



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Contract management in the Australian Public Service

FRIDAY, 10 MARCH 2000

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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Friday, 10 March 2000

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

Senators and members in attendance: Senator Hogg and Mr Charles, Mr Cox, Mr Georgiou and Ms Gillard

Terms of reference for the inquiry:

To inquire into, and report on the management of Commonwealth contracts focusing on:

- the adequacy of contract specifications including the design and framing of the initial contract documentation;
- the adequacy of mechanisms for ensuring management accountability and facilitating Parliamentary scrutiny of contracts, including the method by which the Auditor-General is given access to the accounts of contractors;
- quality assurance and performance monitoring of contracts—adequacy of documentation of contract deletions, side agreements, and amendments;
- risk allocation and risk management
- levels of accreditation and expertise of contract management personnel; and
- the extent to which corporate memory is being preserved in agencies to a level sufficient to protect Commonwealth interests.

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Committee met at 9.30 a.m.

CHAIRMAN—The Joint Committee of Public Accounts and Audit will now take evidence as provided for by the Public Accounts and Audit Committee Act 1951. I declare open this public hearing of the Joint Committee of Public Accounts and Audit inquiry into contract management in the Australian Public Service. The search for excellence in contract management is arguably one of the most pressing challenges for the Australian Public Service. With the move to greater outsourcing of programs public sector agencies must equip themselves with a range of skills, knowledge and experience to ensure that contract management is effective and efficient. This inquiry will examine the adequacy of contract management across the Australian Public Service. The emphasis will be on the resources, skills and knowledge that agencies bring to bear in providing good contract management. The key objective of the inquiry will be to identify better practice approaches that can be applied across government agencies. The committee will examine the performance of Commonwealth agencies in delivering efficient and effective contract management.

Some of the key areas the JCPAA will focus on include the adequacy of contract specifications, the adequacy of accountability mechanisms and access by the Auditor-General to contracted premises and records, quality assurance and performance monitoring of contracts, risk allocation and risk management, levels of accreditation and expertise of contract management personnel and the extent to which corporate memory is being preserved.

Today the JCPAA will take evidence from Drake Jobseek, the Engineering Project Management Group of the University of Melbourne, Ballistic Innovations, the Fire Protection Association Australia, the National Furnishing Industry Association of Australia and the Indo-Chinese Employment Service. Before swearing in witnesses I refer members of the media who may be present at this hearing to the committee statement about the broadcasting of procedures. In particular, I draw the media's attention to the need to fairly and accurately report the proceedings of the committee. I now welcome representatives of Drake Jobseek to today's hearing.

[9.32 a.m.]

GILLARD, Ms Beverley Lorraine, Director, Drake Employment Services Pty Ltd trading as Jobseek, a division of Drake International

SIMONS, Mrs Sue, National Manager, Drake Employment Services Pty Ltd trading as Jobseek, a division of Drake International

SUTTON, Mr Neil John, Administration/Commercial Manager, Drake Employment Services Pty Ltd trading as Jobseek, a division of Drake International

CHAIRMAN—We have, of course, received your submission. Would you by any chance have a brief opening statement that you would like to make before we ask you questions, or shall we proceed?

Ms B. Gillard—We can proceed.

CHAIRMAN—One of the things you talked about in your brief submission was that contract specifications are very one-sided in terms of performance expectations and that the government provides no assurance with regard to its performance or the contractual performance of Centrelink. Can you expand on that and tell us the kinds of difficulties that whatever it is you are trying to say causes you?

Ms B. Gillard—Let us go to some major references in the contract. The first thing is that, in, provider obligations, section 3, the provider obligations are very much just for the provider. There are no obligations, it seemed to us, to look for obligations from DEETYA, which then the department of government involved, and also Centrelink which was the delivery agency. The obligations that were listed in the contract were all obligations required of the provider. In the provider performance, again we saw that there was an absence of DEETYA and the delivery agency Centrelink performance commitment. So again, it was all very much what the provider was expected to do in terms of performance obligations.

Again, with warranties and undertakings, they were all very much for the provider. There was an absence of a balance in the contract with respect to warranties and undertakings from both the government department and the delivery agency. There were no guarantees made by DEETYA. We also saw an absence of an independent regulatory authority. They were the major issues that we saw coming out of the contract. That meant that we saw that as very one-sided because we were expected as a provider to fulfil the obligations, fulfil the performance, the warranties and undertakings, but there were no reciprocal responses to those requirements. We always saw our relationship with government as a partnership. Most contracts have mutual obligations. We saw that as very one-sided.

Mr COX—What sorts of obligations do you think the government should have towards the providers?

Ms B. Gillard—Performance obligations.

CHAIRMAN—Such as?

Ms B. Gillard—Such as the levels of business that would be provided to the provider. There were no guarantees whatsoever. The referral flows would be guaranteed. There were no considerations for referrals in error. We experienced a lot of referrals that came to us that were in error. Either the addresses were wrong or the people already had work. We had a very large proportion of referral flow that came to us that we had to administer that was inaccurate. There was never any time, any benchmarks, put into the contract or anywhere else that said that the other partners to this agreement had some benchmark performance to adhere to—just none at all.

Mr GEORGIU—I am not across all the aspects; could you just put what you do into the context of the obligations. From my perspective you are speaking really very shorthand.

Mr Sutton—In the case of the employment services agreement there was a requirement for a number of the services that were tendered for Centrelink to refer job seekers to providers. One of the difficulties with that process, and probably understanding some of the constraints on the Commonwealth, was that there were no sureties given where competitive prices were sought as to the volume of business. In terms of risk management, that obviously makes it very difficult to make a competitive price tender bid when you are not too sure what sort of volume you are actually dealing with.

The second issue is that we are not aware of any contractual arrangement between DEWRSB, which was the government's representative in the contract, and Centrelink as the delivery agency. Where we were looking to Centrelink for referrals, if we had an expectation, let us say, that referrals would flow to a contracted capacity so government awarded us a maximum volume of business, if you like, with no guarantees as to whether that would be delivered, our expectation might have been that that business would flow over three to six months. In some cases that business did not flow for 12 months, and the sorts of issues that arose were that in some areas Centrelink put quotas in individual Centrelink sites. Centrelink's management in Canberra were helpful in changing some of those approaches over time, but the issue is how

long it takes to rectify some of those issues and what the actual performance criteria were that DEWRSB imposed on Centrelink, if you like, as their contracted delivery agent.

Mr GEORGIU—Ideally, what would you have liked to see?

Mr Sutton—We would have liked some certainty as to the sort of—

Mr GEORGIU—Certainly. I like certainty. But do you want 3,000 job seekers a week, a month? Can you turn it into those terms?

Mr Sutton—We will use a round number. If we said it was 1,000 job seekers, and the government's criterion was that those 1,000 job seekers should be delivered, let us say, over three or four months, we would like some certainty that the flow would be something in the order of 250 in each month, even if it were 1,000 by the fourth month. You would like to know that within those four months you would be operating with 1,000 job seekers. Because of the nature of the contract, in some areas—and Knox was one example—the Commonwealth had issues between supply and demand factors. They actually contracted more providers, to the best of our knowledge, than they had an ability to deliver the volumes of business that they contracted. So there are always difficulties in getting referral numbers in that site.

Ms B. Gillard—I think that is what I am talking about in principle: if there are obligations imposed on the provider, there should be some benchmark obligations imposed on the other parties to an agreement. That did not seem to be evident from our point of view.

CHAIRMAN—Are you still offering in the second round?

Ms B. Gillard—No. We are continuing to serve our contractual obligations under the first round.

CHAIRMAN—The first round, but you did not participate in the second?

Ms B. Gillard—No.

CHAIRMAN—I thought I remembered that. You did examine the contract documents for the second round?

Ms B. Gillard—Yes.

CHAIRMAN—There was no movement? I thought there were some major differences in the contract provisions for the second round.

Ms B. Gillard—From my observation, there was an attempt to suggest that a certain flow of business would be forthcoming to providers in the second round, but there were no guarantees made whatsoever. In fact, if you read the declaration that tenderers were required to sign in order to be considered as a tenderer, they were extremely onerous. Someone used the term 'straitjacket' to describe it. Again, even though there was mention made that it would be the intention that 85 per cent of the referral flow would flow through in metropolitan areas within three months and in regional areas within six months, there was then a disclaimer to say absolutely no guarantees were made and you really had to put the tender in based on a range of very uncertain high risk considerations. That has been pretty much the way it has been through both tender rounds.

CHAIRMAN—If you sign an agreement with Coles-Myer to fill a position or a range of positions for them within their organisation, surely Coles-Myer does not guarantee you any base of personnel from which you might find successful candidates.

Ms B. Gillard—If you are working with a company, it will depend on your pricing as to what type of business, what flow of business, how many placements, for example, a Coles Myer might be looking to fill. You would certainly base your tender or your proposal on the level of business that would flow—and there are usually responsibilities on both parties so that you could deliver a service that is win-win for both parties.

CHAIRMAN—The thing they will never guarantee you is how many people will answer your ads or whatever else in the system to apply for the positions that Coles Myer make available.

Ms B. Gillard—That would be the job of the provider. It would depend on the dynamics and the contract or the proposal itself. But certainly, in the example that you are using, there are circumstances where companies do say, 'I would like you to propose to us for the provision of staff on an exclusive supplier basis, and these are the levels of staff that we are looking for over the next 12 months.' So there is a commitment that we then would take a look at and say, 'Based on that, we propose this.' So there is a mutual obligation on both parties.

Senator HOGG—It is not an open-ended contract, is it?

Ms B. Gillard—No.

Mr Sutton—I think in the example that we cite it is a contract for actual placements. The contract that we sign with the Commonwealth is a contract to deliver a service to job seekers, and obviously a consequence of

that contract is to seek to maximise the number of placements that we can achieve. But the basic contract is a contract to service job seekers.

CHAIRMAN—But how can the Commonwealth guarantee how many job seekers there will be, or, indeed, how many positions in industry or commerce there will be to fill? You have lost me a bit.

Mr Sutton—Firstly, the Commonwealth provides details as to the size of the market, and obviously we do our own demographic studies to assess what the potential is for us to do business in an area. But the Commonwealth does not contract the total potential volume, because there is turnover. What I am suggesting is that, with the way in which the Commonwealth manages the level of the potential market that they put to tender, I guess you need to look at the confidence limits that they put around it. I am not making a judgment about whether it is right or wrong; I am simply indicating that in some cases the volume constraints that they put on it were incorrect, because the level of supply of job seekers was inadequate to service the number of contractors that were appointed. So I think it is incumbent on the Commonwealth, where they create a managed market—and it is a managed market—to look carefully at the level of business they contract.

The issue for us is not necessarily that they guarantee 100 per cent but, where a competitive bid is being asked for, that there is some understanding of the Commonwealth's commitment to us as a tenderer or as a provider under Job Network 1 to a volume of business. We are providing a service and the Commonwealth say they provide no guarantee as to volume, no guarantee as to type, and no guarantee as to the general market information that they provide. You might put disclaimers on some of those things, but the employment services agreement is probably a little different from a lot of contracts that the Commonwealth would let for things like the supply of goods and major projects. It is a little more difficult to quantify, but it would be nice to know that the Commonwealth are guaranteeing, let us say, 60 per cent of the volume of business that they are contracting so that you know what your operational parameters are.

Mr GEORGIU—Don't the industries like them to restrict the number of people who get contracts? Is that what it comes down to?

Mr Sutton—What I am suggesting is that if the number that—

Mr GEORGIU—Is that what you are actually suggesting? We are all politicians and we can all redefine questions. Are you saying that there should be fewer contractors?

Mr Sutton—I think in some areas fundamentally that is what I am saying. I think the level of tolerance that they had in the volume of business that they tendered was not adequate.

Senator HOGG—Are you also saying that the Commonwealth should set lower levels, or a level of minimum engagement, so to speak, that you can expect in the take-up of the contract?

Ms B. Gillard—In principle, I am saying that there is a very one-sided obligation in the contract. It is all for the provider to adhere and commit to obligations but there is an absence of that from the other party.

Senator HOGG—Could I ask one other question. If there is a limit, given that there is none currently, do the Commonwealth in any way audit your performance to find out what level you have reached—whether you have reached the minimum level of expectation in the agreement, whether you have exceeded it, and whether you have delivered what you said you would deliver in the contract?

Mrs Simons—Yes they do. They are aware of the referral levels, and the referral levels are very closely linked to the performance levels. To put it in day-to-day English, if you do not have unemployed people registered with you, you cannot turn them into employed people, and your performance is measured upon placement and/or putting people into another stream.

The basic premise in being successful in regard to performance is that you have the people to do it with. If you do not get the level of referrals that you require, there is no way that you can reach expected performance levels. The other problem with the contract, in terms of referrals, is that it is not just contractual in terms of the Commonwealth specifying numbers; they also rely on Centrelink to do their job appropriately. The Commonwealth could have the intention of referring the levels that are required, but it breaks down at the practical level of Centrelink doing the processes and going through them successfully to ensure that the people flow through. It is the responsibility of the Commonwealth, if they have outsourced that activity, to ensure that that is done. There has been a history that that was not done successfully yet the providers just had to wear it. There was no compensation or allowance to providers for that.

Mr GEORGIU—When you say 'levels that are required', what does that mean? What is the notion of 'requirement'?

Mrs Simons—When you put in a tender and are awarded a tender, you are awarded it on a projected number of job seekers that will be referred to you. You set up your infrastructure and your staffing et cetera in order to meet those expected numbers. The numbers can be erratic. You can have a rush of job seekers in the

first two weeks and then nothing for the next three months. That is an extreme case, but it can occur. The reason that it can happen is that it breaks down at the coalface and you can have an incident. This particular industry is one that I would call incestuous. It appears that people who have got into this area tend to rotate through the various departments and everybody knows everybody, and there are preconceived perceptions about who does what. If somebody in Centrelink has a personal dislike, for some unknown reason, they can actually influence the level of referrals quite considerably. The provider is totally at the mercy of all those occurrences, such as with the referrals in error. The provider has no comeback, other than to protest and request that the problem be fixed, but that in itself can take time by which stage all the performance levels et cetera are affected. I hope that explains it to you.

Mr GEORGIU—Uncertainty exists by the nature of the market. Are you saying that it is not the mutual obligation that is unbalanced, but that you are not getting the right price, given the nature of the system? There are two different points. One is that you have to meet obligations and you say, 'Well, the world is uncertain.' Even in an ideally functioning system, you may get all your unemployed at the end of the three-month period, rather than at the beginning. Are you complaining about price, rather than balanced obligations?

Ms B. Gillard—No, not at all. I think it has to do with performance and our ability. First of all, there has to be the right mix of staff—consultants to job seekers that we are working with to get them into employment. If things are not in reasonable balance that starts to break down and the administration grows and the time that you spend on what you are there for is reduced. It is a performance thing that ultimately you are going to be measured on. The number of outcomes you get does affect your revenue. You have to get those people into jobs and keep them in those jobs. It is all entwined in terms of efficiency of those things and the numbers.

Mr COX—In the first round you were the second largest provider, weren't you, next to Employment National, across the country?

Ms B. Gillard—We are the second largest provider of intensive assistance services.

Mr COX—If I can sum up what I think you are telling me the problems were, in some localities the Commonwealth employed too many providers in a locality so that there would have been an inadequate flow of clients to probably all of them, and that you did not have a clear idea of the specifications of what those clients were going to be in terms of an input to an intensive assistance process. Is that also the case?

Ms B. Gillard—Could you repeat that, please?

Mr COX—You did not know what sorts of clients you would be getting, what their particular problems would be.

Ms B. Gillard—Yes. The mix of clients was unknown. But that would have been the same for everyone.

Mr COX—But it was generally an inefficient and frustrating contract to try to service.

Ms B. Gillard—It has already been recognised that it was very slow to start, and it was. We went through severe teething problems initially with referral flows. Again, I come back to this referral and error issue, which is always a major issue for us because anything that really does strike at your level of productivity means that the ultimate mission that you are trying to accomplish is really retarded. Again, not only was the referral flow spasmodic and we had to do a lot of work working through the channels to the most senior levels in some cases, but also we had a very high degree of error coming through to us which means the time that they spend on administration in different branches could be more adequately spent on the mission at hand. So, yes, there were a lot of things. It was very slow to start and we went through a lot of teething problems. Most providers would have experienced similar things.

Mr COX—In the end it was so frustrating that you decided that you were not going to tender for the second round.

Ms B. Gillard—No. We did tender for the second round. What you asked us here on the first issue was with respect to the contractual obligations. We have said that in our opinion they are one-sided for these particular reasons that we have outlined. Then you said, 'Give us some examples.' What we are saying is that, if it is a partnership and government have been saying they want to view this as a partnership, a partnership has two sides. We are saying that the way the contract has been structured seems to be very one-sided from our point of view.

Mr COX—From what I understand about the results of the second round, there have been some curious outcomes. I have not seen the actual tender document so I do not know what you were asked to provide, but it seems to me curious that six job agencies are providing intensive assistance in Broome, for example, and that there are only eight agencies providing assistance in the whole of Wollongong. There is a bit of an imbalance there.

Mrs Simons—Those six may experience the problems that we were referring to earlier in that they will not have sufficient referrals to sustain them. You may find that some of them may fall by the wayside unless they have other aspects to support them.

Ms B. Gillard—Moreover, are there going to be the jobs in a place like Broome? If the objective is to get unemployed people into work, I would question whether or not there are sufficient job vacancies in a place like Broome. That is even more relevant.

Mr COX—So the modelling that the department has done in allocating the contracts it would seem would be worth looking at to see whether that is adequate, first of all, to see where there are enough clients; second, whether the number of job providers that they have ultimately let contracts for are appropriate to the number of clients, and, thirdly, whether there are actually jobs and the possibility of putting them anywhere.

Ms B. Gillard—We definitely have an opinion. I was not aware that we were going to be asked those questions this morning but I would like to say that we do think that the assessment model was lacking some commonsense and it was illogical. We do think that that whole assessment model needs to be reviewed.

CHAIRMAN—One of the things that we are looking at is corporate memory and skill retention within the Commonwealth. To the extent that you can guarantee that in the private sector, you just cannot. But they are issues that we are concerned with and interested in because of the changing nature of the Commonwealth's activities. The Commonwealth itself used to do all kinds of things which it now asks other people, private sector people and agencies, to perform, whether it is to supply goods or services or do work that was actually done by people employed by the Commonwealth. Did the people who wrote the specification do so in a vacuum or do you think that came from corporate memory from CES?

Ms B. Gillard—I am not too sure that I understand the question. Are we talking about the assessment model of Job Network 2? Is that what you are talking about?

CHAIRMAN—It is whatever it was that you were talking about. You implied there were deficiencies in the model, which is part of the specification. Are these deficiencies in the model when it describes how many clients are going to come from what area and what level of assistance they are likely to need?

Ms B. Gillard—I think it is more the assessment model. That was not specified to the tenderers of Job Network 2.

CHAIRMAN—What do you mean by the assessment model?

Ms B. Gillard—The way the assessment model was constructed on which the tender was based. We were not privy to that so we did not—

CHAIRMAN—But you have still not told us what you are talking about. You know what you are talking about but we would not have a clue. The assessment model—give us a concrete example.

Ms B. Gillard—I was not aware that we were going to be looking at those sorts of issues this morning. I was thinking that we were looking at the specific issues that you have asked us to address in the paper that we put forward on 14 October.

CHAIRMAN—Once the train gets started, necessarily it is very hard to keep it on track.

Mr Sutton—I think the simple answer is that we would have concerns with a model that results in an outcome that completely eliminates nearly 50 per cent of the total market. Where you have infrastructure and staff employed in Employment National and in Drake Jobseek, obviously you construct tender bids that try to utilise the infrastructure and resource that you have in the existing market. It is just a concern to us that the fundamental model that the Commonwealth applied in Job Network 2 resulted in a substantial loss of participation, albeit of organisations, in that market because new market entrants—albeit 80 per cent of them may have been providers under Job Network 1—still have to establish new sites, have to employ people and have to establish links with employers. That delays the performance reaching a stable level of performance in the marketplace for some time. One of the issues that I would raise is this: did the government evaluate in terms of the loss of that 50 per cent, what—

Mr GEORGIU—When you say the loss of that 50 per cent, can you explain that a little more fully because I am a bit slow this morning?

Mr Sutton—Employment National and Drake Jobseek in fact were servicing about 50 per cent of the provider base of the initial Job Network 1. In losing that you are losing all of that infrastructure, you are losing staffing resources which are very important and, most importantly, you are losing those links with employers—those who will provide the placement opportunities for providers. So new providers coming in—albeit they are members of Job Network 1 not operating in many of those sites—have to establish new sites, have to employ people and establish those links with employers. There is a very considerable time lag involved in getting those things in place, which means that the market does not perform optimally for a period

of time and in doing so there is obviously a cost to job seekers because the employment opportunities in the short term are affected.

Mr GEORGIU—Does that mean that you do not like the tendering process as it cuts out people who had a substantial part?

Mr Sutton—Not at all.

Mr GEORGIU—I am genuinely trying to understand, because you are speaking in very abstract terms.

Ms B. Gillard—That is why we felt that, perhaps, this was really not addressing some of the issues.

Mr GEORGIU—No. We are exploring the issues. We are not restricted to this. You are making some points that seem interesting and I am trying to understand. If I am being unusually obtuse, one of the other members of the committee might tell me.

Mr Sutton—I will give you an example.

Senator HOGG—Can I stop you? What you are saying is that, with the change, there is a loss of corporate memory from the private sector as previously with changeovers within the old CES there was loss of corporate memory as people turned over in the service. Now we are seeing it manifested in a different way, and there is a cost to either the provider or the community as a result of the ongoing tendering process. I take it that you are not in opposition to the tendering process but that there are still costs that have to be borne. Is that your point?

Mr Sutton—There are. I think the issue is not with the tender process itself, because the Commonwealth has been through a stringent probity process and I do not raise any issues with regard to it. It is the fundamental structuring of the tender process that one turns to and questions when it results in the outcome that it did.

Mrs Simons—Change and why there are changes is something that I have been trying to understand for the last eight years. When I first started working in the unemployment arena—for want of a better word—and was trying to understand long-term unemployed people and the complexities of the whole system servicing unemployed people, one of the things I never understood was why there is constant change. I accept that change can be very good in some places, because otherwise there can be a complacency. However, change can also take place through monitoring in education, working together in a partnership to continuously lift the benchmarks of best practice.

When unemployed people come to a provider, they do not understand the contractual obligations and they do not care. They come to their consultant, and they are happy to think that finally they have one person who is going to sit there and listen to them. That relationship is formed and they can then progress together towards what is, hopefully, a positive outcome. Another part of that equation is the employer. Again, that is built on a relationship. The qualities of those relationships keep being enhanced by experience. Every so often it seems that the entire market gets turned up on its head. All those relationships are broken, sent askew and then expected to come together again. That is what Neil was referring to. Not only does that have commercial ramifications, but what is also not fully appreciated is the ramifications for the job seekers. I get very cross because, in all the discussions that I have been privy to, it is all on theory. It is all on theory, contracts, business, politics and revenue. The ones who always appear to be missing out here are the ones who we are all meant to be here to help. That sounds very idealistic, and I know that governments have to do this and that you have to have probity, et cetera, but, at the end of the day, that is who is losing out—the job seekers.

The employers are getting very confused. We have employers now who just do not want to know about Job Network; they are sick of it. It is not that they are sick of Job Network. It is: 'Oh, government? No thank you. I don't want anything to do with government.' They find it complex, forever changing and demanding. For our quality assurance we get a written verification from the employer. They have to sign off that the employee we have placed with them is still working there after 15 hours, and again after 13 weeks and again after 26 weeks. They do not want this intrusion into their business. They see it as an intrusion. So that is the effect of constant change and constant upheaval.

Ms B. Gillard—I think that leads to comment about the contract management per se which we were asked to comment on in terms of the consistency in the way the contract managers dealt with a company like ours. I think Sue has touched on that. There were many variations and differences in the interpretations and the information we were given at the contract management level and even through the auditing process, which we always saw as a very healthy thing because it gave us feedback on what our training needs needed to be. So we always saw the process as a very healthy thing. But, in working with contract management—and again Sue, because she is the operational manager, is a lot closer to what is happening on a day-to-day basis in comparison with me—my understanding is, and we have evidence, that information would come from Queensland from a contract manager that told us we were having to do certain things for verification as to

when we had a job seeker start with an employer that was extremely stringent. In another state, we were told that it need not be so stringent and this was required. Again, we have heard just recently that what we were doing was not required and that only a verbal verification was needed. So examples of variations in direction that we would get from our contract management people meant that our people had to come through to another one level up, get the clarification, and confusion would reign. It could affect the audit when people came in to audit a branch. So that led to confusion. It led to extra administrative control and it led to extra time, which all took away from where we should have been spending our time—and were spending our time—but we could have been spending a lot more time.

CHAIRMAN—Are you telling me that you do not get any variability in contract management in dealing with the private sector where you do most of your work?

Ms B. Gillard—We try not to have too much of that because when we enter into a—

CHAIRMAN—People are people, for heaven's sake.

Ms B. Gillard—Yes; but again, if you are looking in Queensland—and, again, Sue can probably expand on this better than I can—I understand to get a verification that a job seeker was employed with an employer they were looking at pay slips. They were looking at all sorts of things that we had to obtain and provide. In another state it was a written verification from the employer, and in another state we were told a verbal verification would suffice.

Mr GEORGIU—Is this from branches of which department?

Mrs Simons—DEWRSB.

Ms B. Gillard—That is the department. The contract—

Mr GEORGIU—You said DEWRSB. They are the agent.

Ms B. Gillard—Yes.

Mr GEORGIU—And they are a private enterprise?

Ms GILLARD—Peter Reith's department.

Mrs Simons—The Department of Employment, Workplace Relations and Small Business. It is a federal government department which is—

CHAIRMAN—Julia has been waiting patiently.

Ms GILLARD—That is all right. It was answered before.

Mr COX—So what you are saying is that the principal documentation on which you were paid varied from place to place and was not set out in the contract?

Mr Sutton—The principal documentation did not change. The interpretation of what was required changed because the Commonwealth did not document its obligations to providers. So you had, in one state, officers of the department saying, 'In order to verify a claim we need this information.' In another state they are saying, 'We need a different level of information.' To take up your point earlier, Drake do not deal with that with a range of contractors. This contract is very intrusive and very prescriptive. It raises the issue of whether there is an employer-type relationship as opposed to a contractor type of relationship. Normally, contractors do not tell us how to do our business. We deliver an outcome which we are paid for. In this case, we had officers of the department telling us how we should operate our business.

Mr GEORGIU—They were also telling you quite different things about how you should operate your business.

Mr Sutton—That is correct.

Ms B. Gillard—We are saying that is what we have found. When the question was asked of us back in October, we said this is what we have found. In terms of saying what would we suggest be done about it, we are saying what we really need to have in contract management is a very specific outline as to what the contract management people do and how they should do it in some general terms so it cuts out this inconsistency and allows a company such as ours, which is operating in various states, to do our job with a degree of certainty that what we are doing is right so that we are not going to find, when we have an audit come in, that they are saying, 'No, that is not right', and that it may disadvantage us in some way. So what we are saying for the future is, in the account management area, that needs to be clarified and known by the provider more than it has been in the past.

Ms GILLARD—Following up Sue's point, you are also saying that, in terms of the evaluation of the tenders and who should get the work and who should not get the work, there seems to be too little value placed at the current stage on past experience and ongoing relationships.

Ms B. Gillard—That is right.

Ms GILLARD—I understand that in the tender document the model referred to price not being the only criterion and that there would be quality indicators but it did not specify what they would be. You are effectively saying that a proven capacity to deliver against past outcomes and the fact that you are in a series of ongoing relationships ought to be part of the evaluation or be an appropriate way of evaluating tenderers.

Ms B. Gillard—Absolutely.

Ms GILLARD—And that is not happening at the moment or it did not happen this time.

Ms B. Gillard—No, it did not happen.

CHAIRMAN—Just so we are absolutely clear: you were a major provider in round 1 and you tendered but you were not successful in round 2. Is that correct?

Ms B. Gillard—That is right.

Ms GILLARD—In those locations where you were providing intensive assistance but you were not successful in round 2, your intensive assistance clients are in the process of being reallocated to other agencies; is that right?

Ms B. Gillard—No, we are continuing to work with those people to fulfil the contractual obligations of Job Network 1.

Mrs Simons—When they are referred to us, they are referred for a period of either 12 or 18 months. We were offered the option to continue to completion with those that were already part way through their contracts and we opted to complete their contracts.

Ms GILLARD—You could have opted to have them reallocated?

Mrs Simons—Yes, we could have opted to close our doors but we opted to continue with our responsibilities to them.

Mr COX—I refer to some of your successful competitors in the second round. Many of them were charities who are subject to a different set of tax rules than you are.

Mrs Simons—That has not escaped us.

Mr COX—Do you have a view about the evenness or unevenness of the assessment process, given that they are effectively competing against you and using Commonwealth tax expenditures?

Ms B. Gillard—Again I want to stress that, when we have been in a partnership on a contract, such as we were with government, we have always taken the approach that if we have any issues at all we take them through the channels that we consider to be the right channels. We are very keen to do that, no matter whom we are working with, so as to do it the right way. Yes, there was an issue of competitive neutrality and we raised that with government to try to ensure that was evened out. During Job Network 1, certainly for intensive assistance, the fee was a set fee so all providers were being paid the same amount of money. However, the private sector had operating costs to bear that some of the other sectors did not have and we wanted to try to even that out so that any future competitive pricing had that knowledge over it so that it was not out of balance. Now more than that I really do not want to comment on but, yes, we did recognise that as we went through Job Network 1.

Senator HOGG—You have referred to the audit process. Who actually does the audit? Could you inform me of that?

Mrs Simons—The department has a national contract manager and it also has contract managers for each region, so it is the regional contract manager who conducts the audits.

Senator HOGG—So it is an audit done by the department?

Mrs Simons—Yes.

Senator HOGG—Is any audit performed by the Australian National Audit Office?

Mrs Simons—No.

Senator HOGG—That is all.

CHAIRMAN—Can I ask you, because we are trying to ask everyone: if it had been specified in the contract document that your records could be—not that they would be—subject to audit by the Auditor-General, would that prevent you from signing a contract?

Ms B. Gillard—No.

Mrs Simons—We had no concern about audits at all. We saw audits as a very positive method of identifying areas for improvement. We did not have a problem with the principle of the audits but we certainly did have a problem with the way in which the audits were conducted.

Mr GEORGIU—Was this thing about variations in validation raised with the department? Did you ever say, ‘Why the hell do we have to produce X in Queensland, Y in Victoria and Z in Western Australia?’

Mrs Simons—Wherever we noted discrepancies at all, we would channel them through our national contract manager.

Mr GEORGIU—And what happened? What do you mean by ‘channel’? Did you say, ‘Why in God’s name is this bloke asking for this?’

Mrs Simons—Yes, we would pick up the phone over any issues and say, ‘This is happening over here.’

Mr GEORGIU—What happened?

Mrs Simons—They would then address the issue and try to correct it where possible.

Mr GEORGIU—Did they actually correct it?

Mrs Simons—There were some issues that they did correct.

Mr GEORGIU—Let us stay with the thing that hit me, that there is variability in the amount of data required in different states. Was that fixed?

Mrs Simons—Because of the nature of the audits, we actually elected to continue with the process of verification that we were doing because, from our risk management perspective, this provided signed proof that we had placed a person in a job and they were still there. As I said, there was no way that we could be looked at as entering into any fraudulent behaviours. So we elected to maintain that.

Mr GEORGIU—I am sorry, I was just about to monster the department for not behaving appropriately and consistently, and now I am not sure what they have done. You raised the issue of variable validation as being an issue of irritation and concern. I asked, ‘Did you raise it with the department?’ and you said, ‘Yes.’ Then I asked, ‘What happened?’ and then I lost the track of the answer entirely. What did they do when you said, ‘You are making quite different demands of us in different states?’

Mrs Simons—On the validation process specifically?

Mr GEORGIU—Yes, on the validation figures. That one sounded very clear when it first started.

Mrs Simons—I do not have the answer to that because I did not actually follow through on that particular issue.

Ms B. Gillard—It did not stop the inconsistencies. I would have to speak to Glynis.

Mr GEORGIU—Okay, so it was raised. That sounded like a staff example of something that was transparently silly or something that should have been fixed. So we asked, ‘Was it fixed?’ and you said, ‘We don’t know.’

Ms GILLARD—You could advise us once you have consulted with the other officer at Drake about whether or not it was fixed, because you seem to have a relatively low degree of confidence that it was fixed. It would be good if we could get that answer.

Mrs Simons—As I said, it is not something that we pursued terribly energetically at the end of the day. We took the decision that we would just continue with the process that we were doing because that was the surest way we had of validating every claim that we made.

Ms GILLARD—From what I have heard you say, it seems that the inconsistency about what verification was required was one problem but that there are many other examples related to contract management where there was inconsistency. It seems to me from what Beverley said earlier that your experience was that those things often were not addressed or were addressed in a slow fashion.

Mrs Simons—I might add that the inconsistencies that we are referring to were not specific to Drake by any means.

Ms GILLARD—No.

Mrs Simons—There was a problem generally within the entire industry. As Mr Charles said, it is people and it is interpretation, and it is a matter where clear directives were not given in the first instance and then they were not sufficiently followed through, and that creates an environment of uncertainty and confusion.

Mr COX—If there is a vast number of job providers and service providers in the new market and some of them are only being required to get telephone verification that somebody is in a job, then it is pretty obvious to everybody on this committee that there is a possibility that systematic fraud could eventuate from that.

Mrs Simons—That was part of our concern, which is why we implemented the written verification system. We wanted to pass every audit with flying colours basically. Our contract managers were very clear on the emphasis that they put on audits. We were audited relatively frequently, and we wanted to feel quite sure and comfortable that our records were up to scratch, which we believe they were.

CHAIRMAN—As a matter of practicality, did you ever have anything to do with the CES?

Mrs Simons—Yes.

CHAIRMAN—Would you sit there and tell me that there was no variability in the process or outcomes from one CES office to the other?

Mrs Simons—There definitely was.

CHAIRMAN—Like a hundred per cent!

Ms B. Gillard—That does not mean that we cannot work towards trying to improve that.

CHAIRMAN—I am not making that point.

Ms GILLARD—This is Tony Abbott's brave new world. Everything is supposed to work perfectly now.

CHAIRMAN—I accept that.

Ms GILLARD—That is what we are constantly told in question time.

Ms B. Gillard—There is an additional point, too. It occurs to me that, if one company is using a particular process for verification and another company is using another method of verification that is perhaps a little less formal, it could influence the performance factor at the end of the day.

Mrs Simons—Most definitely.

CHAIRMAN—We take your point. I doubt there is anybody here who would not support the proposition that performance indicators ought to be evaluated uniformly across both the sector and the nation. There should not be any variability in that.

Mr COX—I have not seen the contract documentation, but I understand that the department indicated that they were looking for a wide geographic spread. Were they calling for people to tender and nominate places where they would provide services, or were they calling for people to tender to provide services in defined locations?

Ms B. Gillard—Neil has done a lot of work on this, so I will allow him to respond.

Mr Sutton—The tender required you to tender by region and to nominate the sites from which you would operate within that region either through a fixed site or an outreach operation. They did not nominate the sites; the sites were at our discretion to nominate. They nominated the regions and the ESAs and we then indicated in which sites we would be prepared to operate within those regions and ESAs.

CHAIRMAN—Thank you very much for your submission and for coming and answering our penetrating questions.

[10.36 a.m.]

DUFFIELD, Mr Colin F, Senior Lecturer, Department of Civil and Environmental Engineering, University of Melbourne

NOONAN, Mr Neil Alton, Senior Academic, Department of Civil and Environmental Engineering, University of Melbourne

YOUNG, Professor David Montgomery, Professor of Construction Management, Engineering Project Management Group, University of Melbourne

CHAIRMAN—I welcome representatives of the University of Melbourne Engineering Project Management Group to today's hearing. We have received your brief submission. Would you like to make a brief opening statement or do we proceed to ask you questions?

Prof. Young—I take the opportunity to make a brief opening statement just to say that we are a very recent, in the last four or five years, and very small group within the Faculty of Engineering at the University of Melbourne. We are trying to establish our way, as it were. The chair that I occupy is a new chair at the university and its brief is to establish management training for engineers at the undergraduate level and research and development and consulting. But, in particular, our group is involved in postgraduate education and research into engineering project management. It is a group that comes under the auspices of the chair.

CHAIRMAN—How often do you meet?

Prof. Young—As a group?

CHAIRMAN—Yes.

Prof. Young—We occupy the same section of the university and we meet on a structured basis once a month, on a formal basis, but we are in constant contact with each other.

CHAIRMAN—Do you have a formal secretariat of staff?

Prof. Young—We have a secretariat.

CHAIRMAN—I think I saw here that you were somehow associated with the Institution of Engineers.

Prof. Young—We are not formally associated with the Institution of Engineers but, for the management education that we provide for our undergraduate engineers, we are working to the documents that the Institution of Engineers has encouraged for that component of their education. Of course, our degree course is accredited by the Institution of Engineers anyway.

Mr Noonan—I have something that may be of value. I am on the Institution of Engineers national committee for construction.

CHAIRMAN—I declare a personal interest: I am a fellow of the institution. Before we start to ask you about your submission, there is a burning question, which results from the institution appearing before us at our first set of public hearings in this inquiry, which relates to one of their major concerns and which is also a concern of the Master Builders Association. In the construction field, firstly, the government departments seem to have divested themselves of a great deal of technical expertise, corporate knowledge and contract management, and further, the way in which the industry has developed over the last few years is that there seems to be an increasing movement by the Commonwealth and the states to place most if not all of the risk in building construction contract management onto the contractor and none onto the owner. Would you like to comment?

Prof. Young—Yes, we would be pleased to comment on that. The second issue was one of risk, which we have addressed in our submission to you and which we would like to have the opportunity, perhaps, to respond on, and I will get Colin to assist in that as well. Risk management for project management is an area of research that we have been developing, quite successfully I would suggest, in the last two or three years, including with the state government of Victoria. Colin will give you the details of it, but we are tabling a document that was recently—six months ago—released by the government of Victoria about risk allocation and risk management modelling. It does not address the issue of downloading of risk, but rather it addresses the issue of risk being managed by that party best able to manage it, whether that is the owner, the government or a service provider. There are a number of interesting comments about that. Do you wish us to make them now?

CHAIRMAN—Absolutely, go for it. It is a major concern of this inquiry.

Prof. Young—We are happy to hear that because it is a topic that is fairly dear to our hearts as well. Colin, do you want to talk about that document first and then I will come back?

Mr Duffield—Yes please. I suppose my opening remarks with respect to risk are that we as a group believe that, regardless of what contractual form you use, you still pay for the risks inherently. You either pay up-front, and if you divest your risk to the group tendering for work and if they price the work appropriately, you pay a premium fee for that. If you hold the risk yourself, theoretically you should get cheaper tender prices. What we have been experiencing anecdotally is that the risks have been shed-off to contractors and the contractors who have been winning the work have invariably not necessarily fully priced in the risk. Therefore, we have a belief that the risk is still there and that people will come back. That is no doubt why from time to time we see people asking for more money, et cetera, because ultimately somebody has to pay for the risk regardless of where it is contractually placed.

We have been doing a lot of work trying to tie down the risk in terms of, say, the framework of identifying the risks you have got, evaluating them and allocating them off. It is in the allocation of risk where we think that the policies and procedures of not only the federal government but also basically anybody who deals in these matters get very keen, in the allocation of identified risks. This overlaps a little with what you mentioned earlier in respect of expertise. To allocate risks appropriately, we hold the view that you actually need to understand what those risks are and the details of them.

This particular report, which we will table and leave with you, has looked at a number of the privately funded projects primarily here in Victoria but actually across Australia, has interviewed most of the bankers, financiers, constructors and others, and has asked them, 'With the government often putting risk towards you, what are your views? Which ones are important, and which risks actually are going to come back and, I suppose, be revisited?' So that is there.

We also, with respect to risk, think that certain risks should be borne, as David said, by the party who is best able to manage them. That has been a philosophy that has been around for a long time, and I believe it is the federal government's policy as well, but it is in the actual detail of identifying the specifics of the risk and then doing something with them where sometimes that broad philosophy can be overlooked. An example would be the inclusion of rise and fall clauses in contracts and, whilst we have been going through a period of low inflation it has been, I suppose, convenient to have lump sum capped prices, but the risk of rise and fall is still there and, if we enter into a phase of high rise and fall, then maybe those things should be relooked at.

Prof. Young—I guess there are two fundamental cultures to do with risk: those viewed by the owner, be it government or private, who are risk averse and would tend to want to download risk. We suggest that really, going back to that point about the party best able to control and manage risk, it can include the owner and can include government. When we say 'the party best able to manage risk', we mean the party who has available to them suitable mitigation techniques, which is one point; and, as a second point, a party who is also able to influence the probability and the consequence of that risk occurring. That is the fundamental philosophy we believe behind allocating risk to the party best able to manage it.

Mr GEORGIU—Can you give us a very simple, concrete example about what that means?

Mr Noonan—I will give you an example. Just in the last couple of weeks I have been out looking at buildings for the Master Builders Association here in Victoria for their awards of excellence, and I have seen two Commonwealth projects, one in Bandiana and one in West Melbourne. The West Melbourne project I saw just this week. The whole concept of delivering the Australia Post facility down there is risk averse on the part of Australia Post. They want their budget and their fixed price to stand up. So, very simply, what they did in this particular contract—in the order of \$3 million or \$4 million—was underpin and demolish the site for the proposed works themselves with a separate contract. So Australia Post knew all about the site. They had a geotechnical investigation. They had actually underpinned the footings. They were in the best position of anybody to know precisely what was on that site through their previous contractor and the investigation. Notwithstanding that, when they entered into a head contract to build their facility—which is a brilliant facility, by the way—they passed on that risk to the building contractor.

Mr GEORGIU—Sorry, they passed it on; what does that actually mean?

Mr Noonan—They passed the risk on to build any new footings and to support the ground floor, et cetera, to the next contractor and said, 'You are wholly responsible for the site; acquaint yourself with the site.' In my opinion that was unreasonable—not so much unreasonable, but illogical.

Mr COX—Wasteful in terms of the price?

Mr Noonan—Probably not in that instance because the contractor I do not believe put a huge margin on it because, through his subcontracts, et cetera, he was able to go back into history and find out a little bit about it. But, conceptually, in my opinion, it was wrong. It resulted in a nice firm price, but conceptually, if things had gone wrong—and over a program of works they can—they would be paying for it or, alternatively, if the issue is big enough, it would not really, in my opinion, hold up at arbitration or litigation, et cetera, because they had no control of it. They were asked to tender quite quickly, so it was quite impossible for tenderers to

fully equate. That, in my opinion, philosophically was a wrong approach, but comforting to the client to know that they had a fixed price.

CHAIRMAN—The second one?

Mr Noonan—It is a risk, the second one at Bandiana, which again is an excellent project. The finished result for the Commonwealth is a really first-class facility. It is a logistics structure for the Army at Bandiana. The risk was in the documentation, so it is not quite the same example. This was a project documented by some very capable consultants, but complete with numerous errors which were not picked up in the documentation phase. The local contractor made it work. For example, the floor level was 600 millimetres out of the ground on one corner. It was not in the ground as it had to be for the facility. But it is a little the same, in that it had an asbestos-riddled structure on the site. The Commonwealth, using a separate contractor, reefed out the old footings and removed the asbestos, et cetera. Again the attitude was that, because it was on the ground conditions, it should be passed on to the local contractor. One of the reasons they submitted it for an award was that they solved the problems. They lowered the floor level and imported fill, all at a variation which is still being resolved. In my opinion, it could have been much better managed in the documentation phase, particularly as to who was inheriting the risk. In my opinion the contractor will be paid for that one.

CHAIRMAN—I understand, from what the MBA told this committee, that the Commonwealth and the states have moved away from fully documented drawings and specifications, including bills of quantities, for a major contract to drawings and detailed specifications—but the specifications themselves relating more largely to either overall Commonwealth standards or the Australian Standards Association bookshelf full of volumes—and no bills of quantities with short tender times and literally throwing all of the risk onto the contractor. Do you have any comment? Are you aware of this?

Prof. Young—As a general comment—I think Colin has already made this point—eventually somebody will have to pay. I guess in the case of government works, the taxpayer will pay for risks in some form, whether it be an inflated tender price or claims and variations towards the end of the contract. But a point that I omitted to make earlier is that we see all this in our group as being a life cycle of valuation of projects, not purely design, documentation and delivery. So the effect on the facility during its working life can also be affected by this. Risks can only be managed if they can be identified. So anything that can be done to identify and reduce the number of risks that can be identified at the start of the conceptual phase, of the documentation stage, must surely provide a more efficient and more economical facility at the end of the day for the taxpayer—in this case, the government.

The example you used was about not providing a bill of quantities. Neil has had more experience in this area than I, but why can't the government agency engage the appropriate persons to provide a bill of quantities? That is more information and it reduces that area of risk that can be reduced. There are some risks, of course, that could be material adverse effect type risks that neither party could have foreseen at the start of the job and maybe those risks have to be on a shared basis. But it seems to me that the philosophy of doing everything possible to identify risks at the start must surely reduce that cost component of the job that is risk associated.

Mr Noonan—In my opinion, there has certainly been a significant reduction in the use of bills of quantities and measurements supplied by the owner, not just on government jobs, though—all jobs. But they are still being used. I saw an example last week of a \$30 million project in Melbourne which was substantiated with a bill of quantities. The bill was there certainly to assist tenderers but particularly to assist in variations. They are still being used. My observation, from taking the opportunity through the Master Builders to keep myself fresh as to what is happening, is that certainly there has been a reduction in fully documented projects as the Commonwealth and the states used to do them. But they are still alive and well. Both of these jobs I mentioned to you at the lower range were fully documented projects. There is a shift wherever possible to document, design and construct innovation. It is really at the top end. There are plenty of traditional jobs still out there.

Mr Duffield—What you are asking goes to the core of achieving efficiencies in our contract area to go, design and construct where somebody else has the full performance responsibility. I am involved in a number of the Australian standards that you mentioned, where performance oriented design is certainly being pushed such that you get the benefits of a contractor knowing how to build something, integrating well with the designer and so it is not a removed process but an integrated process. It has a lot of value in it. What industry has been experiencing is the short tender period, the time when designers are treated more or less as subcontractors. What I perceive occurring is that the lowest common denominator factor is ruling. We are getting tried and proven designs and less creativity because people with short time can only go for a tried and true solution. We may from time to time in some of these fast track type arrangements be missing out in the creative solutions. It is an integrated thing. There are benefits on one hand but there are risks on the other in terms of those approaches.

CHAIRMAN—The Commonwealth bureaucracy has changed substantially over the last two decades and that departments are now under the direction of their secretaries and their CEOs, in largely independent organisations. There are some common rules and constraints and all of that but nonetheless they are to a large extent virtually free to run their businesses within their budget to achieve the outcomes that they are expected by government to achieve. How on earth would we make a recommendation with respect to risk management if there is a perception at the end of this inquiry regarding what the institution said and what the master builder said? You talked in terms of downloading this, apportioning most of the risk to the contractor rather than the entity itself accepting it. How on earth would we make a recommendation that would help reverse that cycle and do a better job of risk allocation to, as you said, the party most appropriate to handle that risk?

Prof. Young—I would like to respond to that by suggesting that the government agency that is providing a facility—and I know that the Institute of Engineers has spoken to you about an informed client—cannot be expected to know everything; no organisation can be. Is there a way that a structured capturing of an identification of risks can be sponsored by the procuring organisation? There must be a lot of valuable knowledge out there across our country about the activities or the facility that the agency is trying to procure. Somehow maybe that government agency could go to the trouble and expense of trying to capture that body of knowledge. If you do that you are provoking the identification of risks in all the aspects of the job. The risks that you identify are the risks that you can manage, which is the point I was trying to make a little earlier. There are risks you cannot identify, ones you cannot manage, but maybe you could have done better in trying to identify them at the start. Maybe some structured capturing of the body of knowledge or experience that is available in a particular type of facility is something that the agency could develop.

Mr GEORGIU—Could you explain what the post office did wrong in the way it structured the contract?

Mr Noonan—Bluntly, it is a draconian style of contract that attempts to pass risks on to the contractor. It actually does that.

Mr GEORGIU—So it says, 'If the building falls down, despite the fact that we have had—

Mr Noonan—No, it says, for example, on the facade brickwork—and this is an existing building which had new penetrations and old penetrations to be filled in et cetera; a building with 1940 bricks in cracked condition—'You are fully responsible for the facade brickwork.' They had to put stainless steel mechanical ties in the brickwork to hold it together et cetera.

Mr GEORGIU—So what would you have liked them to have done? Sorry, this is what I genuinely do not understand.

Mr Noonan—I am a traditionalist. I would think Australia Post had plenty of time to put a cherry picker up to the facade to document it—'strengthen weaknesses et cetera'—highlight the areas to be rebuilt and measure them.

Mr GEORGIU—Why would they do that? They have a contractor that gets money for the job. He assesses the value of the job. Why would Australia Post do all this prework?

Mr Noonan—I would suggest that commercially they would be better off because they would have quantified the work.

Ms GILLARD—Would they get a better contract price as a result?

Mr Noonan—I believe so.

Mr GEORGIU—You did not say that all that heavily when you started. My recollection is that you said that there was not much in it.

Mr Noonan—Initially, I raised another risk, which was the facade. The initial risk I raised was within the ground.

Mr GEORGIU—Let us stay with the ground. Did the Commonwealth actually do the initial work?

Mr Noonan—Yes.

Mr GEORGIU—How did the Commonwealth offload the risk?

Mr Noonan—They basically made the contractor accountable for ground water, for example. They were in the position to know whether or not there was ground water there; the contractor was not. They passed on the risk for ground water. Fortunately, that did not emerge, because it was only one project. But if you do it over a program of work, it will emerge and you will pay.

Senator HOGG—Could I just ask a question. What would that add to the cost percentage wise in passing that part of the risk on? Is that quantifiable?

CHAIRMAN—With respect, Senator, that is the problem.

Mr Noonan—It is a little bit of a guess but it is certainly not a big percentage of the contract sum.

Mr GEORGIU—Mr Duffield made the perfectly reasonable point, which I understood, that it is better to have such a graded project but that the problem with what is happening now is that the timelines are truncated. That I understand but what is wrong with Australia Post saying, ‘Yes, we’ve done the work. Here’s the documentation, charge the price, but you’re responsible.’ On the face of it—and I may well be missing something—I do not understand what the problem is.

Mr Duffield—It is a question that has no definitive answer in so far as when somebody tenders for work they may or may not adequately price risks that are on the table. In the case of a small foundation job, as Mr Noonan has been describing, in terms of the overall cost of that building the foundations are probably relatively minor. It is a small domestic structure. If the contractor were doing their job diligently and fully pricing the work, they would include a margin—an extra fee—because of the uncertainty involved in the foundation work, for which then Australia Post would pay. I think the principle that Mr Noonan was outlining is that, if the contractor did their work in that way, the extra margin that Australia Post paid for the contractor taking the risks in respect of the foundations would be wasted money because Australia Post would already know everything about the site, so Australia Post would have paid twice to carry that risk. They have paid in their original engineering design and geotechnical investigation and they have paid again to give that risk to the contractor, thereby it is a little inefficient. That may be a small-scale example.

Mr GEORGIU—Alternatively, the builder knew that there was very little risk in the competitive bidding process and it did not add very much at all.

Mr Duffield—That is very possible. The point I made much earlier was that, if the risk has not been priced adequately by the contractor, quite often that risk will re-emerge by way of a variation, ongoing discussions, latent conditions or other things, and so it does not go away.

Prof. Young—When you talk about a contract, my experience in the construction industry is that clients view contracts in different lights. Some view a contract as a master-servant relationship, where technically a contract is a voluntary agreement between two parties. Many clients, it seems to me, think it is a master-servant relationship, which is the downloading of risk almost universally. The other point I would like to make is that if you look at the life cycle of a project, the actual cost of construction is probably 60 or 65 per cent, even 70 per cent, of the cost of the job, and yet the cost of the designing, documentation and investigations beforehand may be eight, nine or 10 per cent of the cost of a job. It seems to me that if you can spend another one per cent and make that 11 per cent, and save even five per cent of 60 per cent, you have got to be ahead and you get a time advantage as well.

Mr Duffield—If I can take the next point in respect to how we view risk, it is not only the negative side of risk. Risk also brings with it opportunity, in that if you carry a risk there is the chance that, say in that little foundation example, had the contractor actually priced a risk factor and nothing went wrong, that is a little bonus for them. They have got some opportunity. In the contracts we have seen historically, the government agency who put out the contracts do not avail themselves of their opportunities. They tend to push the risks only one way, and we would see that as an area to be looked at, where opportunities should be working both ways, as well as the negative side of the risk.

Ms GILLARD—I want to raise the question of risk in a slightly different setting. At the risk of being parochial, it is actually an example from my electorate. It is in circumstances where it is not a building project and it is not a tender arrangement; it is where the Commonwealth is negotiating a contract. In particular, the Defence estates organisation was negotiating a contract with an aero club that operates from Point Cook and has a number of aeroplanes that fly from there. It really highlighted to me that the risk averse culture that the Commonwealth has leads to asking initially for a completely unreasonable set of conditions that no one is ever going to sign up to. You get from that very protracted contract negotiations with a lot of increased agitation and possibly ill will on both sides because they have started at the wrong spot. To use that particular example, it is a nonprofit club and it has got some aeroplanes. In the original contract, the Defence estates organisation asked for unconditional, continuing, personal guarantees from every director of the nonprofit club. They ultimately settled after a fairly vexed contractual negotiation where, as you can imagine, the club directors were fairly heated on the question. They ultimately settled for a \$500 increase in the security deposit. It is completely extraordinary, so I would be interested in your comment on that particular round. I would also be interested in your comment on that particular round in the context that I suspect quite frequently—and we have had some evidence of this already—happens around the Commonwealth, where they start trying to shift not 100 per cent of risk but 1,010 per cent of risk and end up wasting a lot of administrative time and creating a lot of angst in negotiating down to a reasonable situation. I will put that to you for your comment.

Prof. Young—A general comment would be one one I made earlier: identifying the risks that you are trying to talk about. If you can in some way capture those risks—how you apportion them, allocate them, retain them, download them, whatever—it is all about risk identification at the start. I know that is not precisely what you are saying, but it seems to me that, with whatever venture we are involved in, if there is some way that we can ensure we capture the risks and expose ourselves to the people who may know what those risks are, then how you do it is another issue. But I could not comment specifically on the way that was handled.

Mr Duffield—Might I add—and jump further down in our submission—that education and training comes into it. It is a safe position to go in a conservative line where you have all bases covered. But the reality is we always work in the grey zone in the middle but, of course, that requires more input, more time and more experience, and probably that is where you ended up getting to in your negotiations because more and more experienced people and more knowledge was placed on the table. It would seem it is sensible to have some of that experience coming in early in the part and maybe speeding up the process.

Ms GILLARD—I suspect what is happening in examples like that is at the outset there is no real identification of risk. There is just a sort of wish list of things that are comforting, like guarantees, et cetera. Whether the risk assessment gets sharper during the contractual negotiation process, I am still not convinced. I cannot imagine what would make you move from continuing unconditional personal guarantees to \$500 extra. It just seems extraordinary.

Mr Noonan—Government is no different to the private sector. There are informed clients in government, very informed clients, and there are very uninformed clients, and the private sector has exactly the same problem. But what amazes me with your example is that the solution is really completely inconsistent with the initial approach. To increase the security deposit has absolutely nothing to do with it. That is about securing the completion of your building and the defects in your planes, et cetera. It is quite a different issue. So I think that, across government, across the private sector, you have very informed and you have very uninformed. One of the weaknesses is the uninformed don't know they are uninformed, so how to switch it around.

CHAIRMAN—I was going to ask about that. That is your view. Do the other two of you share that view, because it seems to me what Julia was saying demonstrates perhaps that departments—and every department is different now; we've got to accept that—demonstrate what I have perceived, from own personal experience, as a risk-averse attitude across the public sector generally, and I am not just talking about the Commonwealth, and that is different from the understanding of risk allocation more generally in the private sector.

Prof. Young—My comment on this topic, as I wrote down here, is this: to know you don't know. And it seems to me that risk-averse groups really don't know. Some of them don't even know they don't know but were downloaded anyway, in which case you don't have to worry about it.

Mr GEORGIU—I think the other thing is that they always end up bearing the risk, Defence being a prime case. They always end up paying anyway.

Mr Duffield—The capacity to pay sometimes comes to the fore, or the perceived capacity to pay.

Mr COX—With these uninformed purchases in the Commonwealth—

Mr Noonan—I am semi-retired so I can say those things.

CHAIRMAN—He is saying everywhere.

Mr COX—I know, but I want to focus on the ones in the Commonwealth because that is—

Prof. Young—It would usually be part of an academic institution, too.

Mr COX—Those are the people who we are trying to influence. In your obviously long experience, have the number of uninformed clients increased since there has been a devolution of responsibility for managing construction contracts within the department—that is, since the Department of Housing and Construction was abolished and individual agencies started doing their own thing?

Mr Noonan—To be quite honest, I can't speak first hand for a big suite of Commonwealth projects, but I can assure you that with the devolution of public works authorities—and that is not just my background—yes, there is that problem. And I have seen it particularly on state government projects, usually with smaller clients. Either in Treasury or in a construction authority or in government, somewhere there is not a residual base of expertise for guidance. And it does not have to be in a construction authority. But I see that weakness, and particularly with smaller clients; not with the larger, informed clients to the same degree because they can usually get in a mode of operation that is reasonably successful, but the smaller clients in government,

definitely. There is no godfather in Treasury, in Finance. It is unreasonable to expect chief executive officers to be across these sorts of issues—running businesses in the most astute way for their projects.

Mr COX—Would you say there is an argument for having a godfather to look after them within government?

Mr Noonan—Either within government or a capacity to buy it in. I think it is in government's interests to have that. It can be done in the old style, of course, which is not flavour of the month, or alternatively it can be consulted in.

Mr COX—At the moment they tend not to do that?

Mr Noonan—To the best of my knowledge, no.

Mr GEORGIU—Drawing comparisons between past and present, I find it surprising that government departments are more risk averse now than they were 40 years ago.

Mr Noonan—I think the culture is the fixed price concept.

Mr GEORGIU—The old culture used to be that, if you over-engineer everything, everything will be all right.

Mr Noonan—I am not talking so much about over-engineering or anything. That is a perception that many people hold.

Mr GEORGIU—Yes, I know. It is very unfortunate.

Mr Noonan—I can understand that. I think that unless there is independent expertise available to clients from within government—smaller clients in particular—they are at risk also. Just because they believe they are going out to the consulting sector to document projects or to the contracting sector to build them, et cetera, they are blissfully unaware that they are carrying that risk. It is all theirs; it is included.

CHAIRMAN—You are reasonably experienced with the way the Victorian government departments have interacted with the construction sector over the last few decades.

Mr Noonan—Yes.

CHAIRMAN—It used to be the case that the Department of Public Works, for instance, with the Department of Education, built all the schools.

Mr Noonan—Correct—or most of them.

CHAIRMAN—And in the early 1980s, we started the process of devolving that responsibility via the department to private sector architects through school councils as the contracting agent.

Mr Noonan—Correct.

CHAIRMAN—And my view is that the cost to the state fell very, very dramatically and with no diminution of quality. Can you comment on that?

Mr Noonan—I would disagree with the quality—quality in terms of standards. Standards were different and inconsistent. In my opinion, you are comparing apples and pears. It is not so much the quality—the quality from both products is quite sound—but the standards applicable to the school council contract versus the one delivered through the central client, in my opinion, differed. One was the bottom of the range, a lean and mean facility, and the other was perhaps more consistent with the historic brief and standards that had been established, sometimes for very, very good reasons.

Mr GEORGIU—Sometimes not.

Mr Noonan—That is right. Everything has to be reflected on.

CHAIRMAN—But sometimes extremely stodgy and slow to react to modern trends.

Mr Noonan—Perhaps.

Mr GEORGIU—Validating the point about a long time arising giving the opportunity for creativity, denied or otherwise.

CHAIRMAN—Perhaps.

Prof. Young—I think there is an issue here as to how we are doing things today compared to how we may have done them 20 or 30 years ago. I think we now identify the need for a project manager for a project and that those skills do not necessarily reside with the architect or the engineer or any other technically oriented professional. I guess that is where we are coming from, that we are doing things better by virtue of the client having a project manager who can have that broader picture. The project manager, in terms of delivering the project, may well need the technical documenter and designer and should have that person or persons as part

of his or her team. But there has to be a project manager who is divorced a little from the design and from the construction but looking after the client's interests. In terms of the delivery of the project, the project manager may well need the technical documenter and designer and should have that person or persons as part of his or her team, but there has to be a project manager, who is divorced a little from the design and the construction, looking after the client's interests.

Mr Duffield—I would like to add something in reply to your earlier question. You were asking what is different today as compared to what it was like in the past. With respect to education and training of staff, I think there is a massive difference, and I do not think it is peculiar to the contracting industry. I think it is peculiar to the way our society has moved with outsourcing and other things, and we are seeing it in the area of contract management. All three of us are involved heavily with postgraduate education of professionals working in contracts. We see people in federal government departments, private organisations and the like and we are frequently surprised at the lack of expertise in the management of contracts of people who have very senior positions. We were talking about it and trying to, I suppose, prepare for these sessions. The breadth of experience required to appropriately manage projects is difficult for people to achieve today, as organisations have gone to outsource more and more of their business and their expenditures have been cut. The in-house training that was once available primarily through government, as it has been outsourced, is now not available as readily in private organisations, either due to a lack of funds or a lack of opportunity. As we have specialised organisations delivering certain services, it is much harder for someone to get the breadth of experience that is required. We believe that to be a real issue of concern in this important area of contract management.

CHAIRMAN—Nonetheless, would you not agree that, fairly well across the board— whether you are talking about a building construction project, development of a new chemical refinery or a new railway, whether it is in the outback or in the middle of nowhere—we are doing things faster than we ever did before, notwithstanding what you say about the dearth of in-house experience in contract management?

Mr Duffield—There is a less structured path for people to gain the appropriate experience. We have very good project managers in Australia, but we do a lot of projects and not everybody has the same opportunity for the breadth of experience. I suppose that is the point I am making.

Mr GEORGIU—Mr Chairman, I have found this very interesting. If you have any further thoughts about some of the issues we have raised today—especially about risk and how somebody bears it at the end—and you would like to put in a supplementary submission, given the nature of the discussion, I think the committee would really appreciate it.

Prof. Young—The document we tabled may help, but certainly we will take that opportunity.

Mr GEORGIU—If you say this is what these nice people were really on about and could not quite manage to get there, I think it would be worth while.

CHAIRMAN—Is it the wish of the committee that the document entitled *Risk identification and allocation project: survey report* and appendices presented by the Engineering Project Management Group be taken as evidence and included in the records as exhibit 25? There being no objection, it is so ordered. Thank you very much for coming and for that report.

Proceedings suspended from 11.24 a.m. to 11.38 a.m.

STEARNS, Mr Robert Murray, Sales Manager, Ballistic Innovations

CHAIRMAN—Welcome. Thank you for coming, Robert. We thank you for your submission. Do you have a brief opening statement that you wish to make?

Mr Stearn—Only by way of documentary things that have come to my attention since I wrote that submission, which illustrate the point fairly clearly. I can bring that up in the course of the conversation or I can do it now.

CHAIRMAN—Go ahead.

Mr Stearn—In a recent project in Jakarta—not an Australian government project, by the way, but it illustrates the point—a client of ours went to tender and sought some bullet-resistant fittings. During the course of that tender, a number of companies, including ourselves, made that client a number of offers. One of the offers that came by was for a product that will stop a bullet at 600 metres. The trouble is that the client was looking for a product that stops a bullet at three metres. The bona fide offer was made and they provided test reports to say that this is the capacity of our product. Indeed, one of the test reports even says that the product failed, yet the client was going to accept that product because it was about a third the price of ours. When the client organisation was confronted with these pieces of paper and test reports, it seems—and the Commonwealth and state governments and private enterprise are no different when they are confronted with a test report—that they could not read it. They could not make head nor tail of the things and did not go off and seek advice as to which product they should be accepting. If we are all going to be quality-assured, it should be quality-assured when you accept someone's offer, not at the time it is installed and supplied.

Mr GEORGIU—More shockproof.

Mr Stearn—Which would be even more embarrassing, yes.

CHAIRMAN—Robert, we talked to you when we did the purchasing inquiry.

Mr Stearn—Indeed.

CHAIRMAN—You are largely saying the same sorts of things. In a sense, you are saying that the specifications are not well-enough written, that the agencies seem not to have the corporate knowledge to ask the right kinds of questions to get the right kind of advice or have the knowledge internally. How do we go about mixing that?

Mr Stearn—I think the Commonwealth is probably the greatest repository of information in the land. It has enormous experience and knowledge hidden away in various corners. I understand that there is a policy within the Commonwealth of user-pay. If a department went to ASIO for instance and sought some security advice, ASIO would then bill that department for their time. I have no idea how much ASIO might charge for their time, but in any event it is seen as another expense. Sometimes it is seen as another unnecessary expense, so it is only for the matter of asking the question of the right people to get the answers that you want to help you manage your particular project.

CHAIRMAN—I think you missed the point: how do we go about ensuring that that occurs?

Mr Stearn—Having a commercial interest in this, the competitive tendering business of performance contracts and requesting products of certain performances and types is very good and works to an extent except when offers are made and accepted, as I mentioned before. That is where the whole thing falls over and becomes dangerous. For certain things, perhaps it is better for certain departments, or indeed the Commonwealth as a whole, to reinvent the standing offer or the period contract. Perhaps you might have a slightly different face to it where you have only one supplier for the period contract. You may have a panel of three or four suppliers and, as each project comes up, those three or four suppliers bid, assuming that their product has been tested, accepted and approved, and everyone is on the same wave length—as long as you are comparing eggs with eggs. Unfortunately, when it comes to the time for calling for expressions of interest and tender for a standing offer and you narrow down to three short-listed companies which you think can do the job, without having actually building an example for testing which is going to cost money, you cannot do that to one and not to all. So it would cost the Commonwealth to test private enterprise materials, which is just what the Commonwealth does not want to do.

CHAIRMAN—In the purchasing inquiry, we heard from more than one respondent that there are times when what is specified and contracted is never tested against the original specification. Can you comment on that?

Mr Stearn—That is about right. That happens so often it is not funny. Contractors make subcontractors a genuine offer and if the head contractor accepts it then the subbie being quality assured will install what he offered. If it is not tested against the original specification or the client's intention at the end of the project

then someone is going to carry the can for that and it is probably going to be the Commonwealth because they have accepted the offer.

CHAIRMAN—Is it any different between public agencies and private agencies in that respect?

Mr Stearn—Private companies, private clients, seem to be quicker to accept a risk. If it is a small risk, fix it, go on and get the job finished. In the Commonwealth it is more of a protracted process that delays projects and it winds up costing the Commonwealth money to fix something that is discovered halfway through a project. That is what the University of Melbourne guys were alluding to before. When you get halfway through a project and you find a design flaw you have to go and fix it. By the time the decision is made to fix it and people have run off to parliament to get more money for the variation to fix it, the whole project is slowed down and stopped and may end up costing you even more money.

Mr GEORGIU—That example you quoted—was that a private company?

Mr Stearn—This example from Jakarta is a private company making an offer to a government agency, not the Australian government. That particular government appears to operate differently where it has local control, that is, you go out and fix your own problems. In Australia we have more central control and everything has to pass through Canberra before a nail gets driven into a piece of wood. So each country, it would seem, has a different method of operation. The United States, in our experience, says no, everything comes from the USA. Whether that is for nationalistic reasons or other reasons, I do not know.

Mr GEORGIU—I was just thinking that maybe when they saw the price difference they would reduce their expectations rather than not being able to read the test results.

Mr Stearn—If a client organisation reduces its expectations of performance then really it has changed the specification of its tender document. To be fair, there would be pressure on you to go back to tender with a revised spec. Again, that is time and again that is dollars.

Mr COX—As you are in a relatively specialised area do you find that Commonwealth agencies seek the advice that is available within the Commonwealth on issues relating to materials in your field? There are material research laboratories that would have a very high level of expertise in those things. Do the relevant agencies that need your services go and get advice from them before they approach you?

Mr Stearn—Not often, because it is user-pays. In one particular Commonwealth test facility it costs us \$20,000 a day.

Mr COX—Which one is that?

Mr Stearn—P&EE Graytown—Proof and Experimental Establishment, an engineering agency at Graytown, Department of Defence.

Mr COX—That is the army one, is it?

Mr Stearn—That is for a particular service. That is what it is touted to cost. From my own commercial interest I would love to go and do more testing, but that cost is so prohibitive it kills us. It is just not worth pursuing. We can get some excellent information out of the products that we test, but it only becomes practical when it is in the interests of the Commonwealth to know that the testing program becomes viable. In the case of the bullet resistant fittings, it is only a thousand dollars a test. If you want to go and experiment with new materials or other ways of making things, you can quite quickly and readily go out and test. Indeed, such a test of identifying new materials and testing them is being organised for early next month for our own commercial purposes. As a result of that, we are going to get several of our client organisations down to witness the test so that they can see how it is conducted, in case they get confronted with things like this—another country's standards and other products—and then they will know exactly what we are talking about. We have to educate the Commonwealth or state government staff as to what their own specifications actually say. From my experience, having a commercial interest in it, that is a bit of a loaded gun because I am telling my client what the specifications actually mean. If I skew it one way or the other it can be, 'You have a commercial interest in this, Bob; you're going to make more dollars out of it.' I have to be careful how I treat that one; it is a double-edged sword. I am painfully aware of that, and I have to keep making that statement that I do have a commercial interest in it to all those people I speak to.

CHAIRMAN—Do you find any variability in specifications between agencies?

Mr Stearn—Yes.

CHAIRMAN—I did not say that right. The terms and conditions of contract are really what I am trying to get to.

Mr Stearn—It depends upon how it is run. Having a period contract with a Commonwealth agency effectively means, as far as we are concerned, that we will deal with those terms and conditions with any

Commonwealth agency—no change. Where the Commonwealth elects to go under the guise of a head contractor—go and build this building and it is going to have some bullet-resistant fittings in there—we are then dealing with the head contractor. A lot of people in Canberra get very cheesed off with us when we put up our prices by eight per cent because we are dealing with a head contractor. Well, sorry, we are taking a commercial risk in dealing with a head contractor because we are not guaranteed our money—unlike dealing with the Commonwealth. Indeed, we are still \$10,000 out-of-pocket from a Commonwealth contractor who closed up shop. So, it is one of those things where we take a risk and we add an amount of dollars onto it, and so the Commonwealth does not get the benefit of consistent pricing as it would get with a period or standing offer.

CHAIRMAN—In those general terms of conditions of contract that you normally operate under if you are working directly for the Commonwealth, are there any onerous conditions that are costing the Commonwealth money?

Mr Stearn—No. It is lovely. It is pick up the phone and send an order, ‘We want two of these over there.’ Wonderful! It works like a charm and usually the money is in the bank 30 or 35 days after the event. There have been one or two hiccups, but nine times out of 10 the Commonwealth pays us promptly and smartly and there is no drama. The problems that we get are at the other end, where the architects say, ‘I don’t like the colour of that; can you change this?’ Then it becomes a non-standard item which requires a specialised effort, which means that the price goes up and all of those risks come into it. So it is the people who want things to look good as opposed to—

Mr GEORGIU—Oh, no! Awful, aren’t they? It is a tiny bit self-serving.

Mr Stearn—Yes, it is. But that is basically our major problem—how the things are changed for appearance sake rather than: this is the standard item; make it fit and make it work. And it does work, and the Commonwealth departments that use our products are, by and large, delighted with the end result. We are getting some great feedback from different users. It is just in the design stage of the building that it tends to get sticky.

CHAIRMAN—One of the things we have been asking most people, particularly private sector people—and we did ask the Institution of Engineers and the Master Builders Association—is: if all Commonwealth specifications said that, under certain circumstances, the Commonwealth Auditor-General would have right of access to your contract records in your premises, would that cause you to raise your tender price or cause you any difficulty?

Mr Stearn—No. You are welcome to do it now. It is not a problem. That is not an issue at all. The only issue that we would draw out of that is one of intellectual property. We would want that information, should it become necessary, appropriately protected.

Senator HOGG—I want to turn to the statement at page 3 in your submission under the heading ‘Mechanism for accountability’. The statement says:

The Commonwealth ASSUMES that their intentions have been met, but it does not KNOW.

What leads you to that statement and, if that is the case, what can be done about that?

Mr Stearn—In the building projects, the Commonwealth will ask, from time to time—not as a rule that is cast in concrete—and the same with state governments, for a certificate of compliance. I can sit down and write you a lovely little letter on the computer and say, ‘Yes, our product complies.’ That is basically all I have to say. The head contractor accepts it and runs. If, in our case, somebody is shot, somebody has to stand before the coroner and say, ‘But, your worship, we thought it was bulletproof.’ How would the Commonwealth know that? It has a certificate of compliance from some contractor who says, ‘Yes, I gave you a wall.’ In my opinion, the Commonwealth needs to get a test report at the time of tender so that it knows that it is accepting a product that meets their performance requirements, and then it needs to get that test report and a certificate of compliance from the supplier who supplied the test report to say that that was what was installed in the project. Then, when you get to the coroner, ‘Your worship, it was a bullet-resistant wall. There’s the test report and the certificate of compliance.’ It is not after the event; it is before it.

Senator HOGG—In the case of your company, what evidence have you got that the Commonwealth has assumed that you have met their specifications?

Mr Stearn—Very few people ask for test reports.

Senator HOGG—So, because they do not ask for a test report, your assumption is that they do not know.

Mr Stearn—I could supply anything. My competitors could supply anything. It might have been another part of the builder’s works. If we choose to use steel on a particular panel, that might be in the bill of

quantities associated with structural steelworks, in which case the structural steel fabricator is supplying a bullet-resistant wall. He would not know whether or not it was bullet resistant. He does not care.

Mr GEORGIU—When you agree to put the thing in, you could put anything in at all so long as you have said that it is—

Mr Stearn—Yes.

Mr GEORGIU—So you want to test it after it has been installed?

Mr Stearn—No, I want to test it before—at the time of offer.

Senator HOGG—But surely you give some guarantee where there is a comeback by the Commonwealth if you have failed to meet the specifications of the contract.

Mr Stearn—We do, because we have got the test reports—and that is assuming we get the contract. A builder might see a steel wall, a steel wall that we might choose to provide as being bullet resistant as correctly belonging in structural steelworks. We might not even get the contract: a non-specialist supplier will do the works.

Senator HOGG—But even then there is still comeback from the Commonwealth government on that supplier if the work performed is of a faulty nature or does not meet the specifications.

Mr Stearn—The supplier of the wall is not going to say whether or not it is bullet resistant. He does not care because the drawing shows there is a lump of steel there that—

Senator HOGG—But there will be a legal liability, surely, in the longer term if they have not provided—

Mr Stearn—Probably, yes. But if the Commonwealth's drawing shows a lump of 10-millimetre steel in that wall, the contractor will put a piece of 10-millimetre steel in the wall. And if a bullet goes straight through it, who is liable? The builder has a contract that says it was 10 millimetres of steel. He has put a piece of 10-millimetre steel in there, but how does anyone know it is bullet resistant? Where was the test report? They have not got one.

Mr GEORGIU—So where does the problem lie? Is it in the initial specification?

Mr Stearn—It is in the initial—

Mr GEORGIU—So what should they be asking for?

Mr Stearn—They should be asking for test reports for their product at the time of tender.

Mr GEORGIU—But what should they be specifying?

Mr Stearn—They need to be specifying a bullet-resistant wall of a certain performance to a certain standard.

Mr GEORGIU—And that does not happen?

Mr Stearn—No. Very rarely does that happen.

Mr GEORGIU—So when people want bullet-resistant something-or-others, what do they say in the contract?

Mr Stearn—They generally draw a piece of 10-millimetre steel on the wall or they generally draw a piece of glass that is 30-millimetres thick. It has got nothing to do with whether it actually is or not. But that is what you will get.

Mr GEORGIU—Is or not what?

Mr Stearn—Bullet resistant. So if the architect draws 30-millimetre glass, that is what you are going to get. If it is bullet resistant or not, what has that got to do with it? The client's intention is that it has to be bullet resistant.

Mr GEORGIU—So we do not ask for what we want. It is not that we do not get what we think we are getting, which is a different problem.

Mr Stearn—It depends upon on how the contract—

Mr GEORGIU—But it is a problem. If they say 'X' deal and somebody does it, then they are not liable because they have delivered on what they were asked to deliver.

Mr Stearn—That is exactly right. But I need to document that and say that this is what I have delivered, here are the test reports, and everyone is happy. But the moment that I say, 'Yes, I've done that', and walk away, the receiving authority has no evidence that I have done that. There is no evidence to say that my product is conforming with the standard that is required. In our case, I can produce that evidence.

Senator HOGG—This would only apply in a specialised area, wouldn't it?

Mr Stearn—Correct.

Senator HOGG—In many areas, the precedents, if one could say that, would already be set.

Mr Stearn—Correct.

Senator HOGG—So you are talking about very specific specialised contract areas?

Mr Stearn—Correct. In the case of a plaster wall, as long as it meets with the Australian standard, it does not have to be tested. I think it is a method of construction for a plaster wall. As long as it complies with that, it is in accordance with the standard. There is no test report as such for a plaster wall. But for our products there is. I assume for some other products there will be, too.

CHAIRMAN—Thank you very much, Robert. We appreciate your continuing advice.

Mr Stearn—If you would like any other information I can help you with, please ask.

CHAIRMAN—No worries; will do.

Proceedings suspended from 12.02 p.m. to 1.11 p.m.

BALSILLIE, Mr Richard Allan, Executive Director, Fire Protection Association of Australia

WILLIAMS, Mr Troy Russell, Assistant Executive Director, Policy Support, Fire Protection Association of Australia

CHAIRMAN—I welcome the representatives of the Fire Protection Association of Australia to today's hearing. Thank you very much for your submission and for coming today. Would you like to make a brief opening statement before we ask you questions about your submission?

Mr Williams—We would like to take the opportunity to thank the committee for its interest in both our submission and other points we have to raise. We appreciate that, in the broad scope of this committee's work, it is really only a minor issue. It does, however, relate to the maintenance of fire protection systems in buildings, which have only two purposes; that being, the protection of life and property from fire. We have highlighted in our submission that the installation of these systems is predominantly the work of a sector of the building and construction industry, regulated and reviewed at some length at a state level. Our members advise us that, on the whole, the administration of contracts at that level is undertaken in quite a sound fashion. We have looked at the maintenance of those systems once they are installed. Our members have also advised us that, the maintenance of those systems is generally sound, but there are deficiencies appearing, and it would appear that the incidence of those is increasing, not decreasing. So we would like to take the opportunity to bring this to the attention of the Commonwealth before we find ourselves in a scenario where that potential mismanagement is costing the Commonwealth in terms of funding and where it starts to pose a life safety risk.

Most of the issues on the horizon from potential problems in contract management really stem from the lack of proper technical advice. We have highlighted in our submission—and we will clarify further, if required—that 10 or 15 years ago there was quite a good framework through the Commonwealth Fire Board and some government agencies for the Commonwealth to acquire that advice. Those agencies are no longer around and, increasingly, individuals are left to some extent to their own capacity to do so, and sometimes they get it right and sometimes they simply get it wrong. We are hoping to outline that and look towards ways where we can continue the work we have done in the past of helping those individuals get the contract specifications right, but try to do so in a more coordinated fashion.

CHAIRMAN—Thank you. I think we will deal with the Commonwealth, most significantly, because that is where our interests lie. We cannot tell the states what to do, nor would we try, but there may be some similarities in approaches on the same sorts of issues. As centralisation of government operations has wound down, some claim that there is a lack of technical expertise within individual agencies, where that technical expertise used to be held either within the agency or in a central agency, and that increasingly they do not know where to turn for the kind of advice they should get—technical expertise, corporate knowledge, memory of what was done before, what worked and what did not work. Do your members talk about that at all?

Mr Williams—They do, and that situation you have outlined is almost entirely the case. When you had the Department of Administrative Services and the Commonwealth Fire Board, it might not have been an agency within one department but there was a central point. Now, with the Department of Administrative Services having gone, and particularly with some of the agencies having almost complete autonomy, although they do report back, they do not have a person to look at contract management of this nature. They will in their particular area of expertise, but not for, say, building management. They try to get that advice. Sometimes they guess and do it well, but generally they find themselves searching, as you have identified.

CHAIRMAN—It is any worse or any different than you find in the private sector?

Mr Williams—In the private sector what will generally happen is they will drag in a consultant in to look at it. If, for example, you were a building owner, you would have two options: either you would go to, say, the Property Council of Australia to seek advice or you would come, as many of our members do, to us. A third of our membership are in the facilities management area so they come to us for advice.

In the public sector there seems to be, certainly at the Commonwealth and state levels, less reliance on outside help, probably for cost considerations, and there is an attempt to do it internally. That is certainly the case with smaller projects. If you are looking at management of a large defence facility or a larger facility elsewhere, it is coordinated in a pretty good fashion, but once you get down to a local level there is not a lot of reliance on outside help.

CHAIRMAN—I notice that you commented on ship fire warning and fire control systems and you thought those were excellent. Do the people who deal with the Department of Defence have any problem with either their contract management or their purchasing?

Mr Williams—Not out of the ordinary. There are individuals, both officers and civilians, within the defence department—who are well known throughout the industry and certainly within their own department—who are able to provide that sort of advice. The defence department would certainly not, with respect to the maintenance of fire protection systems, be a priority to review, at least in our view.

CHAIRMAN—What was that?

Mr Williams—It would not be a priority to review it, in our view. The advice internally is excellent.

CHAIRMAN—When you talk about maintenance, I have a little trouble in that you say that in terms of specifications the Commonwealth still is, to a large extent, getting it right. That means that an initial installation in a Commonwealth owned building, or leased building, for that matter, has proper fire protection systems in place and fire warning systems in place. How is it that they get that right but they do not get the maintenance right?

Mr Williams—Generally because it is the private sector that the building is in. Also, with the building codes, the process of designing and constructing a building and ultimately getting a certificate of occupancy does require absolute co-compliance to the satisfaction generally of a building surveyor. That is required under the building code of Australia, generally supported by state legislation. However, the strength of that legislation is lessened once the building has been classed as suitable for occupancy. Certainly the building code makes a passing reference to maintenance, and most of the state legislation requires maintenance, but it does not set it out. Nor, in most jurisdictions, is there an audit process to make sure that that maintenance has been done properly. So once the building is up and it is installed for the first time, you have got to basically do an audit of the entire building right from the design philosophy to the point where the keys are handed over. But the process of monitoring from occupancy onwards is not what it should be.

CHAIRMAN—How do we get there?

Mr Williams—There are a couple of issues. The private sector does not get it right all the time either; we will concede that much.

CHAIRMAN—Thank you.

Mr Williams—There are a couple of options. It would be useful to start looking at a couple of things like a standard set of contract documents to overcome some of the issues we have highlighted, like trying to find what are the contract documents and having a central point of reference—whether it be within the Commonwealth or from outside—to tender that sort of advice. We do it and we will do it happily, but it is starting to become an impost on the obligations we have to our members, so it is a matter of providing a central resource, even if it were to be web based. You could do some of it that way or through an organisation which could tender advice to the agencies and the departments as well.

CHAIRMAN—Do you have a preference for which way?

Mr Williams—To be honest, if you are looking at outside agencies, your options are fairly limited. We are the largest fire protection organisation; you could look to some of our members to provide that advice, as well. If you were looking at an option within the Commonwealth, you could look at reconstituting the Commonwealth Fire Board, but that would seem an irregular decision given that it was disbanded only two or three years ago.

CHAIRMAN—You commented that Asset Services deserved to go.

Mr Williams—Yes, it definitely did. When it was providing advice and services within the Commonwealth, its management was probably not what it should have been. When it started competing more fully with the private sector, the situation had become far worse—it was losing money hand over fist. It was desirable that it should go, and the private sector picked up that work and seems to be doing it quite well. We have had no complaints that that has really affected the level of service to the Commonwealth.

Mr COX—Would your members be likely to have any views about access of the Auditor-General to their books in the event that something serious like fraud or malfeasance happened in the operation of a contract?

Mr Williams—At the moment in Queensland there is a situation where the ACCC has got involved, and naturally they have complied with that. In Victoria, under a state government initiative, there was a coronial inquiry into the Kew Cottages fire and, when requested to, the members made the documentation available. So, when it is required within the normal scope of business operations—usually through an ACCC inquiry or a coronial inquiry—those documents are made available.

Mr COX—So you would not have any objection to the Commonwealth requiring such a clause in a contract?

Mr Williams—It would depend on the specifics of that clause and exactly what information was being sought. But another issue, once that information was made available, is its distribution within the Commonwealth and the need to make sure that no commercially sensitive information was released.

Mr COX—With so much being contracted out now, our concern is to see that issues of fraud are able to be followed up by the Auditor-General, because at the moment, unless there is such a provision written into the contract, the audit trail for the Auditor-General stops with the private contractor, and those things cannot be pursued.

Mr Williams—If there was a specific recommendation, we could certainly take it to our members and get an answer to you. It is a little hard to provide a commitment one way or the other without knowing precisely what you have in mind.

CHAIRMAN—You said:

Although the public service makes reasonable attempts to compile specifications which can be understood by the industry, the responsible officer may overlook technical aspects such as the interaction between a fire sprinkler and fire alarm system which may render the specification deficient.

Can you elaborate on that?

Mr Williams—Certainly. Generally, a situation such as that arises when someone is making a reasonable attempt to draw up a contract but is doing so without the proper knowledge. So, if you have got a building which has, say, both a fire detection system and a fire sprinkler system, he is unaware of the interaction between the two and the need to look at what is effectively two documents separately. There is an Australian standard under the AS 1851 series of fire alarm systems and a separate one for fire sprinkler systems. Those are written in such a way as to stand alone but, without the knowledge that there is a degree of interaction, you will suddenly find yourself maintaining a part of the fire sprinkler system which has an impact on the fire detection system which you were unaware of. For instance, you may find an air conditioning system in a fire detection system and an air handling system. If you were to set the detection system off so the building thinks there is a fire without having effectively isolated, say, the air handling system, you will shut down the air conditioning in the building, because the air conditioning goes from being an air conditioning system to a smoke management system. In a small building, it is not a major issue—in fact, it may not be an issue at all. But if you suddenly find yourself in a 15-storey office building, you have got some problems there.

Also, if you maintain, say, a fire sprinkler system without knowing the details, you may have the fire brigade turn up thinking there was a fire, because you were unaware of requirements in other documents that would have required you to take procedures to look at the other systems. Most of the systems are interrelated and, without knowledge of where the links are, you will find problems from time to time.

CHAIRMAN—And you really believe this efficiency occurs more in the public sector than it does in the private sector?

Mr Williams—Generally, the private sector will contract everything, the entire building management, out to a firm. When you start getting to a local level—not so much in large facilities but with smaller buildings—it is mostly for cost reasons. They do not want to be contracting everything out on what might be the maintenance of a small building, so they will make a reasonable decision to get it themselves. They are 80 per cent of the way there, but sometimes they overlook some simple facts. We have had scenarios where the company is hiring, say, the local plumber to look at the hose reel or something like that and then completely forgets about the portable fire extinguishers. That is because it was making what it thought at the time was a correct judgment. The private sector, however, generally gets in a contractor to look at the whole building, but they pay a premium for someone effectively managing the entire maintenance contract.

CHAIRMAN—Let us take a small operation, something that is not very big—say, a small, 30-bed nursing home. Today's standards require nursing homes to have both a fire detection system and a fire prevention sprinkler system. Would they normally contract all that work out? Would they have the knowledge to know they need to do that?

Mr Williams—The nursing homes are probably a slightly different example for two reasons. As you would be aware, they have a whole range of standards across the health industry to comply with but there are also standards for the maintenance of the facility. Also, attention was drawn to the need to properly maintain nursing homes and places of special accommodation with the Kew Cottages fire. If you look at the coronial inquest into that fire, a lot of flaws can be identified where the maintenance contracts were deficient. They had a number of maintenance contractors over several years, and there is an excellent case for the view that the maintenance of the system was left lacking because there was no corporate memory. The number of maintenance contractors changed predominantly on price. There was no consistency in the maintenance area. The outcomes there, of course, are on the public record, and I do not have the details to hand. But there is a

good case for the view that maintenance had perhaps not ensured that the level of safety was where it should have been.

CHAIRMAN—When you were talking about the ongoing value of fire safety circulars, you said:

FPA Australia has obtained preliminary indication that it can review and republish the *Fire Safety Circulars* and is investigating the viability of undertaking such work.

That is because the Public Service once upon a time used them as a reference and they now have difficulty in obtaining current information. What do you mean by investigating the viability of undertaking the work?

Mr Balsillie—Basically it is a resourcing issue—

CHAIRMAN—In other words, do you get paid?

Mr Balsillie—Exactly right. How will we get the money back from the resources that we are planning to put into the project of revising, editing and publishing it?

CHAIRMAN—So what is happening?

Mr Balsillie—What is happening at the moment is that it is on a list of the things that we will be doing over the next 12 months, according to our available resources. So I cannot give you a commitment that that is something that we are going to do right now, because it is not the highest priority that we have, particularly at this stage and until we can do a market research survey on it to show that we will get our costs back.

CHAIRMAN—You have not approached any government agencies for assistance, sponsorship or money?

Mr Balsillie—No, not at this stage. Again, it is a resourcing issue as to when we get to commence that part of the project.

Mr Williams—It seems to me that there is consensus that the maintenance of those documents would be a sound idea. As to exactly which agency will deal with it and who, for instance, will fund that work is simply a bit of conjecture. Everyone has agreed that they are a good set of documents, but as for funding the revision and maintenance of them, they seem to be quite happy to let someone else take care of that.

CHAIRMAN—You then went on to say:

In recent times FPA Australia finds itself in a position where it is tendering advice to the Australian Public Service in the creation of contracts and related documentation ... Although FPA Australia will continue to provide this service, it would be in the Commonwealth's interest if such advice were provided in a more coordinated fashion.

Mr Williams—I will explain that one. It is quite simple. At the moment, being the only real national organisation in this area, a lot of times we get inquiries either through someone who has done an Internet search or simply searched through the *Yellow Pages*. When we get a phone call, whether it be from the private or the public sector, it is initially dealt with in the same way—it comes through to about two people. If it is a private sector organisation, the question basically comes down to whether or not you are a member. If it is the public sector, we will answer the question anyway. We are finding that the questions are becoming more frequent and also more complex. At the end of the day, we have prime responsibility to our members. In years beforehand, the association did get a grant in aid from the Commonwealth government—I think the figure was \$30,000—and that supported that sort of work. But, when that funding stopped, it disappeared. At the moment, we maintain a sales tax exemption, which will disappear in June. That is closely related to a lot of our fire safety work. In previous years, through the sales tax exemption and through its grant in aid, the organisation was effectively resourced to provide that sort of advice. That is not the case now and, as I said, we have a prime responsibility to our members.

Mr Balsillie—A number of government departments and officers within those departments are, in their own right, members of the association, but not all of them are. Obviously, we feel a greater obligation to those who are our members, to give them extra service in terms of advice. We also need to be very careful, as the advice becomes more complicated, about our potential liability in giving that advice.

CHAIRMAN—Fair enough.

Mr Williams—In terms of coordinating it, if, for example, it was a private sector company, what you would do is find a parent company and say, 'We're dealing with seven or eight of your divisions. We would like to put together a package and try to coordinate that.' We have done that with the Insurance Council and their members. We have brought them together under an umbrella membership. If the opportunity is available, it might be worth the Commonwealth looking at a similar thing where all the agencies come together under a corporate membership which provided the resources to our office to make sure that advice was available.

CHAIRMAN—Where did the \$30,000 you used to get come from?

Mr Balsillie—Over the period of 18 years that we had that grant—and it stayed at \$30,000 for the whole 18 years—it moved from one department to another.

CHAIRMAN—You were cost effective.

Mr Balsillie—We were very cost effective. The last payment we got was through the Department of Administrative Services.

CHAIRMAN—When did it cut out?

Mr Balsillie—About five years ago.

CHAIRMAN—And that \$30,000 would make a lot of difference?

Mr Balsillie—It would go some way to making a lot of difference these days, yes. It would certainly enable us to do some more advisory work.

Mr COX—Was it cut out before or after March 1996?

Mr Balsillie—I cannot remember the exact date, but at that stage we were only one of two grants in aid under a particular program. They were both cut out at the same time.

Mr Williams—In providing a resource to address the Commonwealth's issues, the fire safety circulars, for instance, would be revised. That provides useful documentation. In terms of an office, an organisation such as the Commonwealth Fire Board would probably be excessive to the task. You do not need an organisation with a staff of six or seven people. A single person who was well known or had the ability and was centrally located to become well known to the instrumentalities and agencies that needed the advice would probably tender most of it. The reason I say centrally resourced is that a contractor working from his office would have a potential to lack a library or an ongoing link to people at Standards Australia and also an ongoing link to some of the private sector contractors. Not wanting to push ourselves forward too much, but if he was, for instance, located in our office, he would have all those things and so you would not need to look at funding office space and things like that to the same extent you as if you were to simply contract that job out.

CHAIRMAN—Do your members complain at all about the Commonwealth or its agencies attempting to transfer risk to the contractor?

Mr Williams—Not to a great extent. There have certainly been some questions on excessive liability insurance and things like that, where it would appear a standard contract has been used. A company on the North Coast of New South Wales was asked to service three portable fire extinguishers and a hose reel, and was asked to have \$200 million worth of liability insurance. The premiums were as much as his turnover. That limits the competition as well. There are only a number of fire protection companies in Australia which have that sort of liability insurance. In terms of the contract documentation itself and trying to move the liability, it has not really been identified as an issue.

CHAIRMAN—That is good to hear. Gentlemen, thank you very much. It has been most helpful. It is an entirely different issue that we had not focused on until we got your submission. Your issue is very safety oriented, but I can think of other instances in other ongoing service contracts where there could be similar sorts of problems, although with perhaps different consequences. Nonetheless, money is money and financial consequences may be as serious sometimes as the safety ones.

Mr Williams—As we said, it was an issue that perhaps 10 years ago was not around because we had organisations within the Commonwealth to look at it. Now that they have been gone for a few years, it is one that has identified itself and would show a trend of becoming a larger issue. So this was a perfect opportunity to raise it now, to perhaps head off any potential problems in the future. So we thank you for that opportunity of doing so.

CHAIRMAN—Yes, it is an opportunity but I am not sure that we are going to be brilliant enough to come up with any kind of solution for you that is viable and saleable. I do not know; we will have to think about that. If you come up with any brilliant ideas, let us know.

Mr Williams—We will do.

CHAIRMAN—We prefer people to help us write up our reports than have to do all the hard work ourselves.

Mr Williams—Understood; thank you very much.

[1.38 p.m.]

RADDA, Mr Mike, Chief Executive Officer, National Furnishing Industry Association of Australia

CHAIRMAN—I welcome the representative of the National Furnishing Industry Association of Australia. Thank you for coming to talk to us. My memory tells me that you also provided a submission and talked to us during the purchasing inquiry.

Mr Radda—I did.

CHAIRMAN—I have recently heard you on tariffs.

Mr Radda—You have.

CHAIRMAN—Would you like to make a brief opening statement before we ask you questions about your submission?

Mr Radda—Yes, thanks for the opportunity to support our presentation today. Our submission sets out the three major concerns that we have with current contracting practice. They are lack of standard specification, lack of expertise and loss of corporate memory and, I guess, use of techniques to transfer responsibility onto contractors.

However, in addition to that, we have a new concern, which is the government's priority to devolve authority to Commonwealth agencies through the Financial Management and Accountability Act. We were strong supporters of the previous inquiry. We thought the excellent recommendations were something that would make a big difference. There was a lot of concern through the Australian government procurement when they were rejected last year, essentially on the grounds of devolution of authority through the act which I mentioned before. We seem to have difficulties separating some of the issues between this inquiry and the other because we see them closely linked. As a consequence, we have a concern that this outcome will be similar to the previous one. A sample question I would like to pose in concluding is this: are you satisfied that all the chairs that are purchased by Commonwealth agencies would meet Australian standards? If you are not satisfied, are you prepared to meet the costs in occupational health and safety and workcover claims that will probably eventually result?

CHAIRMAN—In your submission, you state:

The detailed knowledge of products and requirements has decreased significantly since the demise of Purchasing Australia and as a consequence so has contract specification.

Would you like to tell us about that in more detail?

Mr Radda—Yes. I can give you some examples. You used to have an arrangement through Purchasing Australia where you had people who had expertise in a whole range of things. Now you have agencies who have the responsibility for purchasing. They do not have expertise in whether standards even exist. If I use an example like I quoted in the introduction about chairs, we have contracts that are coming out at the moment that say, 'As to appropriate standards'. The people who are specifying do not know what the appropriate standards are, or which ones to assess them against. There are international standards, European standards—a whole range of standards. I would imagine there are people who are not even aware that if they specify a product and ask for it to be supplied, there may or may not be an Australian standard that it should comply with. In the past, that was done. Purchasing Australia went through issuing, for three years, their own contracts, Fiji contracts and those sorts of things, and there was quite a lengthy procedure for the industry to comply with before you could actually get on the approved register.

CHAIRMAN—But that is just a purchasing issue. We are trying to deal—

Mr Radda—In a specific example, we dealt with a health department where they were not sure what the specification should be for furniture so they said, 'Products as per similar to what we have currently.' And they specified what those products were because the people who were specifying did not know what the criteria were about chairs. If people do not know—for instance, there is an Australian standard for office chairs, and I am writing the contract. I can put a 'catch-all' on and say, 'There is an escape clause in the back,' which is what tends to happen nowadays. It is the responsibility of the contractor to meet all appropriate standards. That is it. From there it is as if the responsibility has been passed back to the contractor to make sure that has been committed. But the people who are writing and specifying the contract now no longer necessarily know what is the appropriate standard and whether it is being complied with.

CHAIRMAN—The last respondent to our inquiry from the Fire Protection Association Australia, who has just left, told us that, across the agencies, when specifications are written the initial specifications are good. Your members deal across, I would imagine, every agency of the Commonwealth.

Mr Radda—Yes.

CHAIRMAN—We all sit down a lot and have desks and all that good stuff. Why do you suppose there is this major difference of view about standards? With respect, their standards are pretty blessed stringent. Furniture standards would not necessarily be as stringent.

Mr Radda—The last comment you made may be the answer to your question. It may be that fire protection is something that each agency does something special with and keeps an eye on the standards. I cannot really comment on their scenario. I can only comment on ours and say that there are a lot of people who do not know what the appropriate standards are in our area. Like you mentioned, it is a product that perhaps the standards people perceive may not be an issue and anybody can necessarily be given the job to specify the requirements of it. It is an ongoing problem in our industry.

CHAIRMAN—With your industry there is simply a contract for supply, then you supply it, and that is it?

Mr Radda—Yes.

CHAIRMAN—You are not involved in cabinet making or you might go into a building property?

Mr Radda—I am not sure of the question. If you mean whether there is an ongoing service requirement, there may be a small element of that but that is not a significant part. It is once the product is delivered that you would expect it to be the end of the contract essentially.

CHAIRMAN—Okay, so there is no real contract management issues associated with your members?

Mr Radda—It is not nearly as significant in any relationship to the supplier.

Ms GILLARD—Are the standards to which you refer predominantly for occupational health and safety?

Mr Radda—No, they are predominantly Australian standards, but embodied in those are ergonomic and safety requirements.

Ms GILLARD—And who issues the standards?

Mr Radda—Standards Australia.

Ms GILLARD—Are they voluntary standards?

Mr Radda—Yes.

Ms GILLARD—If you were getting people to use furniture that was not up to those standards, could that raise a liability problem in case of injury?

Mr Radda—That is the question I posed at the end, in that there are good reasons for Australia going down the road of writing Australian standards. Our standards do not stand alone. They are closely aligned with European, American and world's best practice. One of the reasons we have standards is so that you can actually make assessments of value for money, rather than of just a price element. Also, you can be provided with some guarantee about safety. If you are not an expert on a product but you can specify compliance with an Australian standard, you can tick off a whole lot of things that you may not have to be an expert in. We cannot be experts in everything, but by not specifying standards or complying with them there are no guarantees.

CHAIRMAN—We have made a recommendation in another report that it be mandatory that with all contracts the Auditor-General be given access to contractor records if necessary. Would your members jump and down about that?

Mr Radda—No, I do not think that would be a serious problem.

CHAIRMAN—As long as it is in the specification in the first place?

Mr Radda—As long as it is in the specification in the first place, yes. I do not think that would be a problem.

CHAIRMAN—During the purchasing inquiry you made a big deal about the bundling of items in a super-purchasing contract so that we had pens, paper and furniture all in the same contract.

Mr Radda—Yes, that is correct.

CHAIRMAN—Is that still happening to the same degree or has it reduced in intensity?

Mr Radda—It seems to have reduced in intensity. Sometimes it is hard to keep a constant assessment of these products where people are accepting them more, but it does seem to have reduced in intensity.

CHAIRMAN—You expressed some disappointment at the outcome of our recommendations. I am not as disappointed as you are because I can see there are other ways to achieve some of the things we want to

achieve anyway, which we will take care of. In addition to that, sometimes simply writing the report helps change attitudes and therefore outcomes.

Mr Radda—In response to that, I have the same view to that really, that we believe that report in itself did raise the awareness of some of the contracting issues. But we were disappointed because we thought that those really good recommendations were not supported through to delivery.

Mr COX—Have you had trouble with overspecification of products. Chairs and things are fairly generic. Do some agencies overspecify to the point where they have actually just selected one item that they want? There was once a famous incident in Defence of a 24-page spec for an office chair which, of course, only one supplier could fill. Have you had any experience of that sort of thing?

Mr Radda—Yes, we have. It does occur. You might remember there was a discussion in an estimates expenditure committee, or something like that, last year about chairs in Parliament House that were purchased with imported leather, the specifications that were behind those chairs, and how Joint House purchasing practice actually went to select that product. The simple thing is that is a good example of some of the consternation we experience in those sorts of things.

Mr COX—When we moved into Parliament House 12 years ago, we found that whoever picked the furniture for it had gone after getting the best of everything. They seemed to have paid a premium to be able to reject a sofa if it had two stitches out of place. I think they totally forgot that what they were doing was furnishing offices that were going to be used 18 hours a day. The survivability of the finishes on some of that stuff was not going to be more than a few years, so a vast quantity of money was wasted in seeking perfection that was not going to have any real benefit.

Mr Radda—Sure, but in answer to the previous question about the notion of specification: that is an ongoing issue and in furniture it can be a key one. If you specify a product closely enough, you certainly limit the suppliers who have access to that job.

CHAIRMAN—Thanks very much, Michael. We cannot ask you a whole lot more because your business does not require ongoing contracts.

Proceedings suspended from 1.52 p.m. to 2.26 p.m.

NGUYEN, Mr Hoang Vu, Director, Indo-Chinese Employment Service Pty Ltd

CHAIRMAN—I now welcome the representative of the Indo-Chinese Employment Service. We have received your submission. Would you like to make a brief opening statement before we ask you questions?

Mr Nguyen—No, I would like to proceed with the questions.

CHAIRMAN—Okay. You talked in your submission about adequacy of contract specification and a real change in the specifications between the tender round one and tender round two. Could you tell us about that?

Mr Nguyen—I was referring to the specification prior to the 1994 contract. Our organisation entered the market in 1994. My understanding is that prior to that a number of contracts were administered by individual regions within the department and as a result of that the implementations were open for different interpretations. Under the current contract the system is much better in that they have, before the release of a request for tender, an exposure draft. Also there was public consultation, written submissions and a series of public information sessions. All interested parties were given an opportunity to raise comments or concerns about the process, which is a much better system.

CHAIRMAN—Do you have any problems with the specifications in the latest tender round?

Mr Nguyen—No, we do not.

CHAIRMAN—One of the respondents to this inquiry in dealing with this issue, that is, Centrelink and employment services, has complained that the tender documents set out what you must do and you then provide a price for providing the service, but there is no requirement on either Centrelink or the department of employment to actually send clients to you. Do you have any problem with that part of the specification?

Mr Nguyen—I personally do not have any problem with that. My understanding is that the contract was designed in a way that gives both parties, the department and the provider, a chance to look at the contract before signing it. Also, as part of the tendering process everyone was given the opportunity to raise any concerns to the probity adviser. So we do not have any problems with that.

CHAIRMAN—Which part of the employment market do you deal in?

Mr Nguyen—We are dealing with intensive assistance and job matching.

CHAIRMAN—If you had planned, let us say, to have 300 intensive assistance individuals on your books but the department only sent you 100, how would you financially be able to cope with that?

Mr Nguyen—My understanding of the request for tender documentation was that, as part of it, the department did make it clear, in the release of the request for tender, that providers had to take those issues into account when they submitted the price. So there is no guarantee by the department to provide that number of referrals, even though I know that the department and Centrelink will try their best to do it. But in the contract they did say that there is no guarantee of the level of business.

CHAIRMAN—And you have no difficulty with that?

Mr Nguyen—We have no difficulty with that because our price was based on the assumption that we do not always have the highest percentage capacity.

CHAIRMAN—How many services do you operate?

Mr Nguyen—Do you mean the sites?

CHAIRMAN—Yes.

Mr Nguyen—We are offering services from 10 sites.

CHAIRMAN—All in Melbourne?

Mr Nguyen—Yes.

CHAIRMAN—None in Sydney?

Mr Nguyen—None in Sydney.

CHAIRMAN—You said that performance monitoring has been efficient and beneficial in ensuring that contract obligations by both parties are achieved. Have you found that performance monitoring has been uniform for each of your locations?

Mr Nguyen—Yes, because our organisations were managed by the same contract manager.

CHAIRMAN—For all?

Mr Nguyen—Yes, for all the sites we are operating, so there is a uniformity among them.

Mr COX—One of the questions that we are asking everybody is about access by the Auditor-General to contractors' books. The committee has made recommendations on that issue before but the government has not yet taken them up. We think that might be a necessary power for the Auditor-General if there were circumstances of fraud or serious malfeasance. With a lot of services that were previously provided by the Commonwealth directly now being provided by contractors, there is a limitation on the Auditor-General's powers to investigate problems if and when they emerge. Would you have any objection to a clause that allowed the Auditor-General to have access to your books in those sorts of circumstances?

Mr Nguyen—No, we do not have any objection to that. The way I look at it is that, if the issue is to ensure management accountability and to promote public confidence in the tendering process, any mechanism that ensures that those things happen would be highly welcome. The way I see it is that the current mechanism for ensuring management accountability is adequate. With the monitoring visit, the QA conducted by the department is a way of ensuring that those things happen.

Mr COX—Just for the benefit of the committee's interest, could you tell us a little bit about the extent of your business? Do you mainly provide services to members of the Vietnamese community?

Mr Nguyen—It would be a good idea to give you some understanding or background about our organisation. We entered the market in 1994. Initially, we won the contract to provide employment services under the contract placement program. Then we went on and won the contract to provide job clubs for Vietnamese job seekers and we went on and won the ESRA contract under the case management system followed by Job Networks 1 and 2. The majority of our clients are people from the Indo-Chinese community. Under this contract we have become a general provider servicing everyone in the community.

Mr COX—What is the geographic basis on which you are providing the service?

Mr Nguyen—We are mainly based in Melbourne. We have them in Footscray and the western suburbs, Springvale and Box Hill, where the majority of Indo-Chinese populations are.

Mr COX—Are you operating in any other states?

Mr Nguyen—No, we are not.

Ms GILLARD—Did you increase the volume of business from Job Network 1 to Job Network 2?

Mr Nguyen—Yes.

Ms GILLARD—Can you tell us about the differences between Job Network 1 and Job Network 2 for your agency?

Mr Nguyen—In terms of the—?

Ms GILLARD—In terms of the volume of business.

Mr Nguyen—Under Job Network 1 we got three contracts. We got job matching, Jobsearch training and intensive assistance. Under Job Network 2 we only have job matching and intensive assistance. We do not have Jobsearch training any more.

Ms GILLARD—And is that because you did not tender for it or because you were not successful?

Mr Nguyen—We were not successful.

Ms GILLARD—Right. And has the number of intensive assistance places gone up?

Mr Nguyen—The number has gone up, and also we have increased from nine to 10 sites.

Ms GILLARD—We had an employment services agency speak to us earlier today, and they said one of the problems they believe existed with the Job Network 2 tender documentation was that it did not make sufficiently clear to tenderers on what basis their tender would be assessed. I know the documentation said that price would not be the only criteria, that there would be some quality measures as well, but it did not actually specify in great detail what those quality measures were. Do you share that concern that there could have been more detail about the assessment model for tenders?

Mr Nguyen—I did not see it as a concern as far as our organisation was concerned because of the fact that, in the request for tender, it did say that anybody, even the tenderers, who had a concern about the integrity of the tendering process could contact the probity adviser directly to raise the issue or to raise their concern.

Ms GILLARD—I suppose I am not so much concerned about probity questions but that people were clear on what basis the department was making the decision, whether it was how much of a component price was, how much of a component location was, how much of a component proven track record in the area was—those sorts of things. I wondered whether it was sufficiently clear in relation to those kinds of issues.

Mr Nguyen—The way we approached the tender was that there were criteria that we had to address, and we went through those criteria and addressed them in the best way we could; that is how we did it.

Ms GILLARD—And did you get given any reason as to why you were not successful for the Jobsearch training?

Mr Nguyen—I think it is because of the outcome, the past performance. This is a very competitive market and probably our performance compared with others was not that high.

Ms GILLARD—That is your assumption, is it, rather than the department telling you that?

Mr Nguyen—Yes, that is right.

Ms GILLARD—So the did not tell you why you failed in the tender?

Mr Nguyen—The department did not tell me why I was not successful. But the department did offer the opportunity for feedback through the feedback session. So, any tenderers who wanted to go along and find out why they were not successful, I think, were given the opportunity to do that.

Ms GILLARD—Right. And did you make use of that opportunity or not?

Mr Nguyen—No, because I thought I understood.

Ms GILLARD—Right. Thanks.

CHAIRMAN—In the first round some of my employment services that had been operating even before 1994 had a difficulty they believed in terms of job matching with cash flow—that is, it was going to be very difficult for them to operate because they did not get paid until they got an outcome. Did you experience that difficulty, or did you use prepayment for intensive services to finance your job matching operation?

Mr Nguyen—No. We have different services and different staff responsible for different services. My understanding is that the job matching is paid once you match people to their job and only that, whereas with intensive assistance there are more services. You are expected to provide more counselling, to try to improve their employability and so on. That is why there is a difference in the prices and costs involved. We did not experience difficulties in that because we have staff looking after the job matching area and their job is to try to match people to the job.

CHAIRMAN—You had enough cash in the bank to be able to pay them until you actually got some outcomes then?

Mr Nguyen—Yes, you are right.

CHAIRMAN—That is pretty helpful.

Mr Nguyen—As part of the tender there was a provision where, I think, organisations were asked to demonstrate financial viability or something, and it was one of the things that I was assessed at.

CHAIRMAN—You did comment that the department has recently conducted quality audits of a number of your sites. Could you tell us what the results were?

Mr Nguyen—Okay. The results were very good. We had the opportunity to talk to the department through the contract manager and the people who conducted the audit. There were chances for us to talk about the contractual obligations of both parties, the way we operated and the services we delivered. Also, it was a chance to have feedback from the department as to the areas that could be improved. I followed up those comments and they were very constructive; they helped us to improve our services and helped our services to be of a much higher standard.

CHAIRMAN—Based on your experience so far, in both Job Network 1 and Job Network 2, if there is another opportunity three years from now, do you believe you will still be in the marketplace?

Mr Nguyen—Yes, I still believe that.

CHAIRMAN—Does the government pay you on time?

Mr Nguyen—They do. We do not have any problems with the payment because there are some guidelines we have to follow and, once we initiate an invoice, we always get paid promptly.

CHAIRMAN—How long does it take to get paid once you have submitted the invoice?

Mr Nguyen—It is about 14 days.

CHAIRMAN—That is very good. We are pleased to hear that.

Mr COX—To continue on the line about your business, what are the typical ages of your clients?

Mr Nguyen—They are about the 40- to 55 age group. It is very typical.

Mr COX—And what jobs have they previously held in Australia?

Mr Nguyen—You would be surprised to know that the majority of our clients had very limited experience in Australia. Most of them come from farming backgrounds in Vietnam and they speak very little English. So our strategy is to try to help them and place them to a Vietnamese employer—the Vietnamese or Chinese in Melbourne—where the language barrier is not a problem.

Mr COX—Are they relatively recent migrants or are they people who have been here for a while?

Mr Nguyen—I think people who have been here for a while. We have people who have been here for six, eight or even 10 years and with no work experience.

CHAIRMAN—What sorts of outcomes have you had? Do you mind us asking?

Mr Nguyen—No, not at all. I am glad to say that our outcome, according to the performance data released by the department, is above the national average—much higher, I would say.

Mr COX—What sorts of jobs are you managing to place people in?

Mr Nguyen—In the retail industry, in the hospitality industry. A lot of them have developed the self-employment business. They have the skills, they have the knowledge, to run their own business. It is just their lack of English and lack of opportunities here. We help them to gain employment through that market.

CHAIRMAN—The companies that you deal with on an employment basis, are they all kinds of companies—Australian, English, American, German?

Mr Nguyen—Yes, all kinds of companies. When we have clients, or job seekers who have some experience or have some skills which have never been used, we try to match them and refer them to a company that already has some experience in dealing with people from a non-English speaking background. If they have a skill, a qualification, that led to them having a higher position, we also refer them there. As I said, the majority of our clients were referred to the Indo-Chinese business community because of the language problem.

CHAIRMAN—Have any of your major clients undertaken to start English language programs at work?

Mr Nguyen—Not at work, because most of them work for a Vietnamese or Chinese employer. But we have referred quite a number of our clients to training classes to improve their English as part of our contract obligations, and we have done that quite well. We have arrangements with a number of local TAFE colleges, and we refer people to those classes. There are a number of strategies that we would use, depending on the kinds of skills, experience and their interest. One of the common strategies we use is to refer them to an English class to improve their English.

CHAIRMAN—I remember years ago—it might have been 1991 or 1992—visiting an air conditioning company in Perth. They employed quite a lot of former Vietnamese nationals, and they had an in-house English language program which they operated at their own expense. As I recall, for half of the time that the employees went to the classes, the employer paid for them and for half the time they went it was their own free time. It seemed to work extremely well.

Mr Nguyen—I think it is a very good idea. I also know other companies, like Ford in Broadmeadows, that have in-house training, and it is good. The problem is that nowadays big companies like that tend to employ people with sufficient English. They use the English test as part of their entry exam. So people who fail the test will not be able to get into that company and will not be offered that opportunity. But with companies that have employed people with limited English, I think it is a great idea. If we have clients in that category who apply to a company and require some further training, we are quite happy to cover those expenses to improve their chance. I think it is a good way of doing it.

CHAIRMAN—That is good. Thank you very much for your submission and thank you for coming. We are glad to hear from one respondent who thinks that the department is doing all right.

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

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

Committee adjourned at 2.48 p.m.

