you supply something to the Victorian government—let us say it was \$10 and it was one transaction—I can now, through the computing systems that we built, identify that transaction. That is the level of detail that we now have available. That sort of analysis is incredibly powerful, and we are still grappling with the extent of management information that that is going to provide us into the future and what it might mean.

CHAIR—Would it tell me whether it was Australian made?

Mr Duncanson—It would. We have not required that, but we could and that could be easily done.

CHAIR—But you do not now?

Mr Duncanson—No. But we could easily do it and it would be automated so that you have compulsory capture of the information rather than, ‘We think this might be Australian.’ The way you do that is in the registration of the firms involved in the electronic commerce system.

CHAIR—You made a statement on *Hansard* that 97 per cent of what the Victorian government buys is Australian and then you turn around and tell me that you have no statistics. What is it? Which way?

Mr Duncanson—Prior to PURIST, any advice given by a bureaucrat within Victoria, or anywhere else, I would suggest, was best endeavours, guesstimates, estimates, but not fact, because of the difficulty of getting the information that you are asking for. I am saying we think, anecdotally, that that order of buying is happening but in the future we will be able to nail it; we will be able to say exactly what it is.

CHAIR—But you said you are not requiring source information.

Mr Duncanson—That is right.

CHAIR—Then how can you tell us? If we ask you next year, you will not be able to tell us because you are not asking questions.

Mr Duncanson—We cannot tell you absolutely.

CHAIR—I could fly to the moon if the Yanks would put me on top of one of their rockets. I might not survive but—

Mr GRIFFIN—We would have supported that.

CHAIR—You’d support it!

Mr Duncanson—The language I used was deliberately not specific. All public servants will give best endeavours to provide the information that is requested of them. What I am suggesting is that they did not actually know. They probably knew within reasonableness or they best guessed, but they did not actually know. What I am saying is that PURIST will give us the ability to do it.

Mr GRIFFIN—So your 97 per cent figure is a best guess at this stage?

Mr Duncanson—It is a best guess. That is what I was saying. The stuff I have tabled will give you some flavour of that in picture form.

Ms PLIBERSEK—With your definition of ‘Australian made’, are you talking about subsidiary companies?

Mr Duncanson—With these definitional things, whether it is SMEs or Australian made, if we require a supplier when they register to provide certain information, that is the point which is critical to enable us to capture it by the cent or by the transaction. So, if we require that they must say that they are 100 per cent owned and operated, that will flow through attached to each transaction and will be captured in the system. It is not compulsorily required now because we are not there but we have the infrastructure to suck it up as it comes—if that makes sense.

CHAIR—It is still not agreed nationally what is a small business and what is a medium sized enterprise, but there is no question now about the definition of ‘Australian made’ because it is now law.

Mr Duncanson—To answer your question: if you were to change a definition—say, SMEs—we could re-run the numbers very easily and give the answer.

CHAIR—I am not focusing on Australian owned but on Australian made. That is defined in law in origin labelling. That one is easy now. There is only one uniform definition.

Mr Duncanson—Using that definition, if that was a requirement, the supplier responds to that when they register. Once they have done that, you have got it in the future. It is not there now.

Mr St CLAIR—Do you have any definition of an SME?

Mr Duncanson—Personally, I have always used 15 employees or a million dollars in turnover.

Mr St CLAIR—As a small enterprise?

Mr Duncanson—As a small one—below those figures. That is just personally, because it changes.

Ms PLIBERSEK—You talked about the railway gauges problem. In three weeks time Victoria is about to buy a system for the Yellow Pages concept that we were talking about yesterday. You have said that South Australia and Western Australia are likely to use the same system. Are you hoping that the Commonwealth government will use the same system?

Mr Duncanson—Absolutely.

Ms PLIBERSEK—What move has been made towards reaching an agreement on that?

Mr Duncanson—I am not the electronic commerce officer, the person responsible for electronic commerce, in Victoria. As far as I am aware and from what I know, I could not answer that. I do not know what their approach is to it.

What we are intending to do with that arrangement is to appoint a panel of providers—three or four. For the first cab off the rank, Victoria will run its pilot with the Department of Natural Resources and Environment with one of them. Then South Australia will probably choose another one and Western Australia will probably choose another one. They may choose the same one—I do not know—it is up to them, and you cannot control those other governments.

We have said that, whatever system is chosen, it must be able to talk to the other systems. That is the key issue. That is the uniquely Australian thing. That is where we are really out there doing good things. In the United States, they have communities of commerce in that sense, but there are different standards because they are all different proprietary systems. You will have a defence one, a vehicle manufacturing one and so on.

Ms PLIBERSEK—So, if I am a small business and I want to supply in the US to the defence, agriculture and communication departments, I have to subscribe to three different systems?

Mr Duncanson—You register a few times. In this case you register once.

CHAIR—I have to tell you honestly of some of the concerns that this committee has heard. One is that small business has not been willing to sign on to Transigo—it costs \$50. Business organisations have told us that most small businesses are not Internet connected and, lastly, we have been advised that over a 11-month period DOFA—I think it was—in an experiment with Transigo, offered 27 tenders for which they got three offers.

Mr Duncanson—Firstly, Telstra is one of the three majors in one of the four providers. To answer your point, Telstra and some others with one of the consortiums—some of this is commercial-in-confidence because they are bidding; so, if we go into that, I will need that done in camera—

Ms PLIBERSEK—If you want to go in camera, we will save that till the end.

CHAIR—By the way, it was more than \$50, I apologise—less than \$350.

Mr Duncanson—Yes. Telstra in that major consortium, which is one of the four—so it is one of four of the four—decided not to tender Transigo as a solution. That is our fundamental point. I think there is something there that is not working with Transigo. Since yesterday, I have rung staff—what I did table was the site reports—and we have had 140 tenders electronically in Victoria with an average of 17 people lodging tenders online per tender.

Ms PLIBERSEK—Using which system, though?

Mr Duncanson—The system we built over the World Wide Web. So that is a big number—it is more than three—and that has happened over and over again. I understand similar sorts of things are happening in New South Wales as well. Why they have only got three, I would suggest, is a problem I would be unable to answer.

Ms PLIBERSEK—It is particular to Transigo rather than general to electronic commerce. Is that what you are suggesting, that the problem is particular to Transigo, not to the way of doing business?

Mr Duncanson—Yes, there are all different ways in which to structure your approach. Ours is an open approach. It is not a proprietary system. We have basically set standards. We have not gone out and said, ‘This consortium must provide a single solution and that is their proprietary knowledge.’ We have said, ‘These are the threshold standards which any consortium must abide by.’ That is where we think we are significantly different, and I think that is the winning point on it. Does that make sense?

CHAIR—Thank you.

Resolved (on motion by **Mr St Clair**):

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 3.08 p.m.

